

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER VICTOR @ “GER” AND “GERRY”, ROBERTO MONTEBON @ “BOBBY” AND “BENTO” AND CEFERINO GUNEDA @ “PRINO”, DEFENDANTS, CEFERINO G...

G.R. Nos. 75154-55. February 06, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal from the joint Decision[*] of the Regional Trial Court (RTC) of Argao, Cebu, in Criminal Case No. AR-912 for Robbery with Homicide, and Criminal Case No. AR-913 for Illegal Possession of Firearm and Ammunitions.

In Criminal Case No. AR-912, the Regional Trial Court found: a) Both Roberto Montebon and Ceferino Guneda guilty beyond doubt of the crime of Robbery with Homicide. They were both sentenced to suffer Reclusion Perpetua, and the accessory penalties provided for by law; and b) Roger Victor guilty beyond doubt of the offense of simple Robbery, with two mitigating circumstances of plea of guilty to Robbery and testifying as to true facts in favor of the State. He was sentenced to suffer an indeterminate imprisonment of from six (6) months and one (1) day of prision correccional, as minimum, to four (4) years, two (2) months and one (1) day of prision correccional, as maximum, and to suffer the accessory penalties provided for by law.

The two accused Montebon and Guneda were commanded, jointly and severally, to indemnify the heirs of Charles Turner in the sum of Sixty Thousand Pesos (P60,000) without subsidiary imprisonment in case of insolvency, and to pay the costs.

In Criminal Case No. AR-913, the RTC found Roberto Montebon guilty beyond doubt of the offense of Illegal Possession of Firearm. He was sentenced to suffer a straight penalty of imprisonment of 17 years and 4 months, to suffer the accessory penalties provided for by law, and to pay one-third of the costs.

Roger Victor and Ceferino Guneda were acquitted for failure on the part of the prosecution to establish actual or constructive possession of any firearm in their person or residence.

In this Court, only accused Ceferino Guneda is appealing from the RTC Decision, which adjudged him guilty of the crime of Robbery with Homicide.

The facts as established by the Prosecution and used by the Trial Court as the basis for conviction follow:

"Accused-appellant Ceferino Guneda was a resident of Barangay Ilaya, a mountainous community in the Municipality of Boljoon, Province of Cebu, where his relative Juanita Guneda Victor, the wife of his co-accused Roger Victor, was also residing. Victor casually visited his wife to deliver the latter's ration, as he was residing in Cebu City where he and the third accused, Roberto Montebon, were working as garbage collectors in the Department of Public Services of Cebu City (TSN, 26 July 1985, pp. 10-14; 26 September 1985, pp. 4-6; 4 December 1985, pp. 50-5).

When Victor went to Boljoon to visit his wife on September 18, 1984, Guneda met him at the market place and proposed to him a plan to rob the residence of an American named Myles Castle and the cottage of Charles Turner, an American Peace Corps Volunteer assigned in the Municipality of Boljoon. The two agreed to execute their plan on Oct. 16, 1984 (TSN, 26 September 1985, pp. 25-29).

As planned, Victor went to Boljoon in the afternoon of October 16, 1984, together with Montebon, who brought with him a .38 caliber homemade revolver. They proceeded to the store of a certain Josefina Romero along McKinley Street, where Victor used to leave his things intended for his wife everytime he came to Boljoon. They passed the time there drinking 'tuba' and eating bread while they were conversing in subdued voices (TSN, 26 September 1985, pp. 6-8; 30 May 1985, pp. 6-11).

At past 6:00 o'clock that afternoon, Victor and Montebon left and proceeded towards a bridge where they were subsequently joined by Guneda, who led them to the house of Myles Castle along Rodriguez Street. As they entered the gate of Castle's house, a maid went out to get the clothes which were being hanged to dry. Forthwith, Montebon held her and said: 'Don't move this is a hold-up!' Frightened, the maid instinctively shouted, causing the three to scamper away and return to the bridge where they stayed for a while (TSN, 30 May 1985, p. 11, 26 September 1985, pp. 8-10).

