Supreme Court E-Library

EN BANC

[G.R. No. L-31866. November 7, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **CARLOS CARAMONTE**, *defendant-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CONFESSIONS; TEST OF ADMISSIBILITY.**— The Rules of Court, Rule 130, Section 29 provides: "The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given as evidence against him." But following the time-honored *caveat,* it has been constantly held that when the accused successfully proves that a confession was given as a result of violence, intimidation, threat, or promise of a reward or lieniency, the confession becomes inadmissible. The Court is ever cognizant of the time-honored admonition that confessions, especially those made extra-judicially, should be carefully scrutinized. The court does not accept confessions readily, because experience has shown that some law officers are not above extorting confessions through violence and intimidation. Hence, the true test of admissibility is that the confession is made freely and voluntarily.

2. **ID.; ID.; ID.; VOLUNTARINESS, HOW DETERMINED.**— In determining whether a confession is voluntary or not, the age, character and situation of the accused at the time it was made are important elements in the consideration of the court. Much depends upon the intelligence of the accused or want of it.

3. **ID.; ID.; ID.; CONFLICTING CONFESSIONS CANNOT BE A GROUND FOR ACQUITTING ACCUSED.**— It has been held that conflicting confessions can not be a ground for acquitting the defendant, for if a confession could be rejected on such ground, all that would be necessary in any case to dispense with a damaging confession would be for an accused to tell another story out of harmony with the preceding one (*US vs. Acacia*, No. 12875, October 26, 1917, 37 Phil. 71).

4. **ID.; ID.; ID.; DEEMED VOLUNTARY WHEN FOLLOWED BY A RE-ENACTMENT OF THE CRIME BY THE ACCUSED**

Supreme Court E-Library

HIMSELF.— And when an extra-judicial confession is followed by a re-enactment of the crime by the accused himself in accordance with his confession, such confession may be deemed voluntary. (*PP. vs. Conde*, L-2921, June 27, 1951, 89 Phil. 298). Whether or not a confession is voluntary depends upon the credibility of the witnesses. This matter lies within the special competence of the trial court whose conclusion concerning the credibility of witnesses will not be disturbed by the appellate court. (*PP. vs. Pereto*, L-20894, December 29, 1967, 21 SCRA 1469; *PP. vs. Secapuri*, L-17518-19, February 28, 1966, 16 SCRA 199; *PP vs. Pasiona*, L-18295, February 28, 1966, 16 SCRA 212; *PP. vs. Quintab*, L-21417, January 31, 1966, 16 SCRA 146).

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Jaime M. Lantin and *Solicitor Reynato S. Puno* for plaintiff-appellee.

Victorino U. Montecillo for defendant-appellant.

D E C I S I O N

ABAD SANTOS, *J.*:

On December 31, 1967, armed men sacked two places in Negros Occidental: Toboso town in the early morning; and Cadiz City in the evening. For the raid on Toboso, the Circuit Criminal Court at Bacolod City, in Criminal Case No. CCC-XII-27, found the accused Carlos Caramonte guilty of robbery in band with multiple homicide and less serious physical injuries, and sentenced him to death. But for the raid on Cadiz City, the Court of First Instance, Branch I, at Silay City, in Criminal Case No. 690, acquitted the same accused Caramonte. This is an appeal from the judgment of conviction.

At the time the trial of this case started, of the several accused mentioned in the Third Amended Information, all were at large except Ricardo Cañete and Caramonte. Trial proceeded against these two; but before the prosecution rested its case, it moved that the case be dismissed against Cañete, on the ground of

Supreme Court E-Library

insufficiency of evidence. There was no objection on the part of the accused, and the court dismissed the case against Cañete. Hence, the case proceeded only as against the accused Caramonte.

One witness — Luciano Salinas — testified for the prosecution in both cases. In Criminal Case No. 690, which resulted in the judgment of acquittal, Salinas was discharged to become a state witness. In the instant case, he testified that he resides at Sitio Amamansa, Barrio Pasil, Bantayan, Cebu. This place is found on the island of Botiguez, which is a part of Bantayan.

