

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODRIGO DASIG @ KA RUBIN DAKU @ ARMAND; EDWIN NUÑEZ Y
TABANAS @ MABI; ALVIN DOE @ AL @ KA ALVIN; ROGER DOE @ KA
JAMES @ KA...**

G.R. No. 100231. April 28, 1993

Ponente: NOCON, J.

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NOCON, J.:

Appellant, Rodrigo Dasig is now before Us to plead the reversal of his conviction by the Regional Trial Court, Branch 28, Mandaue City, finding him guilty of Murder with Direct Assault.

He was charged together with Edwin Nuñez and 6 others who are still at large, in an Information which reads:

"That on or about the 4th day of August, 1987, in the City of Mandaue, of this Honorable Court, the aforementioned accused, conspiring and confederating together and helping one another, with intent to kill, treachery, evident premeditation abuse of superior strength and use of motor vehicle, all armed with unlicensed firearms, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Redempto Manatad, a police officer on traffic duty, at his vital portion which caused his death soon thereafter, knowing beforehand that the victim was a policeman who was then in the performance of his official duties."[1]

Upon arraignment, appellant and Edwin Nuñez entered a plea of "not guilty." However, after the prosecution had presented its first witness, accused Nunez changed his plea of "not guilty" to "guilty." Hence, the lower court held, in abeyance the promulgation of a judgment against said accused until the prosecution had finished presenting its evidence. While trial was still ongoing, Nuñez died on March 10, 1989, thereby extinguishing his criminal liability.

The facts surrounding this case show that in the afternoon of August 4, 1987. Pfc. Redempto Manatad, Pfc. Ninah Tizon and Pfc. Rene Catamora were tasked by their commanding officer to assist in manning the traffic at M.N. Briones and Bonifacio Streets in Mandaue City. Pfc. Tizon controlled the traffic lighting facility; Pfc.. Manatad manned the traffic; while Pfc. Catamora acted as back-up and posted himself at Norkis Trading building.

At about 4:00 o'clock in the afternoon, Pfc. Catamora noticed eight (8) persons, one of whom he identified as Edwin Nunez, acting suspiciously. He noticed one of them giving instructions to two of the men to approach Pfc. Manatad. He followed the two, but sensing that they were being followed, they immediately proceeded to the middle of the road and engaged Pfc. Catamora to a gun battle. At that instant, Pfc. Catamora heard a series of shots from the other group and thereafter saw Pfc. Manatad sprawled on the ground. Being out-numbered and to save his own life. Pat. Catamora sought refuge at the nearby BIR Office from where he saw two (2) persons take Pfc. Manatad's gun and again fired at him to make sure that he is dead while the rest of the group including Nuñez acted as back up. Thereafter, the Nunez group commandeered a vehicle and fled from the scene of the shooting. Pfc. Rene Catamora testified that he can identify accused?appellant Nunez because of a mole at the bridge of his nose near the left, eye which he noticed when the accused passed 2 or 3 meters in front of him together with his

companions.

On August 16, 1987, two teams of police officers were tasked to conduct surveillance on a suspected safehouse of members of the sparrow unit located in Peace Valley, Cebu City. Upon reaching the place, the group saw Rodrigo Dasig and Edwin Nuñez trying to escape. The team of Capt. Antonio Gorre captured Nuñez and confiscated a .45 caliber revolver with 3 magazines and ammunitions, while the group of Sgt. Ronald Arnejo pursued Dasig, who threw a grenade at his pursuers, but was shot on his left upper arm and subsequently apprehended. A .38 caliber revolver with 17 live ammunitions were confiscated from him.

Thereafter, Dasig was brought to the hospital for treatment, while Nuñez was turned over to the Metro discom for investigation. Meanwhile, Dasig was interrogated by M/Sgt. Ariston Ira of the PC Criminal Investigation Service on August 19, 1987 at his hospital bed at the Lapulapu Army Hospital in Cebu City. Assisting Dasig during the interrogation was Atty. Fortunato Parawan of the Creer Law Office, who was requested by the military to represent appellant who did not have a lawyer. Before the start of the interrogation, Atty. Parawan asked appellant whether he was willing to avail of his services, to which appellant agreed. M/Sgt. Ira then appraised Dasig of his constitutional rights. The interrogation was conducted in Cebuano upon appellant's request.

