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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,**

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ROLANDO COMETA alias LANDO, and CANDELARIO BOLANDO alias DODO, *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; INTERLOCKING CONFESSIONS; RULE.**— The rule on interlocking confessions is — "where extrajudicial confessions has been made by several persons charged with a conspiracy and there could have been no collusion with reference to the several confessions, the fact that the statements are in all material respects identical is *confirmatory of the testimony of an accomplice.*" In other words, such extrajudicial declarations may, under certain conditions, be taken into consideration as a circumstance in judging the credibility of the testimony of an accomplice.

2. **CRIMINAL LAW; ROBBERY WITH HOMECIDE; HOW COMMITTED.**— The rule is that where the original design comprehends robbery in a dwelling, and homicide is perpetrated with a view to the consummation of the robbery, the crime committed is the complex offense of robbery with homicide even though homicide precedes the robbery by an appreciable time. If the original design was not to commit robbery but robbery was committed after the homicide as an afterthought as a minor incident in the homicide, the criminal acts should be viewed as constitutive of two distinct offenses and not as a single complex offense.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; CONVICTION; RULE WHEN THERE IS VARIANCE BETWEEN THE CRIME CHARGED AND THE EVIDENCE TO SUPPORT THE SAME.**— The rule is that where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the other. Where the defendant is charged with robbery with homicide, he may be convicted of one of them. Likewise, when a person is charged with a crime and the evidence does not show that he is guilty of the crime charged, but does show that he is guilty of some lesser offense, the court may sentence him for the lesser offense provided the lesser offense is a cognate offense and is included in the complaint filed with the court.

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4. **CRIMINAL LAW; CONSPIRACY; WHEN THERE IS NO EXPRESS OR IMPLIED CONSPIRACY AMONG THE PERSONS TAKING PART IN THE COMMISSION OF THE CRIME, THEIR LIABILITY IS SEPARATE; CASE AT BAR.**— If there is no express or implied conspiracy among two or more persons taking part in the commission of the crime, then their liability is regarded as individual or separate. Here, conspiracy has not been sufficiently proven. It does not appear that the appellants had a common plan or common criminal design. According to Bolando's extrajudicial confession, he went along with Toling because he was afraid to displease the latter. It was only when they were on their way to the *barrio* that he learned that the purpose was to rob one Francisco Lumpayao. Rogelio Cometa, however, in his extrajudicial confession maintained that his purpose with Francisco Toling was to kill Isabelo Caseres. Neither could conspiracy be inferred from the acts of Candelario Bolando or Rolando Cometa, since the two had not cooperated in any manner with Francisco Toling and Rogelio Cometa for the realization of the latter's criminal purpose. Candelario Bolando and Rolando Cometa could not, therefore, be held responsible for the death of Isabelo Caseres. Considering, however, that Bolando admitted that after knowing that they were going to rob someone he still went with them to Barrio Bag-ong Gutlang and although he did not directly participate in the robbery he gave moral encouragement to them with his presence and shared in the loot in the amount of Fifty Centavos (₱0.50), he should be criminally responsible as an accomplice for the crime of robbery.

5. **ID.; PERSONS CRIMINALLY LIABLE; ACCOMPLICE; DEFINED.**— An accomplice is one who cooperates in the execution of the crime by previous or simultaneous acts, provided that he has not taken direct part in the execution of the crime or forced or induced others to execute it, or cooperated in its perpetration by an indispensable act.

6. **ID.; ID.; ID.; HOW TO HOLD A PERSON LIABLE AS AN ACCOMPLICE.**— In order to hold one liable as an accomplice, it is essential that it be proved beyond reasonable doubt that between the supposed accomplice and the principal, there is community of criminal purpose which implied that it be shown that the supposed accomplice committed the acts imputed to him with the intention to help morally or materially in the commission of the crime.

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APPEARANCES OF COUNSEL

Honesto K. Bausa (Counsel de Oficio) for defendants-appellants.

Solicitor General Felix V. Makasiar and *Assistant Solicitor General Conrado T. Limcaoco* for plaintiff-appellee.

D E C I S I O N

ANTONIO, *J.*:

Automatic review of the decision of the Court of First Instance of Zamboanga del Sur, dated December 1, 1967, in Criminal Case No. 3141, in view of the capital punishment imposed on Rolando Cometa, Rogelio Cometa and Candelario Bolando. The sentence reads as follows:

"WHEREFORE, the Court finds Francisco Toling, Rolando Cometa, Rogelio Cometa, Candelario Bolando, and Hilario Gahito guilty beyond reasonable doubt of the crime of Robbery in Band with Homicide, and appreciating the aggravating circumstances of in band, nocturnity, dwelling, and treachery regarding the killing of Isabelo Caseres, with no mitigating circumstance to offset the same, hereby imposes the death penalty on all the defendants.

