

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AUGUSTO MUTUC AND FERNANDO BONDOC, DEFENDANTS-APPELLANTS.

G.R. No. L-37578. April 24, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an automatic review of the decision of the Circuit Criminal Court, Pasig, Rizal imposing on the accused Fernando Bondoc and Augusto Mutuc the supreme penalty of death for the crime of murder.

The accused were charged in an information dated December 14, 1972 as follows:

"That on or about the 28th day of May, 1970, in the municipality of Tagig, province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, with the intent to kill, evident premeditation and treachery and armed with a lead pipe and a hunting knife, did, then and there wilfully, unlawfully and feloniously hit the victim with a lead pipe in the neck and stab him several times on the vital parts of his body, thereby inflicting upon the said Benjamin Garcia, mortal stab wounds, which directly caused his death.

"Contrary to law."

Upon arraignment, the accused assisted by their counsel de oficio pleaded "NOT GUILTY".

The prosecution presented evidence to prove that on May 26, 1970, Fernando Bondoc went to Benjamin Garcia's house at barrio Balucu, Apalit, Pampanga. The two left for a sari-sari store where Trinidad Garcia, Benjamin's wife saw them drinking with Augusto Mutuc and Elpidio Lopez. About 5:00 o'clock in the morning of May 27, 1970, Benjamin Garcia left his residence at Barrio Balucu, Apalit, Pampanga, together with accused Fernando Bondoc, Augusto Mutuc, and Elpidio Lopez. Since that day, Benjamin Garcia never returned home. When Trinidad Garcia asked Fernando Bondoc about the whereabouts of her husband he answered: "I do not know. He alighted from my vehicle." A similar query by Trinidad to Augusto Mutuc produced the same answer "I do not know." Trinidad Garcia, assisted by her brother-in-law, sought the assistance of the National Bureau of Investigation (NBI) in Pampanga but that office failed to find anything regarding the disappearance of Benjamin Garcia. On February 21, 1972 or almost two years after Garcia's disappearance, through an indorsement of the Secretary of Justice, the Honorable Vicente Abad Santos, the case was referred to the National Bureau of Investigation in Manila. NBI Agent Mariano P. Matta, Jr., who was assigned to investigate the case questioned Fernando Bondoc and Augusto Mutuc. Bondoc, who was then detained in the Municipal jail of Apalit, Pampanga for a serious physical injuries charge was turned over to the NBI upon its request. After a "systematic interrogation" conducted by Matta, Bondoc admitted his participation in the killing of Benjamin Garcia and implicated Augusto Mutuc and Elpidio Lopez. The prosecution states that Bondoc gave a statement voluntarily admitting his guilt (Exhibit "D"); and that after affixing his signature as well as his right thumbmark to each and every page of his statement he appeared before the NBI Regional Director to subscribe and swear to the truthfulness of his statement. Augusto Mutuc was next apprehended by the NBI after Bondoc gave his statement.

According to the prosecution's evidence, Mutuc also admitted his participation in the killing of Benjamin Garcia in a statement (Exhibit "E") which he gave voluntarily answering questions propounded by NBI Agent Paras in the presence of Matta. Since Mutuc manifested that he cannot read and write, his statement was read to him and after his acknowledgment that he understood the questions and his answers, he impressed his right thumbmark on each and every page. He was then brought before the NBI Regional Director who administered the oath. Elpidio Lopez could not be located and remained at large. After the two accused gave their statements the two were brought to the place where they stated the killing of Benjamin Garcia took place. The investigating team also took steps to verify any autopsy referred to the NBI on or around May 28, 1970 from the municipality of Taguig, Rizal. After research, the records of the NBI medico-legal division showed that an unidentified male cadaver was found in Taguig, Rizal sometime on June 4, 1970 in an advanced stage of decomposition. The decomposed body was retrieved from Sitio Tanyang, Taguig, Rizal by Leonardo de Angeles, a driver of Funeraria Rizal, Corporal Jimenez and two helpers from the Funeraria Rizal. During the autopsy, photographs were taken and later filed in the medico-legal division's record. Dr. Dario C. Nalagan conducted the postmortem examination of the unidentified cadaver on June 7, 1970 at 4:30 o'clock in the afternoon upon request of Corporal Roman Jimenez of the Taguig Police Department. The doctor found at the time of autopsy that the body "x x x must have been dead around the last week or ten days or two weeks from the time of the autopsy counting backward." Dr. Nalagan found 3 stab wounds on the body of Benjamin Garcia which he described as follows: "Wound No. 1 is located at the medial aspect, lower chest of the fourth intercostal while at the right chest there are two wounds in the inter-costal and the third wound is found also at the right chest, 1 centimeter on the medial line that is just below the chest." After the investigation of the accused in 1972, the same pictures were shown to Trinidad Garcia, Benjamin's wife who identified them as those of her husband. During the re-enactment in 1972, the place pointed by the accused as the place where they killed and dumped the body of Benjamin Garcia turned out to be the same spot pointed by witnesses who discovered the body of Benjamin Garcia in 1970.

