

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOVENIANO SOLIS Y CABUG, JOEL CABUG Y PAYE, ROGER SOLIS Y
CABUG, ROLANDO BAHIA Y CATINDOY, NESTOR EGUAC Y ANSENG
AND DANILO VI...**

G.R. Nos. 78732-33. February 14, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Accused-appellants Joveniano Solis y Cabug, Joel Cabug y Faye, Roger Solis y Cabug, Rolando Bahia y Catindoy, Nestor Eguac y Ansen and Benhur Lomo y Berioso were charged with the crime of robbery with homicide in Criminal Case No. 6419-V-84 RTC of Valenzuela, Metro Manila, Branch 171, in an information which reads:

"That on or about the 5th day of August, 1984, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Danilo Vidal alias 'Danny' who is still-at-large and the preliminary investigation against him is still pending with the Office of the Provincial Fiscal, Malolos, armed with bladed weapons (sic) and blunt instruments, conspiring, confederating and helping one another, with intent of gain, did then and there wilfully, unlawfully and feloniously, by means of force and violence, take, rob and carry away with them the cash amounts of P118,318.00 belonging to Rita Kho, P30,000.00, Sanyo Cassette assembly, and a gold-plated 'Citizen' wristwatch of unknown value, all belonging to Johnny Sai Tung to the damage and prejudice of said Rosita Kho and Johnny Sai Tung in more than P148,318.00; and by reason of and during the occasion of the said robbery, the said above-named accused, conspiring, confederating together and helping one another, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously, attack, assault and stab Demetrio Paranada and Johnny Sai Tung with the bladed weapons and blunt instruments they were then provided hitting them on the different parts of their body which directly caused their death.

"That the aggravating circumstances of nocturnity and abuse of superior strength are present during the commission of this crime. Contrary to law." (Rollo, pp. 59-60)

The accused-appellants pleaded not guilty to the offense charged.

On September 15, 1984, a similar information was filed against Danilo Vidal y Briosio upon his arrest before the RTC of Valenzuela, Metro Manila, Branch 172, docketed as Criminal Case No. 6456-V-84, as follows:

"That on or about the 5th day of August, 1984, in the municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Joveniano Solis y Cabug, Joel Cabug y Paye, Roger Solis y Cabug, Rolando Bahia y Catindoy, Nestor Eguac y Ansen and Benhur Lomo y Berioso who are already charged in Criminal Case No. 6419-V-84 of the same offense, armed with bladed weapons (sic) and blunt instruments, conspiring, confederating and helping one another, with intent of gain, did then and there wilfully, unlawfully and feloniously, by means of force and violence, take, rob and carry away with them the cash amounts of P118,318.20 belonging to Rita Kho, P30,000.00, Sanyo

Cassette assembly, and a gold-plated 'Citizen' wristwatch of unknown value, all belonging to Johnny Sai Tung, to the damage and prejudice of said Rosita Kho and Johnny Sai Tung in more than P148,318.00; and by reason of and during the occasion of the said robbery, the said above-named accused, conspiring, confederating together and helping one another, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously, attack, assault and stab Demetrio Paranada and Johnny Sai Tung with the bladed weapons and blunt instruments they were then provided hitting them on the different parts of their body which directly caused their death.

"That the aggravating circumstances of nocturnity and abuse of superior strength are present during the commission of this crime. Contrary to law." (Rollo, pp. 60-61)

Accused-appellant Danilo Vidal, likewise, entered a plea of not guilty on arraignment. A joint trial of the two cases ensued. Upon motion of the prosecution, the trial court ordered the discharge of accused Benhur Lomo to be utilized as a state witness.

On March 3, 1987, the trial court rendered a decision convicting all of the accused, the dispositive portion of which rules:

"WHEREFORE, accused Joveniano Solis y Cabug, Joel Cabug y Paye, Roger Solis y Cabug, Rolando Bahia y Catindig, Nestor Eguac y Anseng and Danilo Vidal y Brosio are hereby sentenced to suffer the penalty of Reclusion Perpetua on two (2) counts.