On December 30, 1967, at about 4:00 p.m., Salinas left his house for sitio Tunga to buy matches from the store of one Agustin Cañete. When he arrived, he saw, about ten meters away from the store, a group compose of: Carlos Caramonte, Isabelo Montemayor, Florencio Tagsawa *alias* Turing, Tambok, Boy, Kiampao, Cesar Cañete, Roberto Rivera, and Tatong Mansueto.

When Salinas approached the group squatting on the ground, he heard that they were planning to stage robberies at Toboso and Cadiz City. Specifically, at arm's length, he heard Montemayor tell the others: "We'll rob Toboso and Cadiz City." When he left the place, the group remained but later they also went away. They divided into two groups and went to the seashore.

At about 5:00 p.m., Salinas reached home and went to the seashore. He watched while a group of seven — Caramonte, Turing, Tambok, Mario, Boy, Ponyot, and Kiampao — boarded a yellow pumpboat. He was about 40 to 50 meters away from the point of departure. He followed with his eyes the progress of the boat until it was about four to five kilometers away.

The scenario shifts from Botiguez island to Toboso town which, on December 31, 1967, between 1:00 to 1:30 a.m., was the venue of a victory celebration for the newly-elected mayor and other town officials held at the town plaza. One of those who abstained from participating in the celebration was Lim

Supreme Court E-Library

Eng Yu, a merchant who preferred to go to sleep in his house located about 10 meters from the plaza. At about 1:20 a.m., he was awakened by several, shots fired near the municipal building, about 30 meters away. He peeped through the window and saw several men with carbines passing through Del Pilar street. He hid himself, and then heard the front door being broken down with an axe. After gaining entry, the malefactors broke the second door leading upstairs. They fired several shots and destroyed the clothes closets. Lim did not recognize any one of the three or four persons who broke into his house.

Together with Lim in his house at this time, were his daughter Elizabeth Lim, and two maids: Dioleta Disol and Lolita Pahayahay. Lolita testified that when the three girls heard the sound of the axe upon the door, they hid under the bed in the living room. The armed men espied Dioleta's feet sticking out from under the bed. They pulled Dioleta out and dragged her downstairs. The band ordered them to look for money, but the girls did not know where it could be found. Later, the band brought them to the seashore, which is about half a kilometer's distance from the house. There they were released, and they ran back home. After the marauders left, Lim found that they had broken his wooden safe open and taken the amount of ₱2,600.00, as well as some pieces of jewelry.

At the time of the robbery, at about 1:30 a.m., a group of policemen were taking a coffee break at a store on Del Pilar street, this group was composed of: the Chief of Police, Sgt. Charles Valencia, Pat. Salustiano, Taganele, and Pat. Sotero Baynosa. As they left the store to go home, a burst of gunfire exploded in the vicinity. The policemen, seeing that the band of malefactors were armed, sought refuge in different places. The band gave chase to Pat. Baynosa. He testified that he ran towards the market place and emerged only after one hour, after the band has disappeared. Baynosa found Valencia's dead body at the municipal kiosk. He had been hit on the head by a bullet. The Chief of Police directed Pat. Baynosa to investigate the robbery. The policeman went to Lim's house and recovered an axe; 29 pieces of .30 cal. shells; and one piece of live .45 cal. bullet.

Supreme Court E-Library

At about the same time, between 1:30 to 2:00 a.m., Vivencio Rosales and his son Nelson where inside a bus identified as Simwin No. 50. They were poised to go home after attending the victory ball. His son took a seat near the bus driver. Then a person unknown to Vivencio approached the bus and ordered the driver not to start the vehicle and not to put on the lights. When the driver, disregarding the stranger's directive, started the bus, immediately afterwards an explosion occurred. After the first explosion, Nelson was hit on the left side of the head and died five hours after arrival at the hospital. The passenger beside Nelson, George Baynosa, was also hit and he died from the gunshot wound.