From there, the trio proceeded to rob Charles Turner in his rented cottage located at Lusapon Beach in the outskirts of Boljoon Poblacion. However, upon entering Charles Turner's cottage, Montebon shot him at the back of his head upon instruction of Guneda, who wanted the American killed because the latter knew him. After killing Turner, the trio ransacked the cottage of Turner's personal belongings, and returned to the culvert near the bridge where they left the things which they found to be unimportant (TSN, 26 September 1985, pp. 30 - 34).

Thereafter, Guneda left his two companions, who waited for a bus to carry their loot to Cebu City. It was about 4:00 o'clock at dawn of October 17, 1984 when Victor and Montebon were able to board a 'Sesaldo' bus for Cebu City. Montebon alighted at Inawayan, Pardo, Cebu City with the loot, while Victor proceeded home to his residence at Ponce Compound, Cebu City (TSN, 26 June 1985, pp. 8 - 14).

At about 6:30 o'clock in the morning of October 17, 1984, a report was made to the Police Force of Boljoon that Charles Turner was seen lifeless in his cottage. Forthwith, Patrolman Marcos Florida, Archimedes Villanueva and Romulo Medida proceeded to the cottage of the Peace Corps Volunteer where he was found dead while sitting on a chair with his head stooping towards a table (TSN, 30 May 1985, pp. 25 - 26).

Upon suggestion of the Local Health Officer, Turner's cadaver was referred to the NBI Medico Legal Officer for autopsy (Ibid., pp. 26-27). Dr. Tomas Refe, the NBI Medico Legal Officer who conducted the post-mortem examination on October 19, 1984, issued a necropsy report (Exhibit 'U') of his findings, one of which was a gunshot wound located at the back of the head of the victim, lower portion. He also found inside the head of the victim a badly deformed bullet slug (Exhibit 'D-1') which he submitted to the NBI Ballistic Section for examination. The doctor opined that, based on the size of the wound, it could possibly be caused by a .38 caliber bullet. He also stated the immediate cause of the victim's death as due to hemorrhage, extensive and severe, secondary to gunshot wound. (TSN, 26 June 1985, pp. 48-58).

Meanwhile, based on informations gathered particularly from Myles Castle and Josefina Romero, Victor came out as one of the suspects. With this lead, Patrolman Florida and Villanueva reported on October 20, 1984 the progress of their investigation to Captain Gerry Barias of the 344th PC Company stationed at Sibunga, Cebu. Captain Barias immediately instructed Lt. Pablo Lumusan to organize a PC-INP team to track down the suspect in Cebu City where he was working as garbage collector in the Department of Public Services. (TSN, 30 May 1985, pp. 30-42).

That same day at about 2:00 o'clock in the afternoon, a six-man PC-INP Team proceeded to Cebu City to track down the suspect. But by the time they reached the Sub-Office of the Department of Public Services at the

Reclamation Area where Victor was working, the latter was already off from work. The group then decided to pass the night in the house of Boljoon Mayor Cesar Villareal in Cebu City, and returned to the Reclamation Area at dawn of the following day (October 21, 1984) to wait for Victor. But since Victor did not report for work that morning, somebody in the place volunteered to lead the group to the Ponce Compound where Victor was residing (TSN, 30 May 1985, pp. 42-44).

At first, the woman who met the group in the house where Victor resided denied the latter's presence. Consequently, some of the members of the group left to secure a search warrant from the court. However, before said group returned with Captain Gerry Barias, who personally carried the search warrant, Victor had already surrendered voluntarily to CIC Teodulo Abiner, Archimedes Villanueva and Patrolman Marcos Florida, who were left behind to keep watch over the house of Victor. (TSN, 30 May 1985, pp. 44-46).

