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SO ORDERED.

Barredo (Chairman) Antonio, Aquino, and *Guerrero,* JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-36824. September 11, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARISTON GUILLERMO, CARLITO ABORDE, RONITO CULLO, and JESUS CULLO,** *defendants-appellants.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; ILLEGALLY OBTAINED EVIDENCE IS NOT ADMISSIBLE.— [T]he prevailing rule now is that illegally obtained evidence are not admissible. Besides, the 1973 Constitution clearly provides: "Sec. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained *in violation of this section shall be inadmissible in evidence.*"

2. REMEDIAL LAW; EVIDENCE; ACTS OR DECLARATION OF A CONSPIRATOR RELATING TO CONSPIRACY, WHEN ADMISSIBLE.— The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given against

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* Mr. Justice Guillermo S. Santos is on leave. Mr. Justice Juvenal K. Guerrero, a member of the First Division, was designated to sit in the Second Division.

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the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Arthur D. Defensor for appellants Guillermo and Aborde.

DECISION

CONCEPCION JR., *J.*:

Appeal from a judgment of conviction in Criminal Case No. 1830, for Robbery In Band With Homicide, entitled "*The People of the Philippines vs. Ariston Guillermo, Carlito Aborde, Ronito Cullo and Jesus Cullo, accused,*" by the Court of First Instance of Iloilo, Branch IV (Judge Valerio V. Rovira), containing the following dispositive portion:

"WHEREFORE, the Court finds accused Ariston Guillermo, Carlito Aborde, Ronito Cullo and Jesus Cullo guilty beyond reasonable doubt of robbery in band with homicide defined and penalized in Article 294 (1) of the Revised Penal Code in relation to Articles 293 and 296 of the same Code, and hereby sentences each of the four accused to suffer the penalty of *reclusion perpetua*, with all the accessory penalties provided by law. The above named four (4) accused shall jointly and severally indemnify Vicente Gardoce and Demetria Castor, parents of the deceased, the sum of ₱12,000.00 for the death of their son Billardo Gardose, and in addition thereto to pay said heirs of the deceased the sum of ₱6,240.00 for loss of income, plus ₱10,000 for moral damages, to pay said heirs the sum of ₱600.00 for reparation of damage caused, to reimburse them the sum of ₱1,500.00 for expenses for the coffin, embalment, church service and the wake, and to pay the costs.

"The records show that on June 21, 1972, accused Ariston Guillermo and Carlito Aborde signed an agreement whereby both agreed to abide by the same rules imposed on convicted prisoners while undergoing preventive imprisonment.

"SO ORDERED."

Accused-appellants Jesus and Ronito Cullo filed a separate brief from that filed by accused-appellants Ariston Guillermo and

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Carlito Aborde, all accused-appellants raising almost identical issues as alleged errors of the trial court, namely: (1) the trial court's admitting in evidence Exhibits "A" and "B", alleged extrajudicial confessions of Ariston Guillermo and Carlito Aborde; (2) in relying on the evidence of the prosecution both oral and documentary which have disturbing inconsistencies and inherent improbabilities; (3) in not believing the testimonies of the witnesses and documentary evidence for accused-appellants; (4) in convicting the accused-appellants. Accused-appellants Ariston Guillermo and Carlito Aborde also raised the issue that the lower court allegedly erred in holding that the suspects were sufficiently identified and in relying thereon as basis of conviction when in truth and in fact they were allegedly victims of a frame-up.

It is firmly established by evidence that at about 5:30 A.M. of May 10, 1972, at Barrio Lamonan, Passi, Iloilo, near the residence of Vicente Gardoce and his wife Demetria Castor, there occurred an incident where Billardo Gardoce was shot and killed with a homemade shotgun during a robbery wherein Vicente Gardoce was compelled to give the malefactors P500 cash, one .22 caliber *paltik* revolver, and one 12-ga. homemade shotgun. The prosecution's version of the crime, established principally by the testimony of witnesses Vicente Gardoce and Benedicto Gardoce, is that early in the morning (about 5:30 A.M.) of May 10, 1972, at the house of Vicente Gardoce, in Barrio Lamonan, Passi, Iloilo, where he lived with his wife Demetria Castor and his children Godofredo, Billardo, Rufino and Benedicto, all surnamed Gardoce, Vicente Gardoce was awakened by the barking of their dogs downstairs. Vicente told his son, Benedicto, to go out of the house and find out the cause of the barking of the dogs. Benedicto went down the house and opened the gate of their fence which surrounded the house, while his father Vicente was standing on the balcony of their house. When Benedicto opened the gate accused Ariston Guillermo held and pushed the former to accused Carlito Aborde who then tied Benedicto's hands behind his back. Godofredo Gardoce followed Benedicto, whereupon Ariston Guillermo also held Godofredo and pushed him to Carlito Aborde who also tied Godofredo's hands at his back. In the meantime accused Ronito and Jesus, both surnamed Cullo, each holding a pistolized