Dr. Enrique Gauzon, Acting Municipal Health Officer of Toboso, testified that at about 1:45 a.m., he examined the cadaver of Sgt. Charles Valencia, and later issued a post mortem report. Dr. Gauzon was of the opinion that death was caused by severe hemorrhage from the cerebral gunshot wound. He testified that the wound was probably caused by a carbine, a Garand, or a Thompson. Dr. Gauzon also examined the body of Nelson Rosales and arrived at the similar conclusion that the cause of death was severe hemorrhage from a gunshot wound. Further, the doctor also examined the cadaver of George Baynosa and found one bullet wound. He issued the opinion that the wounds on the three cadavers he examined could have been caused by .38 or .45 cal. bullets.

Dr. Eusebio Respicio, Jr., a physician engaged in private practice, testified that he examined Lim Katian at the Magdalene Hospital on December 31, 1967. Lim informed the doctor that he was shot in Toboso; his wounds actually healed on the 11th day. The doctor turned over the bullet to the PC.

After this telescopic view of the events at Toboso, we return to Botiguez island and find Salinas on the day of the robbery, December 31, 1967. At about 6:00 a.m., he had climbed to the top of a coconut tree in order to gather *tuba*. From this vantage point, at a distance of about 50 meters, he saw the yellow pumpboat coming back to the seashore. He saw the pumpboat disgorge seven persons who were Caramonte and his six other companions. The band proceeded towards barrio Pasil.

Supreme Court E-Library

On the same day, at about 5:00 p.m., Salinas went to the cockpit. He then went to buy *tuba* at the house of Rosendo Cañete — his wife's relative — at Barrio Silanga. In the yard he saw: Caramonte, Isabelo Montemayor, Teofilo Mejia, Ronnie Boy, Boy, Mario, Turing, Tambok, Ponyot, Kiampao, Liadring, and Panday. He heard Montemayor say: "Let's raid Cadiz City." He then received an invitation from Montemayor to join the raiding party. Although initially hesitant, Salinas accepted the invitation and boarded a blue pumpboat with the others at the seashore of Tabunok. They left at 7:00 p.m., and arrived at 9:00 p.m. at Cadiz City.

Salinas stayed in the pumpboat while his 13 companions — including Caramonte — disembarked with firearms. Salinas heard shots; after about 30 minutes, the group came back. While they were at sea, he heard Boy groaning and complaining that he was wounded on his left thigh. Ronnie Boy was also wounded on the left arm. They reached Amamansa at about 4:00 a.m. and brought the two wounded men to Salinas's house. Montemayor gave him ₱30.00 as his share for the Cadiz adventure.

On January 3 and 5, 1968, the III PC Zone at Cebu City received a spot report from the PC at Negros Occidental on the robbery with multiple homicide in Toboso. On January 9, 1968, Master Sgt. Sandy Castañeda was assigned to lead the team for the investigation of the robberies at Toboso and Cadiz City. The team interviewed Salinas and took down his affidavits. On January 20, 1968, past 5:00 a.m., Sgt. Castañeda went to the house of Rafael Escario at barrio Pasil, where he found Caramonte. He was accompanied by Capt. Luis Panes and other soldiers of the PC at Negros Occidental. Capt. Panes on the witness stand later confirmed the sergeant's story. The sergeant showed to Caramonte the warrant of arrest issued by the judge of the Cadiz City Court. Caramonte argued as an alibi that on the day of the robbery, on December 31, 1967, he took his oath as municipal councilor. However, the sergeant verified that Caramonte actually took his oath on a later day, and therefore effected the arrest.