Upon interrogation, Victor verbally admitted being one of those who killed the American Peace Corps Volunteer in Boljoon, Cebu. Victor even voluntarily turned over to the PC-INP team a size 40 corduroy jacket (Exhibit 'B') owned by the victim. The team also recovered an empty .38 caliber revolver shell inside the house of Victor who explained that said empty shell was left by his co-accused Roberto Montebon while they were drinking liquor inside the house immediately after the incident (TSN, 30 May 1985, pp. 46-49; 31 May 1985, pp. 5-7).

From there, Victor led the team to the house of Montebon in Inawayan, Pardo, Cebu City. Montebon was lying down inside his house when the PC-INP team arrived at about 11:00 o'clock in the morning that same day. Then and there, Captain Barias placed Montebon under arrest. The team also retrieved the items taken by the suspects from the victim's cottage in Boljoon as follows:

- 1) One locally-made .38 caliber revolver without serial number (Exhibit 'D')
- 2) ME Asahi Pentax Camera (Exhibit 'E')
- 3) One Sony Transistor Radio (Exhibit 'F')
- 4) One Sony AC-140 W Adopter (Exhibit 'G')
- 5) One Brown Attache Case (Exhibit 'H')
- 6) One KDK table Electric Fan (Exhibit 'I')
- 7) One travelling bag (Exhibit 'J')
- 8) One Laundry Bag, 'fatigue color' with printed name 'Charles Turner' (Exhibit 'K')
- 9) One Brown Men's jacket (Exhibit 'L')
- 10) One 'fatigue color' raincoat (Exhibit 'M')
- 11) One white shirt, long sleeve (Exhibit 'N')
- 12) One white polo shirt, short sleeve (Exhibit 'O')
- 13) One booklet of blank checks (Exhibit 'P')
- 14) One booklet Deposit Checks and records and blank ticket (Exhibit 'Q')
- 15) One ID card of Charles Turner issued by the US Peace Corps on October 29, 1983 by James A. Myer, Director, Peace Corps Philippines (Exhibit 'R')
- 16) Five (5) pieces of \$100 bills bearing Serial Nos. B-08872739-A, L-1256340-A, L-12563422-A, L-01675875-A and L-30817888-A (Exhibits 'S', 'S-1', 'S-2', 'S-3' and 'S-4', respectively)

17) Two (2) live .38 caliber bullets found inside the revolving cylinder of Exhibit 'D' (Exhibits 'D-1' and 'D-2')

While said items were being retrieved in the house of Roberto Montebon, the latter remained silent even as Roger Victor remarked, in his presence and several other persons including his wife and a certain Eduarda Serafin, that they were the very articles they took from the cottage of Charles Turner when they killed him in Boljoon, Cebu (TSN, 31 May 1985, pp. 7-39).

After Pat. Florida had issued a receipt for the confiscated articles (Exhibit 'T') duly signed by Montebon's wife and a neighbor by the name of Eduarda Serafin, Victor and Montebon were brought to the PC headquarters at Lahug, Cebu City. From there, the two suspects and the confiscated articles were brought to Boljoon, Cebu (TSN, 31 May 1985, pp. 29-32). That same evening of 21 October 1984 at the Municipal Building of Boljoon, Victor and Montebon were investigated one after the other by PC Sgt. Aristedes Getubig. Both Victor and Montebon were informed of their constitutional rights under custodial investigation, waived the same and voluntarily gave their sworn statements (Exhibits 'Y' and 'Z' respectively) wherein they did not only admit participation in the killing of Charles Turner but also implicated their co-accused Ceferino Guneda (TSN, 25 July 1985, pp. 19-29).

During the Preliminary Investigation of the case conducted by MTC Judge Alfredo Buenconsejo (Exhibit 'BB', both Victor and Montebon, assisted by a counsel de oficio, pleaded 'guilty' to the charges for Robbery with Homicide and Illegal Possession of Firearm and Ammunitions. Thereafter the two accused who were duly informed of their constitutional rights, both acknowledged the truth and correctness of their respective sworn statements taken by PC Investigator Sgt. Getubig (TSN, 25 July 1985, pp. 119-135).

