

CLEMENTE MAGTOTO, PETITIONER, VS. HON. MIGUEL M. MANGUERA, JUDGE OF THE COURT OF FIRST INSTANCE (BRANCH II) OF OCCIDENTAL MINDORO, THE PEOPLE OF THE PHILIPPINES, IGNACIO CALARA,...

G.R. Nos. L-37201-02. March 03, 1975

Ponente: FERNANDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/32c87c0861bd/>

FERNANDEZ, J.:

EN BANC

G.R.Nos. L-37201-02. March 3, 19753;

CLEMENTE MAGTOTO, PETITIONER, VS. HON. MIGUEL M. MANGUERA, JUDGE OF THE COURT OF FIRST INSTANCE (BRANCH II) OF OCCIDENTAL MINDORO, THE PEOPLE OF THE PHILIPPINES, IGNACIO CALARA, JR., AND LOURDES CALARA, RESPONDENTS,

[G.R.No.L-37424. March 3, 1975]

MAXIMO SIMEON, LOUIS MEDNATT, INOCENTES DE LUNA, RUBEN MIRANDA, ALFONSO BALLESTEROS, RUDOLFO SUAREZ, MANUEL MANALO, ALBERTO GABION, AND RAFAEL BRILL,PETITIONERS, VS. HON. ONOFRE A. VILLALUZ, IN HIS CAPACITY AS JUDGE OF THE CRIMINAL CIRCUIT COURT OF PASIG, RIZAL, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

[G.R.No. L-38929. March 3, 1975]

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE ASAALI S. ISNANI, DISTRICT JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA DEL SUR, BRANCH II, VICENTE LONGAKIT, AND JAIME DALION, RESPONDENTS.

DECISION

FERNANDEZ, J.:

The present cases involve an interpretation of Section 20, Article IV of the New Constitution, which reads:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence,"

and specifically, the portion thereof which declares inadmissible a confession obtained from a person under investigation for the commission of an offense who has not been informed of his right (to remain silent and) to counsel.[1]

We hold that this specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date.

Accordingly, We hereby sustain the orders of the respondent Judges in G. R. No. L-37201-02[2] and G. R. No. L-37424[3] declaring admissible the confessions of the accused in said cases, and We hereby set aside the order of the respondent Judge challenged in G.R. No. L-38929[4] which declared inadmissible the confessions of the accused in said case, although they have not been informed of their right to remain silent and to counsel before they gave the confessions, because they were given before the effectivity of the New Constitution.

The reasons for these rulings are as follows:

Section 20, Article IV of the New Constitution granted, for the first time, to a person under investigation for the commission of an offense, the right to counsel and to be informed of such right. And the last sentence thereof which, in effect, means that any confession obtained in violation of this right shall be inadmissible in evidence, can and should be given effect only when the right already existed and had been violated. Consequently, because the confessions of the accused in G. R. Nos. L-37201-02, 37424 and 38929 were taken before the effectivity of the New Constitution in accordance with the rules then in force, no right had been violated as to render them inadmissible in evidence although they were not informed of "their right to remain silent and to counsel," "and to be informed of such right," because, We repeat, no such right existed at the time.

The argument that the second paragraph of Article 125 of the Revised Penal Code, which was added by Republic Act No. 1083 enacted in 1954, which reads as follows:

"In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at anytime with his attorney or counsel,"

implicitly granted to a detained person the right to counsel and to be informed of such right, is untenable. The only right granted by said paragraph to a detained person was to be informed of the cause of his detention. But he must make a request for him to be able, to claim the right to communicate and confer with counsel at any time.

The remark of Senator Cuenco, when Republic Act No. 1083 was being discussed in the Senate, that the bill which became Republic Act No. 1083 provides that the detained person should be informed of his right to counsel, was only the personal opinion of Senator Cuenco. We grant that he was, as We personally knew him to be, a learned lawyer and senator. But his statement could reflect only his personal opinion because if Congress had wanted Republic Act No. 1083 to grant a detained person a right to counsel and to be informed of such right, it should have been so worded. Congress did not do so.

As originally worded, Senate Bill No. 50, which became Republic Act No. 1083, provided: "In every case, the person detained shall be allowed, upon his request, to have the services of an attorney or counsel. In the period of amendment, the phrase 'have the services of' was changed to the present wording 'communicate and confer anytime with his.' As the Solicitor General points out in his able memorandum, apparently the purpose was to bring the provision in harmony with the provision of a complementary measure, Republic Act No. 857 (effective July 16, 1953), which provides:

"SECTION 1. Any public officer who shall obstruct, prohibit, or otherwise prevent an attorney entitled to

practice in the courts of the Philippines from visiting and conferring privately with a person arrested, at any hour of the day or, in urgent cases, of the night, said visit and conference being requested by the person arrested or by another acting in his behalf, shall be punished by arresto mayor."

None of these statutes requires that police investigators inform the detained person of his "right" to counsel. They only allow him to request to be given counsel. It is not for this Court to add a requirement and carry on where both Congress and the President stopped.

The history behind the new right granted to a detained person by Section 20, Article IV of the New Constitution to counsel and to be informed of said right under pain of a confession taken in violation thereof being rendered inadmissible in evidence, clearly shows the intention to give this constitutional guaranty not a retroactive, but a prospective, effect so as to cover only confessions taken after the effectivity of the New Constitution.

To begin with, Section 29, Rule 130 of the Rules of Court, provides:

"Confession. — The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given in evidence against him."

And according to Section 3, Rule 133 of the Rules of Court:

"Extrajudicial confession, not sufficient ground for conviction. — An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti."

Extrajudicial confessions of the accused in a criminal case are universally recognized as admissible in evidence against him, based on the presumption that no one would declare anything against himself unless such declarations were true. Accordingly, it has been held that a confession constitutes an evidence of a high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and conscience. (U.S. vs. Delos Santos, 24 Phil. 329, 358)

The fundamental rule is that a confession, to be admissible, must be voluntary. And the first rule in this connection was that before the confession could be admitted in evidence, the prosecution must first show to the satisfaction of the Court that the same was freely and voluntarily made, as provided for in Section 4 of Act 619 of the Philippine Commission (U.S. vs. Pascual, August 29, 1903, 2 Phil. 458). But with the repeal of said provision of law by the Administrative Code in 1916, the burden of proof was changed. Now, a confession is admissible in evidence without previous proof of its voluntariness on the theory that it is presumed to be voluntary until the contrary is proved (5 Moran, Comments on the Rules of Court, p. 264; People vs. Dorado, 30 SCRA 53, 57, citing U.S. vs. Zara, 42 Phil. 308; People vs. Cabrera, 43 Phil. 64; People v. Singh, 45 Phil. 676; People v. Pereto, 21 SCRA 1469).

And once the accused succeeds in proving that his extrajudicial confession was made involuntarily, it stands discredited in the eyes of the law and is as a thing which never existed. It is incompetent as evidence and must be rejected. The defense need not prove that its contents are false (U.S. vs. Delos Santos, 24 Phil. 329, 358; U.S. vs. Zara, 42 Phil. 325, November, 1921). The same rule was followed in People vs. Nishishima. "Involuntary confessions are uniformly held inadmissible as evidence — by some courts on the ground that a confession so obtained is unreliable, and by some on the ground of humanitarian principles which abhor all forms of torture or unfairness towards the accused in criminal proceedings, x x x." (57 Phil. 26, 48, 51; 1932).[4-a] in the concurring opinion of Justice Butle, he said: "Apart from the fact that involuntary confessions will be declared incompetent and are therefore utterly futile, it is high time to put a stop to these (third degree) practices which are a blot on our Philippine civilization."

This rule was, however, changed by this Court in 1953 in the case of People vs. Delos Santos, et al., G.R. No.

