

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELICIANO HIPOLITO Y CLEMENTE AND CIRILO MALAGAMBA Y
MONTARAS, DEFENDANTS, FELICIANO HIPOLITO Y CLEMENTE,
DEFENDANT-APPELL...**

G.R. No. L-31402. August 17, 1981

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PER CURIAM:

MANDATORY REVIEW of the decision rendered in Criminal Case No. 90010 of the Court of First Instance of Manila, entitled: "The People of the Philippines, plaintiff, versus Feliciano Hipolito y Clemente and Cirilo Malagamba y Montaras, defendants". Hipolito was found guilty of murder, qualified by evident premeditation and aggravated by the circumstance that the crime was committed in consideration of a price, reward, or promise. Malagamba was also found guilty of murder qualified by evident premeditation, but without any aggravating or mitigating circumstance. The dispositive portion of the said decision reads, as follows:

"WHEREFORE, Feliciano Hipolito y Clemente and Cirilo Malagamba y Montaras are declared guilty beyond reasonable doubt of the crime of murder, and each is hereby sentenced, as follows:

1. Feliciano Hipolito y Clemente, to suffer the penalty of DEATH, to be executed in the manner provided by law; and
2. Cirilo Malagamba y Montaras, to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties provided by law.

Both accused to indemnify, jointly and several-ly, the heirs of the deceased in the amount of twelve thousand pesos (P12,000.00), and each to pay one-half (1/2) of the costs."

The record shows that on September 18, 1966, Concepcion Bust-amante Ang was shot and mortally wounded while making a telephone call outside a small "tienda" near the corner of San Bartolome Street and Harrison Boulevard (now Pres. Quirino Avenue) in Malate, Manila. The necropsy report,[1] showed the following:

"MISCELLANEOUS EXTERNAL WOUNDS AND EXTENSION INTERNALLY:

- (1) A gunshot wound of entry, thru and thru in the left axillary line at the level of the 7th intercostal space measuring 0.8 cm. in diameter, directed horizontally to the right and made an exit in the left anterior chest 2.0 cm. in diameter.
- (2) Another gunshot wound of entry thru and thru, left axillary line, level of the 8th intercostal space measuring 0.8 cm. in diameter, directed horizontally to the right and made an exit in the right anterior chest measuring 2.0 cm. in diameter.

"MISCELLANEOUS FINDINGS IN INTERNAL ORGANS:**RESPIRATORY SYSTEM:**

Penetrating gunshot wound, lung, left. Grazing gunshot wound, lung, right.

CARDIOVASCULAR SYSTEM:

Penetrating gunshot wound, heart.

Penetrating gunshot wound, arch of aorta.

Hemothorax, 1500 cc.

Vena cavae collapsed.

CAUSE OF DEATH:

Hemorrhage and shock due to gunshot wounds (2) thru and thru the chest penetrating the heart, lungs and aorta."

The crime remained unsolved for more than a year and a half so that on May 9, 1968, the Criminal Investigation Service (CIS) of the Philippine Constabulary ordered its Agent Pedro Jesuitas to conduct an investigation and to apprehend and file the proper charges against the malefactor if the evidence so warrants.

In the course of his investigation, Pedro Jesuitas learned that one Feliciano Hipolito was responsible for the crime so that on May 16, 1968, the said Feliciano Hipolito was arrested and brought to the PC Headquarters at Camp Crame, Quezon City for investigation. Upon questioning, Feliciano Hipolito admitted having killed the said Concepcion Bustamante Ang and implicated one Cirilo, the driver of Ang Kung alias Vicente Ang, the husband of the deceased, as the person who hired him to kill the deceased for the amount of P5,000.00 at the instance of the said Ang Kung alias Vicente Ang.[2]

In view thereof, Cirilo Malagamba, the driver of Vicente Ang, was taken into custody on May 20, 1968, and after questioning, he also admitted participation in the commission of the crime.[3]

As a result, an information was filed with the Court of First Instance of Manila on June 5, 1968, charging Feliciano Hipolito, Cirilo Malagamba, and another person whose identity and whereabouts are still unknown, with the crime of Murder for the killing of Concepcion Bustamante Ang.[4]

In subsequent time following the conclusion of the trial, the trial court rendered the disputed decision;[5] Cirilo Malagamba ap-pealed,[6] but his appeal was subsequently withdrawn.[7]

Under consideration is the DEATH sentence imposed upon the accused Feliciano Hipolito. The accused seeks a reversal of the judgment and his consequent acquittal upon the ground that the evidence of the prosecution is not sufficient to sustain a conviction since the extrajudicial confession of the accused, upon which the judgment in question is based, was obtained from him by means of deceit, if not by force and violence, and during a custodial investigation where he was not assisted by counsel of his choice. In the alternative, he prays that he be found guilty of HOMICIDE only due to the absence of circumstances that would qualify the killing to Murder.