"The defendants are further ordered to return the things robbed or pay the value of ₱59.45 in case of failure to return the same, to indemnify the heirs of Isabelo Caseres, in the amount of ₱6,000.00 to be borne equally by the five defendants, to suffer the accessory penalties of the law, and to pay the costs."

Originally, six (6) persons were accused of the crime of Robbery in Band with Homicide in an Information filed in the aforesaid court on June 29, 1966, namely: Francisco Toling *alias* Ikong, Rogelio Cometa, alias Celio, Candelario Bolando, *alias* Dodo, Rolando Cometa *alias* Lando, Emilio Toling and Hilario Gahito, but only the three afore-named appellants appeared for the promulgation of the judgment on December 19, 1967, because:

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(a) Hilario Gahito died in jail on September 26, 1967 and the case against him was dismissed on December 19, 1967;[1]

(b) Emilio Toling was not brought to court for trial; the person arrested as Emilio Toling turned out to be Emilio Montillano and was released from custody;[2] and

(c) Francisco Toling escaped from the Provincial Jail on December 1, 1967 and was still at large when the sentence was promulgated.[3] He cannot be considered to have appealed also because as to him the sentence has not been promulgated.[4]

The Information wherein the appellants were charged reads:

"The undersigned First Assistant Provincial Fiscal of Zamboanga del Sur, accuses Francisco Toling *alias* Ikong, Rogelio Cometa *alias* Celio, Candelario Bolando *alias* Dodo, Rolando Cometa *alias* Lando, Emilio Toling and Hilario Gahito, for the crime of Robbery in Band with Homicide, committed as follows:

"That at about 11:45 o'clock in the evening of February 5, 1966, at Barrio Bag-ong Gutlang, Municipality of Molave, Province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring, confederating together and mutually helping one another, armed with a home-made shot gun (*paliuntod*), a 22 caliber homemade revolver (*paltik*), bolos of different sizes and make, with intent of gain, by means of force and violence against persons and with intent to kill with the use of said firearms, did then and there wilfully, unlawfully and feloniously shot one Isabelo Caseres thereby hitting and inflicting gunshot wounds in the different parts of his body, which mortal gunshot wounds caused his death shortly thereafter and on the same occasion, the said accused enter the dwelling and/or house of one Francisco Lumpayao, a neighbor of the deceased Isabelo Caseres and once inside, take and carry away his personal household belongings without his knowledge and consent and against his will, to wit:

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[1] Order dated December 19, 1967, CFI Record, p. 125.

[2] Order dated October 1, 1966, CFI Record, p. 53-A.

[3] Order dated December 19, 1967, *supra*.

[4] *People v. Jaranilla*, L-28547, Feb. 22, 1974, 55 SCRA 563.

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"Two (2) Pants, One (1) Polo Shirt, Four (4) Ladies Dresses, Two (2) Children's Dresses, Three (3) Books for grade 2 pupils, Four (4) Pieces of Dried Fish, One (1) Flashlight with 3 batteries and cash money in different denominations amounting to One Peso and Sixty-Five Centavos (₱1.65), all things taken constituting a total amount of Eighty (₱80.00) Pesos, Philippine Currency, to the damage and prejudice of the said owner Francisco Lumpayao, of the aforesaid amount and also to the damage and prejudice of the Wife and Parents of the said deceased Isabelo Caseres.

"CONTRARY TO LAW." (CFI Record, p. 1.)

The prosecution sought to establish that at about 11:45 o'clock in the evening of February 5, 1966, the accused, conspiring and confederating with each other, robbed the house of Francisco Lumpayao after mortally wounding Isabelo Caseres who had responded to Lumpayao's call for succor. The evidence consisted of the testimonies of Francisco Lumpayao, Marcelino Campomanes and Florentino P. Omandam, and the extrajudicial statements of Hilario Gahito, Candelario Bolando and Rogelio Cometa (Exhibits "C", "D", and "E", respectively). To prove the voluntariness and due execution of Exhibits "C", "D" and "E", the prosecution introduced the testimonies of Gualberto B. Bacarro, Municipal Judge of Tambulig, Zamboanga del Sur and Acting Municipal Judge of Molave, Zamboanga del Sur, and Paciano Guillen, Municipal Mayor of the same municipality.