L-4880, citing the rule in *Moncado vs. People's Court, et al.*, 80 Phil. 1, and followed in the case of *People vs. Villanueva, et al.* (G.R. No. L-7472, January 31, 1956), to the effect that "a confession to be repudiated, must not only be proved to have been obtained by force or violence or intimidation, but also that it is false or untrue, for the law rejects the confession when by force or violence, the accused is compelled against his will to tell a falsehood, not when by such force and violence is compelled to tell the truth." This ruling was followed in a number of cases.[5]

But the ruling in *Moncado vs. People's Court, et al.*, 80 Phil. 1, which was the basis of the leading case of *People vs. Delos Santos, supra*, was overruled in the case of *Stonehill vs. Diokno* (20 SCRA 383, June 19, 1963), holding that evidence illegally obtained is not admissible in evidence. So, We reverted to the original rule. As stated by this Court, speaking through Justice Teehankee in *People vs. Urro* (44 SCRA 473, April 27, 1972), "involuntary or coerced confessions obtained by force or intimidation are null and void and are abhorred by law which proscribes the use of such cruel and inhuman methods to secure a confession." "A coerced confession stands discredited' in the eyes of the law and is as a thing that never existed." The defense need not prove that its contents are false. Thus, We turned full circle and returned to the rule originally established: in the case of *U.S. vs. Delos Santos*, 24 Phil. 323 and *People vs. Nishishima*, 42 Phil. 26. (See also *People vs. Imperio*, 44 SCRA 75).

It must be noted that all these Philippine cases refer to coerced confessions, whether the coercion was physical, mental and or emotional.

In the meantime, the United States Supreme Court decided, the following cases: *Massiah vs. United States* (377 U.S. 201, 1964), *Escobedo vs. Illinois* (378 U.S. 478, 1964); and *Miranda vs. Arizona* (384 U.S. 436, 1966). In *Miranda vs. Arizona*, it was held:

"To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege* [384 US 479]* and unless other tully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warning have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree lo answer questions or make statement. But unless and until such warning and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." (*Miranda vs. Arizona, supra*, p. 478) [Italics Supplied]

When invoked in this jurisdiction, however, the *Miranda* rule was rejected by this Court. In the cases of *People vs. Jose* (37 SCRA 450, February .6, 1971) and *People vs. Paras* (56 SCRA 248, March 29, 1974), We rejected the rule that an extrajudicial confession given without the assistance of counsel is inadmissible in evidence. This Court in the *Jose* case (as in the *Paras* case), held:

"The inadmissibility of his extrajudicial statements is likewise being questioned by Jose on the other ground lhat he was not assisted by counsel during the custodial interrogations. He cites the decisions of the Supreme Court of the United States in *Massiah vs. U.S.* (377 U.S. 201). *Escobedo vs. Illinois* (37 U.S. 478) and *Miranda vs. Arizona* (384 U.S. 436),"

"The provision of the Constitution of the Philippines in point is Article III (Bill of Rights), Section 1, par. 17 of which provides: 'In all criminal prosecutions the accused shall x x x enjoy the right to be heard by himself and counsel x x x.' While the said provision is identical to that in the Constitution of the United States, in this

jurisdiction the term criminal prosecutions was interpreted by this Court in *U.S. vs. Beechman*, 23 Phil. 258 (1912), in connection with a similar provision in the Philippine Bill of Rights (Section 5 of Act of Congress of July 1, 1902), to mean proceedings before the trial court from arraignment to rendition of the judgment. Implementing the said Constitutional provision, We have provided in Section 1, Rule 1 15 of the Rules of Court that 'In all criminal prosecutions the defendant shall be entitled x x x (b) to be present and defend in person and by attorney at every stage of the proceedings, that is, from the arraignment to the promulgation of the judgment.' The only instances where an accused is entitled to counsel before arraignment. If he so requests, are during the second stage of the preliminary investigation (Rule 1 12, Section 11) and after the arrest (Rule 113, Section 18). The rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached hereto at the time of the adoption thereof should be considered. And even there the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above-cited cases." (*People vs. Jose*, supra, at page 472)

The Constitutional Convention at the time it deliberated on Section 20, Article IV of the New Constitution was aware of the Escobedo and Miranda rule which had been rejected in the case of Jose. That is the reason why the Miranda-Escobedo rule was expressly included as a new right granted to a detained person in the present provision of Section 20, Article IV of the New Constitution.

When Delegate de Guzman (A) submitted the draft of this Section 20, Article IV to the October 26, 1972 meeting of the 17-man committee of the Steering Council, Delegate Leviste (O) expressly made of record that "we are adopting here the rulings of US Supreme Court in the Miranda-Escobedo cases." And We cannot agree with the insinuation in the dissenting opinion of Justice Castro that the Delegates did not know of the existence of the second paragraph of Art. 125 of the Revised Penal Code.

Hence, We repeat, this historical background of Section 20, Article IV of the New Constitution, in Our considered opinion, clearly shows that the new right granted therein to a detained person to counsel and to be informed of such right under pain of his confession being declared inadmissible in evidence, has and should be given a prospective and not a retroactive effect. It did not exist before its incorporation in our New Constitution, as We held in the Jose and Paras cases, supra.

The authors of the dissenting opinions ignore the historical fact that the constitutional and legal guarantees as well as the legal precedents that insure that the confession be voluntary, underwent a slow and tedious development. The constitutional guarantee in question might indeed have come late in the progress of the law on the matter. But it is only now that it had come under Section 20 of Article IV of the 1973 Constitution. That is all that our duty and power ordain Us to proclaim; We cannot properly do more.

Furthermore, to give a retroactive effect to this constitutional guarantee to counsel would have a great unsettling effect on the administration of justice in this country. It may lead to the acquittal of guilty individuals and thus cause injustice to the People and the offended parties in many criminal cases where confessions were obtained before the effectivity of the New Constitution and in accordance with the rules then in force although without assistance of counsel. The Constitutional Convention could not have intended such a disastrous consequence in the administration of justice. For if the cause of justice suffers when an innocent person is convicted, it equally suffers when a guilty one is acquitted.

Even in the United States, the trend is now towards prospectivity. As noted in the memorandum of the Solicitor General:

"x x x That survey indicates that in the early decisions rejecting retroactivity, the United States Supreme Court did not require 'pure prospectivity'; the new constitutional requirements there were applied to all cases still

pending on direct review at the time they were announced. (See *Linkletter vs. Walker*, 381 U.S. 618 (1965) (on admissibility of illegally- seized evidence); *Tehan vs. Shott*, 382 U.S. 406 (1966) (on the self- incrimination rule of *Griffin vs. California*, 380 U.S. 609 (1965)). But the Court began a new course with *Johnson vs. New Jersey*, 384 U.S. 719(1966). It departed from *Linkletter* and *Tehan* and came closer to "pure prospectivity" by refusing to permit cases still pending on direct review to benefit from the new in-custody interrogation requirements of *Miranda vs. Arizona*. As Chief Justice Warren observed in *Jenkins vs. Delaware*, 395 U.S. 213 (1969), "With *Johson* we began increasing emphasis upon the point at which law enforcement officials relied upon practices not yet prescribed." "More recently,the continued, "we have selected the point of initial reliance." That development began with *Stovall vs. Denno*, 388 U.S. 293 (1967) (on the line-up requirements of *United States vs. Wade*, 388 U. S. 218 (1967) and *Gilbert vs. California*, 388 U. S. 263 (1967). These new rulings were held applicable only in the immediate cases "and all future cases which involve confrontation for identification purposes conducted in the absence of counsel after the dates of *Wade* and *Gilbert*. "The fact that *Wade* and *Gilbert* were thus the only beneficiaries of the new rules was described as an "unavoidable consequence of (he necessity that constitutional adjudications not stand as mere dictum." In *Jenkins vs. Delaware* itself, the Court held that the *Miranda* requirement did not apply to a re-trial after June 13, 1966 — the cut-off point set for the *Miranda* requirement by *Johnson vs. New Jersey* — because *Jenkin's* original trial had begun before the cut- off point.

