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SECOND DIVISION

[G.R. No. L-30060. July 30, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DEMETRIO ROBLES, SANTIAGO BINGCO and DIONESIO ALABE,** *defendants,* **SANTIAGO BINGCO,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF THE ACCUSED; UNRELIABLE AND INCONCLUSIVE IN CASE AT BAR.**— The identification of the appellant by the said witness inside the office of the Chief of Police is unreliable and inconclusive. Sergeant Maximo M. Duhaylungsod of the Bansalan Police who investigated Remedios Gutang testified on cross-examination that before the identification, he informed the said witness that they had already apprehended the person involved in the robbery, that he was already in jail and that his name was Santiago Bingco, whom she would identify in the office of the Chief of Police, together with six (6) other persons. Such statements might have unduly influenced the said witness in pointing to the appellant as one of the perpetrators of the crime. It should be noted that the said witness did not know the appellant before the incident. If she had therefore recognized the appellant she must have some bases for recognizing him, like for example, his height, physical build, style of hair and wearing apparel. The said witness, however, failed to furnish the police authorities a physical description of the appellant — a very essential and important detail in the solution of the crime and in the early apprehension of the culprit or culprits.

2. **ID.; ID.; EXTRAJUDICIAL CONFESSION; UNSAFE FOR CONVICTION WHEN THE ACCUSED IS UNSCHOOLED WHO CANNOT READ AND UNDERSTAND ENGLISH.**— Considering that the appellant is an unschooled farmer, having reached Grade V only and cannot understand and read English, his confession which is in English had to be asked in Visayan, and had to be translated to and typed in English and similarly

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his alleged answers in Visayan had to be translated to and typed in English. Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the answers is naturally pregnant with possibilities of human, if not unintentional, inadequacies and incompleteness which render the said confession unsafe as basis for conviction for a capital offense, unless sufficiently corroborated.

DECISION

CONCEPCION JR., *J.*:

Sometime in the night of August 29, 1966, the couple Exequiel Manigos and Remedios Gutang, became the victims of a robbery-killing. The said couple together with their children were sleeping in their house at Blocon, Bansalan, Davao. Exequiel Manigos was shot by one of the malefactors, which caused his subsequent death. The robbers took away some of their personal belongings amounting to ₱520.00, including cash in the sum of ₱15.00.[1]

In the morning of August 30, 1966 the incident was reported to the police authorities of Bansalan, Davao, Thereafter, Patrolman Benjamin Mañacap, together with two policemen repaired to the scene of the crime. Arriving thereat, they found the couple's trunk forcibly opened and blood scattered on the floor.[2] When they investigated the widow Remedios Gutang the latter informed them that of the four robbers, she could only identify the man who was standing by the door.

On September 5, 1966, Sgt. Duhaylungsod of the Bansalan police interrogated Remedios Gutang. Before taking down her statement,[3] however, he brought Remedios Gutang to the office of the Chief of Police, where the latter was made to identify

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[1] Vol. I, t.s.n., pp. 25-26, 31-32; Exhs. "B", "C", Folder of Exhibits, pp. 2, 3.

[2] Vol. I, t.s.n., pp. 9, 10, 11.

[3] Folder of Exhibits, p. 6.

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— in a police line up — the person who robbed their house. Remedios Gutang pointed to the man in the middle among the six (6) persons in the police line-up, who turned out to be the accused Santiago Bingco.[4] Santiago Bingco was a detention prisoner, having been arrested on August 30, 1966 in connection with another case, *i.e.*, trespass to dwelling committed in the house of one Hilario Madrid at Barrio Magsaysay, Bansalan, Davao.[5]

On September 9, 1966, Santiago Bingco was investigated by Sgt. Duhaylungsod. After the investigation, he allegedly executed a sworn statement[6] admitting his participation in the robbery-killing, and pointed to Demetrio Robles and Dionesio Alabe as his companions, with the former as the mastermind, which was subscribed and sworn to before Mariano Tupas, acting Municipal Judge of Bansalan, Davao on September 12, 1966.[7]

On the strength of the said sworn statement and other evidence, the Chief of Police of Bansalan, Davao, filed with the Municipal Court of Bansalan, a complaint[8] charging Demetrio Robles, Dionesio Alabe and Santiago Bingco, with the crime of robbery in band with homicide. After the preliminary examination, all the accused waived their right to the second stage of the preliminary investigation;[9] hence, the case was remanded to the Court of First Instance of Davao.[10]

On February 9, 1967, special counsel Apolinario Veruasa filed with the Court of First Instance of Davao an information,[11]

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[4] Vol. I, t.s.n., pp. 20-21, 23.

