

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE TAMPUS Y PONCE, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-44690. March 28, 1980

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/95f91c26bb6d/>

AQUINO, J.:

This is an automatic review of the judgment of the Court of First Instance of Rizal, Makati Branch 36, con-victing Jose Tampus of murder, sentencing him to death and ordering him to pay the heirs of the victim, Celso Sa-minado, an indemnity of twelve thousand pesos (Criminal Case No. 18510).

In the same decision, Rodolfo Avila, the co-accused a Tampus, was convicted of the same offense and was sentenced to suffer imprisonment of fourteen years and eight months of reclusion temporal as minimum to twenty years of reclusion temporal as maximum and to pay the same indemnity. Avila did not appeal. (He was sentenced to death, together with Frankisio Aro and Pedro Lasala, in another case. Criminal Case No. 1187. The death sentence is under review in L-38141.)

The evidence shows that at around ten o'clock in the morning of January 14, 1976, Celso Saminado, 37, a prisoner in the national penitentiary at Muntinlupa, Rizal and a patient in the emergency ward of the prison hospital, went to the toilet to answer a call of nature and to fetch water.

The accused, Tampus, 27, and Avila, 28, prisoners in the same penal institution, who were tubercular patients in the hospital, followed Saminado to the toilet and, by means of their bladed weapons, assaulted him. Tampus inflicted eight incised wounds on Saminado while Avila stabbed him nine times. Saminado died upon arrival at eleven o'clock on that same morn-ing in the prison hospital.

After emerging from the toilet, Tampus and Avila surrendered to a prison guard with their knives (Exh. B and D). They told the guard: "Surrender po kami, sir. Gumanti lang po kami."

The motive of the killing was revenge. Tampus and Avila, both members of the Oxo gang, avenged the stabbing of Eduardo Rosales in December, 1975 by a member of the Batang Mindanao gang, a group hostile to the Oxo gang. Sa-minado was a member of the Batang Mindanao gang. Rosales was a member of the Oxo gang.

The officer of the day investigated the incident right away. In his written report submitted on the same day when the tragic occurrence transpired, he stated that, according to his on-the-spot investigation, Avila stabbed Saminado when the latter was seated in the comfort room and his back was turned to Avila, while Tampus stabbed the victim on the chest and neck (Exh. J dated January 14, 1976).

Two days after the killing, or on January 16, another prison guard investigated Tampus and Avila and obtained their extrajudicial confessions wherein they admitted that they assaulted Saminado (Exh. A and C).

There is no question that the guilt of Tampus was established beyond reasonable doubt. He and Avila, with the

assist-ance of counsel de oficio, pleaded guilty to the charge of murder aggravated by treachery, evident premeditation and quasi-recidivism.

At the arraignment or after they had pleaded guilty, the trial court called their attention to the gravity of the charge and informed them that the death penalty might be imposed upon them. They reiterated their plea of guilty. The trial court required the fiscal to present the prosecution's evidence. Tampus and Avila took the witness stand, affirmed their confessions and testified as to the manner in which they repeatedly wounded Saminado.

In this review of the death sentence, the counsel de oficio, assigned to present the side of defendant Tampus, contends that he was denied his right to a public trial because the arraignment and hearing were held at the state penitentiary.

The New Bilibid Prison was the venue of the arraignment and hearing, and not the trial court's session hall at Makati, Rizal, because this Court in its resolution of July 20, 1976 in L-38141, where Rodolfo Avila was one of the accused-appellants, refused, for security reasons, to allow him to be brought to Makati. So, this Court directed that the arraignment and trial in the instant case, where Avila was a co-accused of Tampus, be held at the national penitentiary in Muntinlupa.

The record does not show that the public was actually excluded from the place where the trial was held or that the accused was prejudiced by the holding of the trial in the national penitentiary.

There is a ruling that the fact that for the convenience of the witnesses a case is tried in Bilibid Prison without any objection on the part of the accused is not a ground for reversal of the judgment of conviction (U.S. vs. Mercado, 4 Phil. 304).

The accused may waive his right to have a public trial as shown in the rule that the trial court may *motu proprio* exclude the public from the courtroom when the evidence to be offered is offensive to decency or public morals. The court may also, upon request of the defendant, exclude from the trial every person except the officers of the court and the attorneys for the prosecution and defense. (Sec. 14, Rule 119, Rules of Court. See 21 Am Jur 2d 305, sec. 270).