"Thus, the remarkable thing about this development in judge-made law is not that it is given limited retroactive effort. That is to be expected in the case of judicial decision as distinguished from legislation. The notable thing is that the limited retroactivity given to judge-made law in the beginning by *Linkletter vs. Walker* has been abandoned as the Supreme Court in *Johnson vs. New Jersey* and in *Jenkins vs. Delaware* moved toward "pure prospectivity." (pp. 26-28) (Respondents' memorandum, Feb. 16, 1974)

The provision of Article 22 of the Revised Penal Code that:

"Retroactive effect of penal laws. — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same,"

is not applicable to the present cases: First, because of the conclusion We have arrived at that the constitutional provision in question has a prospective and not a retrospective effect, based on the reasons We have given; second, because the "penal laws" mentioned in Article 22 of the Revised Penal Code refer to substantive penal laws, while the constitutional provision in question is basically a procedural rule of evidence involving the incompetency and madmissibility of confessions and therefore cannot be included in the term "penal laws";[6] and third, because constitutional provisions as a rule should be given a prospective effect.[7]

Even as We rule that the new constitutional right of a detained person to counsel and to be informed of such right under pain of any confession given by him in violation thereof declared inadmissible in evidence, to be prospective, and that confessions obtained before the effectivity of the New Constitution are admissible in evidence against the accused, his fundamental right to prove that his confession was involuntary still stands. Our present ruling does not in any way diminish any of his rights before the effectivity of the New Constitution.

IN VIEW OF ALL THE FOREGOING, the petitions for writs of certiorari in G. R. Nos. L-37201-02 and G.R. No. L-37424 are denied and that in G.R. No. L-38929 is granted. As a consequence, all the confessions involved in said cases are hereby declared admissible in evidence. No costs.

Makalinial, C.J., Barredo, Makasiar, Esguerra, Muñoz Palma, and Aquino, JJ., concur.

Castro, Fernando, Teehankee, and Antonio, JJ., dissent in separate opinions.

[1] We here limit Ourselves to a discussion of this right to counsel and to be informed of such right, because that is the only principal issue in these cases, and that is the only new right given to an accused by The New Constitution with respect to extrajudicial confessions. Under the Old Constitution, there was already the provision that no person shall be compelled to be a witness against himself (Art. III, Section 1 (18)); this right included the right to remain silent (U.S. vs. Luzon, 4 Phil. 343); and confessions obtained through force, violence, threat, intimidation or any other means which vitiates the free will were already declared inadmissible against an accused person in a number of Our decisions to which We shall refer in the course of this opinion, although they were raised into the category of a constitutional mandate under Section 20, Article IV of the New Constitution.

[2] Petitioner Magtoto was accused in Criminal Cases Nos. 394 and 395 (CTI of Occidental Mindoro) of murder for the death of Ignacio Calara and Eduardo Calara in two informations both dated February 23, 1973; and during the joint trial of these cases, his extrajudicial confession dated November 15, 1972 was, in the Court's order of June 18, 1973, admitted in evidence over the objection of the defense on the ground that it was taken while the accused was in the preventive custody of the PC without his having been informed of his right to remain silent and to counsel.

[3] The petitioners were accused of murder for the death of Pedro Langaoen in Criminal Case No. CCC-VII 87, Rizal. When arraigned on November 25, 1972, they pleaded not guilty, their extrajudicial confessions, obtained without the benefit of counsel were taken on October 17, 1970, and presented during the trial held on June 2, 1973 and admitted in the Court's order of August 16, 1973.

[4] In G.R. No. 1,-38929, the respondents Vicente Longakit and Jaime Dalion were both accused in Criminal Case No. 4113 of the Court of First Instance of Zamboanga del Sur for robbery with homicide. The information is dated February 6, 1970. The extrajudicial confession of Longakit was executed on November 7, 1968, while his additional confession was executed on September 1, 1970, without his having been informed of his right to counsel; and they were offered in evidence during the trial and rejected by the Court on June 18, 1974. In this case, nothing was mentioned of any extrajudicial confession of the co-accused and co-respondent Jaime Dalion.

[4-a] "While from the purely evidentiary standpoint, a confession may be truthful even if coerced; yet it must not be overlooked that extraction of such a confession infringes the constitutional guarantees of due process and the inhibition against compulsory self-incrimination (Const., Art. III, Sec. I (1 and 18)) that are among the touchstones dividing democratic from totalitarian methods, and that the violation of these Constitution prescriptions suffices to render the coerced confession objectionable." (People vs. Castro, 11 8SCRA 699, 710).

[5] People vs. Tiongson, G.R. No. L-6872, May 21, 1955; People vs. Dizon, G.R. No. 1,-8336, July 30, 1957; People vs. Garcia, L-8289, May 29, 1957; People vs. Frias, G.R. No. L-13767, July 30, 1960.

[6] "As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished." (22 C.J.S. 49; Bustos vs. Lucero, 81 Phil. 640, 650).

[7] Vide. Black on Interpretation of Laws, 2d Ed., p. 26, citing City of Shreveport vs. R. T. Cole, et al, 129 US 36; San Antonio vs. San Antonio Public Service Co., 255 US 547; also Cooley, Constitutional Limitation, 8[th] Ed., Vol. I, pp. 136, 137.

DISSENTING OPINION

CASTRO, J.,:

The burden of this dissent is my considered view that the particular provision of Section 20 of Article IV of the 1973 Constitution which invalidates a confession obtained during custodial interrogation from a detained person who at such interrogation was not afforded the assistance of counsel, should operate retrospectively as of June 15, 1954 when Republic Act 1083 introduced the second paragraph of Article 125 of the Revised Penal Code recognizing the right of a detained person to counsel in any custodial inquest. I am thus distressed by, and consequently am in sharp disagreement with, the following doctrines expostulated in the majority opinion of Justice Estanislao A. Fernandez and in the concurring opinion of Justice Felix Q. Antonio:

(a) "Section 20, Article IV of the new Constitution granted, for the first time, to a person under investigation for a commission of an offense, the right to counsel and to be informed of such right."

(b) "In most areas, police investigators are without modern and sophisticated instruments for criminal investigation. Many grave felonies have been unsolved because of the absence or unavailability of witnesses. In such cases it is obvious that the custodial interrogation of suspects would furnish the only means of solving the crime."

(c) "The law existing at the time of the adoption of the new Constitution, as construed by this Court in *People vs. Jose*, considered admissible an extrajudicial statement of the accused obtained during custodial interrogation, without assistance of counsel. This decision forms part of the legal system in this jurisdiction."

1. The second paragraph of Article 125 of the Revised Penal Code provides:

"In every case the person detained shall be informed of the cause of his detention and shall be allowed upon his request to communicate and confer at any time with his attorney or counsel."

Misreading the intendment of this provision, the majority of my brethren are of the literal view that the "only right granted by the said paragraph to a detained person was to be informed of the cause of his detention," and that a detained person "must make a request for him to be able to claim the right to communicate and confer with counsel at any time." I regard this interpretation as abhorrent because it gravely offends against the provisions of the 1935 Constitution as well as of the 1973 Constitution that guarantee equal protection of the laws to every person in the realm. I am persuaded that only a handful of the more than forty million inhabitants of this country actually know the provisions of the second paragraph of Article 125, notwithstanding the mischievous legal fiction that everyone is conclusively presumed to know the law. I would even venture the opinion that at least 95% of the Filipino people are not even aware of the existence of this paragraph. As a matter of fact, at the hearing of *Magtoto vs. Manguera* and *Simeon vs. Villaluz*, it was my distinct impression that many of those in attendance thereat, lawyers and laymen alike, became aware of the existence of the paragraph then and only then for the first time in their lives. If many full-fledged lawyers with years upon years of practice behind them are not aware of the said paragraph, can we expect the great bulk of the population of the Philippines, whose experience has been limited to occasional brushes with the uniformed "strong arm" of the law (and not with the law itself), to know of its existence? So that in effect the majority interpretation would give the right to counsel at a custodial inquest to only the choice few who happen to know the provisions of the law and have the courage or the temerity to invoke it in the menacing presence of peace officers, and in the same breath deny the beneficence of those provisions to all others. The poor, the ignorant and the illiterate who do not know the rudiments of law would be at an overriding disadvantage as against the informed few.

