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kilos of PVTA tobacco to the respondent L & C. In fact, it is admitted that the petitioner is allowing the respondent L & C to purchase 24.4 million kilos of PVTA tobacco but without the import rights of 6.1 million kilos of blending tobacco. The mere fact that the respondent L & C was allowed to purchase the 24.4 million kilos of PVTA tobacco does not necessarily give said respondent the right to demand that it be allowed to import 6.1 million kilos of blending tobacco.

WHEREFORE, the petition for *certiorari* is granted. The order of the respondent judge, dated December 6, 1971, is declared void and set aside, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, and *De Castro, JJ.*, concur.

Melencio-Herrera, J., took no part.

EN BANC

[G.R. No. L-34785. July 30, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **RENATO BARRIOS Y ALMOGUERA and RICO NAZARIO Y IBAÑEZ,** *accused.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONFESSION; WHEN THE STATEMENT CONTAINS DETAILS WHICH ONLY THE DECLARANT COULD HAVE FURNISHED AND COULD NOT HAVE BEEN CONCOCTED BY THE INVESTIGATOR, IT IS CONSIDERED TO HAVE BEEN VOLUNTARILY GIVEN; CASE AT BAR.— The statements of the two accused contain details most of which could only have been furnished by them. The

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allegation of Nazario that they drank first beer or liquor on the railroad track in Perlita Street; that he was the one who sat in front of the taxicab while the other accused sat on the rear seat; that Barrios was the one who poked a knife at the taxi driver; that the driver was pulled to the rear seat of the taxicab so that he could be frisked of his money; that the driver shouted "*saklolo, tulungan ninyo ako*"; and that the driver was stabbed because he fought back are details that could not have been concocted by the police investigators. The accused, Renato Barrios, narrated in his statement that the driver fought back when the former took his money; that said accused stabbed the driver with a kitchen knife; that before the robbery, he and the other accused first drank liquor by the bridge going to the railroad track; that he knows Col. Quimpo who lives at the corner of Estrada and Perlita Streets; that it is true that he went to Col. Quimpo three (3) days after the incident and asked what said accused should do as he is one of those being suspected in the killing and robbing of the driver as reported in a newspaper; and that he read in the Daily Star that he is a suspect and Col. Quimpo is a witness. These details could not have been known to the police investigators. It is a settled rule that where the statement of the accused mentions details which only the declarant could have furnished and could not have been concocted by the investigator, the confession is considered to have been voluntarily given.

2. ID.; ID.; ALIBI; WEAK DEFENSE IN CASE AT BAR.— The defense interposed by the accused that on August 28, 1971 they were narrating stories in the house at 2473 Perlita Street, the residence of Renato Barrios, is not credible. Alibi is a defense that can very easily be concocted. For this reason, alibi to be sustained as a defense must be supported by strong evidence. The evidence of the accused in support of their alibi is weak. It is strange that the accused and their companions should be conversing up to 2:30 o'clock in the morning. This is contrary to the ordinary course of things. Besides, Virginia Siscon, a witness of the accused, declared that she conversed with the accused and other persons only up to 10:00 o'clock in the evening of that date. The place where the accused and other persons allegedly told stories was at 2473 Perlita Street which was near the scene of the crime. The crime was committed on

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the same street. There was every possibility for the two accused to have been present at the scene of the crime although earlier that evening they were conversing with other people in the house at 2473 Perlita Street. It has been held that for alibi to prosper, the evidence must show that the accused was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.

3. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; CRAFT; DEFINED.— Craft is a circumstance characterized by trickery or cunning resorted to by the accused to carry out his design.

APPEARANCES OF COUNSEL

Renato L. Ramos for accused Renato Barrios.

Cristobal A. Cantor (Counsel de Oficio) for accused Rico Nazario.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Conrado T. Limcaoco and *Solicitor Carlos N. Ortega* for plaintiff-appellee.