[5] Vol. I, t.s.n., pp. 12, 20, 22; Vol. II, t.s.n., p. 22.

[6] Exhibit "D", Folder of Exhibits, p. 4.

[7] Vol. I, t.s.n., pp. 18, 19, 20, 21.

[8] Record, p. 2.

[9] *Ibid.*, pp. 8, 9, 10.

[10] *Ibid.*, p. 11.

[11] *Ibid.*, p. 18.

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charging all the accused with the crime of robbery in band with homicide, allegedly committed as follows:

"That on or about August 29, 1966, in the Municipality of Bansalan, Province of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring and confederating and helping one another, together with Peter Doe and John Doe who are still at large, armed with firearms, through force, violence and intimidation, and in band, did then and there enter the house of Exequiel Manigos and once inside, with intent of gain, did then and there wilfully, unlawfully and feloniously take, steal and carry away the following articles, to wit:

a)	Clothes, cloth not yet sewed and blanket worth	₱300.00
b)	Two pairs of earings worth	60.00
c)	Three (3) necklaces worth	100.00
d)	Wrist watch worth	45.00
e)	And a cash of	15.00
	Total	₱520.00

to the damage and prejudice of the victim in the aforesaid sum of ₱520.00, and on the occasion thereof, the above-mentioned accused conspiring and confederating with John Doe and Peter Doe with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Exequiel Manigos with a revolver which caused him mortal injury that led to his death."

For insufficiency of evidence, the prosecution moved to dismiss the case against Demetrio Robles and Dionesio Alabe,[12] which the trial court granted.[13] Hence, the trial proceeded only as against the accused Santiago Bingco.

Aside from the alleged extra-judicial confession of the accused, the case for the prosecution rests mainly on the testimony of Remedios Gutang, widow of the deceased Exequiel Manigos.

She testified that about 10:30 in the evening of August 29, 1966, while she, her husband and their children were sleeping

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[12] Record, p. 19.

[13] *Ibid.*, p. 27.

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in their house at Blocon, Bansalan, Davao, she heard three shots coming from their yard. After waking up her husband, she saw a man standing by the window, who thereafter entered their house. Once inside the house, he shot her husband and then pointed his pistol at her face. Thereupon, their door was opened, and immediately, two men entered their house. One of them, posted himself by the door, which was only three (3) fingers length away from a lighted bottle lamp, whom she recognized and later identified as the accused Santiago Bingco. The latter ordered her husband to lie prone upon the floor, while his two companions tied his hands. Upon seeing a black shirt with the aid of his flashlight, the accused Santiago Bingco tied the feet of her husband with it, and said to his companions "go ahead."[14]

His two companions then entered their room and brought out their trunk, which they forcibly opened with a hunting knife. After ransacking its contents, one of the two men, took her inside the room, pointed his hunting knife at her face, and then said, "You just had a recent sale. Tell me where the proceeds of the sale is or if not I will thrust this knife on your face." She replied that she had already spent the money but the man demanded from her the balance. He then searched her body, and finding no money in her person he threatened to burn their house. He then took a bottle of kerosene, and after placing it near the feet of her husband, he scattered the corn around and tied her feet and that of her daughter. All the while, the accused Santiago Bingco remained standing by the door. Thereafter, they went to drink water and washed their hands, and then left their house carrying a bundle.[15]

When the robbers had left their house, she untied her husband, and with the help of their neighbors, they carried him in a hammock to Matanao for medical treatment. However, he died along the way. So they brought her husband's body to her mother's house.[16]

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[14] Vol. I, t.s.n., pp. 28-30.

[15] Vol. I, t.s.n., pp. 28-30.

[16] Vol. I, t.s.n., pp. 31-32.