An accurate paraphrase of the majority view may be stated in the following words: "If this detained wretch asserts

his right to counsel, I will allow him to communicate and confer with a lawyer of his choice. But if he says none because he is unlettered or uninformed, I am under no moral or legal obligation to help him because, standing mute, he has no right to counsel." The , absurdity so implicit in these words strikes terror in me at the same time that it saddens me, for it not only denies the poor and the unschooled the equal protection of the laws but also inflicts a horrendous indignity on them solely because of their poverty, ignorance or illiteracy. The cogent remark of the late Senator Mariano Jesus Cuenco, truly a man of wisdom and experience, when Republic Act 1083 as a bill was under discussion in the Senate, that a detained person in every custodial interrogation should, under the proposed amendment, be informed beforehand of his right to counsel, was therefore not a mere wisp of wind, but was indeed a warning most pregnant with meaning. The statement by the majority that Cuenco's remark reflects only his personal opinion is too simplistic.

Twenty centuries ago, our Lord Jesus Christ articulated the first recorded concept of social justice when he admonished his disciples that "the poor will always be with you." Two decades ago President Ramon Magsaysay expressed the concept of social justice in his own phrase: "He who has less in life should have more in law." And President Ferdinand E. Marcos, expounding his own concept of a "compassionate society," has only one emphasis: the balancing of the scales between the affluent and the poor. The meaning given by the majority to the second paragraph of Article 125 not only completely denigrates all concepts of social justice I have imbibed, for it accords the right to counsel in custodial interrogation only to an informed few and denies it to the great masses of the nation, but also would result in a grossly uneven and largely fortuitous application of the law.

I regard as intolerable in a civilized nation, which proclaims equal justice under law as one of its ideals, that any man should be handicapped when he confronts police agencies because of the happenstance that he is poor, underprivileged, unschooled or uninformed. The majority interpretation does violence to the democratic tradition of affording the amplest protection to the individual — any and every individual — against the tyranny of any governmental agency. It should be unthinkable that an innocent man may be condemned to penal servitude or even sent to his death because he is not blessed with familiarity with the intricacies of he law.

I am thus of the firm view that the second paragraph of Article 125 makes it an obligation on the part of any detaining officer to inform the person detained of his right to counsel before the very inception of custodial inquest, and that this obligation was made a statutory one as early as in the year 1954, So I consider it an error to say that Section 20 of Article IV of the 1973 Constitution granted, for the first time, the right to counsel to a person under custodial interrogation.

Without making any reference to the minutes of any proceedings of the 1971 Constitutional Convention, Justice Fernandez, who himself was a Delegate to the said convention, attests that the Convention articulated the Miranda- Escobedo doctrine of the United States Supreme Court, as a "new right" granted to a detained person, in Section 20 of Article IV of the 1973 Constitution. He cites the submission by Delegate de Guzman of the draft of the said Section 20 to the October 26, 1972 meeting of the 17-man committee of the Steering Council of the Convention, at which time "Delegate Leviste expressly made of record that 'we are adopting here the ruling of the US Supreme Court in the Miranda-Escobedo cases.'" This sketchy statement is all the advertence made by Justice Fernandez to the proceedings of the 1971 Constitutional Convention upon the issue at bar. Considering the curiously remarkable paucity of the discussion made by Justice Fernandez, I am at a loss to determine whether the delegates who had anything to do with the draft of Section 20 of Article IV knew at all of the existence of the second paragraph of Article 125, or, if they were aware of its existence, whether they really knew what the paragraph meant and signified vis-a-vis the Miranda-Escobedo doctrine. I am more inclined to believe that the delegates, if indeed they were aware of the existence of the said second paragraph, completely overlooked it, or chose to consider it as at par with the Miranda-Escobedo doctrine and decided to elevate it to the primacy of a

constitutional mandate, the better to insulate it from the passing frenzies of temporary majorities.

2. The concurring opinion notes that "in most areas, police investigators are without modern and sophisticated instruments for criminal investigation. Many grave felonies have been unsolved because of the absence or unavailability of witnesses. In such cases it is obvious that the custodial interrogation of suspects would furnish the only means of solving the crime." That most of our police agencies are superannuated, is undeniable. But I am amused, and also at the same time outraged, by the implication therefrom that "custodial interrogation of suspects," in such an environment, "would furnish the only means of solving the crime." If I understand the size and shape of this implication, Justice Antonio is of the view that until our police agencies are freed from the confining limits of their antiquated methods and ancient equipment, custodial interrogation of detained persons, without the benefit of counsel, would "furnish the only means of solving" crimes in this jurisdiction. The validity of this view is of course to be seriously doubted. Conversely, does this mean that if a detained person has the assistance of counsel, custodial interrogation would cease to be an effective means of solving the crime?

I hold no brief against custodial interrogation per se. But I do entertain mortal fear that when a detained person is subjected, without the assistance of counsel, to custodial interrogation by peace officers, official lawlessness could be the rule and not the exception. Witness the innumerable cases in the annals of adjudication where this Court has set at naught and declared inadmissible confessions obtained from detained persons thru official lawlessness. It is a verity in the life of our nation that people without influence and without stature in society have, more often than not, been subjected to brutal and brutalizing third-degree methods, if not actually framed, by many police agencies in this country. Instead of blinking our eyes shut to this reality, we must recognize it for what it is.

I am completely conscious of the need for a balancing of the interests of society with the rights and freedoms of the individual. I have advocated the balancing-of-interests rule in all situations which call for an appraisal of the interplay of conflicting interests of consequential dimensions. But I reject any proposition that would blindly uphold the interests of society at the sacrifice of the dignity of any human being.

3. I do not ascribe any significance to the statement made by this Court in *People vs. Jose* that an extra-judicial confession given without the assistance of counsel is not necessarily inadmissible in evidence. This ruling, if it can be construed as a ruling, is, to my mind, unmitigated obiter, since it was absolutely unnecessary to the Court's affirmance of the conviction of the accused in *People vs. Jose*. If one were to read critically and with discernment the entire decision in *People vs. Jose*, one would inescapably see it crystal-clear that the conviction of the accused was based entirely on the inculpatory declarations in court of the offended party Maggie de la Riva. Their conviction was a necessary consequence not because of their confessions but in spite of them.

4. If I understand my jurisprudence in criminal adjective law, it would appear to me that an extrajudicial confession, of and by itself alone, has never been regarded as a proper basis for conviction. I am not aware of any decision of this Court which affirmed the conviction of an accused solely and exclusively on the basis of his written confession obtained during custodial interrogation. To the contrary, my abiding impression is that extrajudicial confessions have been adduced in criminal trials as mere corroboration of other evidence independently establishing the guilt of the accused. Courts have generally been reluctant to convict on the strength of extrajudicial confessions alone. This is quite understandable. Judges generally recognize human frailties and know the realities of life, and one of these realities is that many police agencies have been prone, as a most facile way out of their inadequacies, to extract confessions by force from detained persons during custodial interrogation. This is why in the process of adjudication in criminal cases, courts have invariably required presentation of evidence of guilt other than and independent of the extrajudicial confession of the accused.