D E C I S I O N

FERNANDEZ, *J.*:

This is an automatic review of the amended decision dated January 13, 1972 of the Circuit Criminal Court of Manila in CCC-VI-733 (71) entitled "*The People of the Philippines versus Renato Barrios and Rico Nazario*" finding the two accused guilty of the crime of robbery with homicide and sentencing each one of them to death and to jointly and severally pay the heirs of the victim Teodoro Castillo *y* Molina the sum of ₱12,000.00 for the death of said victim and the sums of ₱10,000.00 as moral damages, ₱10,000.00 as exemplary damages and ₱7.00 representing the amount taken from the deceased and to pay the costs.[1]

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[1] *Rollo*, pp. 8-42.

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The two accused, Renato Barrios *y* Almoguera and Rico Nazario *y* Ibañez were charged in September 1971 with the crime of robbery with homicide in the following:

"INFORMATION

The undersigned accuses Renato Barrios *y* Almoguera and Rico Nazario y Ibañez of the crime of robbery with homicide, committed as follows:

That on or about August 28, 1971, in the City of Manila, Philippines, the said accused, conspiring and confederating with one another whose identity and whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, by means of force and violence, and with intent to gain, take away from Teodoro Castillo *y* Molina, a taxi driver, the latter's earnings of undetermined amount, to the damage and prejudice of the said Teodoro Castillo *y* Molina in the said undetermined amount; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the aforesaid earning of Teodoro Castillo *y* Molina, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the said Teodoro Castillo *y* Molina, by then and there stabbing him with a bladed instrument, thereby inflicting upon him physical injuries which were the direct cause of his death thereafter.

Contrary to law.

(SGD.) RODOLFO C. CASAS
Assistant Fiscal

I hereby certify that an *ex-parte* investigation in this case has been conducted by me in accordance with law; that there is reasonable ground to believe that the offense charged has been committed; and that the accused is probably guilty thereof.

Manila, Sept. 13, 1971."[2]

The facts, as found by the trial court, are:

"A careful study of the evidence presented, shows the fact that victim Teodoro Castillo *y* Molina, a taxi driver, was killed and robbed

[2] *Rollo*, pp. 3-4.

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of his earnings has never been disputed. The only issue in this case, therefore, is the criminal participation of the accused.

The corroborating statements of both accused (Exhibit 'F', statement of Nazario and Exhibit 'G', statement of Barrios) indubitably show that said accused, together with one Arthur, who is still at large, conspired, confederated with and helped one another in killing and robbing the victim. Nazario admitted in his statement (Exhibit 'F') that he invited Barrios to stage a hold-up in Perlita Street. Thereupon, a taxi passed by and he stopped it. They boarded the same and he sat in the front seat while Barrios and Arthur sat at the back with Arthur immediately behind the driver of the taxi. Thereafter, Barrios poked the *balisong* on the taxi driver. Then they pulled said taxi driver to the rear seat in order to frisk him but the driver shouted for help. Fearing that they might be heard and the driver would create a scandal, Barrios immediately stabbed the driver 3 times. Thereafter, he and his companions fled. Nazario further declared that Barrios also stabbed the taxi driver because he fought back.

Barrios likewise admitted in his statement (Exhibit 'G') that they actually stopped the taxi at the corner of Perlita and Estrada Streets and got the money of the driver but the driver fought back and for which reason he stabbed him with a kitchen knife. After that, he and his two companions fled. He cannot remember the number of times he stabbed the taxi driver because he was then drunk.

The fact that both accused confessed to the truth is strongly shown by the corroborating testimony of Generoso Quimpo, Jr., who testified in a spontaneous, categorical, logical and straightforward manner with marked fluency and ease that between 2:00 and 2:30 a.m. of August 28, 1971, while he was still half-awake, he heard a commotion consisting of a sound of a car, a radio and the struggle of some men. He even heard a shout '*iwanan mo na iyan*' and the slamming of the door of the taxi. He looked out of the window and saw a taxi at standstill, around 9 to 10 meters away, but with the engine on. Inside the taxi, he saw two men at the rear seat struggling. Then the driver (he said he is the driver because he was the one who shouted '*magnanakaw*') came out and started running towards Perlita Street shouting '*magnanakaw, magnanakaw*' The man who was inside, at the rear of the taxi, also went out and ran on the opposite direction towards Estrada. In other words, the testimony of Quimpo, Jr. that he saw two men struggling in the rear seat of the taxi, one of whom he believes to be the taxi driver because he was the one shouting