In their respective extra-judicial statements (Exhibits "D" and "E") the accused confessed that on or about May 28, 1970 (Mutuc said he could not recall the exact date), together with Elpidio Lopez and Benjamin Garcia, they went to the residence of Pedro Ignacio in Barrio Bicutan, Taguig, Rizal. While there Mutuc, Lopez, and Garcia had a drinking spree. According to Bondoc's statement, the four of them went to a hilly place about 500 yards away from Ignacio's residence and upon arrival there, Bondoc hit Benjamin Garcia on the head with a piece of lead pipe causing Benjamin Garcia to fall down. While Benjamin was in that position, Lopez successively stabbed him on the chest with a "hunting knife" taken from Benjamin's body. The confessions state that Mutuc removed Benjamin's clothes leaving only his brief. Benjamin's clothes were thrown away. The body of Benjamin was dumped in a dry well and covered with grass. The accused then returned to Pampanga.

The defense of the accused was alibi. Fernando Bondoc claimed that he was in his house in Balucu, Apalit, Pampanga on the date he was supposed to have killed Benjamin Garcia in Taguig, Rizal. His wife had delivered a baby boy and he could not leave them. Appellant Augusto Mutuc alleged that he was fencing their lot in the barrio on May 28, 1970 and had nothing to do with Garcia's disappearance and death.

Both Mutuc and Bondoc claimed that severe maltreatment led to the giving of their extrajudicial confessions. The appellants allege:

"Fernando Bondoc, testifying on his behalf, substantially thus: He was first apprehended on December 7, 1972; he was detained first at the Apalit Police Department and later on brought to the headquarters of the NBI, Manila. He learned that he was suspected of being involved in the killing of Benjamin Garcia. At the NBI, Manila Atty. Paras was the first to question him. He was asked if he has anything to do with the killing of Benjamin Garcia, and he answered, he has nothing to do with it; after giving his answer, Atty. Paras told him, 'matigas ka' and slapped his 'two ears with both hands in a cymbal-like manner and gave him blows at the right

side of his body; when he fell down from the chair, it was in the presence of five persons.' Later on, he was brought to the other building and was subjected to a lie detector test. He was made to sit on a chair and his left arm and chest strapped. He was asked many questions. After the lie detector test, he was told he could go home already, and be with his family. Then he left the building and while he was 'about to take a jeep, Atty. Paras stopped' him and told him 'sleep in the jail, in the NBI, as he (Atty. Paras) will ask him (Bondoc) some more important questions. That 'at about 12:00 o'clock midnight,' he 'was called by two persons who tied both his hands at his back and was 'brought to the third floor of the other building. There again he was asked if he has anything to do with the killing of Benjamin Garcia and he answered 'I don't really have nothing to do with this.' Then Atty. Paras told him to remove his 'kamiseta,' and with it he was blindfolded, and while blindfolded he was given fist blows on different parts of his body. When he fell down, he was lifted and was again asked many questions. When he told them that 'I really don't know anything about that,' he was told to remove his brief. Then his penis was pressed with a plier, and then 'electrocuted.' And this made him felt that he would die; it is very painful. He insisted 'x x x I really do not know anything about it and have nothing to do with that, and they put again the wire at my penis and electrocuted it again.' Then he was again asked if he has anything to do with the killing of Benjamin Garcia, and when they 'were about to electrocute again my penis, I told them 'kahit na po ano ang gusto ninyo, susunod po ako, huwag lang po ninyo akong sasaktan' and it was only then that they told him to put on his brief and his shirt, and then he was brought inside a room, where Atty. Matta, Jr. was. The latter asked his true name, his work, where he lives, his age, the name of his wife and that of his mother and father, and was told to admit. His statement was reduced in writing, and when asked to sign it, he did sign the same.

"He was not advised that he is entitled to a counsel; that when his statement was taken, he was not accompanied by any of his relatives; nor any person known to him, much less a lawyer. He did not get any counsel of a lawyer. That he did not have any misunderstanding with Benjamin Garcia; he has not even quarreled with him. He has never suspected Benjamin Garcia as having done something against his relatives.

"That he was told to point to Augusto Mutuc and while doing so, a picture was taken of him. That he was told to hold the ball pen of Atty. Matta, and told to sign the statement, again a picture was taken. He signed the statement because he was told that 'if I will not sign that, I will suffer a grievous one than the previous one and they told me that I will not see my family anymore.' That during the alleged re-enactment, Atty. Matta demonstrated what he was told to do and he did for fear that he would be harmed again.

"The first time he was allowed to receive visitors was after more than ten (10) days from his arrest. His first visitors were his wife and brother-in-law. They were not able to talk with one another; they just cried upon seeing each other.

"He (Bondoc) was first investigated by Sgt. Capulong of the Apalit Police Department but he did not admit any participation in the alleged disappearance of Benjamin Garcia. (t.s.n., pp. 11-48, inclusive, February 21, 1973).

"His wife, Ines Ignacio-Bondoc, testified that she gave birth to a male child named Dante Bondoc on February 12, 1970; she was assisted by a 'hilot' and was attended for one month (pp. 5-6, March 26, 1973); she was told not to work and touch cold water, but 'because nobody will do the work' in the house, she was forced to do washing against the advice of her 'hilot' (p. 7, id.); on May 28, 1970, her husband, Fernando Bondoc, was at home doing the household chores as she was lying in bed, sick. Her blood was 'becoming clear' and was being attended and treated by a doctor. (pp. 4-5, id.)