I cannot comprehend the apprehension of some of my brethren that a retrospective application of the particular provision of Section 20 of Article IV of the 1973 Constitution relating to the inadmissibility of a confession obtained from a detained person during custodial interrogation without the assistance of counsel, would, in the language of the majority opinion, "have a great unsettling effect in the administration of justice in this country," and, in the phrase of the concurring opinion, "have an impact upon the administration of criminal law so devastating as to need no elaboration." Giving due allowance for the hyperbolic and rather extravagant expressions used, I say that the Court need not entertain such fears, which indeed are more fancied than real. If and when called upon to review any criminal conviction since June 15, 1954, the Court need merely examine the record for independent credible evidence, other than the extra-judicial confession of the accused, proving guilt beyond reasonable doubt. Indeed, the Court has always regarded extra-judicial confessions as merely and essentially corroborative in nature, never as primary or exclusive inculcating proof.

Perhaps, my brethren may not begrudge this paraphrase of Justice William Douglas as a conclusion to this dissent: the rights of none are safe unless the rights of all are protected; even if we should sense no danger to our own rights because we belong to a group that is informed, important and respected, we must always recognize that any code of fair play is also a code for the less fortunate.

DISSENTING OPINION

FERNANDO, J., :

It is the difficulty, rather marked in my case, of reconciling the policy of the Constitution regarding the admissibility of confessions obtained during custodial interrogation, as set forth in language forthright and categorical, that precludes my yielding conformity to the conclusion reached by my brethren. Regretfully, with recognition and awareness of the plausibility from its basic approach that characterizes the lucid and exhaustive opinion of Justice Fernandez, I must dissent. My starting point is the recognition of the power of the Constitutional Convention to impose conditions that must be fulfilled before a duty is cast on a court to allow a confession to form part of the records of the case and that such power was in fact exercised. So I read the last sentence of the provision in question: "Any confession obtained in violation of this section shall be inadmissible in evidence."^[1] The words cannot be any clearer, A judge is bereft of the competence, even if he were so minded, to impress with admissibility any confession unless the person under investigation was informed of his right to remain silent and his right to counsel.^[2] Absent such a showing, whatever statement or admission was obtained during such stage of custodial interrogation is a worthless piece of paper. So the Constitution commands. It speaks in no uncertain terms from and after January 17, 1973 when it became effective. The crucial date is not when the confession was obtained, but when it was sought to be offered in evidence. Parenthetically, such a mode of viewing the issue would indicate the irrelevancy of the question of prospectivity. To repeat, there is no imprecision in the terminology of the fundamental law. It is quite emphatic in its choice of the phrase, "inadmissible in evidence." This then is, for me at least, one of those cases where, to paraphrase Justice Moreland, the judicial task is definitely indicated, its first and fundamental duty being to apply the law with the Constitution at the top rung in the hierarchy of legal norms. Interpretation therefore comes in only after it has been demonstrated that application is impossible or inadequate without its aid.^[3]

Assume, however, that the need for construction is unavoidable, it is my submission that the compulsion exerted by the specific wording of the above provision, its historical background with particular reference to the explicit adoption of the Philippines of the Miranda decision^[4] of the United States Supreme Court and the policy to be pursued in line with the avowed objective to vitalize further the rights of an accused, the present Constitution

reflecting, to borrow from Frankfurter, a more progressive standard of criminal justice, calls for a decision other than that reached by the Court. Hence this dissent.

1. The authoritative force inherent in the specific language employed by the Constitution is a fundamental rule of construction. As was expressed in *J. M. Tuason & Co., Inc. v. Land Tenure Administration*:^[5] "We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. *** What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum."^[6] I am of the belief that this is one of them. The provision, to my mind, leaves no doubt as to what is intended. Its meaning is crystal-clear. I fail to discern any ambiguity. What it prohibits then cannot be countenanced. Its categorical wording should control. No confession contrary to its tenor is admissible after January 17, 1973. That conclusion I find inescapable.

2. Even if there were less certitude in its wording, the conclusion, to my mind, would not be any different. So it must be, if we pay heed to history, one of the extrinsic aids to constitutional construction. This is to acknowledge, in the terminology of Cardozo, the force of tradition.^[7] It is to defer to what has been aptly termed by Holmes "the felt necessities of the time."^[8] To recall Justice Tuason, the state of affairs existing when the Constitution was framed as reflected in the operative principles of law is not to be ignored."^[9] It supplies the needed illumination when things are shrouded in mist. Such is not the case at all, as was made clear in the preceding paragraph. Even if it were so, the trend of authoritative decisions of recent date is unmistakable. Confessions are carefully scrutinized and if, in the language of *People v. Bagasala*,^[10] suffering in any wise from "coercion whether physical, mental, or emotional" are impressed "with inadmissibility."^[11] The opinion continues: "What is essential for its validity is that it proceeds from the free will of the person confessing."^[12] It is not just a happy coincidence that *Bagasala* was promulgated on May 31, 1971, one day before the Constitutional Convention met. In March of 1972, while it was in session, this Court in a unanimous opinion by Justice Makasiar in *People v. Imperio*^[13] rejected confessions on a showing of circumstances neutralizing their "voluntary character."^[14] The next month, in *People v. Urro*,^[15] cited in the opinion of the Court, Justice Teehankee as ponente stressed: "A coerced confession 'stands discredited in the eyes of the law and is as a thing that never existed.'^[16] Further: "In any case, the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to alleged voluntary confessions of the accused and the courts should be slow to accept such confessions unless they are corroborated by other testimony."^[17] Nothing is clearer therefore than that during the period this provision was under consideration by the Convention, the juridical atmosphere was permeated by healthy skepticism, at times downright distrust, whenever confessions were relied upon by the prosecution, there being an insistence, as was but proper, that they should be unmarred by any taint of impairment of will. So it has been from the later sixties.^[18]

To complete the picture, just shortly before the parties in *Magtoto* and *Simeon*, were heard in oral argument, in the closing days of November, 1973, in *People v. Saligan*,^[19] Justice Castro could speak thus for a unanimous Court: "It is worthy of note that the trial fiscal was in the correct frame of mind when he recognized the importance of demonstrating the culpability of the defendant by evidence, apart from the latter's plea of guilty. Unfortunately, however, the fiscal did not follow through. His offer of the extrajudicial confession of the defendant as evidence of the latter's guilt and the trial court's admission thereof do not afford us comfort in the discharge of our task. For, having rejected the judicial confession of guilt of the defendant (his plea of guilty) on the ground that the manner of his arraignment does not exclude the possibility of improvidence in its entry, we can do no less with regard to his extrajudicial confession, the same not having been properly identified nor shown

to have been freely and voluntarily executed." [20]

Thus is the indispensability of proof of the voluntariness of a confession underscored in a decision rendered after the effectivity of the Constitution. To repeat, even if the applicable provision were not free from doubt as to its literal command, history, I would think, supplies the answer. It sustains the plea for inadmissibility.

3. Reference to the epochal American Supreme Court decision in *Miranda v. Arizona* [21] is not amiss. The issue therein raised concerned the admissibility of statements from an individual under police custody, considering that under such a time and under the stress of such conditions, he would be hard put not to admit incriminatory matters. The American Supreme Court, through Chief Justice Warren, held that such statements made during the period of custodial interrogation to be admissible require a clear, intelligent waiver of constitutional rights, the suspect, being warned prior to questioning that he has a right to remain silent, that any utterance may be used against him, and that he has the right to the presence of an attorney, either retained or appointed. The *Miranda* doctrine as set forth in Chief Justice Warren's opinion, is to this effect: "Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of those rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned." [22] The delegates to the Constitutional Convention, many of them lawyers, were familiar with this ruling announced in 1966. Concerned as they were with vitalizing the right against self-incrimination, they advisedly used words that render unmistakable the adoption of the *Miranda* doctrine. It would be then, in my opinion, to betray lack of fidelity to the objective thus revealed if any other interpretation were accorded this provision than that of conformity to its express terms. No juridical difficulty is posed by this Court's holding in *People v. Jose*, [23] decided in 1971, that rejected the applicability of the *Miranda* doctrine. Precisely it must have been partly the dissatisfaction by the Constitutional Convention with the doctrine announced that led to its inclusion with its express prohibition against the admission of confessions so tainted, without any qualification as to when it was obtained. All that it means then is that henceforth *People v. Jose* and the latter case of *People v. Paras* [24] are bereft of any persuasive force. This is so not because of a change of judicial attitude but because of the express language of the present Constitution. [25]