Supreme Court E-Library

Judge Francisco Ledesma of the Cadiz City Court testified that before him, on January 23, 1968, Caramonte subscribed his affidavit, marked as Exhibit "G"; and on January 24, 1968, another affidavit, marked as Exhibit "H". In Exhibit "G", consisting of 12 pages, Caramonte raised the alibi that he stayed at his residence, the house of Rafael Escario at barrio Pasil, Botiguez, the whole day of December 30, 1967, until the afternoon of December 31, 1967, when he went to Silanga. Caramonte and a certain Pat. Ramos brought Exhibit "G" to Judge Ledesma. The judge explained to Caramonte the contents of the affidavit, and advised him that he could make the necessary corrections. Accordingly, Caramonte made about ten corrections on Exhibit "G".

In the affidavit marked as Exhibit H", consisting of four pages, Carlos Caramonte admitted his participation in the robberies at Toboso and Cadiz City. The accused also corrected Exhibit "H".

Judge Fernando Uy Bontua of the municipal court of Toboso testified that before him, Caramonte subscribed his affidavit, marked as Exhibit "F", on February 2, 1968. In this affidavit consisting of two pages, Caramonte confessed his participation and acknowledged his receipt of ₱130.00 as his share in the robbery at Toboso. Judge Bontua testified that Caramonte was alone when he brought the affidavit to the judge's office. There were no policemen in the judge's chamber. The judge advised Caramonte, in English, of his constitutional rights, and told him that he could correct the affidavit. Accordingly, Caramonte made about seven corrections on both the original and the carbon copies of the affidavit.

On February 2, 1968, Sgt. Castañeda went to Toboso for the re-enactment of the robbery. He testified that Caramonte agreed to the re-enactment, and that Caramonte played his role voluntarily, without instruction from others. Sgt. Castañeda asserted that while he was present and directed the photographer on the shots to be made, yet Caramonte voluntarily assumed different positions during the re-enactment, and did not do so upon Castañeda's instructions.

Supreme Court E-Library

The photographer, Samuel Villaflor, testified that while he was taking pictures of the re-enactment, Caramonte voluntarily assumed different positions without force from any source.

The accused Caramonte, testifying in his own behalf, raised the defense of alibi. He testified that he is a native of Botiguez island. He was informally adopted by Rafael Escario, who financed him through the Cebu Institute of Technology until he earned the degree of Bachelor of Science in Commerce. He then engaged in business, and in 1967 was elected No. 2 councilor of Bantayan.

Caramonte testified that on December 28, 1967, at about 10:00 a.m. he left Botiguez island by pumpboat and arrived at Bantayan at 11:00 a.m. At 4:00 p.m., he went to the house of Mayor-elect Jesus Escario — Rafael's nephew — to verify when their briefing session would be held. Caramonte next went to the house of Dr. Surmillion, and then to the municipal building, and finally returned to the house of Mayor Escario.

On December 30, 1967, at 10:00 a.m., he left for Botiguez island. He had lunch with Rafael Escario and his wife. At 3:00 p.m., the barrio captain of Botiguez invited him and the Escario couple to the celebration scheduled for December 31, 1967, at Sitio Silanga. The celebration was partly in Caramonte's honor as newly-elected councilor, and he accepted.

From the afternoon of December 30, 1967 up to noon of December 31, 1967, he stayed in Escario's house, where he lived. At 3:00 p.m., he went to barrio Silanga to attend a cockfight. In the afternoon, he learned that the oath-taking was to be held that night (December 31, 1967). But since he could not take the pumpboat as low tide had set in; and since he had to attend the celebration that evening, he sent word that he would take his oath before the Mayor on January 2, 1968.

On December 31, 1967, at 9:00 p.m., he and the Escario couple went to Barrio Silanga to attend the affair sponsored by the barrio captain. He stayed at the dance hall from 9:00 p.m. to 5:00 a.m. the next day, January 1, 1968. All during the night, he was at the dance hall, except only for one hour when

Supreme Court E-Library

he had some snacks at the house of Mrs. Adela Cañete. Afterwards, he returned home to Barrio Pasil and stayed there the whole day. Caramonte took his oath as councilor on January 3, 1968.

