

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS R. MATERNAL, EMILIO G. AMAR, JR., ZOSIMO IGAO AND
NORBERTO RELOJAS, ACCUSED, CARLOS R. MATERNAL,
ACCUSED-APPELLANT.**

G.R. No. L-37482. July 25, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Mandatory review of the decision rendered in Criminal Case No. 4337 of the then Court of First Instance of Palawan, entitled "People vs. Carlos R. Maternal, Emilio G. Amar, Jr., Zosimo Igao, alias 'Sosing' and Norberto Relojas, alias 'Ovit'," the dispositive portion of which reads:

"The information filed is 'robbery in band with murder.' However, the facts as established in Maternal's extra-judicial confession is only simple robbery with homicide, there being no more than three armed men who appeared to have participated in the commission of the offense. The penalty for this crime is reclusion perpetua to death. Considering the accused Carlos Maternal's voluntary admission of guilt and the provision of Art. 160 of the Revised Penal Code relative to quasi-recidivism, the penalty imposable against Maternal who was serving sentence at the time of the commission of the offense, is the maximum which is death. However, the Court realizes that Carlos Maternal had no intention to commit so grave a wrong as borne out by the fact that he was not shown to have joined in the stabbing and the fact that he was the one who admonished his companions to desist from the stabbing.

"In view of all the foregoing considerations, the Court hereby imposes upon Carlos Maternal, for the offense as found by this Court, the extreme penalty of death with the recommendation to His Excellency, the President of the Philippines, that he be extended executive clemency for the commutation of this penalty to reclusion perpetua.

"There being no evidence on hand to establish the guilt of Zosimo Igao and Emilio Amar, Jr., beyond reasonable doubt, the Court holds them not guilty of the offense charged and orders their immediate release from confinement." (pp. 29-30, Rollo)

It appears that about 7:00 in the evening of August 27, 1969, Juan Cabasal left his house to go to Panamonton Beach in Barrio Tagpirara, Municipality of Brooke's Point, Palawan, to keep watch over his boat and sleep there. He brought with him his radio-phono marked "Fujiya", his bolo, a flashlight and a blanket. When he did not return home the following morning, his sister Adelaida Cabasal went looking for him. Failing to find him, she went to the municipal building to ask help from the police. Likewise, Restituto Cabasal, went in search for his brother, Juan, who he knew had slept in a banca the previous night. He went to the Philippine Constabulary authorities at Brooke's Point and reported the matter. The Acting Chief of Police sent out two men to Panamonton Beach to help look for the missing Juan Cabasal. About two o'clock in the afternoon of August 28, 1969, the search party found Juan Cabasal under the sea, already dead, about twenty meters from his banca.

The Municipal Health Officer of Brooke's Point, Dr. Domingo Sy Siong, conducted an autopsy of the deceased Juan Cabasal and found that the latter sustained eleven (11) lacerated wounds in the different parts of his body, five (5) of which were fatal and could have been caused by sharp edged and blunt edged instruments.

In search for the persons responsible for Cabasal's death, the police had two persons in mind, namely: Zosimo Igao and Norberto Relojas. On September 11, 1969, Acting Chief of Police Francisco Marquez and some policemen went to Barrio Tagpirara to apprehend these two suspects. In the course of their search, the peace officers found a hideout where they came upon the "Fujiya" radio-phono of the deceased Juan Cabasal in the possession of an occupant who turned out to be appellant Carlos Maternal, an escape-convict from the Iwahig Penal Colony. The police placed Maternal under arrest and, upon investigation, he admitted that he and three others were the ones responsible for the death of Juan Cabasal. He was brought to the Office of the Chief of Police for investigation. He gave a statement which was reduced to writing (Exhibit "C") by Pat. Eliseo Crespo at about 11:35 in the evening of September 13, 1969. The following morning, the statement was given for him to read and change whatever was wrong with it. The only correction that Maternal made was his prison number which he claimed was wrong. Thereafter, Pat. Sunico accompanied Maternal to the Office of Municipal Judge Nicolas Feliciano who propounded questions to appellant regarding his name and whether the statement, Exhibit "C", was his. The judge then read the questions and answers appearing therein to Maternal, after which he asked the latter whether he was willing to sign the same. Maternal replied in the affirmative and signed the statement, Exhibit "C". Judge Feliciano then made him swear to the truth of said statement, after which the judge signed it himself.