Meanwhile, the deformed bullet slug (Exhibit 'D-1') taken from the head of the victim, the .38 caliber locally made revolver (Exhibit 'D'), together with the two live bullets (Exhibits 'D-2' and 'D-2-A') found in its cylinder, which was confiscated from the house of Montebon, and the empty shell (Exhibit 'D-3') taken from Victor were all referred for ballistics examination to the NBI. Ballistic Supervisor Artemio Panganiban Jr., who conducted the examination issued on December 27, 1984 a report (Exhibit 'W') of his findings and conclusions, among which were the following: 1) that the fired cartridge case marked as Exhibit 'D-3' and the test pen from the firearm marked as Exhibit 'D' possessed similar individual characteristics to mean that said cartridge was fired from the same firearm; 2) that although no definite findings could be made on the bullet slug marked as Exhibit 'D-1', due to its badly deformed and heavily scratched conditions, it was possible that the same was fired from the firearm marked as Exhibit 'D' due to their similar irregular rifling characteristics (TSN, 27 June 1985, pp. 6-17)." [People's Brief, pp. 4-16].

There being a prima facie case against the three accused; two Informations, both dated 14 January 1985, were filed charging them, respectively, with the crime of Robbery with Homicide and Illegal Possession of Firearm.

Upon arraignment, Roger Victor duly assisted by counsel de oficio, entered a plea of "guilty" to Robbery but "not guilty" to Homicide. Roberto Montebon and Ceferino Guneda, also duly, assisted by their respective counsel, entered pleas of "not guilty."

In assailing the Decision on appeal, accused-appellant, Ceferino Guneda, submits the following Assignments of Error:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED CEFERINO GUNEDA OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE AS THE INFORMATION USED THEREFOR FAILED TO ALLEGE ALL THE ESSENTIAL ELEMENTS OF THE CRIME CEFERINO GUNEDA WAS CONVICTED OF AND THEREFOR VIOLATES THE LATTER'S CONSTITUTIONAL RIGHT TO BE

INFORMED OF THE NATURE AND THE CAUSE OF ACCUSATION AGAINST HIM.

II

EVIDENCE PRESENTED BY THE PROSECUTION IS GROSSLY INSUFFICIENT TO SUPPORT THE TRIAL COURT'S CONVICTION OF CEFERINO GUNEDA OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT ERRED IN FORECLOSING THE RIGHT OF THE ACCUSED GUNEDA TO PRESENT EVIDENCE FOR HIS OWN DEFENSE.

It is argued that Guneda cannot be convicted of the special complex crime of Robbery with Homicide as the Information filed against him failed to allege that the Homicide was committed "by reason of or on the occasion of the robbery," and that neither may one infer from that charge alone that the alleged Homicide was done for purposes of committing the alleged Robbery, thus violating Guneda's right to be informed of the nature and cause of the accusation against him.

Article 294 of the Revised Penal Code provides:

ART. 294. ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS — PENALTIES —
Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

While the Information filed against all three accused reads as follows:

"The undersigned Assistant Provincial Fiscal of Cebu, accuses ROGER VICTOR, alias 'GER' and 'GERRY,' ROBERTO MONTEBON, alias 'BOBBY' and 'BENTO,' and CEFERINO GUNEDA alias 'PRINO' of the crime of ROBBERY WITH HOMICIDE, COMMITTED as follows:

That on the 17th day of October, 1984, at about 1:00 o'clock dawn, more or less, at Lusapon Beach, Barangay Poblacion, Municipality of Boljoon, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring confederating and mutually helping one another, with treachery and abuse of superior strength, did then and there wilfully, unlawfully and feloniously enter the house of CHARLES TURNER and once inside, attack, assault and shoot the latter with the use of an unlicensed firearm thereby inflicting mortal wound on the vital part of his body which caused his instantaneous death.