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homemade firearm, pointed their guns at the Gardoce brothers. Rufino Gardoce followed his brother Godofredo. He, too, was also pushed by Ariston Guillermo to Jesus Cullo who tied Rufino's hands with a rope the latter had with him. Billardo Gardoce followed his brother Rufino and he asked Ariston Guillermo, "What is going on, Brod?", whereupon Ariston Guillermo without saying a word shot Billardo Gardoce with a pistolized "*pugakhang*" (homemade shotgun). Billardo was hit on the left eye, fell to the ground, and died immediately. According to witness Vicente Gardoce, Ariston Guillermo demanded money and the former's long barrel shotgun with the threat that the sons of Vicente Gardoce would be killed if the latter would not give his money and his shotgun. Vicente Gardoce therefore gave his ₱500 and homemade shotgun to Ariston Guillermo.[1] According to witness Benedicto Gardoce, when his father Vicente Gardoce at first refused to heed the demand of Ariston Guillermo for money and the gun, the group went near the balcony and Carlito Aborde fired his gun in the air. The Gardoce brothers pleaded with their father Vicente Gardoce before the latter gave the money and the gun to Ariston Guillermo.[2] Before the accused left the place, the Gardoces were threatened with death should they tell the police authorities about the incident.

Accused-appellant Ariston Guillermo denied participation in the crime. He testified that he was a casual laborer in the stock farm of the Bureau of National Husbandry station at Dumarao, Capiz; that he worked in the breeding station on May 9, 1972; that he asked permission to be absent on May 10, 1972 to plow his farm for planting cassava, which he did; that at about 10:00 A.M. of May 10, 1972, a policeman accompanied by the son of Vicente Gardoce came and asked the accused whether four persons had passed that way and when Guillermo said no, he was told that he would be taken for questioning; that he was brought to the house of Vicente Gardoce and later he was placed inside the Municipal Jail of Passi; that afterwards he was brought to the P.C. Detachment in Barrio Dacuton, Dumarao, Capiz, where the policemen asked the soldiers whether they knew Barrio Carataya,

[1] pp. 12-13, t.s.n., Hearing of August 8, 1972.

[2] pp. 15-16, t.s.n., Tauro.

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Cuartero, Capiz, and a person named Carlito Aborde; that the P.C. soldiers accompanied the policemen to Carataya where they picked up Carlito Aborde and brought him to the P.C. detachment where he was asked if he knew Ariston Guillermo; that when Carlito Aborde denied knowing Ariston Guillermo, both were handcuffed to each other and they were brought to Passi; that on the way to Passi, when Carlito denied knowledge of the robbery in the place of Gardoce, he was maltreated, clubbed, kicked and boxed; that they arrived at Barrio Tabobong at 9:00 P.M., where they (policemen) continued maltreating Carlito Aborde, who later mentioned his father-in-law as his companion, as well as Guillermo Galvez, and one "Potpot;" that Guillermo Galvez denied participation in the crime, whereupon the policemen continued maltreatment of Carlito who pointed in desperation to Ariston Guillermo as his companion in the crime; that when Ariston Guillermo denied participation in the crime, he was also maltreated; that the investigation and maltreatment continued inside the municipal jail of Passi on May 12, 1972; and that because of continued maltreatment by policemen, Carlito Aborde and Ariston Guillermo signed confessions.[3]

Accused-appellant Carlito Aborde denied participation in the crime. He claimed that in the evening of the incident he was in his house at Barrio Carataya, Cuartero, Capiz where at about 7:00 p.m. that evening of May 9, 1972, he saw the house of his elder brother, Hermenigildo Aborde, burning; that he helped in putting out the fire after half of the roof of the kitchen was burned and the hand of his sister-in-law was burned; that after the fire was extinguished, with Pedro Mestidio he proceeded to Barrio Lunayan, Cuartero, Capiz, to inform his older brother that the latter's house was partially burned and his wife sustained burns; that his elder brother left for home upon being so informed, while Carlito Aborde remained; that on May 11, 1972, the policemen came and arrested him; that he was brought to the P.C. detachment in Barrio Dacuton, Dumarao, Capiz, then to Passi, Iloilo, in the municipal jail; and that he signed Exh. "A", his alleged confession, because he was continuously maltreated by the police.