Caramonte testified that on January 20, 1968, in the early morning, law enforcers led by Capt. Panes, and including Sgt. Castañeda, showed him a warrant and effected his arrest. He was first brought to Bantayan and then to Cadiz City. Initially, he shared a cell with Agustin and Rosendo, both surnamed Cañete; but later, the two men were transferred and Caramonte was left alone in the cell.

On January 21, 1968, at about 4:00 p.m., Sgt. Castañeda and others brought him to the radio room. They asked him why he joined the robbery in Cadiz City, but he protested that he was at Sitio Silanga at the time of the robbery. They brought Salinas into the room, and he affirmed Caramonte's participation.

Caramonte testified that after Salinas left the room, Sgt. Castañeda ordered him to take off his clothes and stand against the wall with both of his hands extended. Castañeda then started punching him in the stomach. The other ICs agent also thrust his fingers into Caramonte's stomach. Caramonte fell, but Castañeda ordered him to stand up and hit him with a flying kick on the right shin. Caramonte was wounded and fell down. He was told to stand up, only to be kicked again on the left shin.

The Chief of Police pointed a gun to the right side of Caramonte's head and said: "If you will not tell the truth, we'll kill you." Consequently, Caramonte said: "I will accept all what you are doing . . ." He was allowed to sit down but he was already dizzy. Castañeda told him: "If you keep on lying that you were not in the Cadiz robbery we will maltreat you until you die." Castañeda's stout companion made Caramonte stand and hit him with his open palm on the solar plexus. Then Castañeda hit him on the abdomen until he lost consciousness.

Caramonte claimed that when he regained consciousness on January 22, 1968, in the morning, he was back in the cell.

Supreme Court E-Library

A policeman came and Caramonte requested for a doctor, but this request was not granted until the end of January. At about 10:00 p.m. of that day, he was taken by jeep to the beach and ordered to wade into the water about six inches deep. Castañeda told him: "If you will not point out the place where you landed right here, we will hit you with our bullet." Caramonte protested that he had never been to that place, at which five policemen hit him with their carbines and he fell to the water. When he stood up, Castañeda cocked his pistol and said: "You point, otherwise, we will kill you." But Caramonte refused to admit his guilt, and he was brought back to his cell.

Caramonte then claimed that on January 23, 1968, at about 10:00 a.m., Castañeda and his stout companion told him that if he did not sign the affidavit they brought, they would maltreat him until death. They brought him to City Hall and on the ground floor, Castañeda told him that if he did not sign, he would die of maltreatment. He was brought to the city judge who read the affidavit, Exh. "G". He did not want to sign it, but he did so because he could no longer endure the pain they inflicted on him, and because he was told that if he failed to sign they would continue the maltreatment until he died.

Caramonte claimed that it was Judge Ledesma and not he who made the corrections marked as Exh. "G-1", to "G-8". He wrote the corrections marked as Exh. "G-9" and "G-10", but he did so only on the instructions of the judge. At the time he affixed his signature to the affidavit, he was positioned between Castañeda and his companion, facing the judge.

On January 23, 1968, in the evening, Castañeda, his stout companion, and the chief of police brought him again to the radio room. When he refused to admit his guilt, they made him stand up and kicked him at the back of his right thigh. They asked him to name the mastermind of the robbery, and promised that if he did so they would free him. They suggested that he identify Rafael Escario as the brains behind the robbery, but he refused. Castañeda made the same threats on his life, and then showed Caramonte the affidavit marked as Exh. "H".

Supreme Court E-Library

On January 24, 1968 Castañeda, his stout companion, and the policemen brought him to the city judge to sign Exh. "H". He was again threatened with death and guarded on each side by Castañeda and his companion. Caramonte claimed that he did not request for permission to read the affidavit and he signed it without reading. He claimed that all signatures appearing on the left side of the four pages are his, but the signature on page 4 is not his. He made the cancellation on paragraph 2, but it was Judge Ledesma who made the other cancellation.