and then accused, with intent of gain, take, steal and carry away One (1) Camera Abash Pentax, One (1) radio transistor 'Sony,' One (1) set Sony Adopter 'AC-140W,' One (1) brown attache case, One (1) electric fan-KDK, One (1) travelling bag, One (1) laundry bag (fatigue color), One (1) jacket "Sears the Mens Store" Coldoroy, One (1) men's jacket (brown color), One (1) raincoat (fatigue color), One (1) white polo shirt long sleeve, One (1) white polo shirt-short sleeve, One (1) booklet blank check, One (1) booklet deposit slip and records, One (1) ID card of Charles Turner and Five (5) pieces \$100 bills (Green Money).

CONTRARY TO LAW.

Cebu City, Philippines, January 14, 1985."
(Paragraphing and italics supplied)

A close analysis of the above-quoted Information will reveal that it has sufficiently alleged the proper offense committed which is that of Robbery with Homicide. The said Information may well be divided into two parts: (1)

That which alleges the commission of Murder with the use of an unlicensed firearm, qualified by treachery and abuse of superior strength; and (2) that which alleges the commission of Robbery, clearly on the same occasion. The direct and intimate connection between the two (2) crimes as well as the components of each offense is readily apparent.

The precise language of the statute need not be used in alleging the commission of the crime as long as in charging the commission of a complex offense like that of Robbery with Homicide, the Information alleges each element of the component offenses with the same precision that would be necessary if they were made the subject of a separate prosecution (See *U.S. v. Lahoylahoy*, 43 Phil 131; *People v. Panaligan*, 43 Phil 131).

We hold, therefore, that although the phrase "by reason or on occasion of the robbery", as provided for by the Revised Penal Code, was not literally used in the recital of facts alleging the commission of the crime of Robbery with Homicide, the Information, as filed, sufficiently and distinctly alleges the commission of the two crimes of "Robbery" and "Homicide" and adequately informs the accused of the offense charged.

In arguing that the evidence presented by the prosecution does not establish his guilt beyond reasonable doubt, Guneda assails the extra-judicial confessions of his co-accused Roger Victor and Roberto Montebon (Exhibits "Y" and "Z", respectively) as inadmissible for having been obtained through force, threats and intimidation. Guneda also alleges that the testimony of his co-accused Roger Victor, affirming the latter's extra-judicial confession, is not to be believed for being filled with inconsistencies and that such affirmation, taken together with the extra-judicial confessions abovementioned, may not be used in evidence against him pursuant to Sections 27 and 29, Rule 130 of the Rules of Court, which provide:

RULE 130. Sec. 27 — ADMISSION BY CONSPIRATOR. The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

RULE 130. Sec. 29 — CONFESSION. The declaration of an accused expressly acknowledging his guilt of the offense charged may be given in evidence against him.

At this juncture, it must be pointed out that Section 27 refers only to the extra-judicial statement or admission of a conspirator. When such extra-judicial statement is confirmed at the trial, it ceases to be hearsay. It becomes, instead, a judicial admission being a testimony of an eyewitness admissible in evidence against those it implicates (*People v. Durante*, 47 Phil 654; *People v. Borromeo*, 60 Phil 691; *People v. Gumaling*, 61 Phil 165; *People v. Mabasa*, 65 Phil 568; *People v. Encipido*, L-70091, December 29, 1986, 146 SCRA 478).

The extra-judicial confession of Roger Victor (Exhibit "Y") was re-iterated and affirmed by him in open court, during the trial. Thus, such confession partakes of the nature of a judicial testimony admissible in evidence not only against the declarant but even against his co-accused, Ceferino Guneda.

Thus, the ultimate question which must be addressed as regards Guneda's second assigned error is whether or not the testimony of Roger Victor, taken together with the other evidence on record, is sufficient to establish Guneda's guilt beyond reasonable doubt.