4. Now as to the question of policy. It is submitted, with respect, that the interpretation adopted by the Court affords less than hospitable scope to a categorical command of the present Constitution without, to my way of thinking, deriving support from any overriding consideration from the standpoint of an efficient administration of justice. Would it not amount then to frustrating the evident end and aim of such constitutional safeguard? For it does appear that the Convention, in manifesting its will, had negated any assumption that criminal prosecution would thereby be needlessly hampered. The memorandum of Solicitor General Estelito Mendoza and Assistant

Solicitor General Vicente Mendoza, commendable for its thoroughness, cites an American leading decision, *McNabb v. United States*.^[26] It does not lend support to their plea, which merited the approval of my brethren. It is a blade that cuts both ways. Witness these words in the opinion of Justice Frankfurter: "Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard — not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' Manguera which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime. It reflects not a sentimental but a sturdy view of law enforcement. It outlaws easy but self-defeating ways in which brutality is substituted for brains as an instrument of crime detection."^[27]

So I would view the matter and thus reach a conclusion different from that of the Court. This is not to discount the possibility that it may be a little more difficult to obtain convictions. Such a misgiving informs the prevailing opinion. It seems to me, again with due respect, that a reaction of that sort, while not groundless, may have an element that goes beyond the bounds of permissible exaggeration. Even if, as I would have it, the confessions in question are deemed inadmissible in accordance with the specific wording of the provision under scrutiny, it does not follow that the efforts of the prosecution are effectively stymied. It would be, to my way of thinking, an undeserved reflection on that arm of the government if the only way it could prove guilt is to rely on confessions, especially so when, as is quite apparent from the early sixties, the trend in judicial decisions has been as is quite proper to scrutinize them with care to erase any lurking doubt or suspicion as to their having been obtained by coercion, either physical or psychological. Only thus may be truthfully said that there is full respect for the constitutional mandate that no person shall be compelled to be a witness against himself.^[28]

5. It is by virtue of the above considerations that I am compelled to differ. Certainly this is not to imply lack of awareness of the merits of the opinion of the Court. It is only that for me the countervailing considerations are much more persuasive. There is the apprehension that to postpone the effectivity of the provision in question by a construction that looks for meaning outside its borders may at least during such time devitalize its essence. Under the circumstances then, I could not be as one with my brethren. It is not unusual that the vote of a Justice reflects his deeply-held convictions. Much more so in constitutional law where it can truly be said that it may not be a matter of right or wrong but of means and ends. As was so succinctly and aptly put by Justice Malcolm: "Most constitutional issues are determined by the court's approach to them."^[29] I am the first to admit then that viewed from the inarticulate major premise, which, as pointed out by Justice Holmes, is often decisive, of what in Packer's terminology is the Crime Control Model in the administration of criminal statutes that I discern in the opinion of the Court, the conclusion reached is both logical and inevitable. I am unable however to overcome what undoubtedly for some may be a predilection for what in his value system lies at the other end of the spectrum, the Due Process Model, that for me conduces most to an effective maintenance of the cluster of the constitutional rights of an accused person. In the eloquent language of Justice Black: "No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution — of whatever race, creed or persuasion."^[30] So it will be in due time, even with this decision. Soon, hopefully, the lower courts will no longer be confronted with confessions obtained before the effectivity of the Constitution but offered in evidence thereafter. So with more reason, I am led to conclude, if eventually it has to be thus, why not now?

[1] Article IV, Section 20 of the Constitution reads: "No person shall be compelled to be a witness against

himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him.

Any confession obtained in violation of this section shall be inadmissible in evidence."

[2] It is admitted in the opinion of Justice Fernandez that the right to remain silent has always been an aspect, one of great significance, in the guarantee against self-incrimination. This is not unexpected for as counsel in the leading case of *Chavez v. Court of Appeals*, L-29169, August 19, 1968, 24 SCR.A 663. he argued most persuasively for its being deferred to and respected. Moreover, then and now again in his opinion, he could trace its origin to *United States v. Luzon*, 4 Phil. 343, a 1905 decision.

[3] Cf. *Lizarraga Hermanos v. Yap Tico*, 24 Phil. 504, 513 (1913).

[4] *Miranda v. Arizona*, 384 US 436 (1966).

[5] L-21064, February 18, 1970. 31 SCRA 413.

[6] *Ibid.*, 422-423.

[7] Cf. Cardozo, *The Nature of Judicial Process*, 127-132 (1921).

[8] Holmes. *The Common Law* 1 (1881).

[9] Cf. *De los Santos v. Mallare*, 87 Phil. 289 (1950).

[10] L-26182. May 31, 1971, 39 SCRA 236.

[11] *Ibid.*, 242.

[12] *Ibid.*

[13] L-26194. March 29, 1972, 44 SCRA 75.

[14] *Ibid.*, 85.

[15] L-28405. April 27, 1972. 44 SCRA 473.

[16] *Ibid.*, 484. Citing *United States v. De los Santos*, 24 Phil. 329 (1913)

[17] *Ibid.*

[18] Cf. *People v. Manobo*, L-19798, Sept. 20, 1966, 18 SCRA 30; *People v. Chaw*, L-19590. April 25, 1968, 23 SCRA 127; *Chavez v. Court of Appeals*, L-29169, Aug. 19, 1968, 24 SCRA 663; *People v. Alto*, L-18661, Nov. 29, 1968, 26 SCRA 342; *Pascual v. Board of Medical Examiners*, L-25018, May 26, 1969, 28 SCRA 344; *People v. Gande*, L-28163. Jan. 30, 1970, 31 SCRA 347.

[19] L-35792, November 29, 1973, 54 SCRA 190.

[20] *Ibid.*, 195-196.

[21] 384 US 436 (1966). Even before *Miranda*, the trend appears to be towards a much more exacting scrutiny of the voluntariness of confessions. Cf. *Brown v. Mississippi*, 297 US 278 (1936); *Chambers v. Florida*, 309 US 227 (1940); *Lisenba v. California*, 314 US 219 (1941); *Ashcraft v. Tennessee*, 322 US 143 (1944); *Malinski v. New York*, 324 US 401 (1945); *Lee v. Mississippi*, 332 US 742 (1948); *Williams v. United States*, 341 US 97 (1951); *Rochin v. California*, 342 US 165 (1952); *Leyra v. Denno*, 347 US 556 (1954); *Pennsylvania v. Claudy*, 350 US

116 (1956); *Payne v. Arkansas*, 356 US 560 (1958); *Blackburn v. Alabama*, 361 US 199 (1960); *Rogers v. Richmond*, 365 US 534 (1961); *Reck v. Pate*, 367 US 433 (1961); *Mapp v. Ohio*, 367 US 643 (1961); *Gallegas v. Colorado*, 370 US 49 (1962); *Shotwell Manufacturing Co. v. United States*, 371 US 341 (1963); *Fay v. Noia*, 372 US 391 (1963); *Lynum v. Illinois*, 372 US 528 (1963); *Brady v. Maryland*, 373 US 83 (1963); *Malloy v. Hogan*, 378 US 1 (1964); *Jackson v. Denno*, 378 US 368 (1964); *Escobedo v. Illinois*, 378 US 478 (1964).

[22] *Ibid.*, 444-445. There were dissents from Justices Clark, Harlan, White and Stewart.

[23] L-28232. February 6, 1971, 37 SCRA 450.

[24] L-23111, March 29, 1974, 56 SCRA 248.