"The accused are hereby ordered jointly and severally to pay the offended party the sum of P118,318.00, deducting therefrom the recovered amount of P1,677.00, representing the proceeds for the two days of the business; the amount of P30,000.00 the personal money of Johnny Sai Tung that were taken by the accused.

"The accused shall jointly and severally indemnify the heirs of deceased Johnny Sai Tung and Demetrio Paranada the sum of P30,000.00 for each (People vs. Dela Fuente, G.R. Nos. 63251-52, December 29, 1983).

"Each shall pay the proportionate costs.

"SO ORDERED." (Rollo, p. 89)

Hence this appeal.

The antecedent facts as summarized by the trial court are as follows:

"It appears on record that weeks prior to August 5, 1984, Joveniano Solis told Benhur Lomo and Joel Cabug, both his cousins, of the plan to rob and kill Johnny Sai Tung, brother-in-law of Mrs. Rita Kho, owner of the Swine Country Farm located at Parada, Valenzuela, Metro Manila; that the said piggery farm is owned by the spouses Kho King and Rita Kho; that after the death of Kho King, Mrs. Rita Kho continues the business; Johnny Sai Tung, brother of Kho King, helps in managing the piggery business and was keeping the proceeds of the sale; that Joveniano Solis is the foreman in the Swine Country Farm; that Benhur Lomo is a laborer in the said piggery farm; that Joel Cabug also worked with the said farm but left his employment and is working at E.S. Second hand Cartons at No. 103, 5th Avenue, 6th Street, Grace Park, Caloocan City at the time of the incident in question; that Roger Solis, brother of Joveniano is a laborer of the said piggery farm; that Rolando Bahia also worked in the said farm but was dismissed on March 26, 1984; that Nestor Eguac was also a former laborer in the same farm; that no date was agreed when to carry out the plan; that at around 7:00 o'clock in the evening of August 4, 1984, Joveniano Solis ordered Benhur Lomo to enter the bodega located at the lower portion of the house where Sai Tung lives; that he will wait inside the bodega and allow them (Joveniano and companions) to enter by opening the main door of the house; that as instructed, Benhur earlier entered the bodega, hid himself behind a pile of sacks and waited; that the security guard padlocked the door of the bodega; that at about 1:00 o'clock in the early morning the following day, there was a knock on the door of the bodega, Benhur opened the front door; Joveniano Solis, Danilo Vidal and Joel Cabug entered; that there was

(sic) no electric lights because the current was already cut off; that the barking of the dogs sent Johnny Sai Tung to come down the stairs focusing a flashlight on them; that Johnny Sai Tung saw Benhur Lomo and asked him why he was there; that Lomo did not answer, sensing danger Johnny ran upstairs; that Joel Cabug ran after Johnny and overtook him midway on the stairs; that Joel Cabug stabbed the body, and pulled Johnny on the waist; that they fell down and landed on the cement floor with Johnny on top of Joel; that Danilo Vidal approached and hit Johnny on the head several times with a pipe; that Joel pushed Johnny's body away from him; that Danilo Vidal stabbed Johnny on different parts of the body; that Benhur, Danilo and Joel went up to the house to the room of Johnny while Joveniano stood guard and ordered Benhur to open the drawer; that there was money inside the drawer and Joveniano ordered Benhur to take it; that they met at the 'ospital ng baboy' and gave the money to Joveniano; Joveniano gave Benhur his share of P780.00; that Benhur buried the money and went back to work cleaning the hogs; that Demy Paranada was found dead at the farrowing section of the farm.

"The post-mortem findings (Exhs. 'M' & 'O') show that the cause of death of Johnny Kho Sai Tung and Demetrio Paranada as (sic) hemorrhage, severe, secondary to stab wounds of the chest.