On the same day, January 24, 1968, at about 3:00 p.m., Castañeda, his stout companion, and the chief of police — all armed — took him by jeep to the beach. Castañeda produced a boat and then supervised the re-enactment of the robbery. Castañeda ordered Salinas to sit on the boat with a carbine, and ordered the photographer to take a picture. Castañeda also ordered Caramonte to sit on the banca.

Later, the law officers brought Caramonte to the Toboso beach. Policemen of Toboso and Cadiz city surrounded Caramonte. There were many civilians at the beach. The Toboso policemen approached him, held his left ear, and threatened: "You pirate, you better watch out, later, I'll cut your ear." When he refused to point to the place where he allegedly landed, five policemen simultaneously hit him with the butt of their carbines. Castañeda threatened him with death and more pictures were taken.

Caramonte said that on February 2, 1968, substantially the same group of law-enforcers brought him to the Toboso municipal building. Castañeda again made the same threats of death, and the group brought him to the municipal judge. In the presence of the judge, Castañeda repeated his threats. In the company of the law enforcers, Caramonte signed the affidavit marked as Exh. "F" because of fear and the maltreatment he had received.

The defense presented ten witnesses to prove the defense of alibi, *i.e.*, that on December 31, 1967: in the morning, Caramonte was at Barrio Pasil, Botiguez island, in Rafael Escario's house; in the afternoon, he went to the cockpit at Silanga; and in the

Supreme Court E-Library

evening, he attended the celebration hosted by the barrio captain in his honor. But the trial judge discounted the defense of alibi, as well as the defense that Caramonte made his extra-judicial confession only because of force and intimidation. The trial judge conceded that not one of those who saw the shooting at Lim's house was able to identify the robbers. He also conceded that Salinas as a witness is unreliable, and that his testimony alone can not sustain a judgment of conviction. But the trial court was convinced that Caramonte's extra-judicial confession, Exh. "F", is valid, having been the result of reflection after several days in jail.

The trial court disregarded Caramonte's claim that he signed Exhibit "F" only because of force and intimidation. It stressed that Caramonte not only signed his confession, but also introduced corrections on the affidavit. Moreover, he did not report the alleged acts of force and intimidation to Judge Bontua. Hence, the trial court applied the presumption of regularity in the performance of public function. The trial court applied the same presumption with respect to the re-enactment of the crime.

The trial court then rendered judgment as follows:

WHEREFORE, the Court finds the accused CARLOS CARAMONTE guilty beyond reasonable doubt of the crime of robbery in band with multiple homicide and less serious physical injuries as charged in the information, and considering the aggravating circumstances that the act was committed by a band, that the crime was committed during nighttime to facilitate the commission and its accomplishment, that the crime was committed with evident premeditation, that the crime was committed with the use of superior strength, and that it was committed with the use of fast motor vehicle without any mitigating circumstance to offset the same, hereby sentences said accused Carlos Caramonte to suffer the penalty of DEATH, to indemnify each of the heirs of the deceased Charles B. Valencia, George Baynosa and Nelson Rosales each in the sum of ₱12,000.00; and another sum of ₱10,000.00 each to the heirs of said deceased as moral damages, to indemnify Lim Katian the sum of ₱3,000.00 for the injuries he received and another sum of ₱3,000.00 as moral damages, to indemnify Lim Eng Yu the sum of ₱2,600.00, the amount stolen, and to pay the costs.

Supreme Court E-Library

In its Brief, the defense assigned two errors: that the lower court erred in convicting the accused and imposing on him the extreme penalty of death on the basis of his coerced confession and his voluntary re-enactment of the crime charged; and that the lower court erred in ignoring the defense of alibi, notwithstanding its finding that there was no identification whatsoever that the accused committee the crime charged.