The other contention of counsel de oficio is that the confession of Tampus was taken in violation of Article IV of the Constitution which provides:

"SEC. 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."

As the confession in this case was obtained after the Constitution took effect, section 20 applies thereto (People vs. Dum Dum, L-35279, July 30, 1979).

There is no doubt that the confession was voluntarily made. The investigator in taking it endeavored, according to his understanding, to comply with section 20, as shown in the following parts of the confession.

"Ang may salaysay matapos maipabatid sa kanya ang kanyang mga karapatan tungkol sa pagbibigay ng malayang salaysay sangayon sa ipinaguutos ng panibagong Saligang Batas ay kusang loob na nagsasabi ng mga sumusunod bilang sagot sa mga tanong ng tagasiyasat:

x x x x x x x x

"6. Katulad sa mga bagay-bagay na ipinaliwanag ko saiyo kanina ay uulitin ko sa iyo na ikaw ay aking tinawagan dito sa aming tanggapan dahil sa ibig kitang maimbistiga tungkol sa pagkakapatay sa isang bilanggo

rin na nagngangalan ng Celso Saminado noong petsa 14 ng buwan ding ito ngunit bago tayo magpatuloy ay uulitin ko rin saiyo na sa imbigastasyon naito, ikaw ay hindi ko maaaring pilitin, takutin o gamitan ng puwersa para makapagbigay ng salaysay o statement.

"Na sa imbigastasyon naito, ikaw ay may karapatan na magkaruon ng isang abogado na magtatanggol saiyo.

"Na ikaw ay may karapatan na manahimik o tumanggi na paimbigasta.

"Ngayon at maulit ko saiyo ang mga karapatan mong ito, ikaw ba'y magpatuloy pa sa pagbibigay ng salaysay bilang sagot sa alin mang itatanong ko saiyo? – Sagot - Opo, sir." (Exh. A).

However, counsel de oficio points out that before the confession was taken by investigator Buenaventura de la Cuesta on January 16, 1976, Tampus was interrogated two days before, or on the day of the killing, by the officer of the day, Vivencio C. Lahoz, and that at that alleged custodial interrogation, Tampus was not informed as to his rights to have counsel and to remain silent.

The truth is that, even before Lahoz investigated the killing, Tampus and Avila had already admitted it when, after Coming out of the toilet, the scene of the crime, they surrendered to Reynaldo S. Eustaquio, the first guard whom they encountered, and they revealed to him that they had committed an act of revenge. That spontaneous statement, elicited without any interrogation, was part of the *res gestae* and at the same time was a voluntary confession of guilt.

Not only that. The two accused, by means of that state-ment given freely on the spur of the moment without any urging or suggestion, waived their right to remain silent and to have the right to counsel. That admission was confirmed by their extrajudicial confession, plea of guilty and testimony in court. They did not appeal from the judgment of conviction.

Under the circumstances, it is not appropriate for coun-sel de oficio to rely on the rulings in *Escobedo vs. Illinois*, 378 U.S. 478, 12 L. ed. 2d 977 and *Miranda vs. Arizona*, 384 U.S. 436, 16 L. ed. 2d 694, regarding the rights of the accused to be assisted by counsel and to remain silent during custodial interrogation.

It should be stressed that, even without taking into account Tampus' admission of guilt, confession, plea of guilty and tes-timony, the crime was proven beyond reasonable doubt by the evidence of the prosecution.

It is further contended that after the fiscal had presented the prosecution's evidence and when counsel de oficio called upon Tampus to testify, the trial court should have advised him of his constitutional right to remain silent. That contention is not well-taken considering that Tampus pleaded guilty and had executed an extrajudicial confession (*U.S. vs. Binayoh*, 35 Phil. 23).

The court during the trial is not duty-bound to apprise the accused that he has the right to remain silent. It is his counsel who should claim that right for him. If he does not claim it and he calls the accused to the witness stand, then he waives that right (*U.S. vs. Rota*, 9 Phil. 426; *U.S. vs. Grant*, 18 Phil. 122; 4 *Moran's Comments on the Rules of Court*, 1970 Ed., p. 196).

