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is entitled to be placed pending trial in the care and custody of the MSSD pursuant to Article 191 of P.D. No. 603.

Turning to the reinvestigation aspect of the petition, the plea therefor must be addressed to the City Fiscal of Naga, who has direction and control of the criminal prosecution and who is the primary official called upon to evaluate the evidence, ascertain the existence of a *prima facie* case and determine who should be criminally indicted. In case of unjustified refusal by the City Fiscal to conduct a reinvestigation, the proper recourse is to appeal to the Minister of Justice who exercises control and supervision over fiscals.

WHEREFORE, the orders of respondent Judge denying bail to petitioner are set aside. In the interest of dispatch, bail for petitioner is fixed at P15,000.00 and his release is ordered upon the posting thereof and its approval by the trial judge, unless petitioner is held for some other cause. The petition for mandamus to compel reinvestigation of the case is denied. This decision is immediately executory.

SO ORDERED.

Teehankee (Chairman), Gutierrez, Jr., de la Fuente, and *Alampay, JJ.*, concur.

Melencio-Herrera, J., in the result.

FIRST DIVISION

[G.R. No. L-34851. February 25, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERNANDO URGEL** *alias* **"NANDONG,"** *defendant-appellant.*

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT ACCORDED GREAT RESPECT.**— The trial court's findings involving the credibility of witnesses are generally accorded great respect, the matter of assigning values to their testimonies being best performed by the one who can weigh such testimony in the light of the demeanor, conduct and attitude of the witnesses during the trial. It is incumbent upon the appellant to convince the appellate court that a departure from such rule is justified upon a satisfactory showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance as would alter the result. Appellant failed to do so. We are not inclined to disturb the trial court's findings which placed reliance on the credible testimony of the wife of the deceased.

2. **ID.; ID.; ID.; DELAY IN THE EXECUTION OF AFFIDAVIT INSUFFICIENT TO DISCREDIT TESTIMONY; CASE AT BAR.**— Several days delay in the execution of her affidavit wherein she pointed to the accused as the person who inflicted the wounds which caused the death of her deceased husband is certainly not sufficient reason to discredit or doubt her testimony. Said delay was, as observed by the Solicitor General, due to the cumulative effect of her traumatic shock in finding herself suddenly a widow with six children to support; and the urgency of attending to the burial arrangements for her late husband. Aside from the fact that she had no sufficient schooling and could not read, write or even sign her name, she lived in a remote sitio not easily accessible to the law enforcement officers. And being the wife of the deceased, the police investigators probably saw no necessity to reduce to writing, immediately, what she told them about the incident, particularly the identity of the assailant.

3. **ID.; ID.; ID.; MERE RELATIONSHIP ALONE DOES NOT AFFECT CREDIBILITY.**— That the prosecution's eyewitness was the widow of the deceased, without more, is not reason enough to label or consider her testimony biased and unworthy of credence. It does not affect her credibility. The hacking incident took place while she was walking a few meters behind her husband. She saw what happened at close range. Despite her

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relationship to the victim, she would not just testify falsely against a person and impute to him the crime of murder if she was not certain that he really was the man who hacked her husband to death in her presence. This conclusion is bolstered by the fact that the accused-appellant was her husband's nephew. Besides, her supposed motive — her alleged failure to collect her deceased husband's wages from the accused-appellant — was too trivial to be seriously considered. Accordingly, her testimony against the accused-appellant deserves full faith and credit.

4. ID.; ID.; ID.; ALIBI, UNAVAILING IN THE FACE OF POSITIVE IDENTIFICATION.— As regards appellant's alibi, it would suffice to say that such defense must yield to and cannot prevail over the positive identification made by an eyewitness, the wife of the deceased. It is pertinent to point out, too, that the appellant merely sought to establish by his evidence that he was at another place at the time the deceased was hacked to death without showing the impossibility of his presence at the scene of the crime at the particular moment when it was committed. In cases where the accused failed to establish that it was physically impossible for him to be at the scene of the crime and to show improper motive on the part of the witnesses who identified said accused, the defense of alibi cannot be sustained.