In determining the weight and sufficiency of the testimony of a self-confessed co-conspirator implicating his co-accused, it has been held that such testimony cannot by itself and without corroboration be considered as proof to a moral certainty that the latter had committed or participated in the commission of the crime. It is required that the testimony be substantially corroborated by other evidence in all its material points (*People v. Tabayoyong*, L-31084, May 29, 1981, 104 SCRA 724). It is also required that such testimony be credible (*People v. Cuya*, L-33046, 18 February 1986, 141 SCRA 351).

"The general rule is that the testimony of a co-conspirator is not sufficient for conviction unless supported by other evidence. The reason is that it comes from a polluted source. It must be received with caution because, as is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others rather than himself. As an exception, the testimony of a co-conspirator may, even if uncorroborated, be sufficient as when it is shown to be sincere in itself, because given unhesitatingly and in a straightforward manner and is full of details which by their nature could not have been the result of deliberate afterthought." (People v. Sarmiento, 69 Phil 740 cited in People v. Cuya, *ibid.*; See also People v. Lanas, 93 Phil 147, US v. Remigio, 37 Phil 599, People v. Bumanglag, 56 Phil at 14; People v. Canete, L-30491, 21 January 1972, 43 SCRA 14, 26; People v. Aquino, L-27184, 21 May 1974, 57 SCRA 43, 48).

Guided by the requirements of credibility and corroboration on material points in the appreciation of the evidence on record, we hold that the testimony of Roger Victor is sufficient to warrant the conviction of accused-appellant Ceferino Guneda.

First of all, the voluntariness of the testimony is beyond question. Roger Victor was presented by his own counsel as witness in his (Roger Victor's) own behalf at the hearing of 26 September 1985. The direct examination conducted reveals that his testimony was spontaneous and made without compulsion to the point of being self-incriminating despite proper advice from counsel. Thus:

COURT TO WITNESS:

xxx xxx xxx

Q:

How far is Ylaya from the Poblacion of Boljoon?

A:

About 30 kilometers away.

Q:

Why did you not reach Ylaya which is 30 kms. away from the Poblacion of Boljoon?

A:

Because Prino told me that we have a house to be robbed.

Q:

Who is this Prino?

A:

Ceferino Guneda, Your Honor.

xxx xxx xxx

ATTY. CESAR NADELA TO ROGER VICTOR

Q:

And where did you pass by your night on that date October 16, 1984 at the Poblacion of Boljoon?

A:

In the house of a certain Fina Romero.

Q:

Together with whom?

A:

With Roberto Montebon.

Q:

What were you doing there in the house of Fina Romero?

A:

He bought a tuba and then we drank.

xxx xxx xxx

Q:

What time did you go to sleep?

A:

No, I was not able to go to sleep because they brought me in that particular evening.

Q:

In what place?

A:

They brought me to the place of a certain American by the name of Castle.

xxx xxx xxx

Q:

What were you doing there?

A:

When we reached that place because we were three (3) there, the first who entered the gate was Roberto Montebon, then followed by Ceferino Guneda and I followed them.

Q:

Upon entering that gate what were you doing?

A:

The two of them proceeded to the door, while I was left in a place where there was a piece of wood. When the maid went out to get some clothes which were hanged, the maid was held by Roberto Montebon and Roberto Montebon told her: "Don't move this is a hold-up."

Q:

After that what happened next?

A:

The maid shouted because of fear, so they left the maid and the two of them followed me.

ATTY. CESAR NADELA: At this juncture, Your Honor, since the testimony of this witness is self-incriminatory, this representation would like to withdraw his appearance. And we will dispense our direct-examination.

xxx xxx xxx

COURT TO WITNESS:

Q:

Was your statement voluntary on your part and nobody co-erced you to make such statement?

A:

Yes, Your Honor, because that was the real happening and those were the things we did.

xxx xxx xxx

Q:

Did you tell your counsel that you will tell a lie or you will tell the truth?

