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EN BANC

[G.R. No. L-24866. July 13, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERTO LLAMOSO y ORTACIO, DOMINADOR AGUILAR y DAYAO, OSCAR PADILLA, and LAGIM LAGUNERA,** *defendants,* **GILBERTO LLAMOSO y ORTACIO, and DOMINADOR AGUILAR y DAYAO,** *defendants-appellants.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; CREDIBLE WHEN CONFIRMED AND CORROBORATED BY OTHER EVIDENCE.— We, therefore, hold that the trial court committed no error in refusing to accord credence to the allegations of appellant that his extrajudicial confessions were extracted through force, violence and intimidation. Such a claim is rendered incredible by the following: (a) the testimony of Alfredo Lazarte and Domingo Gomez on the voluntary manner in which the extrajudicial declarations were made by the declarants and the circumstances surrounding their affirmance under oath by appellants before the Fiscal; (b) the profusion of details contained therein on the planning, execution of the crime and flight of the culprits which can only be given by the very person who has experienced the same or taken part in the execution of the crime; (c) the failure of the appellants to complain to any of the duly constituted authorities of the alleged maltreatment before the testimony of Llamoso on January 15, 1964 and Aguilar on April 17, 1964; and (d) the circumstance that many of the facts contained in the afore-mentioned extrajudicial confessions were confirmed and corroborated by the other evidence.

APPEARANCES OF COUNSEL

Prospero A. Crescini for defendants-appellants.
Office of the Solicitor General for plaintiff-appellee.

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DECISION

PER CURIAM:

Automatic review of the judgment of the Court of First Instance of Manila, Branch XVIII, in Criminal Case No. 69139, the dispositive portion of which reads:

"Premises considered, the Court acquits defendant Oscar Padilla, with costs *de oficio* and his immediate release is hereby ordered. With respect to defendants Gilberto Llamoso and Dominador Aguilar, the Court finds and so holds that their guilt has been established beyond reasonable doubt. In the commission of the crime, the aggravating circumstances of use of motor vehicle and nighttime were attendant, without any mitigating circumstance to offset any of them. The Court also considers against the said defendants that the crime of direct assault against an agent of a person of authority was committed. While this Court is adverse at imposing the capital punishment, nevertheless, in view of the circumstances of the case and the express and mandatory provisions of the second paragraph of Article 5 of the Revised Penal Code, the Court finds itself compelled to comply with the law and imposes upon each of them the maximum penalty prescribed by law — death. They are also sentenced to indemnify jointly and severally, the government in the sum of ₱23,778 and the heirs of the deceased Pat. Domingo Daracan in the amount of ₱5,000.00, and to pay the costs."

Accused Gilberto Llamoso *y* Ortacio, Dominador Aguilar *y* Dayao, Oscar Padilla and Lagim Lagunera, together with others still unidentified, were charged with the crime of Robbery in Band with Homicide, according to the Information, as follows:

"That on or about the 28th day of February, 1963, at nighttime which was purposely sought to better accomplish their ends and with the use of a motor vehicle, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation, to wit: by using a United Taxi with Plate No. 125 Mla. '62 to convey them to their destination and armed with guns, entered the MVO Branch on Dakota St., Malate, in said City, and pointing their guns at the employees therein and shooting Pat. Domingo

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Daracan *y* Solayao with a carbine and .45 caliber pistol, thereby inflicting upon him mortal wounds which were the direct cause of his death thereafter, take, steal and carry away cash money in different denominations amounting to ₱23,778.00 and several non-negotiable checks of undetermined amount payable to said office, to the damage and prejudice of the Motor Vehicle Office (Manila Branch) in the aforesaid sum of ₱23,778.00, Philippine Currency."

The case against Lagim Lagunera was dismissed for insufficiency of evidence after the prosecution had closed its evidence. Oscar Padilla was acquitted by the trial court.

On September 21, 1965, appellant Gilberto Llamoso, through counsel, filed before this Court a Motion for New Trial on the grounds that: (1) errors of law or irregularities had been committed during the trial prejudicial to the substantial rights of the herein appellant; and (2) new and material evidence had been discovered which the accused could not, with reasonable diligence, have discovered at the trial, and which if introduced and admitted, would probably change the judgment. In a Minute Resolution dated November 2, 1965, this Court resolved to take up this matter when this case is considered on its merits.

