

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEODORO VILLAMOR, ROMULO POLEÑO AND ROMEO CAGARA,
ACCUSED WHOSE DEATH SENTENCES ARE UNDER REVIEW.**

G.R. Nos. L-41493 and L-41494. December 14, 1981

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PER CURIAM:

This is a murder case. At about five o'clock in the afternoon of March 22, 1973 Teodoro Villamor, Felipe Tarpin, Romeo Cagara, Romulo Poleño, Dionisio Argales and Rogelio Genita had a conference at the volleyball court of Barrio Rizal, La Paz, Leyte. They agreed to get hold of the firearm of Lolito Bernal, a resident of Barrio Calab-nian, La Paz, and to kill him if he refused to surrender it.

To implement that agreement, the conspirators, all armed, proceeded to Bernal's house which was about half a kilometer away. On the way, they met Eutropio Argales and convinced him to join them. They reached Lolito's house at about seven o'clock in the evening.

In accordance with the plan, Villamor, Tarpin and Poleño pushed the door and barged inside the house. Cagara stationed him-self in the balcony. Genita and the Argales cousins posted themselves as lookouts in the yard.

Angeles Bernal, 29, testified that her husband Lolito, 29, was slicing meat in the kitchen when the three intruders suddenly entered the house and proceeded directly to the kitchen. She had known Villamor, Poleño and Cagara for a long time. She was in the sala when the male-factors came in.

Villamor ordered Lolito to put down his bolo and surrender his firearm. Lolito said that he had no firearm. Enraged by that answer, Villamor, Tarpin and Poleño took turns in hacking Lolito with their bolos. Cagara came in and with his bolo also assaulted Lolito. He fell on the floor.

Angeles shouted for help. To muffle her outcry, Poleño pressed her head against the floor and fired at her two times with his revolver. She was not hit. The bullets hit the nylon sack dividing the sala. Be-lieving that Lolito was already dead, the four assailants left the house and fled to the mountain of Hinonocan.

Lolito Bernal sustained an incised wound in the neck, two inches wide and six inches deep, which reached the cervical bone and cut the big blood vessels in the neck. It was a fatal wound. Also fatal was an incised wound in the chest which lacerated the liver. Bernal was also wounded on the face, shoulders, vertebral column and hands (Exh. A). He died in his house as a result of those wounds.

Tarpin was killed in an encounter with the Constabulary soldiers on March 30, 1973. The next day Villamor, Poleño and Cagara were captured by a posse of Constabulary soldiers and policemen who-raided their mountain hideout in Barrio Julita. Seized from them were homemade .38 caliber pistols, a .22 caliber pistol, a rifle, four shotguns and assorted rounds of ammunition.

Villamor, Cagara, Poleño Eutropio Argales, Dionisio Argales, and Genita were charged with murder. Genita was not arrested. The Argales cousins were discharged and became State witnesses. After trial, the Court of First

Instance of Leyte, Tacloban City Branch IV, Convicted Villamor, Poleño and Cagara of murder, sentenced each of them to death and ordered them to pay solidarily to Bernal's heirs an indemnity of twelve thousand pesos (Criminal Case No. 1168, Decision of August 13 as amended on August 18, 1975).

The case is now before this Court for mandatory review of the death sentence. That case was tried jointly with Criminal Case No. 1167 wherein the lower court in a separate decision convicted Villamor and Cagara of murder, sentenced each of them to reclusion perpetua and ordered them to pay solidarily the heirs of Jesus Canales an indemnity of twelve thousand pesos. The trial court found that Villamor and Cagara killed Canales on March 19, 1973 or three days before they killed Bernal.

Because Villamor and Cagara did not appeal from the decision in Criminal Case No. 1167, now L-41493, we cannot review the sentence of reclusion perpetua in that case which became final and executory after fifteen days from the promulgation of the decision on August 11, 1975.

In Criminal Case No. 1168, now L-41494, Villamor, Poleño and Cagara interposed an alibi. They claimed that from March 15 to 30, 1973, they were in the abaca farm of Tarpin in the mountain of Hinonocan. The trial court correctly disbelieved that alibi. It was a fabricated defense.

The three accused executed extrajudicial confessions wherein they admitted that they killed Bernal (Exhs. D, E, Q or 6 and R or 3). At the trial, they repudiated their confessions and declared that they were maltreated by the Constabulary soldiers. Villamor stated in his confession that Bernal was killed because he was Tarpin's enemy (Exh. R or 3).

They contend that their confessions are not admissible under section 20, Article IV of the Constitution because they were not informed of their rights to remain silent and to have counsel. That is the only issue raised in this review of their death sentences.

The Constabulary investigator and the fiscal before whom the confessions were sworn testified that the confessions were voluntary. The investigator denied that there was any maltreatment. The fiscal said that he read the confessions to the accused and required them to sign the confessions again in his presence.

It is stated in the confessions that the confessants were apprised of their constitutional rights. The investigator testified that he advised the three accused of their rights to remain silent and to be assisted by counsel. He allegedly informed them that any statement made by them would be used against them in court (40 tsn April 29, 1975; 269-270 tsn May 27, 1975).

He testified that he conducted the interrogation in the Waray-Waray dialect, which is known to the accused, and translated into English the questions and the answers thereto and that after the investigation and before they signed their confessions, he read the contents thereof to them in the dialect (42- 46 tsn April 29, 1975). The trial court admitted the confessions over the objection of defense counsel.

The case of *Miranda vs. Arizona*, 384 U. S. 436, 16 L. Ed. 2nd 694 ("an earthquake in the world of law enforcement") lays down the following procedural safeguards contemplated in section 20 of our Bill of Rights:

"He (the accused) 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 warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

"But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." (p. 726. See *People vs. Duero*, G. R. No. 52016, May 13, 1981).

We hold that even if the extrajudicial confessions, which were taken during custodial interrogation when the accused were not assisted by counsel, are inadmissible, the trial court did not err in convicting them of murder.

Their culpability was proven beyond reasonable doubt by the testimonies of the eyewitness, Angeles Bernal, and the two accused who became State witnesses.

The murder was qualified by abuse of superiority (absorbing band) and aggravated by evident premeditation and dwelling. No mitigating circumstances can be appreciated in favor of the accused.

Conspiracy was proven by means of the testimonies of the two State witnesses. The herein three accused have been shown to be lawless malefactors who had no compunction in killing a man just to satisfy the vindictive whim of Tarpin and in order to divest him of his firearm. For such a senseless assassination committed by useless and dangerous members of society, the death penalty is a just and appropriate punishment.

WHEREFORE, the trial court's amended decision is affirmed. Costs de oficio.

SO ORDERED.

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

Fernando, C.J., and Teehankee, J., no part.

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