A:

I did not tell him that I will tell a lie before this Court, but I told him that I will tell the truth.

xxx xxx xxx

COURT: The Court gave you twenty-four (24) hours and the Court assumed that you conferred with your witness. The Court gave you ample opportunity to confer with the witness. As a matter of fact, this Court doesn't want this witness to be presented as your first witness.

ATTY. NADELA: We have conferred already for so many times your Honor. What he said on the witness stand, are those which we did not discuss. That's why I was mislead (sic) in putting him on the witness stand. (TSN, ORTEGA, 26 September 1985, pp. 7-21, Italics supplied).

This Court has exercised utmost caution in those cases where the conviction is based on the testimony of a discharged co-accused. In the case at bar, however, the witness, Roger Victor, was not discharged as co-accused and yet he testified as to his and his co-accused's participation in the crime. He was, in fact, convicted of Robbery. Moreover, his testimony was made during presentation of evidence by the defense, not by the prosecution. It was only during the presentation of rebuttal evidence that he was again called to testify, this time, by the prosecution. The credibility of his testimony having remained unimpeached, such testimony, therefore, carries great weight in the determination of appellant Ceferino Guneda's guilt.

Second, the testimony of Roger Victor is replete with details that only a participant in the crime could have known, such as, how and when Guneda proposed the commission of the crime (TSN, 26 September, 1985, pp. 26-29), how they first tried to rob Myles Castle (TSN, 26 September 1985, pp. 8-10); where they first examined the articles taken from the victim Charles Turner (Ibid, p. 33-35); how Turner was killed; and who took custody of the loot (Ibid, pp. 29-35). All such details underscore the credibility of Victor's testimony (People v. San Miguel, L-30722, 31 July 1981, 106 SCRA 290).

Third, the testimony of Roger Victor is corroborated in its material points by other evidence on record, to wit: the testimony of Captain Gerry Barias and Patrolman Marcos Florida that the weapon used in killing and the articles taken from the victim were in the possession of Roberto Montebon when he was arrested (TSN, 24 July 1985, pp. 15-16; 31 May 1985, pp. 9-30); the testimony of Artemio Panganiban Jr., Supervising Ballistician of the NBI, that the .38 caliber "paltik" revolver taken from Roberto Montebon was the same weapon which fired the cartridge found in the possession of Roger Victor (TSN, 27 June 1985, pp. 11-56); the testimony of Carlito Lozada, the Sensaldo bus conductor, that Roger Victor and Roberto Montebon boarded his bus at Boljoon enroute to Cebu City (TSN, 26 June 1985, pp. 8-10); the testimony of Juanita Guneda Victor, wife of Roger Victor and a relative of accused-appellant Ceferino Guneda, that the latter and her husband knew each other and that they would often go to the market of Boljoon where according to Roger Victor, Guneda proposed the commission of the crime (TSN, 26 July 1985, pp. 14-22); and, lastly, the testimony of Josefina Romero, corroborating that of Victor, that both the latter and Montebon were among the customers in her store in the afternoon of 16 October 1984, before the crime was committed. All these testimonies corroborate Victor's and serve to strengthen his credibility.

Finally, there is the extra-judicial confession of Roberto Montebon (Exhibit "Z"), sworn to by him before Judge Alfredo Buenconsejo of the Municipal Trial Court of Boljoon, during the Preliminary Investigation, which confession points to Guneda as the mastermind. As stated earlier, the latter argues that this confession is inadmissible for having been obtained through force, threat and intimidation. Roberto Montebon himself testified in open Court that he was maltreated or beaten up by the police and PC investigators leaving him no choice but to sign the confession in question.

The Court, however, is not convinced that said confession was, indeed, obtained in violation of Montebon's constitutional rights. Montebon failed to show any medical certificate proving the injuries he claimed to have sustained. He claimed that he suffered a cut on his lip, but no scar or any sign of maltreatment could be found (TSN, 31 October 1985, p. 51). Furthermore, he complained of maltreatment for the first time only during the trial, which circumstance has been held to be an indication of the voluntariness of the confession (*People v. Francisco*, 93 Phil 28). More importantly, Exhibit "Z" was sworn to by Montebon before Municipal Judge Buenconsejo during the Preliminary Investigation, as aforementioned, where Montebon was represented by counsel (TSN, 25 July 1985, pp. 119-121). He made no complaint to the Municipal Judge either that he had been forced to sign his confession. Thus, it is evident that the confession in question was made voluntarily.