Concerning the first ground, the motion failed to show any such error or irregularity that may be the ground for a new trial. We have noted that the arguments contained therein are not new. They have been raised during the hearing and disposed of in the decision of the trial court.

With respect to the second ground, the alleged new evidence, to wit: the expected testimony of Romeo Canary, a fellow convict, exculpating appellant Llamoso, is not a ground for new trial. According to the decision of the trial court, this appellant was aware of this evidence but made no effort to produce the same. In order that this Court, before whom an appeal is pending, may receive and properly consider new and material evidence, it must be shown that the evidence was discovered after trial; could not have been discovered and produced at the trial by the exercise of reasonable diligence; is material and not merely cumulative, corroborative or impeaching; and is of such weight

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that it will probably change the judgment.[1] A motion for new trial based on newly discovered evidence, supported by an affidavit of a fellow prisoner already convicted of a serious offense exculpating appellant and assuming with others full responsibility for the crime, had often been denied as coming from a polluted source and not worthy of consideration in view of clear evidence of guilt of the appellant.[2]

On June 30, 1971, this Court received from the Bureau of Prisons a certified true copy of the Certificate of Death of appellant Dominador Aguilar, showing that said appellant died on March 28, 1971, of undetermined cause. In view of the death of the aforesaid appellant during the pendency of the automatic review of the judgment of conviction, his criminal liability, meaning his obligation to serve the personal or imprisonment penalties, and his liability to pay the fines or pecuniary penalties, is extinguished.[3]

The records show that at about 6:30 o'clock in the evening of February 28, 1963, while Raul Empedrado was driving a taxi with Plate No. TX-125, Manila (62) along Felix Huertas, two men hailed his taxicab near the corner of Gov. Forbes and Laonlaan Streets and when he stopped, they asked him if he could take in five passengers. Upon an affirmative reply, one of the men beckoned the three other companions and they approached the cab. All the five boarded the cab, with three passengers at the back, while the other two sat at the front seat. Raul drove his taxicab through Dakota St. on instruction of his passengers who said they were looking for women. Upon reaching the corner of Dakota and Vito Cruz Streets, the taxi turned left and entered Sagan Street. Raul inquired from the group where they were going but one of the passengers answered

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[1] *People v. Mangulabnan*, L-8919, Sept. 28, 1956, 99 Phil. 992.

[2] *People v. Amboloquio*, L-1991, April 29, 1950.

[3] *People v. Sendaydiego*, L-33252-54, Jan. 20, 1978, 81 SCRA 120, citing Article 89(1), Revised Penal Code, and 1 Viada, *Codigo Penal*, 4th Ed., 565.

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that they know where they could find women. Raul continued driving. Upon reaching the Holiday Motel at Pasay City, one of the men at the front seat said they might find some women there but another passenger ordered Empedrado to proceed. When the taxicab reached Dakota Street, Raul was made to turn right and as they were near the gate of the Motor Vehicles Office one of the passengers poked a gun at Empedrado's side and told him to stop the car, which he did. Empedrado looked at the man who poked the gun and he identified him at the trial to be Gilberto Llamoso. In the meantime, the other passenger at the front seat alighted and after shoving Empedrado, he took the wheel and drove towards the Motor Vehicles Office at Dakota Street. Upon reaching the place, the car was parked in the compound at about five (5) meters from the gate. Thereafter, the passenger who took the wheel and the other passengers at the back alighted, while Llamoso kept the gun pointed at Empedrado's head. After a lapse of two minutes, during which Llamoso continued pointing his gun at Empedrado's forehead, Llamoso grabbed Empedrado by his collar, and using him as a shield, pulled him out of the cab, at the same time firing his gun. Other shots followed while Llamoso pulled Empedrado to the counter of the Motor Vehicles Office. Upon reaching the same, Llamoso suddenly pushed Empedrado to one side of the counter. Shortly thereafter, he heard someone shouted: "*Pasok, dapa.*" While thus lying flat on their bellies, Empedrado heard several shots. After the shooting had ceased, Raul got up and noticed that his taxicab was gone.