"Accused-appellant Augusto Mutuc, testifying on his behalf, declared that he was arrested by the NBI on December 9, 1972. He was then sleeping under a mosquito net when suddenly somebody grasped his hand and asked him who he was and when he said he is Augusto Mutuc, he was pulled and brought inside a car. He was not allowed to change his dress. Then they proceeded to the municipal building of Apalit, Pampanga where one of the policemen companion of the NBI headquarters in Manila. Upon arriving thereat, he was inside a room of the building and there saw Fernando Bondoc. Then Bondoc asked him why he was there and Mutuc

answered 'I was suspected in the killing of Benjamin Garcia.' Bondoc told him that he was also suspected and because he refused to admit, he was maltreated. Then Atty. Paras brought Mutuc inside a room and was asked of his participation in the death of Benjamin Garcia. When he answered that he did not know anything about it, he was slapped and kicked in the stomach, causing his vision to become dim. Then he was forced to stand and told to remove his pants and shirt. His eyes were blindfolded, and was maltreated. Then he was asked if he has anything to do with the death of Benjamin Garcia, to which he answered: 'I do not know anything about that.' Then he was made to squat. While squatting he was kicked. When he was asked again and refused to answer, he was told 'matigas ka.' And when he could no longer stand the maltreatment, he told his tormentors, he signified conformity to what he was being made to admit, thus: 'you can do anything you want now, and they stopped maltreating him. Thereafter he was brought inside an investigating room where he saw Atty. Matta. There he was investigated and his statement reduced in writing. But that he was not told that he is entitled to counsel; nor informed of his constitutional right to remain silent. Thereafter, they were brought to Taguig, Rizal. They climbed a hill and when the NBI saw a hole, they (accused) were told to point to the hole. The NBI would demonstrate an act, and the accused were made to repeat the act, While doing what they (accused) were told to do, they were photographed."

The trial court found the accused guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code as charged in the information and sentenced them "x x x to suffer the penalty of DEATH, to indemnify the heirs of the victim the amount of P12,000.00, jointly and severally; to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages, jointly and severally, and to pay the proportionate share of the costs."

In convicting the accused, the trial court relied on their extra-judicial statements reasoning out its finding of guilt as follows:

"There were extra-judicial confessions in this case, executed by accused Bondoc and Mutuc, as evidenced by Exhibits 'D' and 'E', respectively. Settled is the rule in our jurisdiction that an extra-judicial confession, if corroborated by evidence of corpus delicti, will suffice conviction. It is the contention of the prosecution that their extra-judicial confessions were voluntarily given. On the other hand, the defense claimed that they were involuntarily given that the extra-judicial confessions were but a product of maltreatment on their persons by the N.B.I. agents.

"After a careful study of their extra-judicial confessions, the Court is convinced that the same were voluntarily given. What with their going to the scene of the crime, their re-enactment thereof and their identification of the pictures of the relative positions of the victim, the Court is more convinced that these accused were the perpetrators of the crime. Granting that they were maltreated by the N.B.I. agents into admitting their participation of the killing of the victim, why did they not file administrative or criminal charges to the proper authorities against their alleged tormentors? The Court could see no valid reason why these N.B.I. agents, career men at that and members of the Philippine Bar, would, in solving a case, go beyond the limitations of legal procedure by extracting such extra-judicial confession (People versus Sedon, et al., 46 O.G. 2644 (1950), and People versus Castillo, G.R. No. L-1667, February 10, 1949). Necessarily, in solving a case, they will also furnish a report of their investigation to the Department of Justice, and that they would be the object of charges if it turns out that they procured these extra-judicial confessions through illegal means. Besides, their confessions exhibited no signs of suspicious circumstances tending to cast doubt on the integrity of the same. In fact, the statements were replete with details which could only be supplied by the accused themselves (People versus Cruz, G.R. No. L-11870, Oct. 16, 1961; People versus Saez, G.R. No. L-15776, March 29, 1961; and People versus Mojica, G.R. No. L-17234, March 31, 1964)."

The accused-appellants raise the following assignments of errors in their brief:

1. THE LOWER COURT ERRED IN ADMITTING THE ALLEGED EXTRA-JUDICIAL STATEMENTS (EXHIBITS D AND E) AND EVIDENCE BASED THEREON, AND IN GIVING CREDENCE TO THE

SAME.

2. ASSUMING WITHOUT ADMITTING THAT THE EXTRA-JUDICIAL STATEMENTS (EXHIBITS D AND E) WERE OBTAINED WITHOUT THE LEAST INTIMIDATION AND MALTREATMENT, THE LOWER COURT ERRED IN CONVICTING THE ACCUSED BECAUSE THE DEATH OF BENJAMIN GARCIA HAS NOT BEEN FULLY ESTABLISHED.

3. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED BASED ON THE EVIDENCE OF THE PROSECUTION WHICH FAILED TO MEET THE QUANTUM OF EVIDENCE REQUIRED TO OVERCOME THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.