5. ID.; ID.; ID.; EXTRA-JUDICIAL CONFESSION PRESUMED VOLUNTARILY EXECUTED; SUPPORTIVE CIRCUMSTANCES IN CASE AT BAR.— Finally, the trial court *a quo* did not err in disbelieving the claim that appellant's confession was not voluntary. As stressed by the Solicitor General, the municipal judge before whom the appellant swore to the truthfulness and voluntariness of his confession testified to such fact. Appellant admitted this; and he did not complain to said municipal judge of any maltreatment. On cross-examination, appellant likewise admitted that he did not inform his counsel during the preliminary investigation that his extra-judicial confession was due to maltreatment. Indeed, his bare allegation of maltreatment is not supported by any credible proof. Appellant has not sufficiently overcome the presumption as to the voluntariness of his extra-judicial confession.

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APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Andres S. Santos for defendant-appellant.

DECISION

DE LA FUENTE, *J.*:

Appeal in Criminal Case No. 82 (CFI Leyte) interposed by the accused Fernando Urgel who, after trial, was found guilty beyond reasonable doubt of murder and sentenced to suffer the penalty of *reclusion perpetua* there being no aggravating or mitigating circumstance, and to indemnify the heirs of the deceased Gualberto Guihapon in the amount of P12,000.00.[1]

As summarized in the appellee's brief, the pertinent facts are as follows:

"At about past eight o'clock in the evening of November 23, 1969 at the poblacion of Javier, Leyte (p. 6, TSN., August 21, 1970), the deceased Gualberto Guihapon and his wife Honorata Leonor were walking (p. 7, TSN., August 21, 1970) on their way home after coming from the public market where they bought rice (p. 6, TSN., August 20, 1970). Upon reaching a corner of the street, appellant coming from behind hacked Gualberto Guihapon with a bolo (pp. 6-7, TSN., August 21, 1970) and when he turned around, appellant hacked him for the second time hitting him on the face (*Ibid.*). Guihapon, after being hacked twice by appellant, fell to the ground where he later died (*Ibid.*). Appellant then just walked away (p. 8, TSN., *Ibid.*).

"The hacking incident was witnessed by the wife of the deceased who was about three meters behind her late husband when appellant hacked her husband (p. 7, TSN., August 2, 1970).

"Appellant executed an extra-judicial confession (Exhibit A) admitting the killing before the municipal judge of Javier, Leyte (pp. 1-4, TSN., July 24, 1970)."[2]

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[1] *Rollo*, pp. 32-33.

[2] Appellee's Brief, p. 2.

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The information filed by the Provincial Fiscal described the wounds of the deceased as follows:

"1 Hack wound at the head starting from the left side of the frontal region extending to the bridge of the nose and the right cheek bone.

Measurement:

Length - 5 inches
Width - 1/4 inch
Depth - 1-1/2 inches

"2 Hack wound at the nape.

Measurement:

Length - 4 inches
Width - 2 inches
Depth - 3 inches"

The lone prosecution eyewitness was Honorata Leonor, wife of the deceased Guihapon, who gave testimony in support of the version of the prosecution. The extrajudicial confession (Exhibit A) of the accused was sworn to before Municipal Judge Nicomedez Tupaz who testified that he translated its contents into the Visayan dialect, a language which the accused understood, before inquiring as to the truth of the recitals of Exhibit A. He was answered by the accused in the affirmative.

The following are the pertinent replies of the accused to the questions of the Officer-in-Charge of the Javier Police Department:

"6. Q - Why are you here now in the office of the Chief of Police?

A - Because *I have killed one Gualberto Guihapon* last 23 November 1969, at about 10:00 p.m. more or less in the poblacion of Javier, Leyte.

"7. Q - Are you sure that you were the one who killed Gualberto Guihapon?

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A - *Yes,* sir, *I was the one who killed Gualberto Guihapon* last 23 November 1969, at about 10:00 P.M. more or less in the poblacion of Javier, Leyte."[3]

Four witnesses were presented by the defense to establish that the accused-appellant could not have hacked to death the deceased because during the entire evening of November 23, 1969, and until the following morning, there was a novena in the house of his sister Teodora Urgel at Bo. San Jose, Dulag, Leyte, where he helped her in attending to the people who came for said novena and in preparing their supper. Aside from the defense of alibi, the accused-appellant repudiated his extra-judicial confession (Exh. A) on the ground that it was not voluntary. He claimed that he was maltreated by a PC Sgt. Brazil who allegedly squeezed together his fingers after inserting three cartridges between them, causing unbearable pain.