The defense pointed out that the Court of First Instance, Branch I, of Negros Occidental acquitted Caramonte in Criminal Case No. 690 for the robbery at Cadiz City. The defense claimed that the prosecution, in spite of the judgment of acquittal in that case, is bent on securing Caramonte's conviction. It stressed that while the accused made a confession in Exhibit "F", he initially denied participation in the robberies in Exhibit "G". It argued that it should be Exhibit "G" and not Exhibit "F" which should be accepted because Exhibit "G" was subscribed earlier — some three days after Caramonte's arrest — on January 23, 1968; while Exhibit "F" was subscribed later, on February 2, 1968. Why did Caramonte deny his guilt in the first affidavit and then some days later repudiate that document and admit his participation in the Toboso robbery? The defense claims that the answer lies in the "intensive investigation" conducted by Sgt. Castañeda for the intervening days that Caramonte was detained.

The issue on appeal hinges on the validity of the extra-judicial confession made by the accused. The Rules of Court, Rule 130, Section 29 provides: "The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given as evidence against him." But following the time-honored *caveat*, it has been constantly held that when the accused successfully proves that a confession was given as a result of violence, intimidation, threat, or promise of a reward or leniency, the confession becomes inadmissible. The Court is ever cognizant of the time-honored admonition that confessions, especially those made extra-judicially, should be carefully scrutinized. The court does not accept confessions readily, because experience has shown that some law officers are not above extorting confessions

Supreme Court E-Library

through violence and intimidation. Hence, the true test of admissibility is that the confession is made freely and voluntarily.

But the rule is that a confession is presumed to be voluntary until the contrary is proved. The defense has the burden to show that the confession is involuntary. Generally, the question of admissibility of extra-judicial confessions is necessarily addressed to the sound discretion of the judge, and since such discretion must be controlled by all the attendant circumstances, the courts have wisely forborne to mark with absolute precision any rules limiting the admission or exclusion of such testimony. Their admissibility must depend largely in each case upon the facts and circumstances surrounding the same. (*US vs. De Leon and De Leon*, No. 9656, August 20, 1914, 27 Phil. 506).

In determining whether a confession is voluntary or not, the age, character and situation of the accused at the time it was made are important elements in the consideration of the court. Much depends upon the intelligence of the accused or want of it. The defendant must realize the importance of his act. The accused was 37 years old and a college degree-holder at that time he gave his confession. Not only that: he was a responsible public official, having been newly elected municipal councilor. Even counsel for the accused stresses his strong character by emphasizing that although born to poverty, he rose above the handicap of his economic position to claim moderate success in his professional life.

The accused made numerous corrections on Exhibits "F", "G", and "H" in front of the municipal judges before whom they were subscribed and sworn to. The corrections embody information best known only to the accused, and it is improbable that coercion wrung them out of him. Moreover, testimony of the accused that his confession was not voluntary can not prevail as against that of a justice of the peace to the effect that the confession was voluntarily signed in his presence (*People vs.* Cabrera, No. L-1311, February 25, 1949, 82 Phil. 839; *People vs. Baluran*, No. L-28582, March 25, 1970, 32 SCRA 71.) The accused contends that we should disbelieve Exhibit "F" because in an earlier affidavit, Exhibit "G", he denied his

Supreme Court E-Library

participation in the Toboso robbery. But a variation in the declaration of a witness is not always sufficient to discredit his testimony (*US vs. Briones*, No. 9589, November 12, 1914, 28 Phil. 367).

Parenthetically, Exhibit "G" — the validity of which the defense presses on this Court — indicates certain aspects of the character and personality of the accused Caramonte. For one, it appears that he knew his acquaintance Isabelo Montemayor was wanted by the authorities for past robberies committed in 1962 and 1966; yet, although they both resided at Botiguez island, Caramonte did not report Montemayor's presence to the authorities at Bantayan. For another, it appears that on December 30, 1967 at about 5:00 p.m., Caramonte was present while Montemayor's group planned the robbery at Cadiz City. Instead of dissuading them, Caramonte said: "It's up to you. For me I have a different life already." The clause "I have a different life already" — which appear several times in the affidavit — implies an unsavory aspect of Caramonte's personal history antecedent to the instant case. Moreover, it appears that although Caramonte was privy to the plans for the raid at Cadiz City, he did not attempt to stave off the crime by reporting it to the authorities in that city. In the handwritten correction marked as Exhibit "G-9", Caramonte added the explanation that his failure to make a report was due to fear of fatal reprisal at the hands of the conspirators.