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[3] *Exhs. "A" and "B".*

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Accused-appellants Ronito Cullo and Jesus Cullo claimed that in the afternoon of May 8, 1972, Sulpicio Palsis invited them to the fiesta of Barrio Lunayan, Cuartero, Capiz; that at about 4:00 p.m. of May 9, 1972, Ronito and Jesus Cullo, with Elena Primitivo and Leopoldo Mestidio went to Barrio Lunayan; that in the house of Sulpicio Palsis, they helped in the preparation of food for visitors; that at about 4:00 a.m. of May 10, 1972, Elena Primitivo requested Ronito and Jesus Cullo to get water from a brook; that they attended mass at 8:00 a.m. of May 10, 1972 and they helped served food to visitors until 12:30 p.m. of May 10, 1972; that they went to the cockpit in the afternoon and attended a dance in the evening which ended the morning of May 11, 1972; that they did not know of the death of Billardo Gardoce until they were jailed in Passi; that both Ronito and Jesus Cullo were arrested May 19, 1972 in their house at sitio Dumalagamba, Cuartero, Capiz; and that they were severely maltreated by policemen but they refused to sign confessions before the Municipal Judge of Passi.[4]

Focus is made on the crucial issue of admissibility of Exhibits "A" and "B", the alleged extrajudicial confessions of accused-appellants Carlito Aborde and Ariston Guillermo, respectively, which were considered admissible in evidence by the trial court, on the reasoning that:

> "The confessions contained in these exhibits ("A" and "B") to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false or untrue, for the law rejects the confession when, by force or violence or intimidation, the accused is compelled against his will to tell the truth. This is in consonance with the principle that the *admissibility of evidence is not affected by the illegality of the means with which it was secured.* (*People vs. de los Santos,* G.R. No. L-4880, May 18, 1953)."[5] (Italics For Emphasis)

The ruling that admissibility of evidence is not affected by the illegality of the means with which it was secured as pronounced in the case of *People vs. de los Santos*, G.R. No. L-4880, May 18, 1953, has long been abandoned, because the prevailing rule

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[4] pp. 117-125, t.s.n., Hearing of Dec. 11, 1972; pp. 119 to 123, t.s.n., Tauro.

[5] p. 11, Decision in Criminal Case No. 1830.

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now is that illegally obtained evidence are not admissible.[6] Besides, the 1973 Constitution clearly provides:

"Sec. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained *in violation of this section shall be inadmissible in evidence*."[7] (Italics for Emphasis)

An examination of Exhibits "A" and "B", written in English, will readily show that they were prepared by another person, both Ariston Guillermo and Carlito Aborde, affiants therein being without knowledge of the English language. The Chief of Police Alfonso Palmares of Passi, Iloilo, admitted that he prepared the affidavits of Ariston Guillermo and Carlito Aborde.[8] Both Ariston Guillermo and Carlito Aborde stated that at first they refused to sign Exhibits "A" and "B" but later they signed because they wore threatened with further maltreatment if they would not sign the confessions. Accused Ronito and Jesus Cullo also stated that they were maltreated and threatened to sign confessions but they refused. Municipal Judge Mariano Basa, Jr., of Passi, Iloilo, before whom Exhibits "A" and "B" were supposed to have been voluntarily subscribed and sworn to, admitted in his testimony that before the signing of Exhibits "A" and "B", Judge Basa, Jr. asked the affiants if they would sign the declaration and "they said no."[9] Judge Basa, Jr. also admitted that he did not remember how many times the accused Ariston Guillermo and Carlito Aborde were brought to his office to sign Exhibits "A" and "B".[10] The trial court relied so much on the voluntariness of the execution of Exhibits "A" and "B", having been sworn to and subscribed before the Municipal Judge of Passi, Iloilo, and yet the Municipal Judge himself

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[6] *Stonehill vs. Diokno,* G.R. No. L-19550, June 19, 1967; 20 SCRA 383.

[7] Sec. 20, Art. IV, 1973 Constitution.

[8] p. 152, t.s.n., Hearing of Jan. 23, 1973.

[9] p. 42, t.s.n., Hearing of August 8, 1972.

[10] p. 43, *t.s.n., Hearing of August 8, 1972.*

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was not so sure if the affiants Ariston Guillermo and Carlito Aborde voluntarily and readily signed said confessions. The finding of the trial court that the physical examination conducted by Dr. Jose M. Acosta on Ariston Guillermo and Carlito Aborde, found no signs of physical injury on Ariston Guillermo and healed lesions on Carlito Aborde which must have resulted from a vehicular accident on May 2, 1972, cannot be conclusive on the question of whether or not both accused were maltreated by policemen when they were detained from May 11, 1972, because the physical examination of both accused was done on July 17, 1972, more than two months after the alleged maltreatment.

The foregoing established facts, together with the admission of Chief of Police Alfonso Palmares of Passi, Iloilo, that accused-appellants Jesus Cullo and Ronito Cullo were held *encommunicado* in jail and that he even refused at first to allow the lawyer of the Cullo brothers to see them while in jail,[11] leave lingering doubts in Our mind about the voluntariness of the extrajudicial confessions, Exhibits "A" and "B" and the not too remote possibility that the accused-appellants were really maltreated while detained for investigation to extract confessions from them. There being reasonably sufficient doubts on the voluntariness of Exhibits "A" and "B", We cannot see our way clear to sustain the lower court's stand on their admissibility as evidence for the prosecution. We have no alternative but to rule that the lingering reasonable doubt on the voluntariness of the extrajudicial confessions Exhibits "A" and "B" should be in favor of the accused and against their admissibility as evidence.