The accused testified that after his arrest on May 16, 1968 CIS Agent Pedro Jesuitas took him to the latter's house at Santolan, Pasig, Rizal, and later to the Manhattan Hotel in Pasay City where he was urged to admit that he was the triggerman in the killing of Concepcion Bustamante Ang and to point to Vicente Ang, the husband of the deceased, as the mastermind, so that they could get some money from the said Vicente Ang. Pedro Jesuitas

promised him that he would not be jailed if he will implicate Vicente Ang. At first, he refused to enter into such a scheme, but after Pedro Jesuitas had slapped him and dunked his head inside a toilet bowl containing human excreta, he acceded. Thereafter, he was given a bar of soap and a towel and told to take a bath, after which he was made to sign some papers. He wanted to read the papers, but he was not allowed to do so. When he insisted, he was maltreated until he fell unconscious. After regaining consciousness, he signed the papers given to him, which turned out to be the extra-judicial confession in question. The following day, he was brought to the office of Col. Dumlao, chief of the CIS, where he was told to point at Ang Kung alias Vicente Ang as the mastermind in the killing of the deceased. From Camp Crame, he was brought back to the Manhattan Hotel and instructed not to reveal their scheme to anybody. Then, he was allowed to visit his family. After visiting with his family, he returned to the Manhattan Hotel.[8]

The claim of maltreatment, however, is not corroborated, and the accused had not filed any case, whether administrative, criminal, or civil, against those persons who had allegedly coerced or forced him to sign the extra-judicial confession in question. On the other hand, CIS Agent Pedro Jesuitas testified that the accused Feliciano Hipolito furnished the statements contained therein freely and voluntarily. His testimony is corroborated by Capt. Protacio Laroya, before whom the accused Feliciano Hipolito had subscribed and sworn to the veracity of the contents of the extra-judicial confession, who declared that the said accused read the extra-judicial confession in his presence after which he told the accused to raise his right hand and asked him (the accused) if he understood the contents thereof, and when the accused answered in the affirmative, he re-requested the said accused to affix his signature on the document, which the accused did.[9]

If it were true that the accused Hipolito was maltreated and that his confession was involuntary, he could have complained about the maltreatment to Col. Dumlao, who could have acted upon it since the accused was brought before Col. Dumlao on May 17, 1968 and confronted with Vicente Ang, whom he pointed to as the mastermind in the killing of the deceased. His failure to do so militates against the veracity of his claim that his confession was involuntary.[10]

Besides, the photographs taken of the accused Feliciano Hipolito on May 17, 1968,[11] the day after he had executed the confession in question, do not show any sign of maltreatment, or that the accused had been beaten and bullied into submission.

The claim that the confession in question was prepared before-hand and obtained under duress or by force is further contradicted by the presence of details which only the declarant could have known. The said confession is replete with details on how the crime was planned and executed which could not have been the product of mere imagination.

The records of the case do not also support the claim of the accused Feliciano Hipolito that the confession in question was secured through a promise of leniency or immunity given by Pedro Jesuitas. The accused did not reveal the existence of such promise to Capt. Laroya, before whom he subscribed and swore to the veracity of his confession. Neither did he inform Fiscal Modesto A. Obispo, Assistant City Fiscal of Quezon City, before whom he acknowledged having executed the confession in question freely and voluntarily.[12] Nor did he ask for confirmation from Col. Rafael Dumlao, the chief of the CIS. The accused cannot plausibly pretend immaturity to be so easily duped by his investigators. At any rate, the alleged promise of immunity by Pedro Jesuitas, who is not a prosecuting officer and cannot honor nor comply with his promise is not sufficient ground to render the confession in question inadmissible.[13]

The fact that the accused was not assisted by counsel during the custodial investigation, as required under Art. IV, Sec. 20 of the 1973 Constitution, and that he had not been informed of his right to silence and to counsel, does not

also render the confession in question, which was executed by the accused previous to the effectivity of the 1973 Constitution, inadmissible, since no law gave the accused the right to be so informed before that date.[14] The right to counsel at custodial investigations is applicable only after the enactment of the 1973 Constitution and not before.[15]