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The accused Santiago Bingco denied any participation in the commission of the crime, and repudiated his alleged extra-judicial confession, claiming that he was maltreated by the police of Bansalan, Davao;[17] and some of the answers to the questions propounded to him were not his answers;[18] and that he signed the alleged confession on the promise of Sgt. Duhaylungsod, the police investigator, that he will be made a government witness.[19] In addition, he interposed alibi. He claims that on the evening of August 29, 1966 from 8:00 o'clock to midnight, he was at the house of one Gregorio Madrid at New Ilocos, Bansalan, Davao, listening to the radio with the family of the latter, and that since he went to live in New Ilocos, Bansalan, Davao in 1965 and up to the present, he had never gone to Blocon, Bansalan, Davao.[20]

The trial court rejected the claim of the accused, and convicted him but only with the crime of robbery with homicide. Thus, the court *a quo* held:

"The court, however, concurs with the position taken by the defense that the crime of robbery in band with homicide could not lie first, the offended party declared that only 3 robbers committed the crime. For a crime to be committed in band it is essential that more than 3 persons participated in the act.

"Furthermore considering, the dismissal of the charge against Demetrio Robles and Dionesio Alabe certainly, the crime could not be robbery in band, but mere robbery with homicide.

xxx xxx xxx

"WHEREFORE, the accused is hereby sentenced pursuant to Art. 294 of the Revised Penal Code to suffer the penalty of *Reclusion Perpetua* with the accessory penalties of the law and to pay the costs.

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[17] Vol. II, t.s.n., pp. 40-41.

[18] *Ibid.*, pp. 33-39.

[19] *Ibid.*, pp. 31, 34, 40.

[20] *Ibid.*, pp. 20-21.

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"He is likewise ordered to indemnify the offended party in the sum of ₱520.00 the stolen property as well as to indemnify the heirs of the deceased in the sum of ₱4,000.00, with no subsidiary imprisonment in case of insolvency by reason of the penalty imposed.

"The accused being a detention prisoner is hereby credited with one-half (½) of the period he has undergone preventive imprisonment.

"SO ORDERED."[21]

Hence, the accused interposed the present appeal.

The principal issues to be resolved in the instant appeal is whether or not the herein appellant has been positively identified by the prosecution's only eyewitness Remedios Gutang, and whether or not the alleged extra-judicial confession of the appellant was voluntary.

Ordinarily, this Court will desist from disturbing the conclusions of the trial court on the credibility of witnesses, in deference to the rule that the lower court, having seen and heard the witnesses and observed their demeanor and manner of testifying, is in a better position to appreciate the evidence. However, this doctrine must bow to the superior and immutable rule that the guilt of the accused must be proven beyond a reasonable doubt, because the law presumes that a defendant is innocent, and this presumption must prevail unless overturned by competent and credible proof.[22] The prosecution failed in that task.

Proof beyond a reasonable doubt of the identity of the accused as the person who committed the crime is essential to conviction.[23] As was held by this Court in *People vs. Beltran*,[24] the identity of the offender, like the crime itself, must be proven beyond a reasonable doubt. We have carefully and patiently gone over

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[21] Record, pp. 80-82.

[22] *People vs. Alto*, L-18660-61, Nov. 29, 1968, 26 SCRA 342, 346; *People vs. Pagkaliwagan*, L-29948, Nov. 26, 1970, 36 SCRA 113, 124.

[23] 30 Am. Jur. 2d., Sec. 1143. p. 319.

[24] L-31860, Nov. 29, 1974, 61 SCRA 246.

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the testimony of Remedios Gutang, and after doing so, We confess that We are not certain that she had positively identified the herein appellant as one of the perpetrators of the crime in question.

At the outset, We would like to point out that contrary to the observations[25] of the Solicitor General, the said witness for the prosecution never testified that it was the herein appellant whom she first saw to be the man outside the window, who thereafter entered their house and shot her husband. Neither did she testify that she recognized the said man.[26] The only part of her testimony which would suggest or imply that it was the herein appellant who shot her husband is the question propounded by the Fiscal and the answer given by the said witness quoted hereunder:

"Q While your husband was tied on his feet by that person who shot him, what was he doing after he tied your husband by the feet and hands?

"A After he tied my husband he said "go ahead."[27]

The part of the question which states: "While your husband was tied on his feet by that person who shot him" has no probative value. That is not the testimony of the witness but that of the Fiscal.