According to Francisco Lumpayao, a 34-year-old farmer, resident of Bag-ong Gutlang, Molave, Zamboanga del Sur, at about 11:45 o'clock in the evening of February 5, 1966, he was awakened by the barking of his two dogs at the porch of his house. Peeping through a hole on the wall, he saw near his house four (4) persons, namely Francisco Toling and Candelario Bolando, who were astride his carabao, and the other two, Rolando Cometa and Hilario Gahito, who were standing nearby. Those astride the carabao were trying to reach for the chickens on the eaves of the roof of his house. Upon seeing this, he shouted: "Robbers! Robbers!". Because of his shouts, the four persons scampered about the premises as far as nine (9) meters away from his house. Shortly thereafter, he saw Isabelo Caseres,

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a neighbor of his, walking towards his house. He called Isabelo and warned him of the robbers, but as Isabelo was about three (3) meters from his house, he was shot by Francisco Toling with a shotgun. Isabelo fell to the ground. Upon seeing this tragic turn of events, he (Lumpayao), together with his wife, Rosario Larawan, and their children, jumped out of their house and ran towards the house of Florencio Caseres, father of Isabelo, about six hundred (600) meters away. On the way, they met Maria Caseres, wife of Isabelo, who was also running towards her father-in-law's house because she heard a shot. When they reached the house of Florencio Caseres, he shouted: "*Compadre*, Isabelo was shot." They then proceeded to hide among the bushes nearby.

Early in the following morning, Francisco Lumpayao returned to his house only to discover in the yard his trunk, which in the evening before was inside his house, already emptied of its contents, namely: two (2) pairs of pants, two (2) lady's dresses, four (4) children's dresses, a flashlight, a necklace, a pair of earrings, and cash in the amount of ₱1.65. He also found out that three (3) of the books of his children were taken. In that same morning, at about 6:00 o'clock, Lumpayao saw the remains of the late Isabelo Caseres lying in state in the house of Florencio Caseres.

Marcelino Campomanes, farmer, 34 years of age, and resident of Barrio Ariosa, Molave, Zamboanga del Sur, testified that at about 12:30 o'clock in the evening of February 5, 1966, while he was inside his house at the said *barrio*, he heard the barking of three dogs. Peeping through the little opening of the window, he saw two horses running fast, with two persons riding on each horse. When the horses got near his house, the riders dismounted and made their horses fight his horse. Thereafter, three of the four persons walked toward his house while the fourth continued to watch the horses fighting. He noticed that the three persons who went near his house were armed. He recognized them as Francisco Toling, who was armed with a gun, Hilario Gahito and "Basilio"* Cometa. He did not recognize

* "Basilio" is Rogelio Cometa (Exhibit "C").

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the fourth man because he was quite far. He was able to recognize the three men because the moon was bright — there was a full moon — and the sky was not cloudy. After about half an hour, the group left. He added that his place was about two (2) kilometers away from Barrio Bag-ong Gutlang, the situs of the crime.

At about 1:00 o'clock in the afternoon of the following day, February 7, 1966, Mr. Florentino Omandam, Provincial Sanitary Inspector of Zamboanga del Sur, upon the request of the Chief of Police of Molave, examined the remains of Isabelo Caseres. After the examination, he issued a Medico-Legal Report (Exhibit "A"), showing the cause of death of Isabelo as massive hemorrhage, secondary to the six (6) thru and thru bullet wounds. He also issued the death certificate of Isabelo Caseres (Exhibit "B").

On the other hand, the defendants presented their defense consisting of denials and alibis. Hilario Gahito, Candelario Bolando and Rogelio Cometa repudiated their respective extrajudicial statements, all contending that they were mauled or maltreated into signing the same. Anent their alibis, Rolando Cometa, Rogelio Cometa and Francisco Toling tried to prove that on the night in question, they were in the house of Francisco Apa in Barrio Moyo, Buug, which is 131 kilometers from the scene of the crime; Candelario Bolando testified that he was in his house at Barrio Ebarle, Tambulig, 30 kilometers from Bag-ong Gutlang; and Hilario Gahito declared that he was at his house in Barrio Ariosa.

The prosecution presented rebuttal evidence and thereafter the case was submitted for decision.

When the trial court was preparing its decision it discovered that the Fiscal inadvertently omitted to present as evidence the admission of Rogelio Cometa. Hence, the court, *motu proprio*, ordered the reopening of the case to enable the Fiscal to offer in evidence the extrajudicial statement of Rogelio Cometa. Thereafter, the case was submitted anew for decision.

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In convicting appellants Rolando Cometa, Rogelio Cometa and Candelario Bolando, the trial court appears to have relied principally on the extrajudicial statements of Hilario Gahito, Candelario Bolando and Rogelio Cometa (Exhibits "C", "D" and "E", respectively).