On the witness stand, appellant Maternal testified that about 10:00 in the evening of August 27, 1969, he was at Tanyang Bubog, a place some three (3) kilometers from Panamonton. He was with Virgilio Camus, Rodolfo Madera, and Munton Muslim. They all went out looking for a banca to ride. Virgilio Camus pointed to them a banca, part of which was resting on the sand while the rear was on the water. Camus woke up the man who was sleeping in the banca and told him to start the engine. When the man refused, Camus hacked him with a bolo. Appellant Maternal shouted at Camus to stop hacking the victim who fell into the water. When Camus and Madera failed to start the engine, they ran away. He (appellant) followed and returned to the house where they were all staying.

Further, appellant testified that when he was investigated by the Acting Chief of Police of Brooke's Point he was made to sign a document, the contents of which were not disclosed to him, much less, was he able to read the same. He had to sign the statement because he would be maltreated considering that his hands were tied at his back with a rope. When at first he would not sign, the police kicked him and the chair he was sitting on fell on its side with him. On the witness stand, appellant declared that the contents of his statement, Exhibit "C", are not true.

The accused-appellant seeks a reversal of the decision, claiming that the trial court erred (1) in admitting the extra-judicial confession; (2) in holding him guilty of the crime of robbery with homicide on the basis alone of the extra-judicial confession; and, (3) in imposing the maximum penalty of death.

The allegation that he was coerced and maltreated in giving his confession, Exhibit "C", was not corroborated considering that Maternal had not filed any case whether administrative, criminal or civil against the persons who allegedly maltreated and forced him to sign the "Salaysay" (Exhibit "C"). And, the claim is belied by his failure to present a medical certificate on the injuries allegedly sustained as a consequence of the supposed maltreatment made by the police when he made the confession. Municipal Judge Nicolas Feliciano testified that when the said confession was presented to him, he read it to appellant and asked if he was willing to sign the same voluntarily. Maternal replied in the affirmative and then signed the document, Exhibit "C", which discloses incidents in details

the police investigators were not in a position to know. For instance, the following appears in said Exhibit "C":

"3. T - Kailan ka tumakas sa bilangguan ng Santa Lucia kung natatandaan mo?

S - Noon pong ika13 ng Septiembre 1968.

4. T - Saan ka nagtungo noong ikaw ay tumakas sa bilangguan ng Santa Lucia?

S - Dito po sa Brooke's Point.

5. T - Saan ka dito sa Brooke's Point nagtira?

S - Sa Tagpirara po.

6. T - Papaano ka nabuhay sa Tagpirara at sino ang nagalaga sa iyo kung mayroon?

S - Ako po ay inuupahan na magtrabaho sa lupa at bahay ni Bert Abiog sa kanilang lupa-

7. T - Sa tagal ng iyong pagtrabaho kay Bert Abiog, alam ba niya na ikaw ay takas na bilanggo sa Santa Lucia, Iwahig Penal Colony?

S - Opo.

8. T - Papaano nalaman ni Bert Abiog na ikaw ay takas na bilanggo?

S - Noong ako po ay naligo sa rancho ni Bert Abiog ay nakita ni Bert Abiog na ako ay maraming tato, at dito ay tinanong ako ni Bert Abiog kung ako ay bilanggo at ipinagtapat ko naman sa kanya na ako ay isang takas na bilanggo na galing sa Santa Lucia, Iwahig Penal Colony. x x x

x x x x x x x x

17. T - Kanino ang radio ponograph na nahuli sa iyo kung nalalaman mo?

S - Yon pong tao na pinatay namin sa tabi ng aplaya sa may bangka.

18. T - Alam mo ba kung saan ang lugar na iyon at ano ang pangalan ng lugar na inyong pinagpatayan ng tao?

S - Hindi ko po alam kung anong Barrio iyon.