The general rule has long been that "x x x the presumption of the law is in favor of the spontaneity and voluntariness of an extra-judicial confession of an accused in a criminal case. The burden is upon the declarant to destroy this presumption." (People v. Soligan, 101 SCRA 264; People v. Castañeda, 93 SCRA 56; People v. Caramonte, 94 SCRA 150; People v. Ramos, 94 SCRA 842; and People v. Juliano, 95 SCRA 511.)

The extra-judicial statements were taken before the Constitution was amended in 1973 and before the right to counsel during any custodial interrogation became the subject of instructions required to be followed strictly by all police agencies. Under the People v. Manguera, Simeon v. Villaluz and People v. Isnani (63 SCRA 4) rulings, the new right provided by Section 20, Article IV of the Constitution was not to be applied retroactively and, therefore, police agencies could be excused for not complying earlier with the strict and detailed guidelines promulgated after the new Constitution became effective.

Notwithstanding the foregoing, the Court has also repeatedly stressed that -

"x x x 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 corroborated by other testimony." (People v. Urro, 44 SCRA 473 (1972); People v. Palacpac, 49 SCRA 440 (1973); People v. Manipula, et al., 52 SCRA 1 (1973); and People v. Francisco, 74 SCRA 158 (1976).

The only pieces of evidence which sustain the finding of guilt and the imposition of the DEATH penalty are the extra-judicial confessions which the accused-appellants repudiated during trial.

Murder is always a heinous and infernal offense. It is particularly diabolic when, as in this case, the victim is lured from his home and family and is disposed of elsewhere, with his widow and children not having the consolation of burying their loved one and knowing where his remains rest. We are constrained to repeat the words of Chief Justice Enrique M. Fernando in his dissent in Magtoto v. Manguera (supra):

"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 maybe truthfully said that there is full respect for the constitutional mandate that no person shall be compelled to be a witness against himself."

To resolve this automatic review of the lower court's decision, we do not have to make a finding on whether or

not the investigating officials indeed tortured the two accused in order to extort the confessions. An allegation of torture was a natural and logical defense under the circumstances and, as pointed out by the trial court, no action was taken by the accused to substantiate the alleged maltreatment. It is their word against the word of the investigating officers. There may also have been exaggerations, if not concoctions, in the story of appellant Bondoc who, while blindfolded, was given fist blows by unidentified "they" or "them" and not having the ability to see anything still testified that pliers were applied to his penis, which was then "electrocuted."

At the same time, there are also circumstances of this case tending to show that the confessions may not have been voluntarily given. Police investigators should be given a certain leeway in making patient, persistent and even relentless questioning of suspects about whose guilt they entertain strong convictions. However, beyond a certain point the methods used become impermissible and any confession secured may no longer be called "voluntary". It is precisely because of the difficulty of fixing the boundary line between permissible and impermissible modes of interrogation, plus the fact that all interrogations, as in this case, are incommunicado that the right to counsel becomes significant.

Because of doubts engendered by facts in the records, we resolve the doubts in favor of the accused and reject the extra-judicial statements as basis for the conviction.

Miranda v. Arizona (384 U.S. 436) explains that even in the absence of torture or third degree methods or, as in this case, alleged electrocution of the genitals and notwithstanding the absence of administrative charges against the investigators or physical examinations of the victims of the beatings, an extrajudicial statement is not necessarily voluntary. It states:

"Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. As we have stated before, 'Since *Chambers v Florida*, 309 US 227 [84 L ed 716, 60 S Ct 472], this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.' *Blackburn v Alabama*, 361 US 199, 206, 4 L ed 2d 242, 247, 80 S Ct 274 (1960). Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other *[384 US 449] effective tactics. (The manuals quoted in the text following are the most recent and representative of the texts currently available. Material of the same nature appears in Kidd, *Police Interrogation* (1940); Mulbar, *Interrogation* (1951); Dienstein, *Technics for the Crime Investigator* 97-115 (1952). Studies concerning the observed practices of the police appear in LaFave, *Arrest: The Decision To Take a Suspect Into Custody* 244-437, 490-521 (1965); LaFave, *Detention for Investigation by the Police: An Analysis of Current Practices*, 1962 Wash ULQ 331; Barrett, *Police Practices and the Law - From Arrest to Release or Charge*, 50 Calif L Rev 11 (1962); Sterling, *supra*, n. 7, at 47-65.) These *texts are used by law enforcement agencies themselves as guides. (The methods described in Inbau & Reid, *Criminal Interrogation and Confessions* (1962), are a revision and enlargement of material presented in three prior editions of a predecessor text, *Lie Detection and Criminal Interrogation* (3d ed. 1953). The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say that the techniques portrayed in their manuals reflect their experiences and are the most effective psychological stratagems to employ during interrogations. Similarly, the techniques described in O'Hara, *Fundamentals of Criminal Investigation* (1956), were gleaned from long service as observer, lecturer in police science, and work as a federal criminal investigator. All these texts have had rather extensive use among law enforcement agencies and among students of police science, with total sales and circulation of over 44,000.)