According to Gahito, he was compelled to join the group at 6:00 p.m., February 5, 1966 by Rogelio Cometa to go to Barrio Bag-ong Gutlang; that upon nearing the house of Francisco Lumpayao, Rogelio Cometa rode on one of the carabaos of Lumpayao, while his four companions — Francisco Toling, Candelario Bolando, Emilio Toling and Rolando Cometa — approached the house, but suddenly the dogs began to bark; that the owner of the house woke up and shouted for help, and a few minutes later, a man went down an adjacent house; that it was at this juncture that Francisco Toling fired his shotgun at the man. As he got scared he ran away (Exhibit "C").

Candelario Bolando stated in his sworn statement (Exhibit "D") that while he was inside his house at about 4:30 o'clock in the afternoon of February 5, 1966, a friend of his by the name of Francisco Toling came and invited him to go with him to Barrio Bag-ong Gutlang. He inquired what was their purpose and Toling just said: "Let us go," and as he was afraid he might get mad at him, he did not hesitate to go with him. His companions in going to Barrio Bag-ong Gutlang were Francisco Toling, Rogelio Cometa, Emilio Toling and Rolando Cometa. On their way to said *barrio*, they met another person whom he came to know later to be Hilario Gahito, and whom they also invited to go with them. When Gahito refused, Rogelio Cometa threatened to kill him. Rogelio Cometa was armed with a .22 Caliber "*paltik*," Emilio Toling with a bolo, Francisco Toling with a home-made shotgun; Rolando Cometa with a bolo, while he also carried a bolo. They arrived near the house of Francisco Lumpayao in Barrio Bag-ong Gutlang at about 11:00 o'clock in the night. Upon arrival, they saw Francisco's carabao nearby. Rogelio Cometa mounted the carabao. Suddenly, the dogs began barking and the owner of the house was awakened and shouted for help from his neighbor. A few minutes later, a person whose

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name he came to know later on as Isabelo Caseres came and Francisco Toling shot him. He saw the victim fall down groaning with pain. Later, the owner of the house, Francisco Lumpayao, with his family, left their house. He got out of his hiding place and at that juncture, Rolando Cometa, Rogelio Cometa and Emilio Toling went up the stairs of said house while he and Francisco Toling remained on the ground. After that they all went home. Rogelio Cometa burned some books and other papers, and some pants and dresses which were taken from the house of Lumpayao because they might be found in their possession. Out of the amount of ₱1.60 which they got, his share was Fifty Centavos (₱0.50), while Francisco Toling got a necklace. He further stated thereon that the shotgun used by Francisco Toling was borrowed by Rogelio Cometa from one Fabian Cometa, father of Rogelio.

Rogelio Cometa narrated in his extrajudicial statement (Exhibit "E") that on the night of February 5, 1966, he was informed by his brother-in-law, Francisco Toling, that he was hired by his father-in-law, Magno Sejuela, to kill one Isabelo Caseres of Barrio Bag-ong Gutlang because they had a misunderstanding. Francisco Toling told him that he was hired to kill for ₱250.00 so that Toling promised him ₱50.00 if he would go with him. He agreed. Toling was armed with a home-made shotgun, Dodo Bolando with a bolo, Emilio Montillano with a bolo, he brought with him a .22 Caliber revolver (homemade), while his brother, Rolando Cometa, was unarmed.

Thus, he testified:

"Q. - What time did you arrive in Barrio Bag-ong Gutlang?

A. - I think its around 11:45 o'clock in the evening, more or less, but the moon was very shiny due to good weather on that particular time.

Q. - How come that said Francisco Toling was able to shoot and kill Isabelo Caseres?

A. - That upon arrival near the house of his neighbor, whose name later known to be Francisco Lumpayao, we tried to make noise with the carabao to let him come down until the dogs of said Francisco Lumpayao barked and barked and

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the said owner of the dogs was awakened, so that he shouted for help thinking that we are robbers, and for that instant, Isabelo Caseres came down from his house, and Francisco Toling who was aiming already waiting for him to come down fired him a shot and I am sure he was hit because he fell on the ground shouting for pains, and on that instant, Francisco Lumpayao and his family run down from their house to make their escape, so that some of us came upstairs and robbed the house.

Q. - You have stated that you were only hired by your father-in-law, have you received the said amount of money?
A. - None, sir, we did not receive the ₱250.00.

Q. - Why?
A. - After the incident, said Magno Swela evacuated with his family and we were not able to see them, especially that we were wanted and we were always hiding ourselves from the Molave police.