The evidence of the prosecution further shows that at the time the malefactors arrived at the Motor Vehicles Office, Tirso Atanacio, driver-examiner, one Mr. Varona and Mr. Lanuza, were playing chess inside their division. All of a sudden, they heard someone shout: "This is a holdup, do not move." Atanacio stood up only to find him staring at a carbine being pointed at him. Immediately after, the man shot the policeman who was then by the main door about five (5) meters away. Atanacio also saw other persons pointing carbines at the fallen officer. Atanacio immediately crawled under the table and while there he heard someone shout: "*Doming, dali ka na.*" While these

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were taking place, Jose B. Rigor, the Acting Cashier, was called by his superior and went out of the cashier's cage. While with his superior, they heard a commotion at the main door about fifteen (15) meters away, and when they looked up in that direction, they saw a man, with his back towards them, holding a carbine pointed at the other employees. Thereafter, they heard gun reports. Rigor and his superior then went into the bodega for cover. In the meantime, the other employees had dropped to the floor. Minerito Giman, who hid under the Registrar's table, was grabbed by the collar by someone who asked where the money was. Giman replied he did not know as they were not in charge. The man then pushed him inside the cashier's cage and again asked where the money was. Then he saw that the cash register was opened and when he found no money inside, he ordered Giman to open the drawers. Giman did so and when he opened the center drawer of the Cashier's table, the man saw that it contained money. The man then ordered Giman to turn around. Giman obeyed. Shortly after, the gunman fired two shots to the floor. When silence returned, Giman turned around but the man was gone. He saw that the drawer was on the floor, but the money was gone except some bills that were scattered on the floor. Then other shots followed. The evidence shows that ₱23,778.00 in cash were taken by the robbers.

The evidence also discloses that a mobile patrol notified the Theft and Robbery Section of the Detective Bureau about the incident. Detective Diosdado Lumanog, together with Sgt. Espiritu, proceeded to the Motor Vehicles Office and saw near the main door the body of the deceased officer, identified as Pat. Domingo Daracan, riddled with bullets. His service pistol was missing. Beside the officer, they found carbine and .45 caliber pistol empty shells. At about the same time, the Homicide Section was notified and Det. Romulo Gorospe and Det. Jesus Senen responded. They took possession of the sixteen (16) empty shells that were gathered by Pat. Gorospe — ten (10) empty shells of .30 caliber carbine and six (6) shells of .45 caliber pistol. These were later turned over to the ballistic expert for examination. The shells were found in the lobby near the office of the Cashier, others were near the main door and others

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were near the Trafcon car parked in-front of the office. Photographs of the scene of the crime were taken. From the police informants, the police learned that the robbery was committed by known police characters from Sampaloc. Search for the suspects was conducted. In the meantime, during the police investigation at the scene of the crime, Bonifacio Marcelo, Fingerprint Expert of the Manila Police Department was summoned. Upon arrival thereat, Marcelo found one of the technicians looking for latent prints, but up to that time, he had not found any. Soon Marcelo was summoned to Mendoza (should be Mendiola) Street. It turned out that the taxi used by the culprits was found abandoned in front of the Centro Escolar University. Marcelo examined the taxi for latent prints and found one on the outside of the door and another one on the inner side of the windshield (Exhibits "D" and "E"). He lifted the latent prints. At the back of the car, they found pieces of rope (Exhibit "B"), a carbine stock (Exhibit "A"), a bullet (Exhibit "C"). After lifting the latent fingerprints, Marcelo compared them with the fingerprints on file with the Detective Bureau. He discovered that the latent prints lifted from the inner face right side of the windshield (right glass window) (Exhibit "E-1") tallied with the print of the middle finger of appellant Dominador Aguilar. Subsequently, after the arrest of Aguilar, Marcelo took the impressions of his fingerprints (Exhibits "F" and "G"), and compared them with the latent fingerprints lifted and found that the impressions of the right middle finger (Exhibit "F-1") tallied with the latent prints (Exhibit "E-1"). Marcelo's findings are contained in the report (Exhibit "J"). Of the accused, Dominador Aguilar was first apprehended and brought on March 2, 1963 to the office of the Theft and Robbery Section by Campillanes. Aguilar was questioned but at first denied participation. Subsequently, on March 6, 1963, Det. Lazarte questioned Aguilar and this time, he admitted his participation and gave a written statement (Exhibit "P"), wherein he identified his companions during the commission of the crime as Llamoso (Exhibit "P-3") and Padilla, (Exhibit "P-1"), but both were not present. In the morning of the same day, Aguilar gave an additional statement (Exhibit "Q"), claiming among other things

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that he was about to separate from his companions but Padilla called him (Exhibit "Q-1"). He identified Raul Empedrado as the taxi driver (Exhibit "Q-2"). The additional statement was sworn to by him before Assistant Fiscal Alfonso Francisco. Three days later, upon the arrest of Padilla, accused Aguilar was confronted with Padilla and he gave another statement (Exhibit "R"), identifying Oscar Padilla (Exhibit "R-1").