19. T - Sinabi mong yon pong tao na pinatay namin, bakit sino ang mga kasama mo na pumatay sa taong iyon na mayari ng radio?

S - Apat po kami, ako, si Sosing, si Junior Amar at si Jovit.

20. T - Maari mo bang maisalaysay ang buong pangyayari at kung paano ninyo pinatay ang tao na sinasabi mong mayari ng radio?

S - Opo. Humigit kumulang po sa alas dies ng gabi (10:00 p.m.) buwan po ng Agosto 1969 ngunit hindi ko po natatandaan kung anong petsa ako, si Sosing, si Jovit at si Junior Amar ay nag-punta kami sa aplaya. Noong kami ay dumating sa aplaya ay may nakita kaming nakapundong bangka at itong si Sosing at si Junior Amar ay tuloy-tuloy sa bangka. Ang ginawa po ni Sosing ay tinaga niya ang atip ng bangka at may taong lumundag na galing sa bangka at ito naman ay sinalubong ni Junior Amar ng saksak sa harap ng tao hindi ko lang alam kung saan siya tinamaan. At noong masaksak ang tao ni Junior Amar ang tao po ay nagsigaw ng 'Tabang' ng dalawang bases at dito ay pinagtataga siya ni Sosing hanggang sa lumubog ang tao sa dagat at dito sinabihan ni Jovit si Sosing na tama na yan Sing at kami ay nagtakbuhan na pauwi sa Tagpirara na dala ko ang radio ponograph." (pp. 20-21, Records)

The disclosures were made by him soon after his apprehension, leaving no opportunity for the police investigators

or anyone else to concoct a story.

The fact that appellant was not assisted by counsel of his choice during the custodial investigation as required by Section 20, Article IV of the Constitution does not render the extra-judicial confession executed by him previous to the effectivity of the new Constitution inadmissible. In *Magtoto vs. Manguera*, 63 SCRA 4, the Court said:

"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."

It is also significant to note that both in his confession, Exhibit "C", as well as in his testimony in court, Maternal did not even deny but instead admitted his presence during the killing of Juan Cabasal, although he tried to exculpate himself from liability by saying that it was his three companions who killed Juan Cabasal.

The rule on confession is that "the declaration of an accused expressly acknowledging his guilt of the crime charged, maybe given in evidence against him" (Sec. 29, Rule 130, Revised Rules of Court). If the same is made freely and voluntarily, the confession constitutes an evidence of a high order since it is supported by the strong presumption "that no person of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime unless prompted by truth and conscience (US vs. de los Santos, 24 Phil. 329)." In a later case, the Court ruled that "a confession is admissible as evidence, and it is presumed to be voluntary until the contrary is shown. Before a confession can be set aside, both the confession and the reasons or motives given for its repudiation should be carefully scrutinized. It would be unsound practice for the court to disregard the confession of an accused simply because the accused repudiates it during the trial (*People vs. Dorado*, 30 SCRA 53.)."

We find no reason to disregard and set aside the confession, Exhibit "C", given by appellant Carlos Maternal. The fact that the two other accused, Emilio Amar, Jr. and Zosimo Igao (Norberto Relojas has remained atlarge), were acquitted because they had no confession, writing or otherwise, only shows that the police in this case did not coerce and/or force appellant Maternal to sign one. For, if he were coerced, and/or intimidated into giving and signing his statement, Exhibit "C", then said defendants Amar and Igao would also have been forced to execute their confessions. Otherwise stated, this fact gives Us additional reason to believe that Maternal gave and signed his statement freely and voluntarily.

The trial court correctly found the accused-appellant guilty of the crime charged and in imposing the maximum penalty because he committed this crime during service of penalty imposed for another previous offense (Article 160 of the Revised Penal Code). However, for lack of necessary votes the penalty is reduced to reclusion perpetua.

WHEREFORE, the judgment of conviction is AFFIRMED and appellant Carlos R. Maternal is hereby sentenced to reclusion perpetua and to indemnify the heirs of the deceased Juan Cabasal in the sum of P30,000.00. With costs. SO ORDERED.

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

Teehankee, J., no part.

Aquino, J., vote for the death penalty.

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