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"From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must 'patiently maneuver himself or his quarry into a position from which the desired objective may be attained.' (Inbau & Reid, *Lie Detection and Criminal Interrogation* 185 [3d ed. 1953]) When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

"Even without employing brutality, the 'third degree' or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness *[384 US 456] of individuals." (Interrogation procedures may even give rise to a false confession. The most recent conspicuous example occurred in New York, in 1964, when a Negro of limited intelligence confessed to two brutal murders and a rape which he had not committed. When this was discovered, the prosecutor was reported as saying: 'Call it what you want-brain-washing, hypnosis, fright. They made him give an untrue confession. The only thing I don't believe is that Whitmore was beaten.' N. Y. Times, Jan. 28, 1965, p. 1, col. 5. In two other instances, similar events had occurred. N. Y. Times, Oct. 20, 1964, p. 22, col. 1; N. Y. Times, Aug. 25, 1965, p. 1, col. 1. In general, see Borchard, *Convicting the Innocent* (1932); Frank & Frank, *Not Guilty* (1957).

There are significant matters found in the records which lead us to differ from Judge Onofre A. Villaluz who stated that the "Court wholly believes on the testimonies of the prosecution witnesses" and who found the extrajudicial confessions "voluntarily given."

The information avers that Benjamin Garcia was killed on May 28, 1970. Bondoc and Mutuc were immediately suspected as implicated in the disappearance of Garcia and were, in fact, investigated. Nothing resulted from the investigations until more than two and a half years later when the appellants were suddenly picked up, subjected to incommunicado interrogation, and persuaded to give "voluntary" confessions.

The prosecution evidence itself shows that Fernando Bondoc was turned over to the investigators on December 8, 1972. His "interview" took place a day later, on December 9, 1972. Starting at 6:00 o'clock in the evening, the interview lasted until midnight. The time element is a factor to be considered in assessing the voluntary nature of the confession, considering that the statement itself is short and narrates a most simple occurrence.

On the other hand, Mutuc's extra-judicial statement is dated December 9, 1972. Yet the record is clear that Mutuc was apprehended only on December 10, 1972 because according to Atty. Matta himself, Mutuc was apprehended in his house after Bondoc gave his extra-judicial statement which was past midnight of December 9, 1972. This inconsistency is very apparent and has not been reconciled by the prosecution. Under cross-examination, Atty. Matta testified:

Atty. Gonzales:

"Q When was this alleged statement of Augusto Mutuc taken?

"A After he was specifically identified by Bondoc, the interview started.

"Q How about his statement identified by you a while ago, when was it taken?

"A It was taken immediately after we learned from him his participation in this case.

"Q I am showing you here in this statement of Augusto Mutuc, it appears that it was taken on December 9, 1972, was that the exact date when this statement was taken before his apprehension?

"A Yes sir.

(TSN., Jan. 24, 1973, pp. 96-97)

The date which shows that a statement was taken a day before the accused declarant was apprehended may have been the result of oversight. However, this Court is reviewing a decision imposing the death penalty where the only prosecution evidence implicating the accused is his own wrongly dated confession. We cannot ignore the discrepancy.

The trial court asks why the accused-appellants did not file administrative charges or criminal complaints against their alleged tormentors.

The records show that the accused-appellants are ignorant farmers from a distant barrio of Apalit, Pampanga. Mutuc cannot even sign his name and merely affixed his thumbmark to his extra-judicial statement. The visitors of Bondoc were allowed to see him only ten days after his apprehension. When the first visitors, his wife and brother-in-law, saw him, they were unable to talk to one another at first; they just cried upon seeing each other. How could the lower court expect these people to file charges against the authorities, more so when the court itself emphasized that the investigations were conducted less than three months after martial law was proclaimed in the whole country? There was no inkling at the time on how martial law "Philippine style" would be implemented.

It is likewise difficult to ascertain the truth or falsity of appellant Bondoc's allegations that his body was subjected to blows and his genital organ pressed with a pair of pliers and then electrocuted. Bondoc was already fully clothed when photographs were taken while he was signing his extra-judicial statement and subscribing to it under oath.

The trial court stated that the appellants' going to the scene of the crime, their re-enactment of the crime, and their identification of the pictures of the relative positions of the victim convinced it that the accused perpetrated the crime.

The prosecution presented as evidence a photograph (Exhibit "F-8") showing a certain Almenon and a certain Pancho pointing to a "hole" where they discovered the body of Benjamin Garcia, the same "hole" which the prosecution stated had earlier been pointed to by the accused as the place where they dumped the body of Benjamin Garcia after killing him. According to the prosecution, Almenon and Pancho joined the NBI authorities after the accused had voluntarily gone to the place to show the exact spot where they dumped Benjamin's body and to re-enact how they killed him. Almenon and Pancho were however, not presented as witnesses in the trial court.

Considering that, as early as June 7, 1970, the authorities already knew that a cadaver had been discovered in the same place and had autopsied the decomposed body and photographed it from various angles and that the accused-appellants were brought to the same place by the officers holding them in custody, and not the other way around, the supposed identification of the well or hole loses much of its probative value. It would be different if an accused who gives an extra-judicial confession leads the police to a place till then known only to the accused and which would not have been discovered had the accused not brought the police there. Moreover, Almenon and Pancho were not introduced as witnesses to give details on how the corpse was discovered and whether their being brought to the "hole" was before or after the appellants had identified it as the place where the body of Garcia was dumped.