Regarding the accused-appellants Cullo brothers, the extrajudicial confessions Exhibits "A" and "B", assuming *arguendo* that they are admissible as evidence, cannot be used as evidence against the Cullo brothers because of the "*res inter alios acta*" rule,[12] since the declarations against interest or confessions of Ariston Guillermo and Carlito Aborde are admissible and effective against themselves alone, in the absence of independent evidence of conspiracy among Ariston Guillermo, Carlito

[11] pp. 148, 153-154, t.s.n., Hearing of January 23, 1973.

[12] Sec. 25, Rule 130 of the Rules of Court.

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Aborde and the Cullo brothers. The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.[13] It may be argued that the direct evidence presented in the testimonies of Vicente and Benedicto Gardoce about the concerted act of the four accused-appellants during the robbery constituted direct independent evidence of conspiracy outside of the extrajudicial confessions Exhibits "A" and "B", since the said evidence established the unison of the concerted acts of robbery to realize a common objective which independently establishes the conspiracy among the four appellants in the perpetration of the criminal act, but We are aware of a flaw in the said direct testimony of Vicente and Benedicto Gardoce. The said flaw in the direct testimony of Vicente and Benedicto Gardoce is precisely on the participation of the Cullo brothers in the crime. Vicente Gardoce testified in court and admitted that in the affidavit which he signed before the Chief of Police of Passi, Iloilo, on May 11, 1972, one day after the death of his son and the robbery, he stated when he was asked if he knew who were the companions of accused Carlito Aborde and Ariston Guillermo during the robbery that the two companions were unknown to him.[14] Benedicto Gardoce also stated in his affidavit subscribed and sworn to before the Municipal Judge of Passi, Iloilo, on May 22, 1972 that the perpetrators of the alleged offense (Guillermo and Aborde) were with unidentified companions. It is also of record that the original complaint named Ronni and Jesus Estorque, as the two companions of Guillermo and Aborde, later on amended to include the Cullo brothers by changing the surname Estorque to Cullo, another indication that during the investigation of the crime on May 11, 1972, the Gardoces, father and son, did not point to the Cullo brothers as participants in the crime. Under the circumstances, the direct testimony of Vicente and Benedicto Gardoce as to the participation of the Cullo brothers in the crime remains in serious doubt. Without the extrajudicial confessions Exhibits "A" and "B" of Guillermo and Aborde implicating the Cullo brothers, and there being serious

[13] Sec. 27, Rule 130 of the Rules of Court.

[14] p. 31, Hearing of August 8, 1972.

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doubts on the direct testimony of Vicente and Benedicto Gardoce regarding the participation of the Cullo brothers in the crime, there remains a reasonable doubt in their favor which materially strengthens the alibi they established.

There is truth to the trial court's stand that even without Exhibits "A" and "B", the direct evidence presented by the testimonies of Vicente and Benedicto Gardoce, supported by other evidence, sufficiently established the guilt of Ariston Guillermo and Carlito Aborde beyond doubt, as the said evidence from the very beginning pointed unerringly at Guillermo and Aborde, together with two others, who committed the crime, Guillermo as the one who shot Billardo Gardoce and who received the ₱500 and the guns, and Carlito Aborde who allegedly fired a shot in the air to threaten Vicente Gardoce to give in to their demands. In the absence of sufficient indications that Vicente and Benedicto Gardoce falsely testified against Ariston Guillermo and Carlito Aborde, and there is no shown motive why they should do so, their straightforward narration in a very simple way of what happened during the incident and the participation of the accused Guillermo and Aborde in the crime committed constitute ample evidence beyond reasonable doubt to sustain conviction.

WHEREFORE, the trial court's decision is affirmed and sustained with respect to the conviction of and penalty imposed on accused-appellants Ariston Guillermo and Carlito Aborde who committed the crime with two others who have not been identified; and reversed and set aside with respect to accused-appellants Ronito Cullo and Jesus Cullo who are acquitted, on the ground of reasonable doubt. The Provincial Fiscal of Iloilo is hereby ordered to conduct an investigation of the manner in which Exhibits "A" and "B" were taken by the policemen concerned, and to prosecute them, if warranted by the evidence. Costs against accused-appellants Ariston Guillermo and Carlito Aborde.

SO ORDERED.

Barredo (Chairman), Antonio, Aquino, and *Guerrero,** *JJ.,* concur.

Abad Santos, J., took no part.

Santos, J., on leave.