"A lead to Rolando Bahia's involvement was from the statement given to the police by Joveniano Solis (Exh. 'H,' 'H-1,' 'H-2' and 'H-3'). Taking that lead, the police picked up Rolando Bahia, and after having been apprised of his constitutional right with the assistance of the lawyer of his choice, Atty. Restituto Viernes of the CLAO and Atty. Antonio Dalag gave the statement (Exh. 'D,' 'D-1' to 'D-8') admitted, his involvement and that of Joveniano Solis, Roger Solis and Nestor Eguac, in the offense. The police also took the lead as to the involvement of the accused Joveniano Solis and Danilo Vidal from Joel Cabug, the latter after having been informed of his constitutional rights assisted by Atty. Reynaldo Garcia gave a written statement (Exh. 'F,' 'F-1' to 'F-12') to the effect that Joveniano planned to gag and tie Demy Paranada and Antonio Solis, the elder brother of Joveniano, the guards at the night shift, to prevent them from rescuing Johnny; that to avoid being recognized, Joveniano and Danilo Vidal wore masks; that he (Joel) placed the mask inside his pocket because it did not fit his face; that the electric power was cut off and they proceeded to where Demy Paranada was; that Joveniano and Danilo held Demy Paranada who was then sleeping; that Demy Paranada was awakened and Danilo advised him, 'Huwag kang sisigaw at hindi ka maaano,' and Demy asked, 'Bakit ba, ano ba ang kailangan ninyo sa akin? Kung pera, wala akong pera;' that he (Joel) held one of Demy's hands but Demy struggled; that he (Joel) was not able to hold the other hand; that in the process, Joveniano's mask was taken off and Demy recognized Joveniano; that Joveniano signalled Danilo and the latter stabbed Demy causing the latter to fall in the canal; that Joveniano and Danilo took turn(s) in stabbing Demy; that they (Joveniano, Danilo and Joel) proceeded to the place where Johnny Sai Tung was sleeping; that Benhur opened the door of the bodega; that Joveniano switched off the lights; that when they were inside the lower portion of Johnny's house the dogs barked and Johnny wearing in (sic) briefs came down with a flashlight.

"During the police custodial investigation, Joveniano Solis after having informed (sic) of his constitutional rights and assisted by his own counsel, Atty. Manuel M. Crudo, gave the written statement (Exh. 'I,' 'I-1' to 'I-30') pointing the place where he hid the money he claimed Joel Cabug gave him; that accompanied by police officers they went inside the compound of Swine Country Farm and retrieved the money (Exh. 'J,' 'J-1' to 'J-2,' photographs; Exh. 'K,' 'K-1' to 'K-2,' money recovered; Exh. 'L,' 'L-1' to 'L-2,' the plastic bags where the money was wrapped; Exh. 'L-3' to 'L-5,' markings in the plastic bag)." (Rollo, pp. 80-82)

In this appeal the accused-appellants raised the following assignments of error in their brief:

"I.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES AND IN DISREGARDING THE THEORY OF THE DEFENSE.

"II.

THE TRIAL COURT GRAVELY ERRED IN SENTENCING ACCUSED-APPELLANTS TO SUFFER THE PENALTY OF RECLUSION PERPETUA ON TWO (2) COUNTS." (Rollo, p. 112)

The only evidence that implicates the accused-appellants in this case is their extra-judicial confessions which they claimed were obtained through tortures. It has been held that a confessant bears the burden of proving that the admissions in his affidavit are involuntary and untrue (*People v. Canunay, et al.*, L-29181, July 9, 1984, 130 SCRA 301). Appellant Rolando Bahia (Bahia, for short) testified that he was mauled. Appellant Joel Cabug (Cabug, for short), likewise, declared that he was mauled and tortured by applying electricity on his sex organ and hand. Appellant Joveniano Solis (Joveniano, for short) claimed that he was mauled, handcuffed and blindfolded and made to lie on the "tarima."