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'*magnanakaw*,' corroborates the admission of Nazario that they pulled the taxi driver from the front to the rear seat in order to frisk him of his money (Exhibit 'F', answer to question No. 6); the testimony of Quimpo, Jr. that the taxi driver went out of his taxi and shouted corroborates also a portion of the answer of Nazario to question No. 6 (Exhibit 'F') that the taxi driver got out of his taxi and shouted; and the testimony of Quimpo, Jr. that he saw two men struggling at the back of the taxi also corroborates the statements of Nazario and Barrios that Barrios stabbed the taxi driver because the latter fought back. The credibility of Quimpo, Jr. cannot be doubted for in the absence of evidence showing improper motive actuating the principal prosecution witnesses tends to sustain the conclusion that no such improper motive existed and their testimonies are worthy of full faith and credit (*People versus Amiscua*, L-31238, February 27, 1971)."[3]

The two accused maintained that they were maltreated into giving their statements admitting their participation in the commission of the crime charged in the information. This contention has no merit.

The statements in question were subscribed and sworn to before Assistant Fiscal Avelino Concepcion of Manila. There is no showing that the two accused refused or even hesitated to sign and swear to said statements. They did not complain to the fiscal that they were maltreated by the police officers. Under these circumstances, the statements are considered to have been voluntarily given.[4]

The assertion of the accused Rico Nazario that he did not complain to the fiscal before whom he subscribed and swore to the statement because he was afraid of the police officers is not credible. Considering the gravity of the offense, it is logical to assume that the fiscal examined thoroughly the two accused on the voluntariness of their statements. If the two accused were really maltreated they should have complained because the probable penalty of death for the crime charged is more awesome than the feared reprisal of the police. Moreover,

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[3] *Rollo*, pp. 31-34.

[4] *People vs. Dorado*, L-23464, October 31, 1969, 30 SCRA 53, 58.

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there is no evidence of the alleged maltreatment other than the bare assertion of the accused.

The statements of the two accused contain details most of which could only have been furnished by them. The allegation of Nazario that they drank first beer or liquor on the railroad track in Perlita Street; that he was the one who sat in front of the taxicab while the other accused sat on the rear seat; that Barrios was the one who poked a knife at the taxi driver; that the driver was pulled to the rear seat of the taxicab so that he could be frisked of his money; that the driver shouted "*saklolo, tulungan ninyo ako*"; and that the driver was stabbed because he fought back are details that could not have been concocted by the police investigators.

The accused, Renato Barrios, narrated in his statement that the driver fought back when the former took his money; that said accused stabbed the driver with a kitchen knife; that before the robbery, he and the other accused first drank liquor by the bridge going to the railroad track; that he knows Col. Quimpo who lives at the corner of Estrada and Perlita Streets; that it is true that he went to Col. Quimpo three (3) days after the incident and asked what said accused should do as he is one of those being suspected in the killing and robbing of the driver as reported in a newspaper; and that he read in the Daily Star that he is a suspect and Col. Quimpo is a witness. These details could not have been known to the police investigators.

It is a settled rule that where the statement of the accused mentions details which only the declarant could have furnished and could not have been concocted by the investigator, the confession is considered to have been voluntarily given.[5]

Moreover, in the absence of evidence to the contrary, the presumption is that the police officers who investigated the accused performed their official duties regularly.[6]

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[5] *People vs. Dorado*, L-23464, October 31, 1969, 30 SCRA 53, 58.

[6] Section 5 [m], Rule 131, Revised Rules of Court.