Q. - Why are you here in the office of the Chief of Police of this Municipality?
A. - I was arrested while I was sleeping in the house of my parents at Barrio Ariosa this municipality by a team of local police.

Q. - Are there any attempts of local police to arrest you and you were able to make good your escape?
A. - Yes, sir, there are many times already, and one is that in Ozamiz City where Rogelio Bretania and his companion went inside the ship (VICTOR) and I am to see them first, so that I was able to escape from them. " (Exhibit "E", CFI Record, pp. 62-63).

In connection with the execution of the extrajudicial statement of Candelario Bolando, Gualberto B. Bacarro, Acting Municipal Judge of Molave, Zamboanga del Sur, testified that when the prepared statement of Candelario Bolando was brought to him at his office (Exhibit "D"), he read the statement sentence by sentence and interpreted the same in Visayan, a dialect understood by Bolando; that after he had read a paragraph, he would ask Bolando whether his statement was true and the latter would answer in the affirmative, after which the same was signed by appellant. He declared that the aforesaid prepared

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statement was brought to his office by Sgt. Bretania of the Molave Police Force, and that the latter was present when the same was read and translated to appellant.

At the hearing on October 2, 1967, Mayor Guillen testified that on October 13, 1966, the statement of Rogelio Cometa (Exhibit "E") was brought to him by Sgt. Bretania. He translated the contents thereof to Cometa from English to Visayan and asked him whether the contents thereof were true and correct. It was only when he was satisfied that Cometa understood the same and affirmed that it was voluntarily given that he allowed appellant Cometa to sign the document and afterwards he administered the oath to him.

In their brief, appellants contend, among others, that the trial court erred in reopening *motu proprio* the proceedings after the case had been submitted for decision, simply to enable the prosecution to present evidence which it overlooked or failed to submit at the trial; that the trial court erred in admitting and relying upon the confessions of Hilario Gahito. Candelario Bolando and Rogelio Cometa as competent evidence against each other and as against their co-accused Rolando Cometa; and that the trial court erred in holding that the crime committed was Robbery in Band with Homicide under Article 294, paragraph 1 of the Revised Penal Code.

With reference to the reopening of the proceedings after both sides had rested and the case submitted for decision, We hold that the trial court was not in error. As early as in 1907, this Court held in *U. S. v. Cinco*,[5] that "judges of the Courts of First Instance are judges of both fact and law, and after all the evidence adduced by the attorneys, if the court is not satisfied, we see no reason why he should not be permitted to call additional witnesses for the purpose of satisfying his mind upon any questions presented during the trial of the case." Also, in *U. S. v. Base, et al.*,[6] it has been held that "if the lower court is not satisfied with the evidence adduced by the attorneys in

[5] No. 3664, August 17, 1907, 8 Phil. 388.

[6] No. 3961, October 12, 1907, 9 Phil. 48.

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criminal cases, with reference to a particular point, he may, on his own motion, call additional witnesses or recall some of the same witnesses, for the purpose of satisfying his mind with reference to particular facts involved in the case."

As to the confessions of Candelario Bolando and Rogelio Cometa, We find them to have been freely and voluntarily executed. For one thing, the confessions themselves are indicative of their spontaneity and the truth. As the narration of facts in the extra-judicial confessions of Bolando and Cometa will show, the essential details, except for the alleged plot to kill Isabelo Caseres, when pieced together are identical and reveal a complete story of the entire incident from its inception to its consummation.

Thus, the initial meeting between Francisco Toling and Candelario Bolando at 4:30 p.m. on February 5, 1966 wherein Bolando was induced by Toling to go with him to Barrio Bag-ong Gutlang; the subsequent meeting between Toling and his brother-in-law, Rogelio Cometa, where Francisco Toling induced Rogelio Cometa to go with him to Barrio Bag-ong Gutlang to kill one Isabelo Caseres who had a misunderstanding with his (Rogelio's) father-in-Law, for which reason he (Toling) was hired by Rogelio's father-in-law to kill Isabelo, and Toling's promise to Rogelio Cometa that he would pay him ₱50.00; their trip to Barrio Bag-ong Gutlang and the recruitment along the way of Rolando Cometa, Hilario Gahito and Emilio Montillano;[7] the circumstance that Rogelio Cometa was armed with a .22 Caliber revolver, Francisco Toling with a homemade shotgun, Emilio Montillano with a bolo, while Rolando Cometa and Candelario Bolando had none; the events that transpired upon their arrival near the house of Francisco Lumpayao at about 11:00 o'clock in the evening of that date — such as the barking of the dogs and the shooting of Isabelo Caseres — which dovetail with the testimony of Francisco Lumpayao. The aforesaid statements contain only minor and somewhat contradictory

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[7] As mentioned in the affidavit of Rogelio Cometa (Exhibit "E"). In the affidavit of Candelario Bolando, Exhibit "D"), he is referred to as Emilio Toling.