The trial court rejected both submissions.

In his appeal, the accused-appellant has faulted the trial court for "giving credence to the testimony of the alleged lone eyewitness, the wife of the deceased," for "relying mainly on the alleged confession of the accused," and for "not considering the testimony of the defense witnesses" and "rejecting the defense of alibi..."

These alleged errors boil down to two issues: *First,* the credibility of witnesses and their testimonies. *Second,* the admissibility of appellant's extrajudicial confession.

To begin with, the trial court's findings involving the credibility of witnesses are generally accorded great respect,[4] the matter of assigning values to their testimonies being best performed by the one who can weigh such testimony in the light of the demeanor, conduct and attitude of the witnesses during the trial. It is incumbent upon the appellant to convince the appellate

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[3] Italics supplied; Exhibit A, see *Rollo,* p. 9.

[4] People *vs.* Mendoza, 121 SCRA 149; People *vs.* Chavez, 121 SCRA 806; People *vs.* Alison, 122 SCRA 9; People *vs.* Galicia, 123 SCRA 550.

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court that a departure from such rule is justified upon a satisfactory showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance as would alter the result.[5] Appellant failed to do so.

We are not inclined to disturb the trial court's findings which placed reliance on the credible testimony of the wife of the deceased. Several days delay in the execution of her affidavit wherein she pointed to the accused as the person who inflicted the wounds which caused the death of her deceased husband is certainly not sufficient reason to discredit or doubt her testimony. Said delay was, as observed by the Solicitor General, due to the cumulative effect of her traumatic shock in finding herself suddenly a widow with six children to support; and the urgency of attending to the burial arrangements for her late husband. Aside from the fact that she had no sufficient schooling and could not read, write or even sign her name, she lived in a remote sitio not easily accessible to the law enforcement officers. And being the wife of the deceased, the police investigators probably saw no necessity to reduce to writing, immediately, what she told them about the incident, particularly the identity of the assailant.

A defense witness, on the other hand, testified that he saw the person who hacked the deceased and afterwards ran towards said witness before disappearing along the left side of the road. But, admittedly, this witness did not recognize the alleged assailant; he merely described the latter as "shorter" and "stouter" than the accused-appellant. In refusing to give credence to the testimony of this witness, the court *a quo* committed no reversible error in the light of improbabilities and/or inconsistencies readily apparent from a perusal of the transcript.[6]

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[5] People *vs.* Mendoza, *supra.*

[6] TSN. of September 9, 1970:

"FISCAL:

"Q: And when you saw Gualberto Guihapon stabbed by that person, you immediately became afraid?

"A: Yes, sir.

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That the prosecution's eyewitness was the widow of the deceased, without more, is not reason enough to label or consider her testimony biased and unworthy of credence. It does

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"Q: What did you immediately think of doing?

"A: To be far from the person and to go towards the left side.

"Q: And when you saw him coming towards your direction, was he running?

"A: He was running but not fast. (Page 11)

xxx xxx xxx

"Q: And you saw that it was a bolo he was holding in his hand?

"A: Yes.

"Q: But nevertheless you did not think of getting away from the road?

"A: That is why he escaped to the left at a distance of the width of the road? (*Ibid.*)

"COURT:

xxx xxx xxx

"Q: In other words, do we understand from you that it was at that distance of 40 to 50 meters that you saw Gualberto Guihapon stabbed by that person?

"A: Yes.

"Q: And when you saw this Gualberto Guihapon hacked by this person, you immediately stopped walking?

"A: Instead, I hurried.

"Q: You hurried proceeding toward the direction where the stabbing was taking place?

"A: Yes, sir.

"Q: But you did not tell us that you were afraid?

"A: I was afraid, that is why I hurried towards Gualberto to see what happened to him so that I could escape to the houses near as the other person was running towards Javier.

"Q: So you were afraid of what you saw?

"A: I was afraid.

"Q: But even if you were afraid, you still proceeded to the place where Gualberto Guihapon was hacked?

"A: Yes, because it was on my way.

"Q: Even if you saw that the one who hacked him was going your direction you also went towards him, towards that direction?