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The defense interposed by the accused that on August 28, 1971 they were narrating stories in the house at 2473 Perlita Street, the residence of Renato Barrios, is not credible. Alibi is a defense that can very easily be concocted. For this reason, alibi to be sustained as a defense must be supported by strong evidence. The evidence of the accused in support of their alibi is weak. It is strange that the accused and their companions should be conversing up to 2:30 o'clock in the morning. This is contrary to the ordinary course of things. Besides, Virginia Siscon, a witness of the accused, declared that she conversed with the accused and other persons only up to 10:00 o'clock in the evening of that date. The place where the accused and other persons allegedly told stories was at 2473 Perlita Street which was near the scene of the crime. The crime was committed on the same street. There was every possibility for the two accused to have been present at the scene of the crime although earlier that evening they were conversing with other people in the house at 2473 Perlita Street.

It has been held that for alibi to prosper, the evidence must show that the accused was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[7]

The evidence of the prosecution has established beyond reasonable doubt that the two accused committed the crime charged in the information.

The trial court imposed the death penalty on both accused because of the finding that the commission of the crime was attended by the aggravating circumstances of craft and abuse of superior strength without any mitigating circumstance. The evidence of the prosecution has not established the aggravating circumstances of craft and abuse of superior strength.

Craft is a circumstance characterized by trickery or cunning resorted to by the accused to carry out his design.

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[7] *People vs. Condemena*, L-22426, May 29, 1968, 23 SCRA 910, 918.

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The trial court found that craft was present because the two accused stopped the taxicab by pretending to be passengers. There is no evidence that the two accused pretended to be passengers. In fact, it is not clear how the taxicab was stopped. The only eyewitness for the prosecution, Generoso M. Quimpo, Jr., declared that between 2:00 and 2:30 o'clock in the morning of August 28, 1971, he was half-awake when there occurred a commotion outside his house consisting of a sound of a car, radio and the struggling of some men; that upon looking out of the window, he saw a taxicab at a standstill about 9 or 10 feet away from the window; that he was in the second floor of the house; that the engine of the car was running; that before looking outside, the witness heard a man shouting "*Iwanan mo na yan.*"; that when he heard the slamming of the door of the taxicab and he peeped out immediately, he saw the taxicab already parked outside; that he saw two men struggling inside the taxicab at the rear seat; that the taxi driver came out and ran towards Perlita Street shouting "*magnanakaw, magnanakaw.*"; that a few seconds after the taxi driver had run out, the man inside the taxicab at the rear also ran towards the opposite direction going to Estrada Street; and that the two persons struggling at the rear of the taxicab were the taxi driver and a man.

It is clear from the foregoing testimony that when Generoso M. Quimpo, Jr. looked out of the window from his house, the taxicab was already at a standstill and that only two men were struggling at the rear seat of the taxicab, the driver of the taxicab and one man. This testimony of the prosecution witness also rules out the existence of the aggravating circumstance of abuse of superior strength. Only one man was struggling with the taxi driver at the rear seat of the taxicab and the witness saw only one man coming out of the rear of the taxicab and running towards the opposite direction going to Estrada Street.

It is settled that an aggravating circumstance should be proven as fully as the crime itself in order to aggravate the penalty.[8]

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[8] *People vs. Marcina*, 77 SCRA 238, 246.

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In view of the foregoing, the trial court erred in imposing the penalty of death. The crime was committed without the presence of any aggravating and mitigating circumstances.

WHEREFORE, the decision under automatic review is hereby affirmed, with the sole modification that the penalty imposed on the two accused is *reclusion perpetua*, with costs against said accused.

SO ORDERED.

Fernando C.J., Teehankee, Barredo, Makasiar, Antonio, Concepcion Jr., Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Aquino, J., concurs in the result.

Santos and *Abad Santos, JJ.*, are on official trips abroad.

EN BANC

[G.R. No. L-35279. July 30, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PORFIRIO DUMDUM, JR. and RENATO PERALTA,** *defendants whose death sentences are under review.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; THE STRINGENT REQUIREMENTS THEREOF AS TO EXTRAJUDICIAL CONFESSIONS DURING CUSTODIAL INVESTIGATION ARE NOT APPLICABLE WHEN THE CONFESSION WAS TAKEN BEFORE EFFECTIVITY OF THE 1973 CONSTITUTION.—The stringent requirements of Section 20, Article IV of the Constitution as to extrajudicial confessions taken during