The crime was correctly characterized by the prosecutor and the trial court as murder. The two accused, Tampus and Avila, as co-conspirators, made a deliberate and sudden attack upon the unarmed victim, while he was inside the toilet, three meters wide and three meters long. The accused resorted to a mode of assault which insured the consummation of the killing without any risk to themselves arising from any defense which the victim could have made. Indeed, because of the unexpected attack, he was not able to make any defense at all (61 tsn). Hence, *alevosia* qualifies the killing as murder.

Evident premeditation is also aggravating. The evidence shows beyond peradventure of doubt that Tampus and

Avila planned the killing by providing themselves with bladed weapons and waiting for an opportunity to kill Saminado and thus satisfy their desire for revenge.

As alleged in the information and as shown in his prison record, Exhibit H, Tampus was a quasi-recidivist. At the time of the assault, he was serving sentences for homicide and evasion of service of sentence. Because of the special aggravating circumstance of quasi-recidivism, the penalty for murder, which is reclusion temporal to death, should be imposed in its maximum period and that is death (Art. 160, Revised Penal Code).

The mitigating circumstances of plea of guilty and voluntary surrender to the authorities, which can be appreciated in favor of Tampus, cannot offset quasi-recidivism nor reduce the penalty. When death is prescribed as a single indivisible penalty, it shall be applied regardless of any generic mitigating circumstances (Art. 63, Revised Penal Code).

However, for lack of the requisite ten votes, the death penalty cannot be affirmed. Hence, it should be commuted to reclusion perpetua.

WHEREFORE, the lower court's judgment as to Jose Tampus is modified. He is sentenced to reclusion perpetua. The lower court's judgment as to his civil liability is affirmed. Costs de officio.

SO ORDERED.

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

Fernando, C.J., took no part.

Barredo, J., I concur, but I believe it best that the court should inform the accused of his right to remain silent and not wait for the lawyer to make the objection.

Teehankee, J., dissents in a separate opinion.

DISSENTING OPINION

TEEHANKEE, J.:

The extra-judicial confession of the accused, having been taken after the 1973 Constitution is manifestly barred from admission under section 20 of the Bill of Rights (Article IV) thereof.

I have grave doubts as to the alleged waiver by the accused of his constitutional right to counsel and to remain silent given in the middle of his "voluntary" extra-judicial confession during his custodial interrogation by the prison investigator, who at such late stage (in pro-pounding question No. 6, not at the beginning of the interrogation) purportedly took time out to admonish and inform the accused of his rights to counsel and to silence. The fundamental rights of such unfortunate disadvantaged persons as the accused should all the more be clearly protected and observed. At the very least, such alleged waiver must be witnessed by a responsible official of the penitentiary, if not by the municipal judge of the locality.

Counsel for the accused's second assigned error is also well taken. After the prosecutor had presented the State's evidence at the hearing for the purpose, and when counsel de officio then called upon the accused to testify, it became the trial court's duty (contrary to the majority's ruling) to apprise and admonish him of his constitutional rights: to remain silent and against self-incrimination, i.e. the right not to be compelled to be a witness against himself.

Under the above-cited section 20 of the Bill of Rights, any confession or incriminatory statement obtained in violation thereof is expressly declared "inadmissible in evidence."

There is no doubt, however, that the accused did judicially enter a guilty plea, with the assistance of counsel, of having killed the victim Celso Saminado. The offshoot should be that the qualifying and generic aggravating circumstances in the information for murder should not be appreciated against him. It should be noted that a co-accused Rodolfo Avila although convicted of the same offense and equally, if not more, guilty than the herein accused (according to the State's evidence, Avila stabbed Saminado at the back while the herein accused frontally stabbed him on the chest and neck) was meted the lesser penalty of 14 years and eight months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum. For this consideration as well as taking into account the contributory subhuman conditions in the over-crowded penitentiary which strangle all sense of decency and predispose the unfortunate inmates to violence and mayhem (People vs. Dahil, L-30271, June 15, 1979 and cases cited), such lesser penalty should likewise be imposed on the herein accused. As a last recourse, the accused should be deemed entitled to executive clemency in the form of commutation of the supreme penalty meted to him.

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.