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details. Thus, one said Rolando Cometa had a bolo, while the other said he was unarmed. Bolando stated that he did not know the purpose of their mission and only was told along the way that they were going to rob Lumpayao, while Rogelio categorically declared that their purpose was to kill Isabelo. There were also exculpatory statements, such as the attempt of each declarant to show that not one of them committed any overt act, either in the killing of Isabelo, or in the robbery in the house of Lumpayao. The disclosure of such details which only the declarants could have known, and the improbability that such details could have been concocted by the police, the failure of the appellants to complain to the municipal judge and the mayor before whom the confessions were sworn, the evident attempt of each declarant to exculpate himself, their delay in complaining to the authorities about their alleged maltreatment, demonstrate clearly that their claim of maltreatment was an afterthought and their said confessions were freely and voluntarily made.

Under the facts, the extrajudicial confessions of appellants Rogelio Cometa and Candelario Bolando should have been admissible only against said declarants and not as the basis for the conviction of Rolando Cometa. The rule on interlocking confessions is — "where extrajudicial confessions has been made by several persons charged with a conspiracy and there could have been no collusion with reference to the several confessions, the fact that the statements are in all material respects identical is *confirmatory of the testimony of an accomplice*."[8] In other words, such extrajudicial declarations may, under certain conditions, be taken into consideration as a circumstance in judging the credibility of the testimony of an accomplice. In the case of Rolando Cometa, there is no testimony implicating said appellant which the aforesaid extra-judicial confessions would confirm or corroborate.

We agree with the appellants that they should not be convicted of Robbery in Band with Homicide. Rogelio Cometa positively

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[8] *People v. Badilla*, No. 23792, Feb. 17, 1926, 48 Phil. 718.

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declared that for a price of ₱50.00, he joined Francisco Toling in the latter's plan to kill Isabelo Caseres of Barrio Bag-ong Gutlang in consideration of a reward of ₱250.00 promised by Magno Sejuela who wanted Isabelo Caseres to be killed. Relating this declaration with the shooting and killing of Isabelo Caseres by Francisco Toling, We cannot escape the conclusion that indeed the purpose of the group was to kill Caseres. In this connection, We hasten to state that while Candelario Bolando stated that he was told along the way that their purpose was to rob Francisco Lumpayao, said statement cannot prevail over the positive declaration of Rogelio Cometa as to their purpose, it appearing that Francisco Toling, who did the killing, and his brother-in-law, Rogelio Cometa, were the ones who organized and led the group in the criminal enterprise. It is not improbable that they did not immediately reveal to Bolando their criminal purpose in order to induce the latter to go with them. They were the leaders, while Candelario was merely a minor follower. Indeed, the actuations of the appellants indicated that the robbery was an afterthought which arose only when they saw that Lumpayao and his family have, because of fear, abandoned their house.

The rule is that where the original design comprehends robbery in a dwelling, and homicide is perpetrated with a view to the consummation of the robbery, the crime committed is the complex offense of robbery with homicide even though homicide precedes the robbery by an appreciable time. If the original design was not to commit robbery but robbery was committed after the homicide as an afterthought as a minor incident in the homicide, the criminal acts should be viewed as constitutive of two distinct offenses and not as a single complex offense.[9]

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[9] "From the fact that the killing and the robbery did not take place in the same place, the appellants contend that the crime committed cannot be robbery with homicide. But it appears from the facts proved that appellants had the intention of robbing Omblero when their leader asked him for money and threatened him with death if he refused and that after shooting him down and thus eliminating an obstacle to the effectuation of their unlawful design, they repaired to his house, which was nearby, and by force, took

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The rule is that where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the defendant can be convicted of the other.[10] Where the defendant is charged with robbery with homicide, he may be convicted of one of them.[11]

Likewise, when a person is charged with a crime and the evidence does not show that he is guilty of the crime charged, but does show that he is guilty of some lesser offense, the court may sentence him for the lesser offense provided the lesser offense is a cognate offense and is included in the complaint filed with the court.[12]

In the instant case, it should be noted that the crime charged was Robbery with Homicide, which, being a special complex

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his money therefrom. It is thus clear that the killing and the robbery are not isolated acts, for there is a direct connection between the two. The killing sprang from the idea of robbing and was but a step in the perpetration of the robbery. In the circumstances, we have no hesitation in saying that the killing was done by reason or on the occasion of the robbery, so that appellants are guilty of the special complex crime of robbery with homicide (Article 294, paragraph 1, Revised Penal Code).