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not affect her credibility.[7] The hacking incident took place while she was walking a few meters behind her husband. She saw what happened at close range. Despite her relationship to the victim, she would not just testify falsely against a person and impute to him the crime of murder if she was not certain that he really was the man who hacked her husband to death in her presence. This conclusion is bolstered by the fact that the accused-appellant was her husband's nephew. Besides, her supposed motive — her alleged failure to collect her deceased husband's wages from the accused-appellant — was too trivial to be seriously considered. Accordingly, her testimony against the accused-appellant deserves full faith and credit.

As regards appellant's alibi, it would suffice to say that such defense must yield to and cannot prevail over the positive identification made by an eyewitness, the wife of the deceased.[8] Nevertheless, we have examined carefully the evidence adduced.

"A: Yes, your Honor because he was on the other side of the road.

"FISCAL:

And you said that you were afraid, you were afraid that you will also be stabbed or killed?

"A: Yes. (*Ibid.*)

xxx xxx xxx

"FISCAL:

How about running back to town?

"A: The houses were apart.

"COURT:

What if the houses are far?

"A: I might have been overtaken by the one who stabbed.

"FISCAL:

So, you still decided to meet him at a distance?

"A: Yes, Sir." (page 12).

[7] See People *vs.* Pueblas, 127 SCRA 746; People *vs.* Maruhom, L-28691, prom. September 28, 1984, etc.

[8] See People *vs.* Alcantara, 126 SCRA 425.

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We find no clear and patent inconsistency between the relative weight assigned by the trial judge to the testimonies of appellant and his witnesses to establish such defense, on the one hand, and the evidence on record, on the other. Thus, it cannot be said that there was no rational basis for the trial court's rejection of the defense of alibi.[9]

It is pertinent to point out, too, that the appellant merely sought to establish by his evidence that he was at another place at the time the deceased was hacked to death without showing the impossibility of his presence at the scene of the crime at the particular moment when it was committed. In cases where the accused failed to establish that it was physically impossible for him to be at the scene of the crime and to show improper motive on the part of the witnesses who identified said accused, the defense of alibi cannot be sustained.[10]

Finally, the trial court *a quo* did not err in disbelieving the claim that appellant's confession was not voluntary. As stressed by the Solicitor General, the municipal judge before whom the appellant swore to the truthfulness and voluntariness of his confession testified to such fact. Appellant admitted this; and he did not complain to said municipal judge of any maltreatment. On cross-examination, appellant likewise admitted that he did not inform his counsel during the preliminary investigation that his extrajudicial confession was due to maltreatment. Indeed, his bare allegation of maltreatment is not supported by any credible proof. Appellant has not sufficiently overcome the presumption as to the voluntariness of his extra-judicial confession.[11]

WHEREFORE, with the modification of the indemnity which is hereby increased to P30,000.00, the judgment *a quo* should be, as it is hereby, AFFIRMED in all other respects.

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[9] See People *vs.* Candado, 84 SCRA 508.

[10] People *vs.* Sambangan, 125 SCRA 726; People *vs.* Atanacio, 128 SCRA 22; People *vs.* Alcantara, *supra.*

[11] People *vs.* Sambangan, *supra.*

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SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, Gutierrez, Jr., and *Alampay, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-40235. February 25, 1985]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* JOAQUIN SALBINO, ET AL., *accused,* SY CHIN and ANTONIO AGRAVANTE, *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; DISCHARGE OF CO-ACCUSED TO BE STATE WITNESS; NECESSARY TO PROVE CONSPIRACY; CASE AT BAR.—** Appellants contend that the trial court erred in discharging Barrameda to become a State witness. No such error was committed. The trial court acted correctly in discharging Barrameda. His testimony was necessary to prove conspiracy or to prove Sy Chin's role as a co-principal by inducement. The two young men, Salbino and Agravante, could not have been expected to have planned the crime by themselves without Sy Chin's help.

2. **ID.; EVIDENCE; GUILT BEYOND REASONABLE DOUBT; ESTABLISHED IN CASE AT BAR.—** Appellants contend that the trial court erred in giving weight to the confessions of Agravante and Salbino, that Barrameda's testimony comes from a polluted source, that the testimony of Florentino Vasquez is riddled with contradictions, that Agravante was not Salbino's companion in perpetrating the robbery and that it was error to admit the pictures of the reenactment of the crime. The Solicitor General competently refuted in his brief appellants' arguments in support of these assignments of error. The trial court in its 232-page decision made an overly thorough examination of the