

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGARDO MARIÑO Y PARENTO, DEFENDANT-APPELLANT.***G.R. No. L-34247. July 25, 1984*

Ponente: RELOVA, J.

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This case is before Us on mandatory review of the judgment of the then Circuit Criminal Court of Manila, in Criminal Case No. CCC-VI-484(71), entitled: "People vs. Edgardo Mariño y Parento", finding said accused guilty beyond reasonable doubt of the crime of robbery with homicide, with the attendance of the aggravating circumstances of abuse of superior strength and recidivism, and sentencing him to death; to indemnify the heirs of the deceased, Enrique Fallarme, in the sum of P12,000.00; the sum of P10,000.00 by way of moral damages; another sum of P10,000.00 by way of exemplary damages; to return to the heirs of the victim the articles and cash taken from the latter or to indemnify them the sum of P600.00 representing the total value thereof if he fails to do so; and to pay the costs.

The deceased, Enrique Fallarme, was a civil engineer working at the City Engineer's Office in Manila. His son, Llywelyn Fallarme, was a utility inspector in the same office. About 3:00 in the afternoon of December 27, 1970, the two left their residence at 54 Gregorio Roxas Street, Quezon City, for their store at the Central Market, Manila. Upon arrival at the Central Market, Llywelyn Fallarme alighted from the car to collect their store sales in the amount of P300.00. He turned over the same to his father, Enrique, who remained in the car.

From the Central Market they proceeded to Paco, Manila to inspect the road project in Canonigo where the elder Fallarme was the Supervising Engineer. Llywelyn and a younger sister left their father in the road project and they proceeded to a piano recital.

About 7:30 in the same evening, the Fallarmes were told that Enrique Fallarme had an accident. Llywelyn rushed to Canonigo, Paco where he saw his father lying on the street, lifeless with stab wounds. He identified the body of his father and told the police that the deceased was wearing a Seiko wrist watch and had a wallet in his pants. They were no longer there.

The medical report (Exhibit "C") shows that the victim died from "shock and hemorrhage" due to multiple (5) stab wounds, one lacerating thru the right ventricle of the heart.

On December 28, 1970, the police arrested one Antonio Madlangbayan, who, in a written statement (Exhibit "E"), admitted that he, together with Boy Mariño, Imping and Rody were the ones who stabbed the deceased at Canonigo street and robbed him of money and wallet. He described the physical features of his companions and confessed that all of them were members of the "Bahala Na Gang."

The case of Antonio Madlangbayan has already been decided by the same trial court. Said accused has been found guilty and sentenced to death. The judgment was affirmed by this Court on December 14, 1979 (People vs. Madlangbayan, 94 SCRA 679).

On the basis of Madlangbayan's statement, the police, after several days of surveillance of his hiding place, was able to arrest herein appellant, Edgardo Mariño. He was brought to the police precinct for investigation. A police line-up composed of appellant and five other detainees was formed and then Madlangbayan was brought to identify the person of "Boy Mariño" whom he mentioned in his statement, Exhibit "E". Madlangbayan immediately pointed to the appellant as the same person.

Thereafter, appellant was investigated by Patrolman Carag who took down his statement (Exhibit "G") following which he was brought before Fiscal Ramon Mabutas at the latter's residence in San Andres, Manila. Fiscal Mabutas talked to Mariño who admitted that he had read and confirmed the truth of the contents thereof, and that the signatures appearing therein are his. Likewise, he acknowledged to the Fiscal that the sketch of a knife (Exhibit "G"-1) was drawn by him. He then signed Exhibits "G" and "G-1" again before Fiscal Mabutas after the latter had taken his oath. This was followed by the Fiscal signing his name in said documents. What happened is narrated by the appellant in Exhibit "G", as follows:

"Tanong (15) Saan galing ang trenta sentimos na ibinili mo ng cigarillo?

Sagot: Binigyan ako ng bente sentimos ni TONY at dinagdagan ko ng diez sentimos. Matapos ako bumili ng cigarillo sa isang babae na waitress doon sa Golden Restaurant ay tumuloy na kami sa Canonigo sa may Roxas High School. Doon sa tapat ng Roxas High School ay nakatayo lang ho yong MAMA na sinaksak namin. Linapitan namin siya. Tinutukan ni TONY ng kutsilyo ang MAMA sa kaliwang tagi-liran at ako naman ay ti-nutukan ko ang MAMA sa liig sa parteng kanang liig ng aking doble blade. Ang sabi ng MAMA ay ganito 'ANO ANG KASALANAN KO?' Ang sabi ko ay 'HOLD-UP ITO' at dinala namin siya doon sa kanto ng Canonigo, San Gregorio at Figueroa Street, doon sa madilim ng kunti dahil sa maliwanag doon sa tapat ng Roxas High School na kinatatayuan ng MAMA.

Tanong (16) Ano pa ang nangyari kong meron?