Appellant Gilberto Llamoso, who was picked up on implication by Aguilar, was likewise questioned and his statement (Exhibit "V") was taken at 11:50 a.m. March 2, 1963. He admitted participation and he identified Aguilar as one of his companions. When shown photographs of Padilla taken from the files, Llamoso also identified him (Exhibits "V-1" and "V-2"). At 7:00 p.m. on March 2, 1963, Llamoso again executed a statement elaborating the details of his previous confession. This was sworn to before the Assistant City Fiscal on the same date (Exhibit "Z"). Subsequently, on March 9, 1963, Det. Lazarte took his additional statement (Exhibit "S") when he was confronted with Padilla and he identified the latter (Exhibit "S-1"). Llamoso also affirmed that before going to the Motor Vehicles Office, he and his companions met at the Santal Arcade at the corner of Castaños and Manrique Streets. He affirmed under oath the veracity of his statements before the Assistant City Fiscal on March 31, 1963.

It also appears from the evidence that on March 3, 1963, Servillano David made a paraffin test on Dominador Aguilar and Gilberto Llamoso, and on March 9, 1963, he also made a similar test on Oscar Padilla. His findings on the test are set forth in Exhibit "Y" wherein the dorsal part of the right and left hands of Aguilar (Exhibits "X-1" and "X-2") and Llamoso (Exhibits "X-3" and "X-4") are sketched and blue spots indicating the presence of nitrates marked with letter "S". As to Padilla, the test also gave positive reaction and the sketch of the dorsal of his right hand showing the spot was also made (Exhibit "Y-1"). The investigating officer submitted the reports of the investigation (Exhibit "U").

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The evidence further shows that the body of Pat. Domingo Daracan was examined by Dr. Angelo Singian whose findings are set forth in the Autopsy Report (Exhibit "K"). According to said report, the victim sustained three (3) gunshot wounds, described in said Autopsy Report and indicated in the diagram (Exhibit "M"), and the cause of death was shock and profuse hemorrhage resulting from the gunshot wounds (Exhibit "L"). Appellant Gilberto Llamoso denied any participation in the commission of the crime and tried to prove that the robbery was committed by other persons. He claimed that he signed Exhibits "S", "V" and "Z" but without knowing their contents.

The issues raised by appellant Llamoso are: (1) the admissibility of his extrajudicial confessions; and (2) the credibility of Raul Empedrado.

Appellant Llamoso contends that his extrajudicial confessions were given under duress. Appellant claims that the details in his alleged confessions were supplied by the police from the information gathered from the taxi driver, Raul Empedrado, and Motor Vehicles Office employees Tirso Atanacio, Varona, Lanuza and Giman, and that he was forced to sign his declaration after being tortured.

It should be noted, however, that the extrajudicial confessions of appellant Llamoso (Exhibits "V" and "Z") described the events relative to the planning of the robbery, the actual holdup and the flight of the culprits. Thus, appellant Llamoso stated:

"16. *T. Maaari mo bang sabihin sa amin kung kailan, saan at papaano mo narinig ng planuhin na holdapin ang tanggapan ng MVO na nasa Dakota?*

S. Hindi ko na po natatandaan ang pecha pero mayroon na hong mga isang buwan ngayon. Doon po sa Santal Arcade na nasa canto ng Manriqne at Castaños ho narinig kong pinlano. Naabutan na po nila ako doon sa canto ng Manrique at Castaños na umiinom sa tindahan. Bumile ho si Conrado Valdez ng alak sa kabilang tindahan doon kay Tomas pagkatapos niyaya niya akong mag-inuman doon sa Santal Arcade. Sumama po ako. Ng nagiinuman na kami, narinig ko si Conrado