[25] Again there can be no dispute as to the competence of the Constitutional Convention setting aside and discarding rulings of this Court which failed to meet its approval. To cite one conspicuous instance, it was held by this Court in a March, 1972 decision. *Martinez v. Morfe*, L-34022, reported in 44 SCRA 22. that the parliamentary privilege of freedom from arrest under the 1935 Constitution did not cover criminal prosecutions. This, in spite of the brilliant advocacy of counsel for the Constitutional Convention, then Delegate, now Justice. Estanislao Fernandez. What happened next? The Convention, under his leadership, decided to amend the provision so that now it reads: "A. Member of the National Assembly shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its sessions, and in going to and returning from the same; but the National Assembly shall surrender the Member involved to the custody of the law within twenty-four hours after its adjournment for a recess or for its next session, otherwise such privilege shall cease upon its failure to do so ***." Article VIII, Section 9 of the Constitution.

[26] 318 US 332 (1943).

[27] *Ibid.*, 343-344.

[28] It is to the credit of the opinion of Justice Fernandez that he cited the concurrence of Justice Butte in *People v. Nishisima*, 57 Phil. 26 (1932), with its exhortation of involuntary confessions which should be "declared incompetent and are therefore utterly futile ***." At 51. It is understandable why therein reference was made to what for some scholars is an aberration in Philippine decisional law, *People v. De los Santos*, 93 Phil. 83 (1953), with its seeming approval of the employment of force or violence as long as it is utilized to obtain the truth. At any rate, as admitted by the ponente, there has been a repudiation of such a doctrine which should never have been even announced in the first place contrary as it is to the mandate that no person shall be compelled to be a witness against himself. It can then be looked upon as a derelict in the sea of the law. To vary the figure of speech and to borrow from Justice Street in *Bachrach Motors Co. v. Summers*, 42 Phil. 3 (1921), even its mere mention could amount to "rattling the bones of an antiquated skeleton from which all semblance of animate life has long since departed." At 9.

[29] *Manila Trading and Supply Company v. Reyes*, 62 Phil. 461, 471 (1935).

[30] *Chambers v. Florida*, 309 US 227, 241 (1940).

DISSENTING OPINION

TEEHANKEE, J., :

I am constrained to dissent from the valedictory main opinion of Mr. Justice Estanislao A. Fernandez ruling that confessions obtained during custodial interrogation from a detained person without the assistance of counsel before the effectivity of the 1973 Constitution on January 17, 1973[1] are admissible in evidence against the accused at his trial although he had not been duly informed of his right to remain silent and to counsel. Such ruling, to my mind, is in violation of the plain and unqualified mandate of the Constitution that such confessions are invalid and inadmissible in evidence.

Section 20 of the Bill of Rights (Article IV) of the 1973 Constitution explicitly provides (as against its one-sentence counterpart provision in the 1935 Constitution[2]) that

"SECTION 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

The main opinion concedes that "a confession obtained from a person under investigation for the commission of an offense who has not been informed of his right (to silence) and to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973." [3]

I fail to see, however, any valid basis for distinguishing such invalid confessions obtained before the effectivity of the New Constitution from those obtained afterwards and the main opinion's ruling that conversely such confessions obtained before are to be held admissible in evidence against the accused.

1. The Constitution now expressly protects "a person under investigation for the commission of an offense" from the overwhelming power of the State and from official abuse and lawlessness and guarantees that he "shall have the right to remain silent and to counsel and to be informed of such right." In order to give force and meaning to the constitutional guarantee, it flatly outlaws the admission of any confession obtained from a person under investigation who has not been afforded his right to silence and counsel and to be informed of such right. There is no room for interpretation and the plain mandate of the Constitution expressly adopting the exclusionary rule as the only practical means of enforcing the constitutional injunction against such confessions obtained in violation of one's constitutional rights by outlawing their admission and thereby removing the incentive on the part of state and police officers to disregard such rights (in the same manner that the exclusionary rule bars admission of illegally seized evidence[4]) should be strictly enforced. What the plain language of the Constitution says is beyond the power of the courts to change or modify.

2. The outlawing of all such confessions is plain, unqualified and without distinction whether the invalid confession be obtained before or after the effectivity of the Constitution. The Court is called upon to enforce the plain mandate of the Constitution outlawing the admission of such invalid confessions. *Ubi lex non distinguit nec nos distinguere debemus*.

3. Stated otherwise, the Constitution has now given full substance and meaning to the fundamental right recognized by all civilized states that no person shall be compelled to be a witness against himself by placing confessions obtained without counsel in the same category as coerced confessions (whether the coercion be physical, mental or emotional[5]) and they are therefore deemed null and void and expressly declared to be inadmissible in evidence. Such confessions obtained without counsel stand discredited and outlawed by mandate of the Constitution.

ACCORDINGLY, and in line with the views herein expressed, I join Justices Castro and Fernando (who have

extensively expounded on the history and rationale of the rule) in voting for the unqualified application of the exclusionary rule to confessions obtained without counsel before the effectivity of the 1973 Constitution but only thereafter sought to be admitted in evidence against the accused and for the rejection of the confessions in the cases at bar.

[1] January 17, 1973 is considered as the effective date of the 1973 Constitution under Presidential Proc. No. 1 102 of the same date. The writer subscribes to the view that the 1973 Constitution was considered in force and effect upon the finality on April 17, 1973 of the Court's decision in *Javellana vs. Exec. Secretary*, 50 SCRA 30, wherein a split Court dismissed the petitions questioning the validity of the proclamation. Cf. Writer's separate opinion in *Aquino, Jr. vs. Enrile*, 59 SCRA 183, 309 (Sept. 17, 1974).

[2] Section 18 of the Bill of Rights (Art. III) of the 1935 Constitution simply provided that "No person shall be compelled to be a witness against himself."

[3] At page 2, main opinion: italics supplied.

[4] Cf. *Stonehill vs. Diokno*, 20 SCRA 383 (1967).

[5] *People vs. Bagasala*, 39 SCRA 236 (1971); *People vs. Urro*, 44 SCRA 473 (1972).

CONCURRING OPINION

ANTONIO, J., :

The constant doctrine of this Court has always been in favor of the admissibility of statements obtained from a defendant under police custodial interrogation where the same has been obtained freely and voluntarily.[1] We have always held that it will suffice for the admission of an extrajudicial confession of an accused that it appears to have been given under conditions which accredit prima facie its admissibility, leaving the accused at liberty to show it was not voluntarily given or was obtained by undue pressure, thus destroying its weight,[2] and that a presumption of law favors the spontaneity and voluntariness of a statement given by the defendant in a criminal case and the burden is upon him to destroy that presumption.[3] We have also declared that an extrajudicial confession is not rendered inadmissible by reason of failure to caution the accused that he need not talk and that if he does, what he says will be used against him, even though such extrajudicial confession was under oath.[4]

The concept of involuntariness seems to be used by the courts as a shorthand to refer to practices which are repugnant to civilized standards of decency or which, under the circumstances, are thought to apply a degree of pressure to an individual which unfairly impairs his capacity to make a rational choice. We explained in *People v. Carillo*[5] that "the conviction of an accused on a voluntary extrajudicial statement in no way violates the constitutional guarantee against self-incrimination. What the above inhibition seeks to protect is compulsory disclosure of incriminating facts. While there could be some possible objections to the admissibility of a confession on grounds of its untrustworthiness, such confession is never excluded as evidence on account of any supposed violation of the constitutional immunity of the party from self-incrimination. x x x The use of voluntary confession is a universal, time-honored practice grounded on common law and expressly sanctioned by statutes." In *People v. Jose*,[6] a unanimous Court rejected the contention that a confession obtained during custodial interrogation without the assistance of counsel is inadmissible, notwithstanding the argument based on *Messiah v. U.S.* (377 U.S. 201), *Escobedo v. Illinois* (378 U.S. 478), and *Miranda v. Arizona* (384 U.S. 436) that the presence of counsel in an in custody police interrogation is an adequate protective device to make the process of

interrogation conform to the dictates of the privilege against self-incrimination. This Court declared that the right of the accused to counsel under Article III, Section 7, paragraph (17) of the Constitution refers to proceedings before the trial court from arraignment to rendition of the judgment, and that the only instances where an accused is entitled to counsel before arraignment, if he so requests, are during the second stage of the preliminary investigation. Thus, We rejected the applicability of the principles enunciated in *Messiah*, *Escobedo* and *Miranda* on the ground that "the rule in the United States need not be unquestionably adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution, the meaning attached thereto at the time of the adoption thereof should be considered.