A careful scrutiny of the records belie the assertions of maltreatment. We find that the appellant were afforded the services of counsel during the time they executed their statements. There was also an instance when the Presiding Judge visited Joveniano's detention cell and inquired about his condition and complaints (TSN, July 18, 1986, 16). Cabug was, likewise, brought before the Fiscal before whom the former subscribed to the veracity of his statement (TSN, March 26, 1986, pp. 25-27). Moreover, We note, that in the statement given by Joveniano dated August 8, 1984, the people then present were counsel of his choice and two press reporters (Records, p. 112). With all these chances to report the alleged maltreatment, appellants kept silent. They did not even file a complaint against their alleged tormentors or ask their counsel or relatives to do so. The claim of defense witness Marciano Mangunay, father-in-law of Cabug, of being busy as the breadwinner of the family which prevented him from reporting the maltreatment is flimsy and unconvincing being contrary to human behavior. We have already ruled that a confession is deemed to have been made voluntarily if the accused did not complain to the proper authorities regarding the alleged maltreatment despite the opportunity to do so (*People v. De los Santos*, L-35598, May 29, 1987, 150 SCRA 311). The voluntariness of the confession is further enhanced by the silence of the press reporters who are usually watchful and vigilant to notice any irregularity in the manner of the investigation and physical condition of accused persons. Appellants neither asked for medical attention nor presented any medical certificate to attest to the bruises or injuries on their persons. The fact, too, that appellant Danilo Vidal (Vidal, for short) and Roger Solis (Roger, for short) did not execute extra-judicial confessions attest to the absence of maltreatment in this case.

Furthermore, We find that the confessions executed by Cabug and Joveniano corroborate and interlock with each other as well as substantiate the testimony of state Witness Lomo. Appellants' confessions abound with details known only to them. Thus, Joveniano's plan to rob Sai Tung and disarm guards Demy Paranada and Antonio Solis held three weeks before the fateful day; the places where the plan was discussed; the telephone conversation between Cabug and Joveniano wherein the latter asked the former to look for a big and courageous person; the difficulty expressed by Cabug searching for such accomplice and the persons he recommended to Joveniano; the points of entry of Cabug, Henry and Vidal to the Country Swine Farm; the first attempt to implement the plan which was foiled because of Joveniano's fear of being blamed since Mrs. Kho put him in charge of the entire operation in the piggery before she left for Hongkong; the food prepared by Joveniano for Cabug and Henry; the place where Lomo hid on the night of April 4, 1984; the sequence of events leading to the death of the victims; the respective roles performed by Joveniano, Lomo, Cabug and Vidal in the commission of the crime; the manner of partition of the loot among them at the "Ospital ng Baboy;" and the places where Lomo and Joveniano buried portions of the stolen money in the farm are matters which are difficult for the police investigators to concoct. The trial court also correctly noted that:

"Joveniano Solis in his statement said that Joel Cabug handed the money to him (Exh. "J," p. 2) while Joel

Cabug claimed it was Benhur that handed the money to Joveniano "F," p. 5) this discrepancy showing the statements are not identical inspire credence. It would indicate that the statements were no tailor made. x x x." (Decision, Records, p. 293).

The post-mortem findings also substantiate the confession of Cabug and the testimony of state witness -Lomo as to the number of wounds inflicted upon the victims.

It is another matter, however, with regard to the confession of Bahia. While it is true that no maltreatment occurred, We could not discount the suspicion that psychological pressure was exerted upon Bahia to admit his participation in the crime in accordance with the police's pre-conceived idea of its commission. This suspicion stems from Our finding that there are unexplained inconsistencies and improbabilities the said confession. It is further strengthened by the records which showed that Bahia was the first suspect picked up by the police who were then under tremendous pressure "to work on a 24-hour basis without let up until solution of the case" so much so that Pfc. Wilfredo Pansanjan "actually passed out and then Lt. Tiquia had to be hospitalized at the V. Luna Hospital." (TSN, June 26, 1985, p. 10) We also noted that Bahia was in the custody of the police for about 28 hours before he was afforded the services of counsel when he gave extra-judicial confession (see TSN, January 29, 1986, pp. 8, 14 to 19).