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Valdez na sinabi kay Oscar Padilla, 'Padre may lalakarin tayo.' Ang sagot ho naman ni Oscar, "Baka small time lang yan.' Ang sagot ho ni Conrado Valdez, 'Hindi padre may contact tayo sa lakad na ito.' Sinabi pa ni Conrado doon daw sa registrohan ng mga jeep. Pumayag naman sina Sixto Posadas, Jose Perez, Dominador Aguilar at si Lagim Lagunera na sasama sa lakad na pinaplano ni Conrado Valdez. At bago sila umalis, sinabi nila magkita na lang sila uli. Alam na raw nila kung saan sila magkikita. Tinanong din ho ako ni Conrado Valdez kung gusto kong sumama sa lakad. Sinabi ko titignan ko. Ngayon sinabi niya sa akin kung sasama raw ako basta't dadaanan na nila ako kung lalakad na. Mula noon hindi na kami nagkita. Mayroon pang sinabi sa akin si Sixto Posadas na baka raw makarating pa sa iba ang pinagusapan nila. Ikaw ang bahala sa akin." (Exhibit "V-1")

* * * * * * * * *

"6. *T. Dati mo na bang silang kakilala? At kung ganoon ay ano ang iyong tawag sa kanikanilang mga pangalan?*

S. Ang tawag ko po sa kanila ay ang mga sumusunod: kay Oscar Padilla ay Oscar; kay Sixto Posadas ay Esto; kay Dominador Aguilar ay Doming; kay Jose Perez ay minsan ay Peping o Pingoy at kay Cesar Pagsibigan ay Cesar.

7. *T. Sa mga binanggit mong limang (5) katao sa itaas nito na kasama mo sa pagnanakaw sa MVO sa Dakota, Maynila, ay sino ang pinakautak sa pagnanakaw doon?*

S. Si Cesar Pagsibigan ho." (Exhibit "Z-1")

* * * * * * * * *

"13. *T. Mula noong kayong magkausapusap sa Panciteria sa Bustillos ay kailan muli kayo nagkitakita?*

S. Nagkitakita ho kaming muli noong magiika-alas 5:00 nang hapon, a 28 nang Febrero, 1963, sa kanto nang Manrique at Castaños sa Sampaloc, Maynila, at naglakad po kaming anim (6) at pagkatapos ay sumakay sa Jeepney na ang viaje ay Lealtad at kami ay bumaba sa may Lealtad na malapit sa bahay ni Mayor

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Lacson at lumakad kami uli hanggang sa kanto nang Gov. Forbes at España at doon sa calle Gov. Forbes na hindi ko na matandaan kung saan lugar doon ay tumawag nang isang Taxi si Doming at kaming anim ay sumakay.

14. *T. Mula doon sa kanto nang Manrique at Castaños hanggang kayo ay tumawag nang Taxi ay daladala na ba ninyo ang mga armas?*

S. *Si Cesar ho at si Doming ay may nakasukbit na armas sa kanilang bewang at si Oscar naman ay may bitbit na balutan na mahaba at may tali.*

15. *T. Ano ang laman nang mahabang balutan bitbit ni Oscar?*

S. Nang kami ay makasakay na sa loob nang Taxi ay binuksan ni Esto ang mahabang balutan at nakita ko ang dalawang (2) Carbine at binigyan niya (Esto) ako nang isang automatic na baril, kalibre .45?

16. *T. Sino-sino pa ang binigyan ni Esto nang baril na kalibre .45?*

S. Si Pingoy." (Exhibit "Z-2").

* * * * * * * * *

"30. *T. Ngayon, sa inyong paglabas na sa hinold-up ninyong opisina ng MVO, papaano ang nangyari?*

S. Kami ni Doming at ng hawak kong choper ang unang lumabas, ngunit ang choper ay hindi bumangon sa pagkakadapa kaya kami na lamang ni Doming ang tumuloy na lumabas. Ako ay nahuli pa rin kay Doming sa paglabas at iniwan ko na ang driver o choper sa kanyang pagkakadapa at kasunod ko sina Cesar, Oscar, Esto at si Pingoy. Nagkaniya-kanya kami nang sakay sa taksi at ako ay napasakay sa hulihan sa pagitan ni Doming at Oscar. Ang nagmamaneho nang taksi ay si Cesar, si Pingoy sa gitna sa unahan at si Esto ay nasa tabi sa unahan.

31. *T. Nang kayo ay nakasakay nang lahat sa taksi hanggang sa kayo ay dumating sa lugar na iniwanan ang sasakyan, ano ang inyong napag-usapan kung mayruon?*

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S. Nang tumatakbo na ang taksi nang malayo-layo, ay sinabi ni Cesar na 'Tinamaan ko ang pulis.' Pagkatapos nang tumatakbo na kami nang papalapit na sa aking binabaan ay sinabi uli ni Cesar na 'Saka na tayo magkita-kita uli.'