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[25] On pages 4-5 of the Appellee's Brief, the Solicitor General argues that the said witness "x x x could not but recognize appellant when he and two companions entered her house as she had a lighted bottle lamp nearby which was enough to illuminate the place (p. 27, t.s.n., *Id.*) It was he whom Mrs. Manigos first saw to be the man outside looking from the window through which he gained entrance to the house (p. 26, t.s.n., *Id.*). It was also he who fired at her husband, Exequiel, in her presence and then aimed the pistol at her. She was also present when appellant ordered her husband to lie on his belly while his companions tied Exequiel's (p. 27, t.s.n., Id.). Mrs. Manigos saw how appellant tied her husband's feet with a black sheet of cloth (p. 27, t.s.n., *Id.*). In short, Mrs. Manigos had ample opportunity to see and remember the face of the appellant, so that it was no wonder at all that she identified him in a line-up without hesitation."

[26] Vol. I, t.s.n., pp. 26-27.

[27] Vol. t.s.n., p. 27.

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We are not impressed by the said witness' testimony that she was able to recognize the appellant because at the time of the incident there was a lighted bottle lamp, which was only three (3) fingers length away from the place where the appellant was standing. If there was such a lighted bottle lamp, it is highly unbelievable that the appellant would just stand there like a statue and expose his face to the light to enable his victim to identify and recognize him. The natural reaction of a person who commits robbery under such situation is to put out the light or to move away therefrom in order to conceal his identity. Again, if there was indeed such a lighted bottle lamp and the light coming therefrom was sufficient to illuminate the place, as observed by the Solicitor General, then the said witness could have recognized the two companions of the appellant who ransacked the contents of their trunk; she could have recognized the man who shot her husband and who pointed his pistol at her face. On top of that, the said witness declared that she did not recognize the two companions of the appellant because "it was nighttime" and that "she did not see very clearly."[28]

Besides, after analyzing the testimony of the said witness, We believe that she did not have ample opportunity to see and observe the face of the appellant, because after the robbers had entered their house, she and her deceased husband Exequiel Manigos, were ordered to lie prone upon the floor,[29] and while thus lying face down, her attention was focused on the two companions of the appellant who were ransacking the contents of their trunk, and thereafter she was taken by one of the robbers inside the other room of their house. Hence, the said witness could not have positively recognized the herein appellant.

Moreover, the identification of the appellant by the said witness inside the office of the Chief of Police is unreliable and inconclusive. Sergeant Maximo M. Duhaylungsod of the Bansalan Police who investigated Remedios Gutang testified on cross-

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[28] Vol. I, t.s.n., p. 28.

[29] Vol. I, t.s.n., pp. 27, 36; Exhibit "I-C", Folder of Exhibits, p. 6.

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examination that before the identification, he informed the said witness that they had already apprehended the person involved in the robbery, that he was already in jail and that his name was Santiago Bingco, whom she would identify in the office of the Chief of Police, together with six (6) other persons.[30] Such statements might have unduly influenced the said witness in pointing to the appellant as one of the perpetrators of the crime. It should be noted that the said witness did not know the appellant before the incident.[31] If she had therefore recognized the appellant she must have some bases for recognizing him, like for example, his height, physical build, style of hair and wearing apparel. The said witness, however, failed to furnish the police authorities a physical description of the appellant — a very essential and important detail in the solution of the crime and in the early apprehension of the culprit or culprits. It is therefore strange how the said witness was able to identify the appellant in the police line-up inside the office of the Chief of Police. While no motive might have impelled the said witness in framing up the appellant, nevertheless, this circumstance is no guaranty that she could not have made an honest mistake.[32]

In the light of the foregoing, We entertain serious doubt as to the sufficiency of the proof of appellant's identity. Such doubt must be resolved in favor of the appellant, it being preferable to acquit a guilty person rather than convict an innocent one.[33]

The only other evidence which directly implicates the appellant to the crime at bar is his alleged extra-judicial confession. While We agree with the trial court in rejecting the appellant's claim of maltreatment, however, We believe after mature reflection that the statements contained therein were not his voluntary statements. The said extra-judicial confession contains statements of facts which were admittedly untrue, that We cannot believe

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[30] Vol. I, t.s.n., p. 23.

[31] Vol. I, t.s.n., p. 34.

[32] *People vs. David*, 75 Phil. 778.

[33] *People vs. Ganal*, 85 Phil. 743.