Sagot: Ang sabi ng MAMA na nakataas pa ang kamay ay ganito 'KU-NIN NYO ANG KAILANGAN NYO'. Ang ginawa ko naman ay kinapakan ko ang bulsa ng MAMA sa likurang pantalon at kinuha ko ang pitaka niya na itim na balat na may lamang kuarta. Kinuha ko sa bandang kaliwa na bulsa. Pagkatapos ay iniyabot ko kay 'RODY' na siya noon at si 'IMPING' ay nasa likuran na MAMA noon. Si IMPING ang unang nagpababa ng kaliwang kamay noong MAMA at kinuha niya ang relas ng MAMA at pinataas din ang kaliwang kamay. Noong biglang binaba ng MAMA ang kamay niya ay sinaksak ni 'TONY' at ng masaksak ang MAMA ay humawak sa aking kwelyo ng damit ko sa kanan. Ang ginawa ko ay sinaksak ko ang MAMA sa dibdib at nabitawan ako ng MAMA at tumakbo na ako kasabay ko si RODY. Ako ay tumakbo papunta sa Kahilom 3 at si RODY ay tumakbo sa HIWAY doon sa banda ng mga Apartment ni ROELES. Pagdating ko Kahilom 3 ay umuwi ako sa amin nagdaan ako sa Dapo Street na papunta sa amin sa Obis sa amin." (p. 29, Record)

Accused-appellant denied the voluntary execution of his statement claiming that he was maltreated into giving the same and alleged that the trial court erred (1) in admitting the extra-judicial confession (Exhibit "E") of Antonio Madlangbayan as evidence against him; and (2) in admitting his extra-judicial confession (Exhibit "G") and in finding him guilty of the offense charged on the basis thereof.

We find no merit in the claim that the lower court erred in admitting the confession (Exhibit "E") of Antonio Madlangbayan as evidence against herein appellant. While it is true that the extra-judicial confession of an accused is not admissible against herein appellant, it nevertheless serves as strong indication that said appellant was participant in the crime because the contents thereof interlocked with those contained in his statement, Exhibit "G". There being no proof of collusion and being identical with each other in their essential details, and corroborated by the testimony of Dr. Abelardo Lucero, a Medical Examiner of the Manila Police Department, and the post-mortem report (Exhibit "C"), it is admissible to prove conspiracy.

Besides, records show that when the extra-judicial confession of Antonio Madlangbayan was presented in court, thru Patrolman Carag, appellant did not object. It has been repeatedly held as a rule of evidence that objection against the admission of any evidence must be made at the proper time and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof the inadmissibility of evidence is, or may be, inferred (*Abrenica vs. Gonda*, 34 Phil. 739).

On the more important question as to whether the extra-judicial confession of Edgardo Mariño is sufficient to sustain his conviction, the Rules of Court provides that "an extra-judicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti." (Section 3, Rule 133). In the case at bar, from the People's evidence the corpus delicti of the offense charged has been proved by the uncontradicted testimonies of Llywelyn Fallarme and the police officer assigned to the case, as well as the testimony of Dr. Abelardo Lucero, the police Medical Examiner, as to the death of Enrique Fallarme, together with the documentary evidence of the necropsy report stating the post-mortem findings, including the cause of death.

With respect to the claim that the extra-judicial confession (Exhibit "G") was obtained thru force and intimidation, the same is belied by the abundance of evidence showing that his confession was voluntarily given. In the first place, the statement is replete with details which only the accused could have known and which could not have been concocted by the police; his movements prior to the commission of the crime are well narrated in said document. Second, Fiscal Ramon Mabutas, who administered the oath of appellant in his confession, propounded questions to him and he admitted that the contents thereof are his and that the signatures appearing thereon were made voluntarily. In fact, he signed his name again before the said administering officer. Third, the questioned statement was made before the effectivity of the New Constitution. It was given on February 9, 1971. We have already held that the provisions of Section 20, Article IV of the Constitution cannot be given retroactive effect to confessions obtained before January 17, 1973, when the Constitution took effect. (*People vs. Viduya*, 97 SCRA 666).

Indeed, appellant with his co-accused Madlangbayan and two others who unfortunately have not yet been apprehended, took advantage of their superior strength when the four of them, two of whom were armed with deadly weapons, surrounded and stabbed the unarmed, helpless and unsuspecting victim. The aggravating circumstance of abuse of superior strength was correctly appreciated by the trial court. However, for lack of the necessary votes, We have to impose the next lower penalty which is reclusion perpetua.

WHEREFORE, the appealed judgment is hereby AFFIRMED, with the modification that herein appellant Edgardo Mariño y Parento is hereby sentenced to reclusion perpetua and the indemnity is increased to P30,000.00.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Fernando, C.J., in the result.

Teehankee, J., no part.

Aquino, J., vote for the death penalty as in the case of Antonio Madlangbayan, the co-accused of Edgardo Mariño, 94 SCRA 679.

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