32. *T. Ngayon, papaano ang nangyari sa mga baril na ginamit ninyo sa Hold-up na iyan?*

S. Kami ni Doming ang magkasabay na bumaba sa taksi pagkat sinabi ni Cesar na una kaming bumaba sa may kanto nang Tuberias at Mendiola at kami raw ay maghiwahiwalay. Sinabi ni Oscar bago kami bumaba na iwanan namin ang baril namin at inabot namin kay Esto sa unahan nang taksi.

* * * * * * * * *

43. *T. Papaano naman ang nangyari sa mga 'carbine' na baril na ginamit nang iyong mga kasamahan?*

S. Hindi ko po malaman pagkat ako at si Doming ay unang bumaba at habang tumatakbo ang taksi pagkagaling sa Hold-up ay pinagtatanggal iyon ni Doming, at ang mga partes ay inilalagay sa loob nang bag nang kuwarta na hawak ni Oscar.

44. *T. Pagkababa ninyo ni Doming sa taksi sa kanto nang Mendiola at Tuberias, saan kayo nagtuloy ni Doming?*

S. Naglakad ho kami ni Doming sa Legarda at sa may Labanderos ay naghiwalay na kami at ako ay tumuloy na sa aming lugar." (Exhibit "Z").

Only a participant to the conspiracy could have vividly related the sequence of events from the commencement of the plan to commit the crime prior to the group's boarding the taxicab and the perpetration of the crime itself at the Motor Vehicles Office. It cannot be said that the source of these details was Raul Empedrado because the latter was with the group only from the time they boarded his taxicab up to the actual holdup at the Motor Vehicles Office. It cannot be claimed also that they originated from the Motor Vehicles Office employees because their knowledge of the robbery was only limited to what transpired at the Motor Vehicles Office building.

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When the accused-appellant Llamoso testified, he claimed that he was given fist and karate blows by the policemen who investigated him and he was forced to sign the extrajudicial confessions. It is not denied, however, that when he appeared before Assistant City Fiscal Isip to affirm under oath the veracity of his confessions, he did not complain to the latter that he did not know the contents of the document and that he was compelled to execute the same under duress, much less did he file any complaint against the police officers who allegedly maltreated him.

It is important to note that many of the facts in Llamoso's statements were affirmed later by Dominador Aguilar's extrajudicial confession. As correctly observed by Solicitor General, now Associate Justice of this Court, Hon. Antonio P. Barredo, "it is absurd to say that Llamoso's confessions were copied from Aguilar's because except one whose contents only identified Oscar Padilla, the former were executed earlier." Llamoso's confessions were made on March 2, 1963 (Exhibit "V"), while Aguilar's were made on March 6, 1963 (Exhibits "P", "Q") and March 9, 1963 (Exhibit "R").

Appellant Llamoso, in impugning his identification by Raul Empedrado, claims that it is highly improbable that the latter, due to fear, could have remembered the face of the man who poked a gun at his forehead, considering that the persons inside the Motor Vehicles Office who were confronted with the same situation were not able to identify any of the culprits. On this point, We agree with the observation of the Solicitor General that Empedrado, unlike the Motor Vehicles Office employees, stayed for sometime in the company of Llamoso. Empedrado and Llamoso were together from the time the former picked up the group in his taxi, throughout their journey along the streets of Manila, and they stayed behind in the taxicab while the rest of the group entered the Motor Vehicles Office. During this time that they were together, Llamoso acted as Empedrado's guard. It was also Llamoso who pointed a gun at Empedrado shortly before dragging and using him as his shield when he started firing as they entered the building. Under these

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circumstances, Empedrado had all the opportunity to look at Llamoso and to remember his face.

Empedrado, in his testimony, clearly and positively identified Llamoso as one of the five men who boarded his taxicab and who pointed a gun at him shortly before Llamoso and his companions entered the Motor Vehicles Office.