The law enforcement officers of the government and the courts have relied upon these doctrines and followed their commands. Hundreds, if not thousands, of cases were finally decided on the basis of such doctrines. To assert, therefore, that Article IV, Section 20 of the New Constitution — which renders any confession obtained in violation of said section inadmissible in evidence — is a confirmation, ratification and promulgation of a pre-existing rule, is to indulge in a historical fallacy.

II

The purpose of requiring the presence of counsel in police custodial investigation in Section 20 of Article IV of the New Constitution, is to serve as an effective deterrent to lawless police action. We cannot say that this purpose would be advanced by making the requirement retrospective. If any misconduct had been committed by the police in connection with the taking of statements of suspects during custodial interrogation prior to the effectivity of the New Constitution, it will not be corrected by making this proscription retroactive.

III

There are interests in the administration of justice and the integrity of the judicial process to consider. To make the proscription in Article IV, Section 20 of the New Constitution retrospective would certainly impair the effective prosecution of cases and tax to the utmost the administration of justice.

Custodial interrogation has long been recognized as an essential tool in effective law enforcement. The detection and solution of crime is a difficult and arduous task requiring determination and persistence on the part of all responsible officers charged with the duty of law enforcement. The line between proper and permissible police conduct and methods that are offensive to due process is, at best, a difficult one to draw. It must be noted that in most areas, police investigators are without modern and sophisticated instruments for criminal investigation. Many grave felonies have been unsolved because of the absence or unavailability of witnesses. In such cases, it is obvious that the custodial interrogation of suspects would furnish the only means of solving the crime. It must be noted also that the law enforcement officials of the national and local governments have heretofore proceeded on the premise that the Constitution did not require the presence of counsel to render admissible statements obtained during police custodial interrogations. All of the courts of the land, in reliance on Our settled doctrines, have heretofore considered as admissible confessions obtained freely and given voluntarily by the declarant even in the absence of counsel. To insert such constitutional specific on cases already pending in court before the ratification of the New Constitution may well undermine the administration of justice and the integrity of the judicial process. Recognition of this fact should put us on guard in promulgating rules that are doctrinaire. To apply this new rule retroactively would have an impact upon the administration of criminal law so devastating as to need no elaboration. Exclusion of this kind of evidence in a retrospective manner would increase the burden on the administration of justice, would overturn convictions based on fair reliance upon existing doctrines, and would undercut efforts to restore civil order. The trial of cases already terminated, where the main evidence consists of extrajudicial statements of accused obtained during police custodial interrogation, would have to be re-opened. It

would be idle to expect under such circumstances that the police could still produce evidence other than those submitted, in order that the prosecution of the case could be maintained.

IV

It is a fundamental rule in the construction of constitutions that constitutional provisions should not be given a retrospective operation, unless that is the unmistakable intention of the words used or the obvious design of the authors.[7] In short, the rule is prospectivity; the exception, retrospectivity.

There is no indication in the language used that Section 20 of Article IV (Bill of Rights), of the New Constitution, is intended to operate retrospectively. Note the plain language of the provision, which reads:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

Section 8 of Article XVII (Transitory Provisions), of the New Constitution, however, provides as follows:

"All courts existing at the time of the ratification of this Constitution shall continue and exercise their jurisdiction, until otherwise provided by law in accordance with this Constitution, and all cases pending in said courts shall be heard, tried, and determined under the laws then in force. The provisions of the existing Rules of Court not inconsistent with this Constitution shall remain operative unless amended, modified, or repealed by the Supreme Court or the National Assembly." (*italics supplied.*)

The law existing at the time of the adoption of the New Constitution, as construed by this Court in *People v. Jose*[8] considered admissible extrajudicial statements of accused obtained during custodial interrogation, without assistance of counsel. This decision formed part of the legal system in this jurisdiction.[9]

Considered as an expression of public policy, Section 8 of Article XVII, to my mind, lays down the guidelines to be observed by the courts in the trial and determination of cases pending at the time of the ratification of the New Constitution. Indeed, this was necessary in view of the considerations heretofore adverted to and to avoid confusion in the resolution of such cases, considering that there are new rules enunciated in the New Constitution, one of which is the evidentiary exclusionary rule in Section 20 of Article IV. To my view, with respect to those cases still pending as of January 17, 1973 (the date the New Constitution was ratified), the admissibility of the extrajudicial statements of the accused notwithstanding its adjective character, should be decided in accordance with the provisions of the 1935 Constitution as construed in the existing jurisprudence.

The foregoing construction of Section 20 of Article IV in relation to Section 8 of Article XVII, is not only in accord with the settled rules of statutory construction, but is an interpretation which is in accordance with the clear provisions, spirit and intent of the Constitution.

V

It is, however, asserted that under Article 125 of the Revised Penal Code, any incriminatory statements given by a person detained, in the course of a police custodial interrogation, is inadmissible in evidence, if the same is done without the assistance of the declarant's counsel. This novel theory cannot be squared either with the clear wordings of the statutory provision or with the existing jurisprudence on the matter. While it may be conceded that Article 125 of the Revised Penal Code requires the detaining officer to inform the person detained the cause of his detention and of his right, if he so desires, to communicate and confer with his counsel, it does not necessarily follow that an additional obligation is imposed upon said officer to allow the suspect to be assisted by

his counsel during the custodial interrogation. Neither does it provide that any incriminatory statement given by him, even if voluntary, would be inadmissible in evidence, if the same was done without the assistance of counsel. Such a construction finds no basis in the clear and plain wordings of the statute. Where the language of the statute is plain and unambiguous, the Court should not indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature.

VI

The final authority of this Court rests upon public respect for its decisions. That public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their bona fide reliance and reasonable expectations. To hold now that public officers, who have acted in justifiable reliance on Our aforecited doctrines, have transgressed the Constitution, would certainly not strengthen public respect on the authority of Our judgments.

Where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively.

The factual and textual bases for a contrary rule, are at best, less than compelling. Relevant is the Court's duty to assess the consequences of its action. More than the human dignity of the accused in these cases is involved. There is the compelling realization that substantial interests of society may be prejudiced by a retrospective application of the new exclusionary rule. Thus, the values reflected transcend the individual interests of the herein accused, and involve the general security of society. The unusual force of the countervailing considerations strengthens my conclusion in favor of prospective application. To the extent consistent with this opinion, I, therefore, concur in the opinion of Justice Fernandez.

Barredo and Muñoz Palma, JJ., concur.

[1] U.S. v. Castillo, 2 Phil. 17; U.S. v. Lio Team, 23 Phil. 64; U.S. v. Clung Po, 23 Phil. 578; U.S. v. Corrales, 28 Phil. 362; People v. Hernane, 75 Phil. 554.

[2] U.S. v. Zara, 42 Phil. 308.

[3] People v. Garcia, L-8298. May 29, 1957.

[4] U.S. vs. Agatea, 40 Phil. 596; People vs. Hernane, supra.

[5] 77 Phil. 572.

[6] 37 SCRA 450.

[7] Sec Black on Interpretation of Laws, Hornbook Series, Sec. 12, p. 26; 16 C.J.S., Constitutional Laws, Sec. 40, pp. 80-81; Drennen v. Bennet, 322 S.W. 2d 585.

[8] Supra.

[9] Article 8, Civil Code.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.