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it to be the voluntary confession of the appellant. Thus, it appears from the statements in the alleged confession that the appellant together with Demetrio Robles, Dionesio Alabe, and two others whose names are unknown, robbed the house of Exequiel Manigos at around 10:00 o'clock in the evening of August 29, 1966 at Blocon, Bansalan, Davao; that at about 12:00 o'clock midnight of the same date, he and his companions wanted to rob the house of Hilario Madrid at Barrio Magsaysay of the same municipality but were unable to do so because they were noticed by the occupants. Moreover, according to the said confession, Demetrio Robles was their leader and that they were armed with three (3) .38 caliber revolvers and two (2) .45 caliber pistols, which were taken by Demetrio Robles and Dionesio Alabe after the commission of the crime. These facts, however, were not corroborated by the evidence of the prosecution. As found by the trial court and as testified to by the prosecution's only eyewitness Remedios Gutang, there were only three (3) persons who committed the crime. Besides, the case against Demetrio Robles and Dionesio Alabe were dismissed by the court *a quo* upon motion of the prosecution for insufficiency of evidence. Moreover, the alleged weapons used in the robbery which were allegedly in the possession of Demetrio Robles and Dionesio Alabe were neither recovered by the police nor presented in evidence by the prosecution. Furthermore, the prosecution has not presented any evidence that Demetrio Robles and Dionesio Alabe were with the appellant in the attempt to rob the house of Hilario Madrid. As a matter of fact, only the appellant was prosecuted for and convicted of tresspass to dwelling (and not for robbery) committed against Hilario Madrid. This only confirms the appellant's assertions that some of the answers to the questions propounded to him were not his answers. In other words, the statements contained in the alleged confession were not his voluntary statements but the words of the investigators put in the mouth of the appellant in accordance with their preconceived theory as to the commission of the crime.

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At any rate, considering that the appellant is an unschooled farmer, having reached Grade V only[34] and cannot understand and read English, his confession which is in English had to be asked in Visayan, and had to be translated to and typed in English and similarly his alleged answers in Visayan had to be translated to and typed in English.[35] Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the answers is naturally pregnant with possibilities of human, if not unintentional, inadequacies and incompleteness which render the said confession unsafe as basis for conviction for a capital offense, unless sufficiently corroborated.[36]

In the case of *People vs. Omega*,[37] this Court had occasion to state that:

"Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance. Thus, in the case of *People vs. Fraga, et al.*, this Court held that:

> 'x x x an accused cannot be convicted on the basis of evidence which independently of his alibi, is weak and uncorroborated, and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is wrong.'

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[34] Vol. II, t.s.n., p. 20.

[35] Vol. I, t.s.n., pp. 19, 22-23.

[36] *People vs. Francisco*, L-40352, Nov. 29, 1976, 74 SCRA 158, 167, citing *People vs. Maisug*, L-22187, March 28, 1969, 27 SCRA 742; *People vs. Urro, et al.*, L-28405, April 27, 1972, 44 SCRA 473.

[37] L-29091, April 14, 1977, 76 SCRA 262, 270-271, and cases cited therein.

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"In other words, the prosecution has the burden of proof in establishing the guilt of the accused beyond a reasonable doubt and the weakness of the defense does not relieve it of this responsibility. The accused does not have to prove his innocence because that is presumed. In the case at bar, the prosecution's evidence falls short of the *quantum* of evidence which will justify conviction of the appellant. His guilt has not been proven beyond reasonable doubt, and therefore, he is entitled to an acquittal."[38]

In view of the foregoing, We hold that the evidence for the prosecution against the herein appellant Santiago Bingco is weak and unsatisfactory to justify a finding of guilt as against him.

WHEREFORE, the judgment of the trial court is reversed and the herein appellant SANTIAGO BINGCO is hereby acquitted, with costs *de oficio*.

SO ORDERED.

Barredo (Chairman), J., concurs opting on the side of liberality.

*Aquino, Guerrero,*** and *De Castro,**** *JJ.*, concur.

*Antonio,** *J.*, took no part.

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[38] See also *People vs. Lim*, L-46890, Nov. 29, 1977.

* Mr. Justice Felix Q. Antonio, took no part being the Solicitor General at the time.

** 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.

*** Mr. Justice Vicente Abad Santos is also on leave. Mr. Justice Pacifico P. de Castro, a member of the First Division, was designated to sit in the Second Division.