While the general rule is that an extra-judicial confession of an accused is binding only upon himself and is not admissible against his co-accused, it has been held that such a confession is admissible against a co-accused where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator (*People v. Condemna*, L-22426, 29 May 1968, 23 SCRA 910; *People v. Pareja*, L-21937, 29 November 1969, 30 SCRA 693), and where the co-conspirator's confession is corroborated by other evidence (*People v. Paz*, L-15052-53, 31 August 1964, 11 SCRA 667; *People v. Agdeppa*, L-17489, 24 December 1969, 30 SCRA 782).

The judicial confession of Roger Victor as corroborated by the other evidence, establishes the guilt of accused-appellant Guneda beyond reasonable doubt.

Anent the third assignment of error, the records reveal that on 30 October 1985, after the prosecution had rested its case, accused-appellant Ceferino Guneda, through counsel, opted to file a Demurrer to Evidence (TSN, 30 October 1985, p. 20). Thus, in an Order of the same date, the Trial Court gave Guneda twenty (20) days within which to present a Demurrer to Evidence (RTC Rollo, p. 267). Thereafter, trial continued with respect to the two other accused.

On 4 December 1985, the Trial Court, in an Order stating that trial had terminated, required both prosecution and defense to submit their respective memoranda within thirty (30) days (RTC Rollo, p. 282).

On 16 January 1986, the Prosecution submitted its Memorandum to the Trial Court.

On 20 January 1986, counsel for Guneda filed a Motion for Extension of Time, or until 8 February 1986, within which to present a Demurrer to Evidence, which motion was granted. Guneda, however, failed to seasonably file his Demurrer to Evidence such that on 1 April 1986, the prosecution moved that the case be submitted for decision. Thus, the Trial Court rendered its Decision on 12 April 1986. On 14 April 1986, Guneda belatedly filed his Demurrer. On 20 May 1986, the Trial Court, in an Order, denied the said Demurrer.

Appellant submits that the Court a quo, notwithstanding its denial of his Demurrer to Evidence, should have given him a chance to present evidence on his behalf and that the filing of the said Demurrer should not have been taken to mean a waiver of the right to present evidence inasmuch as at the time the case was instituted in 1984, the Rules on Criminal Procedure did not yet provide that a Demurrer to Evidence is equivalent to a waiver of the right to present evidence.

Rule 119, Section 15 of the 1985 Rules on Criminal Procedure, which took effect on 1 January 1985, provides:

"When after the prosecution has rested its case, the accused files a motion to dismiss the case on the ground of insufficiency of evidence, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution."

It is significant to note that when Guneda's Demurrer was filed on 14 April 1986, the 1985 Rules on Criminal Procedure were already in effect. In fact, it is evident from the Demurrer itself that it was filed pursuant to the aforecited Rule. Thus, appellant's Demurrer is prefaced as follows:

"A demurrer to evidence is allowed under Rule 119 Section 15 of the 1985 Rules on Criminal Procedure, wherein after the prosecution has rested its case, the accused may file a motion to dismiss the case on the ground of insufficiency of evidence" (Demurrer to Evidence, p.1, 11 April 1986, RTC Rollo, p. 386).

It is clear, therefore, that Guneda intended to waive his right to present evidence upon filing the said pleading and he cannot now reverse himself and argue that it was error for the court a quo to have deemed his right to present evidence as waived.

WHEREFORE, the judgment appealed from is hereby AFFIRMED. Costs against accused-appellant, Ceferino Guneda.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Judge Juan Y. Reyes.

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