The trial court justified the voluntariness of the extra-judicial statements by applying the test that the statements contained details which could have been supplied only by the affiants.

The test cannot apply four square to this case.

The records show that before the Manila agents took over the case of Benjamin Garcia, the Pampanga office had already conducted their own investigation. The findings were embodied in a report forwarded to Manila. On cross-examination, Atty. Matta testified that the accused Bondoc was a "suspect" in the disappearance of Benjamin Garcia because of - (1) the letter of Mr. Nicolas Abelardo and (2) the statements furnished by the Pampanga office. The latter statements, according to Atty. Matta, included those of Mrs. Trinidad A. Garcia, Beatriz Garcia de Timoteo, and Domingo Reyes. The 1970 findings on the unidentified corpse also formed part of NBI records.

The report from Pampanga was never introduced in court during the trial. We find it surprising why the prosecution appeared reluctant to present it.

The testimony regarding the report states:

"ATTY. GONZALES

"May we request for a subpoena duces tecum to be sent to the Director of the NBI, your Honor, regarding this case, as far as the report of the NBI is concerned. It appears that it is not among the files brought by the NBI before this Court.

"FISCAL MELLENDRES

"Your Honor please, I want to manifest that the report asked by counsel as he claimed is the report of the NBI of San Fernando. It seems that the report itself now attached to the record is the very report asked for because there is no such copy your Honor. We are attaching the original copy of the report of the case so I presumed that that is the very report asked for.

"ATTY. GONZALES

"No, this is not the report I requested the NBI to bring to this Honorable Court. After going over the files brought by the NBI representative, it appears that said report is not among the files.

"FISCAL MELLENDRES

"Your Honor please, it is very surprising to hear the statement of counsel that there is still another report with the exception of this report now in our file, and has already been marked as Exhibit 2, for them.

"After all this report is immaterial in this case. This NBI is not the witness in this case. The best witness is the witness to the crime.

"COURT

"Are you sure that there is still another report? Because the representative here said that the same has been submitted and he even confirmed about the existence of said report.

"Why don't you present him?

"ATTY. GONZALES

"We will do that, your Honor. In the meantime, we will present Mutuc."

(TSN, April 24, 1973, pp. 2-3)

Exhibit 2 mentioned by the Fiscal is the necropsy report, not the report of investigation of the Pampanga Office which led Atty. Matta to suspect that Bondoc was one of the authors of the crime. The appellants state that their

efforts to get a copy of the Pampanga report or to have it produced in court were unavailing.

It is, therefore, probable that the investigators in Manila had more or less formed some opinions about the culpability of the appellants and were familiar with some details regarding the disappearance of Garcia and the recovery of an unidentified corpse which bore stab wounds when the confessions were taken. This probability affects the trial court's findings that the statements were replete with details only the accused could have furnished.

Whether or not the decomposed cadaver examined in 1970 was truly the corpse of Benjamin Garcia is itself not satisfactorily established.

Mrs. Trinidad A. Garcia never saw the exhumed body or whatever remained of it in order to ascertain whether it was indeed that of her missing husband. The pictures taken in 1970 were shown to her in 1972. The trial court relied on Mrs. Garcia's statement that her husband had a missing tooth in his lower dentures and the photographs shown to her appears to indicate that a tooth was missing. Mrs. Garcia also stated that she could still identify the face of her husband in the pictures.

Leonardo Garcia, the funeral coach driver who retrieved the body from Taguig, Rizal declared that the body had tattoos. He stated:

"x x x may tatoo sa kaliwang braso sa itaas ng siko at mayroon ding tatoo sa palibot ng dalawang binti x x x".

The widow, Mrs. Garcia, was quite emphatic on cross-examination that her husband had no tattoo on his body; he had only "balat."

It is difficult to comprehend how anybody, including a spouse, could give a positive identification of the corpse from the pictures introduced in evidence. It would also be a risky proposition to corroborate extra-judicial statements about a murder with testimony that a tooth appears to be missing from the lower dentures shown in the photographs. Any apparent gap could be the result of some defect in the photographic film or teeth could have been knocked off in the course of the killing or the falling into the well. Moreover, the necropsy report prepared in 1970 states:

"Body in advance stage of decomposition with marked softening beginning liquifaction of soft tissues exposing the body (bony) structures of the anterior and posterior chest wall and upper extremities. Scalp hairs are falling off and the skull devoid of soft tissues exposing the cranial bones."

Considering all the foregoing, we are constrained to rule that the trial court failed to give the extra-judicial statements "the most painstaking scrutiny" which we have directed must be taken by all trial courts trying cases with similar circumstances.

We, therefore, acquit the accused appellants on grounds of reasonable doubt. This judgment of acquittal does not necessarily mean that the appellants had nothing at all to do with the crime. It simply means that the prosecution failed to prove the guilt of the accused-appellants beyond reasonable doubt. The constitutional presumption of innocence was not successfully overcome by the prosecution.