"When there is direct relation and intimate connection between the robbery and the death of the owner of the property stolen, by reason of the death having preceded the robbery and of the fact that the crime sprang from the idea of robbery, the accused beginning the criminal act by killing their victim, such crimes cannot be separated into two distinct crimes of robbery and of homicide or murder, nor consequently, can the criminal liability of the defendants be divided in accordance with such participation as they may have had in one part of the crime or the other, nor can they be sentenced for the crime of robbery independently of that of homicide or murder. In other words, if there is a direct relation, an intimate connection between the robbery and the killing whether the latter be prior or subsequent to the former, or whether both crimes be committed at the same time — it is unquestionable that they constitute the complex crime defined in Article 294, paragraph 1, of the Penal Code." (Guevara, *Revised Penal Code*, p. 576, citing *People v. Hernandez*, 46 Phil. 48; *People v. Napoleon Libre*, 93 Phil. 5, 8.).

[10] *U. S. v. Lahoylahoy, et al.*, No. 12453, July 15, 1918, 38 Phil. 330.

[11] *U. S. v. Paddit, et al.*, No. 583, Oct. 15, 1902, 1 Phil. 426.

[12] *U. S. v. Nery*, No. 1989, Jan. 22, 1905, 4 Phil. 158; *People v. Castillo*, CA-No. 227, Feb. 1, 1946, 76 Phil. 72.

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crime, is definitely higher than the single crimes of homicide and robbery.[13]

If there is no express or implied conspiracy among two or more persons taking part in the commission of the crime, then their liability is regarded as individual or separate. Here, conspiracy has not been sufficiently proven. It does not appear that the appellants had a common plan or common criminal design. According to Bolando's extrajudicial confession, he went along with Toling because he was afraid to displease the latter. It was only when they were on their way to the *barrio* that he learned that the purpose was to rob one Francisco Lumpayao. Rogelio Cometa, however, in his extrajudicial confession maintained that his purpose with Francisco Toling was to kill Isabelo Caseres. Neither could conspiracy be inferred from the acts of Candelario Bolando or Rolando Cometa, since the two had not cooperated in any manner with Francisco Toling and Rogelio Cometa for the realization of the latter's criminal purpose. Candelario Bolando and Rolando Cometa could not, therefore, be held responsible for the death of Isabelo Caseres. Considering, however, that Bolando admitted that after knowing that they were going to rob someone he still went with them to Barrio Bag-ong Gutlang and although he did not directly participate in the robbery he gave moral encouragement to them with his presence and shared in the loot in the amount of Fifty Centavos (₱0.50), he should be criminally responsible as an accomplice for the crime of robbery.

An accomplice is one who cooperates in the execution of the crime by previous or simultaneous acts, provided that he has not taken direct part in the execution of the crime or forced or induced others to execute it, or cooperated in its perpetration by an indispensable act. The crime committed is robbery with force upon things, since the trunk of the offended party was taken from his house and forcibly opened in the yard.[14] Pursuant

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[13] *U. S. v. Abelinde, et al.*, No. 945, Dec. 19, 1902, 1 Phil. 568; *People v. Andam*, L-11383, April 30, 1958 (Unrep.), 103 Phil. 1129; *People v. Mori*, L-23511 & L-23512, Jan. 31, 1974, 55 SCRA 382.

[14] Article 299, par. b, sub-par. 2, of the Revised Penal Code.

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to the fifth paragraph of Article 299 of the Revised Penal Code, when the value of the property taken does not exceed Two Hundred Fifty Pesos (₱250.00), the penalty for the offense is *prision mayor*. The imposable penalty on appellant Bolando is the penalty next lower in degree than that prescribed by law for the consummated felony,[15] which in the instant case should be *prision correccional* to be applied in its medium period, in the absence of any aggravating or mitigating circumstance.

In the case of appellant Rogelio Cometa, he admitted he agreed to the offer of Francisco Toling that if he would go with him to kill Isabelo Caseres he would be paid ₱50.00 (Exhibit "E"). As a matter of fact, he went with Toling after arming himself with a Caliber .22 home-made gun. On the way to Barrio Bag-ong Gutlang, he even forced Hilario Gahito to join them. He was with Toling when the latter treacherously shot Isabelo Caseres. He should, therefore, be liable as a co-principal in the crime of homicide, since the crime of murder is not necessarily included in the information for robbery with homicide.