The following facts appear in Bahia's confession: that the original plan contrived by Joveniano was to kill Demy Paranada (Paranada, for short); that Joveniano provided each one of them (Bahia, Roger, Eguac and an unidentified male) with Santa Claus masks and knives; that Joveniano rang the doorbell of Johnny Sai Tung's place; that somebody came down from the house but he was not sure if it was Johnny Sai Tung; that Joveniano, Roger, Eguac and John Doe except him pounced upon the person; that at this juncture, Paranada came along and that Joveniano with his help stabbed Paranada; that Paranada despite his wounds fled but was chased by Joveniano and Eguac; that his role was merely to stab Paranada; that he neither participated in the murder of Johnny Sai Tung nor in the robbery that took place without his knowledge; that Roger gave to Joveniano something wrapped in paper; and that Joveniano in turn handed the same thing to Nestor and said "Singkuwenta Mil ito. Parte ninyo ni Lando." (Records, Exh. D, pp. 53-56) These facts do not inspire belief. For one, the said confession does not dovetail with the confession of Cabug and the confession and subsequent testimony of state witness Lomo. Cabug and Lomo declared that the latter hid in the bodega of the victim Sai Tung so as to open the door for Joveniano and their other companions. On the other hand, Bahia claimed that Joveniano rang the doorbell of Sai Tung's house. The use of the doorbell to call down the victim Sai Tung from his room is hardly credible. If there were no lights at that time, the doorbell could not have functioned. Also, to use the doorbell would have aroused not only the victim but also the other members of the household namely, Mrs. Kho, her child and helpers. This would be an absurd situation which does not conform with the usual behavior of malefactors in keeping a low profile to avoid attention. Secondly, the identity of the unidentified companion in Bahia's group was never ascertained by the police among the accused-appellants. It is highly improbable, for appellant Bahia to miss the physical features of the said person since the latter would have no reason to hide his face from Bahia. Thirdly, Lomo (TSN, November 18, 1985, pp. 9-10) and Cabug (Records, Exh. F, p. 126) categorically stated that there were only four (4) perpetrators of the crime: Joveniano Solis, Benhur Lomo, Joel Cabug and Danilo Vidal. Against such positive testimony, We do not find any corroborative and competent evidence to Bahia's confession to establish the participation of Bahia, Roger and Eguac to the commission of the crime. And, fourthly, We are confronted with the possibility that Bahia and Eguac may have been framed-up in this case. In his confession, Cabug stated that Joveniano had already planned to cast the blame on Bahia and Eguac in case suspicion falls on them. This was done exactly by Joveniano when he was invited by the police to give a statement (see Exhibits G and H, Records, pp. 118-119). The pertinent portion of Cabug's confession reads:

"x x x. Nagpunta kami sa bilyaran at nakaharap naming yong kaibigan ni Ben (Joveniano's nickname). Sinabi

at inaya ni Ben yong kaibigan niyang Ilocano na holdapin namin si Johnny. Sabi noong Ilocano ay delikado dahil si Ben pa ang namamahala sa babuyan. Ang sagot ni Ben ay huwag magalala yong Ilocano dahil mayroong ibang mapagbibintangan. Tinanong noong Ilocano si Ben kung sino ang mapagbibintangan pag hinoldap namin ang Amo nya. Ang sagot ni Ben sina LANDO at NESTOR. Tinanong noong Ilocano kung bakit sina Lando at Nestor ang napagbibintangan. Ang sabi ni Ben, kasi dating trabahador sila Lando at Nestor sa babuyan at bago sila pinaalis ng trabaho ay nagbanta sina Lando at (Nestor) na darating din ang araw na may masamang mangyayari sa babuyan. Sabi ni Ben, may banta sina Lando at Nestor kaya sila ang tiyak na mapagbibintangan. x x x." (p. 123, Records)

Again, no contrary evidence was presented by the prosecution to refute the above statement. For his part, Bahia confirmed the ill-will existing between him and Joveniano, to wit:

"Atty. Restituto Viernes — counsel for the accused.

Q

And do you know the reason why you left said company?

A

I was dismissed from my employment there because I testified in favor of Mr. Eguac. Mr. Eguac was dismissed. But then Eguac filed a case against his employer with the Bureau of Labor and I was his witness.

Q

Do you have any misunderstanding with your co-accused Joveniano Solis prior to the date when the incident happened?

A

Yes, sir.

Q

What was that misunderstanding between the two of you?

A

Joveniano Solis, on the other hand, was the witness for the employer in said case at the Ministry of Labor, sir." (TSN, February 17, 1986, pp. 6-7)

The foregoing observations have put the veracity of Bahia's confession in serious doubt. In the absence of a strong and cogent evidence to the contrary, We are inclined to believe that Bahia's statements in his confession are not his own. It is needless to say that no one in his right mind would convict himself without compulsion by fabricating a highly self-damaging story and suppressing the truth which would absolve him (*People v. De los Santos*, supra).