It has been held that conflicting confessions can not be a ground for acquitting the defendant, for if a confession could be rejected on such ground, all that would be necessary in any case to dispense with a damaging confession would be for an accused to tell another story out of harmony with the preceding one (*US vs. Acacia*, No. 12875, October 26, 1917, 37 Phil. 71). And when an extra-judicial confession is followed by a re-enactment of the crime by the accused himself in accordance with his confession, such confession may be deemed voluntary. (*PP. vs. Conde*, L-2921, June 27, 1951, 89 Phil. 298). Whether or not a confession is voluntary depends upon the credibility of the witnesses. This matter lies within the special competence

Supreme Court E-Library

of the trial court whose conclusion concerning the credibility of witnesses will not be disturbed by the appellate court. (*PP. vs. Pereto*, L-20894, December 29, 1967, 21 SCRA 1469; *PP. vs. Secapuri*, L-17518-19, February 28, 1966, 16 SCRA 199; *PP vs. Pasiona*, L-18295, February 28, 1966, 16 SCRA 212; *PP. vs. Quintab*, L-21417, January 31, 1966, 16 SCRA 146)

The trial court was convinced that the extra-judicial confession of the accused was a truthful emanation from a man resigned to his fate because of the seeming lack of help from his friends and associates. The court noted that when Caramonte was arrested at Botiguez island, he requested that the arresting party pass Bantayan, in order to seek aid from his family and some town officials. But no help issued, and on that day Caramonte was brought to Cadiz City, where he was detained for several days. During this period of waiting, Caramonte gradually lost faith that help would ever be forthcoming. In this state of mind, he executed his extra-judicial confession. He was so resigned to retribution that on January 28, 1968, he sent a collect telegram (Exh. 24) to a certain Mrs. Myrna Surmillion stating: "No need of counsel, I'm happy to die, only God's justice for me." The upshot of this telegram was that on the next day, counsel did arrive at Cadiz City. But this form of succor came too late, for Caramonte had already signed his extra-judicial confession.

The defense of alibi is traditionally received by the courts with less than cordiality, for its easily concocted. In this case, the alibi of the accused can not prevail over his voluntary confession contained in Exhibits "F" and "H". It is evident that his alibi is a last-ditch effort to salvage what, in a moment of truth, he has voluntarily admitted as to his criminal participation.

WHEREFORE, the Court finds the appellant guilty as charged. The penalty for the crime is death. However, for lack of the necessary number of required votes, the decision appealed from is modified in respect of the principal penalty to *reclusion perpetua*, but affirmed in all other respects.

SO ORDERED.

Supreme Court E-Library

Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, De Castro and Melencio-Herrera, JJ., concur.

Fernando, C.J., while concurring in the result, I feel that I should make of record my lack of conformity to the view expressed by the ponente on the subject of confessions.

Teehankee, J., I vote for affirmance of the death penalty.

Barredo, J., in view of the long detention of appellant since his conviction by the trial court, I vote for life imprisonment.

EN BANC

[G.R. No. L-32518. November 7, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **PROTACIO MAAGAD**, *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER THE EXPLICIT AND POSITIVE IDENTIFICATION BY WITNESSES.**— Considering that this Court has ruled time and again that a defense of alibi must be looked upon with suspicion, it is obvious that it cannot prevail over the explicit and positive identification made by Dionisia Sing and Tita Sing who, without hesitation, pointed to him as one of the robbers.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; BAND AND DWELLING APPRECIATED IN CASE AT BAR.**— The killing of Francisco Sing was done by reason of and on the occasion of a robbery perpetrated by four armed men in the house of Francisco Sing. There is, therefore, present the aggravating circumstances of by a band and dwelling.