It appears also from the evidence that it was Rogelio Cometa who went up and ransacked the trunk of the Lumpayaos. He is, therefore, guilty as a principal in the crime of robbery, defined and penalized by Article 299, paragraph b, sub-paragraph 2, of the Revised Penal Code.

Upon the other hand, Rolando Cometa cannot be held criminally responsible as principal of either the crime of homicide or robbery since there is no direct proof that he conspired with his co-appellants or directly participated in the commission thereof. He cannot also be held criminally responsible as an accomplice. In order to hold one liable as an accomplice, it is essential that it be proved beyond reasonable doubt that between the supposed accomplice and the principal, there is community of criminal purpose which implied that it be shown that the supposed accomplice committed the acts imputed to him with the intention to help morally or materially in the commission of the crime.[16]

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[15] Article 52, Revised Penal Code.

[16] *People v. Tamayo*, No. 18289, Nov. 17, 1922, 44 Phil. 38.

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Here, it has not been convincingly established that appellant Rolando Cometa, knowing of the criminal purpose, has given aid or encouragement, either morally or materially, in the commission of the crime. Such circumstances being absent, his mere presence at the scene of the crime does not make him an accomplice.[17]

ACCORDINGLY, the judgment of the court *a quo* is hereby modified as follows:

(a) finding Rogelio Cometa *alias* Celio guilty beyond reasonable doubt of the crimes of Homicide, aggravated by treachery, and of Robbery, and imposing upon him, for the crime of Homicide, an indeterminate penalty ranging from eight (8) years of *prision mayor* as the minimum, to eighteen (18) years of *reclusion temporal* as the maximum, and ordering him to indemnify the heirs of Isabelo Caseres in the amount of ₱12,000.00; and for the crime of Robbery, an indeterminate penalty ranging from four (4) years and two (2) months of *prision correccional* as the minimum, to eight (8) years and one (1) day of *prision mayor* as the maximum, and to indemnify Francisco Lumpayao in the amount of ₱200.00;

(b) finding Candelario Bolando *alias* Dodo guilty as an accomplice in the crime of Robbery and sentencing him to suffer an indeterminate penalty ranging from six (6) months of *arresto mayor* as the minimum, to two (2) years, four (4) months and one (1) day of *prision correccional* as the maximum of the penalty, and to indemnify Francisco Lumpayao in the amount of One Hundred Pesos (₱100.00), without prejudice to the provisions of Article 110 of the Revised Penal Code; and

(c) Rolando Cometa *alias* Lando is hereby ACQUITTED on the ground of reasonable doubt, with proportionate part of the costs *de oficio*.

The period of preventive imprisonment shall be deducted from the term of imprisonment of Rogelio Cometa and Candelario

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[17] *People v. Madera*, L-35133, May 31, 1974, 57 SCRA 349.

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Bolando, pursuant to Article 29 of the Revised Penal Code, as amended.

With costs against appellants.

SO ORDERED.

Fernando C.J., Barredo, Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

Teehankee, Makasiar, and *Aquino, JJ.*, took no part.

SECOND DIVISION

[G.R. Nos. L-50752-50830. July 13, 1979]

EVA V. CANTELANG, PEDRO ARIETA, RUBEN COLIAT, MR. ABONOWOG, TONY VIRAY, RUDY RAMEN, CLESTINO CANALE, CHAYONG DINOY, WILSON TANA, FRANCISCO MAGAHAS, ELPIDIO FRANCISCO, GAUDENCIO MACABUHAY, MIGUEL ANGELES, MRS. C. BELTRAN, CRICIA DINO, CONCHITA ZAPEDA, SALUD ZAPANTA, MARCELINO ATENDIDO, JULIO RAMEREZ, FELOMINO DINOY, BERNABE DE LEON, ATANACIO SANTOS, MRS. SUBURDO, JUAN DOMDOM, NUMERIANO KAMINO, PEDRO JINERA, MRS. UYACA, SGT. J.R. HERNANDEZ, MRS. NILLAGAS, ERLINDA JAVELOSA, GLORIA PASCUAL, CELESTINO CANALE, FLORENTINO RAYMUNDO, ROSARIO CADCARA, ROLFO BATO, ANTONIO RECIO, ALEJANDRO MALATAS, SANTOS TABANAO, RODRIGO SIBUL, BERNABE GALEON, SGT. SEMILIA, MRS. BALOG, EPIFANIO MACATBAG, MRS. ESPINOSA, HERMINIO MACATBAG, HERMINIO DIEGO, DIONISIA VELASCO,