Appellant Dominador Aguilar's defense is alibi. He testified that in the evening of February 28, 1963, he was performing his duties as security guard at Sampaloc market. At about 7:05 in the evening, a boy was apprehended stealing by a fellow watchman and this boy was endorsed to him. He and three other companions brought this boy to Manila Police Department Precinct No. 6 where he stayed up to 9:20 in the evening. From Precinct No. 6, he and Det. de los Angeles took the boy to the Youth Center at Arroceros Street where he stayed for ten minutes, and after that Det. de los Angeles drove him to Sampaloc market, arriving thereat at about 9:45, and thereafter he continued to make rounds.

The trial court correctly rejected this defense of alibi of said appellant. As carefully analyzed by the trial judge, Hon. Ruperto Kapunan, Jr., Aguilar's presence at the scene of the crime was clearly established by Bonifacio Marcelo, the Manila Police Department Senior Fingerprint Expert, when he testified that the latent print lifted from the inner face right side glass window of the abandoned get-away taxi (Exhibits "E-1" and "I"), tallied with the fingerprints of Aguilar's middle finger (Exhibits "F-1", "H" and "J"). This positive declaration of an expert witness stands unrefuted by any competent proof. This appellant also failed to present Det. de los Angeles, his alleged companion, or any official of Precinct No. 6, or anyone from the Youth Center where the boy was subsequently taken, to corroborate his alibi.

Aguilar, however, claims that his fingerprints were planted by the police in order to apprehend and bring to the custody of the law the killers of one of its members. If this were true, the police should have also planted the fingerprints of Oscar Padilla,

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Gilberto Llamoso and Lagim Lagunera. Besides, the taxicab used by the malefactors was examined by Bonifacio Marcelo in the same evening of February 28, 1963, shortly after the police had been notified of the robbery, and he lifted the latent prints from the same taxicab at 12:55 a.m. of March 1, 1963, while appellant Aguilar was brought to the police headquarters and his fingerprints taken on March 2, 1963 (Exhibit "F").

Appellant Aguilar also contents that his extrajudicial confessions were obtained through force, yet he did not file any complaint against the police officers who allegedly maltreated him or complain to the Fiscal before whom his confessions were sworn. The confessions contain details which are confirmatory of the events narrated in Llamoso's extrajudicial statements. And, like Llamoso's extrajudicial confessions, appellant's statements contain informations which only he could have known.

We, therefore, hold that the trial court committed no error in refusing to accord credence to the allegations of appellant that his extrajudicial confessions were extracted through force, violence and intimidation. Such a claim is rendered incredible by the following: (a) the testimony of Alfredo Lazarte and Domingo Gomez on the voluntary manner in which the extrajudicial declarations were made by the declarants and the circumstances surrounding their affirmance under oath by appellants before the Fiscal; (b) the profusion of details contained therein on the planning, execution of the crime and flight of the culprits which can only be given by the very person who has experienced the same or taken part in the execution of the crime; (c) the failure of the appellants to complain to any of the duly constituted authorities of the alleged maltreatment before the testimony of Llamoso on January 15, 1964 and Aguilar on April 17, 1964; and (d) the circumstance that many of the facts contained in the afore-mentioned extrajudicial confessions were confirmed and corroborated by the other evidence.

Recapitulating, Gilberto Llamoso confessed his participation of the robbery where a policeman was fatally shot. He was positively identified by Raul Empedrado as one of the culprits.

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His hand was found positive for gunpowder residue. As regards appellant Dominador Aguilar, he too confessed being a member of the holdup gang who was responsible for the robbery and killing in the Motor Vehicles Office. His fingerprints were found on the instrument of the crime and his hand was found positive for gunpowder residue.

In view of the foregoing, We hold that the trial court did not commit any error in finding appellants guilty of the offense charged.

WHEREFORE, the judgment of conviction and sentence of death imposed on appellant Gilberto Llamoso is hereby AFFIRMED, with the modification that the amount due to the heirs of the victim, Pat. Domingo Daracan, should be increased to ₱12,000.00. The case against appellant Dominador Aguilar is hereby DISMISSED insofar as his criminal liability is concerned, with proportionate costs *de oficio*.

SO ORDERED.

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

Barredo, J., took no part as he was the Solicitor General then.

EN BANC

[G.R. No. L-28548. July 13, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO TOLING alias IKONG, ROGELIO COMETA *alias* CELIO, CANDELARIO BOLANDO alias DODO, ROLANDO COMETA alias LANDO, EMILIO TOLING AND HILARIO GAHITO,** *defendants,* **ROGELIO COMETA alias CELIO,**