2. The claim of the accused that the offense committed is only HOMICIDE is without merit. The killing is qualified by evident premeditation. The record shows that there were meditation and reflection by the accused resulting in a deliberate determination to commit the crime. The trial court said:

"Feliciano Hipolito determined to commit the crime earlier in the afternoon of September 15, 1966, when he agreed to kill the deceased upon the promise of Cirilo Malagamba that he (Hipolito) would be given P5,000.00. Feliciano Hipolito performed acts manifestly indicating that he clung to his determination to commit the crime when he and Cirilo Malagamba rode in the car driven by the latter at 5 o'clock in the afternoon and went to the places where the deceased could be found; when at 6 o'clock in the afternoon of the same day he accepted from Cirilo Malagamba .38 caliber pistol with six bullets to be used by him in the killing of the deceased; when on September 16, 1966, at 8 o'clock in the morning he went to the residence of the deceased and made preparation to shoot her, staying in the vicinity up to 12 o'clock noon, the intended victim not having shown up the whole morning; when on September 17, 1966, he went back to the place of residence of the deceased, but not having seen her there he went back to his home; and when on September 18, 1966, he went again to the place of re-sidence of the deceased and waited there. From the time he determined to commit the crime earlier in the afternoon of September 15, 1966, up to the time when he shot the deceased at 11 o'clock in the morning of September 18, 1966, a sufficient time had elapsed for Feliciano Hipolito to reflect upon the consequence of what he had planned to do."

The contention of the accused that evident premeditation is inherent in, and cannot be considered separately from the aggravating circumstance that the crime was committed in consideration of price, reward or promise cannot be sustained: In the case of U.S. vs. Rabor,[16] the Court said:

"It has been suggested that the commission of the crime with deliberate premeditation and 'for a price or promise of reward' should not be treated as two distinct aggravating circumstances, because it is said that the latter necessarily implies the former. This contention, however, can not be sustained in this case and is fully answered by the language of the Supreme Court of Spain in its decision of March 3, 1885:

'Considering, it says, 'that one or the other of the circumstances (treachery or premeditation) is present, either one of them serves to qualify the crime of assassination, and the other to determine the penalty according to the constant jurisprudence of the Supreme Court, and it further appears that the assassination was committed for a price, without there existing any incompatibility between this circumstance and that of premeditation, because, if it is certain that by the general rule the first implies the second, it is not less certain that the latter may be present without the former, and in the present case, after the agreement of the criminals as to the price, they exhibited in their acts a studied and insistent tenacity in accomplishing the criminal object they had proposed.' (Vinda, Vol. 1, p. 263)."

There is, likewise, no merit in the claim of the accused that the aggravating circumstance of price, reward or promise is not present in view of the non-prosecution of Vicente Ang, the alleged giver of the price or reward. The record shows that the accused Feliciano Hipolito made arrangements with his co-accused Cirilo Malagamba relative to the killing of Concepcion Bustamante Ang and not with Vicente Ang, although Cirilo Malagamba said that he was acting at the instance of the said Vicente Ang, and it was the accused Cirilo Malagamba who paid him the amount of P2,800.00. Accordingly, whether or not Vicente Ang was prosecuted in connection with the slaying of Concepcion Bustamante Ang is of little importance.

The trial court, therefore, did not commit an error in finding the accused Feliciano Hipolito guilty of the crime of MURDER for the killing of Concepcion Bustamante Ang, qualified by evident premeditation and aggravated by the circumstance that the crime was committed in consideration of a price, reward, or promise.

WHEREFORE, the judgment should be, as it is hereby AFFIRMED in toto. Without costs.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., in the result.

Fernando, C.J., on official leave.

[1] Exhibit "A".

[2] Exhibit "G".

[3] Exhibit "H".

[4] Original Record, p. 1.

[5] Id., p. 182.

[6] Id., p. 227.

[7] Rollo, pp. 47, 49.

[8] pp. 79-85, t.s.n., of March 17, 1969.

[9] p. 76, t.s.n. of July 2, 1969.

[10] See *People vs. Abejero*, G.R. No. L-36039, May 17, 1980, and cases cited; 97 SCRA 647.

[11] Exhibits "I" and "Q".

[12] See Exhibit "K"; also pp. 55-56, t.s.n. of Feb. 11, 1969.

[13] *People vs. De Torres*, 110 Phil. 982.

[14] *People vs. Urminita*, G.R. No. L-33314, Dec. 14, 1979, and cases cited; 94 SCRA 666.

[15] *People vs. Molleda*, G.R. No. L-34248, Nov. 21, 1978, 86 SCRA 667.

[16] 7 Phil. 726, 728.

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