Another defense raised by appellants to escape criminal liability is alibi. Bahia claims that at the time of the incident, he was asleep in his living quarters at Letre Road, Caloocan City and that he was awakened at about 8:00 a.m. when three (3) policemen came to invite him to the police station. Cabug avers that he was also asleep in the house of his in-laws at No. 103 5th Avenue, 6th Street, Grace Park, Caloocan and that said fact was corroborated by his father-in-law, Mr. Marciano Mangunay. Vidal asserts that he was asleep in their house at San Vicente, Sincaban, Misamis Occidental. Eguac, on the other hand, claims that on that fateful night, he was talking to his co-workers at Sandel and House Restaurant and that he went home at about 5:00 a.m. while Roger claims that he was asleep in their living quarters at Swine Country Farm and was awakened by Joveniano at about 3:00 a.m. For his part, Joveniano, a foreman of Mrs. Rita Kho, claims that on August 4, 1985, at about 9:00 p.m., he was already asleep with his wife, three children and sister-in-law in their house inside the compound.

We have already ruled that the defense of alibi is an issue of fact that hinges on credibility and in this respect, the relative weight which the trial court assigns to the testimony of witnesses must, unless patently and clearly inconsistent with the evidence on record be accepted (*People v. Artieda*, L-38725, May 15, 1979, 90 SCRA 144). The record does not support the above excuses given by Cabug, Joveniano and Vidal. The said appellants did not show by a clear and convincing evidence that it was physically impossible for them to go to the scene of the crime and return to their place (*People v. Perante, Jr.*, 143 SCRA 50). Additionally, appellants failed to present corroborative evidence to prove that they were actually in the places mentioned. The testimony of defense witness Marciano Mangunay is likewise dubious. If his statements were true, then he could have readily apprised the authorities of the truth. Yet he bided his time without justifiable reason. We have held that alibi is weak where it is established mainly by the accused himself and his immediate relatives such as his father, and not by credible persons who would, in the natural order of things be best suited to support the tendered alibi (*People v. Cabanit*, G.R. Nos. 62030-31, October 4, 1985, 139 SCRA 94). Besides, Joveniano, Cabug and Vidal were positively identified by state witness Lomo as the perpetrators of the crime. The records do not show that Lomo was prompted by any ill motive in implicating the appellants. His positive testimony is, thus, credible.

As regards the alibis put up by appellants Bahia, Roger and Eguac, We take exception to the trial court's finding that the same are undeserving of merit. While the rule of long standing is that alibi is a weak defense, it is an equally enduring rule that the prosecution must rely on the strength of its evidence rather than on the weakness of that of the defense (*People v. Hora*, G.R. No. 52395, August 7, 1987, 153 SCRA 21). In the case at bar, their alibis become significant and strong in the face of the unreliability of the prosecution's evidence against them. We entertain serious doubts on the voluntariness of the statements given by appellant Bahia in his extra-judicial confession. These doubts remain considering the absence of corroborative and convincing evidence to convict the said appellants. In line with the constitutional presumption of innocence, these doubts must necessarily be resolved in favor of the accused, it being preferable to acquit a guilty person rather than convict an innocent one (*People v. Robles*, L-30060, July 30, 1979, 92 SCRA 107).

To further destroy the prosecution evidence against them, Joveniano, Cabug and Vidal impugn the credibility of state witness Lomo on the basis of the alleged variance between Lomo's first and second sworn statements dated August 5 and August 9, 1984 respectively before the Valenzuela Police. In his first statement, Lomo denied participation in the killing of the victim and in his second, he admitted his involvement in the crime and implicated the aforesaid appellants. Joveniano, Cabug and Vidal submit that if Lomo were telling the truth, then he could have immediately admitted his guilt or informed or warned the authorities, Rita Kho or the victim Johnny Sai Tung of the plot to rob and kill Sai Tung weeks before the execution of the crime. They maintain the theory that Lomo's change of heart could be attributed to the alleged instruction of Rita Kho to put the blame on the appellants as the perpetrators of the crime (Appellants' Brief, Rollo, p. 144).