WHEREFORE, the decision of the trial court imposing the death penalty on accused-appellants Fernando Bondoc and Augusto Mutuc is hereby REVERSED and SET ASIDE for failure of the prosecution to prove their guilt beyond reasonable doubt. The accused-appellants are ACQUITTED of the charge against them and their immediate release is ordered unless they may be held for some other lawful cause.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Relova, and De la Fuente, JJ., concur.

Aquino, J., see dissenting opinion.

Abad Santos, J., no part.

DISSENTING OPINION**AQUINO, J.:**

I dissent because the guilt of the accused was established beyond reasonable doubt by their confessions which were corroborated by evidence of the corpus delicti (Exh. A to E). No evidence could be more conclusive and indubitable. Their acquittal is not justified.

Fernando Bondoc, 28, a jeepney driver, and Augusto Mutuc y Bondoc, 41, a jueteng collector, third cousins, both natives of Barrio Balucoc, Apalit, Pampanga, admitted in their confessions the assassination of Benjamin Garcia of the same barrio.

It was recounted in their confessions that Bondoc, Mutuc, Elpidio Lopez and Garcia met one morning on May 28, 1970 at a gas station in Plaridel, Bulacan. They rode in a jeep to the house of Pedro Ignacio in Taguig, Rizal. The jeep was driven by Bondoc Mutuc, Lopez and Garcia had a drinking spree at Ignacio's house. In the afternoon, the four went to an uninhabited place or promontory in Barrio Tanyag, Taguig.

Bondoc suddenly hit Garcia in the head with an iron bar or pipe. He fell on the ground. Lopez got the hunting knife of Garcia and stabbed him three times in the chest. Mutuc undressed Garcia and buried him. Then the trio returned to Apalit. The postmortem examination disclosed that Garcia sustained three chest wounds which affected his heart, liver, stomach and intestines (Exh. A).

Garcia was liquidated because he had killed Tomas Mandap and Marcelo Manlapaz, Mutuc's brother-in-law and cousin, respectively. Garcia behaved arrogantly ("siga") in Barrio Balucoc like a "hukbo" whose wishes had to be obeyed (Nos. 12 and 13, Exh. E). About a week before the incident, Mutuc and Garcia quarreled and Garcia attempted to stab Mutuc but was not able to hit Mutuc due to the intervention of by-standers. (According to Garcia's wife, he was also suspected of having killed Mayor Mercado's brother, Juanito, 107 tsn.)

Bondoc gave the following declaration to Agent Mariano P. Matta, Jr. of the National Bureau of Investigation on December 9, 1972 (Exh. D):

"8. T - Sino itong si Benjamin Garcia na tinutukoy mo? S - Kababaryo ko po.

"9. T - Natatandaan mo ba kung kailan nawala itong si Benjamin Garcia? S - Kung hindi po ako nagkakamali ay mula pa nuong Mayo 28, 1970.

"10. T - Ano naman ang nalalaman mo tungkol dito sa pagkawala ni Benjamin Garcia? S - Isa po ako sa kasama nina Augusto Mutuc, Elpidio Lopez at Benjamin Garcia nang sila ay magpunta duon kay Pedro Ignacio sa Bo. Bicutan, Taguig, Rizal, nuong araw na iyon.

"11. T - Bukod sa inyong apat, mayroon pa bang ibang kasama o nakaalam ng bagay naito? S - Wala na po.

"12. T - Isalaysay mo nga ang buong pangyayari na namagitan sa inyo nuong araw na iyon? S - Nuong umaga

po ng Mayo 28, 1970, ako po ay nanduruon sa estasyon ng gasolinahan sa Plaridel, Bulacan, at naghihintay sa pagdating nina Augusto Mutuc at Elpidio Lopez.

"Sila po ay dumating ng mga alas-siyete ng umaga na kasama sa pagdating si Benjamin Garcia. Sakay po ng minamaneho kong jeep na pampasahero, kami po ay nagtungo sa bahay ni Pedro Ignacio sa Taguig, Rizal, at dumating duon ng mga alas-diyes ng umaga. Sila po nag-inumang tatlo na tumagal ng mga hanggang ala-una ng hapon.

"Matapos po nuon, kaming apat ay namasyal duon sa may burol at habang nanduruon, bigla ko na lamang pinalo sa ulo si Benjamin Garcia. Nang nakahandusay na po si Benjamin Garcia, ang ginawa po ni Elpidio Lopez ay inundayan naman ng saksak si Benjamin Garcia.

"Matapos po nilang maihulog duon sa isang hukay si Benjamin Garcia, kami pong tatlo ay umalis na at umuwi sa Bo. Balucoc nang mga mag-aalas singko ng hapon."

Mutuc made the following confession to NBI Agent Romulo R. Parras on December 9, 1972 in the presence of Agent Matta (Exh. E):

"10. T - Ano ang kinalaman mo sa pagkawala at pagkamatay nitong si Benjamin Garcia? S - Ako po ay kasama nina Fernando Bondoc at Elpidio Lopez na pumatay kay Benjamin Garcia.

x x x x x x x x

"15. T - Isalaysay mo nga ang buong pangyayari buhat nuong magkasama kayo nina Benjamin Garcia hanggang sa nang siya ay inyong patayin? S - Nuong pong Mayo nang nakaraang taon, ang tiyak na petsa po ay hindi ko matandaan, kami nina Benjamin Garcia, Elpidio Lopez, Fernando Bondoc at ako ay nagkita-kita sa Plaridel, Bulacan.

"Kami po ay sumakay sa jeep na minamaneho ni Fernando Bondoc. Ang sabi po nila ay papunta kaming Taguig, Rizal. Nang kami po ay nasa isang bahay na, kaming tatlo nina Elpidio at Benjamin ay nag-inuman. Itinuloy po namin ang aming inuman sa may bundok na malayo duon sa bahay na una naming ininuman.

"Duon po sa lugar na iyon pinalo ni Fernando Bondoc sa ulo si Benjamin Garcia. Nang nakahandusay na si Benjamin, ang ginawa naman po ni Elpidio ay makatatlong ulit na sinaksak si Benjamin.

"Matapos po nito, aking hinubaran si Benjamin at itinira, lamang iyong kanyang karsonsilyo. Iyon pong mga damit niya ay aking itinaon. Tinabunan ko lamang po ang katawan ni Benjamin ng kaunting damo at kaming tatlo ay umalis na pabalik sa Pampanga."

The two confessions were sworn to before Nestor E. Gonzales, NBI, regional director. Lopez is at large.

When Garcia failed to return home on May 28, 1970, his wife Trinidad Abelardo inquired from Bondoc and Mutuc about his whereabouts. Garcia had told her that he was going to meet Mutuc and Bondoc. The two answered that they did not know.

The Constabulary detachment in Barrio Balucoc asked her about her husband. She said that she was ignorant of what happened to him. Her brother Nicolas reported his disappearance to the NBI office in Pampanga and its Manila office.

A week after Garcia was killed, or on June 4, 1970, a Taguig policeman reported the discovery of a cadaver in Barrio Tanyag. The body was brought to the morgue where an autopsy was made (Exh. A). Photographs (Exh. B to B-2 and C-1-a to C-1-c) were taken of the body under the supervision of Doctor Dario C. Nalagan, NBI senior medico-legal officer.

About eighteen months later, or in 1972, Trinidad identified the cadaver in the photographs as that of her husband

Garcia as shown by the face, which was still intact, and the fact that a tooth was missing in the lower left jaw (Exh. C-1-d; 106-107 tsn).

The NBI, acting on the letter of Nicolas Abelardo and suspecting Bondoc to be implicated in the case, asked the police of Apalit to turn over Bondoc to the NBI. He was then being detained by reason of a charge for physical injuries. The case was referred to the NBI also by Secretary of Justice Vicente Abad Santos.

The NBI agents confronted Bondoc with Abelardo's complaint. After a series of interrogations, Bondoc admitted his complicity in the killing of Garcia. He identified Mutuc and Lopez as his co-conspirators.

Photographs were taken of (1) the actual interrogation of Bondoc and Mutuc, (2) Bondoc pointing to Mutuc as a confederate and Mutuc pointing to Bondoc as his companion, (3) the taking of their oaths before Regional Director Gonzales and (4) the taking of their fingerprints, Exhibits D-2 to D-5 and E-2 to E-7. The photographs unquestionably show that the confessions were given voluntarily or without any duress whatsoever.

Bondoc and Mutuc reenacted the crime. Presented in evidence were photographs of (1) Bondoc and Mutuc at the scene of the crime in Barrio Tanyag, pointing to the spot where they buried Garcia, (2) how Bondoc hit Garcia on the nape with a tube or iron bar, (3) how Mutuc stabbed Garcia with the latter's hunting knife, (4) how Garcia was dragged and dumped into the depression where his body was found later and (5) Reynaldo Almanon and Restituto Pancho, who discovered the cadaver of Garcia on June 4, 1970, present at the reenactment (Exh. F to F-8).

In *People vs. Del Mundo* (Commander Sumulong), L-39051, June 29, 1982, 114 SCRA 719, Marciano T. Miranda was kidnapped by the Huks in Barrio Balitucan, Magalang, Pampanga and brought some hours later in Sitio Cauayan, Barrio Pam-pang, Angeles' City. A grave was dug and Miranda was ordered to say his prayers. Miranda was bound and brought near the grave. While Miranda was praying, he was hit by a pipe and he fell into the grave. Commander Sumulong directed that the grave be covered.

More than six months later, two corpses in an advanced state of decomposition were exhumed in the spot where Miranda was killed. One of the corpses was identified by Miranda's wife and brother as that of Miranda's because the molars were missing and the hair was reddish. Commander Sumulong and his confederates were convicted of kidnapping with murder in connection with Miranda's liquidation.

In this case, the NBI agents solved the crime without resorting to illegitimate measures. They performed their duties regularly in the ordinary course of business. There is no reason for not giving the confessions their high degree of probative value (Sec. 29, Rule 130, Rules of Court). They contain many details which are tell-tale indicia of their voluntariness.

However, the proper penalty is reclusion perpetua, not death.

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