Appellants' theory is unmeritorious. The alleged instruction given by Rita Kho was purportedly recounted by state witness Lomo to Joveniano. Hence, Joveniano's testimony on this matter is hearsay evidence which cannot be given probative value. Lomo's reason for changing his original statement of innocence was because he was already implicated by Joveniano as one of the perpetrators of the crime (TSN, December 9, 1985, pp. 7-8). His second statement is significant as it confirms not only his involvement in the commission of the crime but also the participation of the said appellants, some of whom are his cousins. The fact that Lomo's second statement was made before the case was filed in court, against his interest and without any inducement or reward from the police shows that he was prompted by his conscience to reveal the truth as anyway the cat was now out of the bag so to speak. Lomo's failure to warn or report the plot to the concerned persons or the authorities should not militate against his credibility. His predicament lies in the fact that two of the perpetrators are his cousins; that cousin Joveniano was instrumental in giving him a job at the piggery (Exhibit D, Records, p. 138); and that cousin Joveniano was the boss at Swine Farm who should be followed (TSN, November 20, 1985, pp. 14-16). This overpowering moral influence exerted by Joveniano naturally stifled Lomo's urge to squeal on his companions.

The evidence on record fully sustains the trial court's finding that Joveniano, Cabug and Vidal are guilty beyond reasonable doubt of a special complex crime of robbery with homicide. It is the nature of this crime that the homicides or murders and physical injuries, irrespective of their numbers, committed on the occasion or by reason of the robbery are merged in the composite crime of "robbery with homicide." (People v. Pedrosos, et al., L-32997, July 30, 1982, 115 SCRA 599). The trial court, therefore, erred in treating the death of the victims as double homicide. The death of Paranada should be considered then as an additional aggravating circumstance, the reason being that there will be an anomalous situation where, from the standpoint of the gravity of the offense, robbery with one killing would be on the same level as robbery with multiple killings (ibid, p. 609). However, We agree with the trial court that all the above appellants conspired to commit the crime which was attended by the aggravating circumstances of abuse of superior strength and nocturnity. Nonetheless, We noted that the trial court failed to consider the aggravating circumstance of evident premeditation against Joveniano. As testified to by state witness Lomo, Joveniano had planned three weeks before the incident to rob the house of Johnny Sai Tung because he wanted to kill Sai Tung (TSN, November 18, 1985, p. 11). Joveniano then had sufficient time to reflect on the act he was about to commit and to desist, if he wanted to, from carrying out his evil design, but he did not. As correctly observed by the Solicitor General, "(w)hile evident premeditation is inherent crimes against property (People v. Daos, 60 Phil. 143), it may be considered in robbery with homicide if there is evident premeditation to kill besides stealing (People v. Pagal, 79 SCRA 570; People v. Nabual, 28 SCRA 714." (Rollo, p. 216)

Under the Revised Penal Code, Article 294(1) thereof, the penalty of reclusion perpetua to death is imposable when by reason or on occasion of a robbery, the crime of homicide shall have been committed. Considering the aggravating circumstances in the instant case, the proper penalty that should be imposed upon the appellants is death. In view, however, of Article III, Section 19(1) of the 1987 Constitution and Our ruling in People v. Millora, et al. (L-38968-70, February 9, 1989) that the cited constitutional provision did not declare the abolition of the death penalty but merely prohibits the imposition of the death penalty, the Court has since February 2, 1987 not imposed the death penalty whenever it was called for under the Revised Penal Code but instead reduced the same to reclusion perpetua. Thus, Joveniano, Cabug and Vidal should each be sentenced to reclusion perpetua.

The other appellants Bahia, Eguac and Roger, should be acquitted of the charge on ground of reasonable doubt.

ACCORDINGLY, the judgment of conviction (1) with respect to appellants Joveniano Solis, Danilo Vidal and Joel Cabug, is hereby AFFIRMED with MODIFICATION as specified above; and (2) with respect to appellants Rolando Bahia, Nestor Eguac and Roger Solis, is hereby REVERSED in that appellants are ACQUITTED of the

charge on ground of reasonable doubt, with costs de oficio.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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