Dasig confessed that he and the group of Edwin Nuñez killed Pfc. Manatad. He likewise admitted that he and Nuñez were members of the sparrow unit and that their aliases were "Armand" and "Mabi." respectively. The extra-judicial confession of appellant marked as Exhibit "J"[2] was signed by him on every page thereof with the first page containing a certification likewise signed by him, which states: "I hereby certify that the herein statement is free and voluntary, and that I am assisted by my counsel in the course of this investigation" followed by the signed conformity of Atty. Parawan. The extra-judicial confession was subscribed and sworn to before Cebu City Asst. Fiscal Salvador Solima.

In the present appeal, Dasig contends that the Procedure by which his extra-judicial confession was taken was legally defective, and contrary to his Constitutional rights. He further contends that assuming he conspired in the killing of Pfc. Manatad, he should be convicted at most of simple rebellion and not murder with direct assault.

Appellant also claims that the custodial interrogation was done while he was still very sick and consequently, he could not have fully appreciated the wisdom of admitting such a serious offense. That even with the presence of counsel, his extra-judicial confession is inadmissible in evidence as said counsel did not actively assist him and advise him of his rights. In effect, his presence was merely to give a semblance of legality to the proceedings and not to protect appellant against possible abuses of the investigator. Dasig, likewise questions the sincerity of Atty. Parawan in protecting his rights considering that the latter is a known anti-Communist advocate and that the law firm to which he belongs has represented high ranking officers of the Armed Forces of the Philippines.

We find the argument specious. Fiscal Salvador Solima in his certification. Exhibit "J-7-B," stated that he had personally examined the affiant and that he is convinced that the latter's statement was free and voluntary and that the affiant signed the same in his presence and swore under oath as to the veracity of everything therein. Atty. Fortunato L. Parawan also testified that he assisted the affiant from the start of the investigation up to its termination. Atty. Parawan testified thus:

"Q. Who introduced Rodrigo Dasig to you?

A. I inquired from the personnel of the hospital the whereabouts of Rodrigo Dasig and I introduced myself as a lawyer. So they informed me the room of Rodrigo Dasig. At that time I introduced myself as a lawyer who came to assist the person of Rodrigo Dasig. Once we had a confrontation with Rodrigo Dasig. I asked him whether he was willing to get me as his lawyer in that investigation. Then he told me yes.

Q. Did he tell you whether he has a counsel of his own choice?

A. No.

x x x.

Q. In other words he accepted your services as counsel in connection with that investigation which was about to be made?

A. Yes.

Q. Who are the persons present at that time?

A. There were guards outside and inside. There was a man from the CIS in the person of, Sgt. Ira, myself and Dasig.

Q. What happened after that?

A. The CIS started the investigation.

Q. You mean this Ariston Ira?

A. Yes.

Q. Before Ariston Ira conducted the investigation was Dasig informed of his constitutional rights to remain silent, to counsel and if he chooses to testify or say something, that statement of his will be used against or in his favor in the court of justice?

A. Yes. He was willing to get me as counsel in that investigation.

Q. After he was informed of his constitutional rights what transpired next?

A. The investigation started.

Q. Were you present at the very start of that investigation?

A. Yes. I was present from the start until it was finished.

Q. Was that reduced to writing?

A. Yes.

x x x.

Q. You said you were present during the entire investigation. Were the answers of the accused, Rodrigo Dasig, to the questions propounded by the Investigator voluntary?

A. Yes, they are voluntary.

Q. After the investigation was finished what transpired next?

A. After the investigation, I think that was already past 3:00 or 4:00, we proceeded to the office of the City Fiscal at F. Ramos St., Cebu City and then we proceeded to the Office of Fiscal Solema (sic) and then it was subscribed there before Fiscal Solema (sic).

Q. Were you present during the proceeding?

A. I was also present."^[3]

We do not find any reason to doubt the factual findings and conclusions of the trial court that the extra-judicial

confession of the appellant was voluntarily made. Said the trial court:

"The prosecution's evidence clearly shows that herein accused during his investigation was properly informed and appraised of his constitutional right to remain silent and to have a competent and independent counsel preferably of his own choice but since at that time he did not signify his intention to retain a lawyer of his own choice, so he was provided with a lawyer in the person of Atty. Fortunato Parawan of the Creer Law Office who was available, at that time, to assist him during the custodial investigation conducted by T/Sgt. Ariston L. Ira at his hospital bed at Camp Lapulapu Army Station Hospital, Cebu City where he was confined after being hit on his upper left arm and in fact, Atty. Parawan only consented to assist herein accused after the latter has answered in the affirmative to his question as to whether he would be amenable to be assisted by him as his counsel of his own choice.

"The prosecution's evidence further show that Atty. Fortunato Parawan after consenting to be his counsel was with him when his extra-judicial confession or sworn statement was subscribed and sworn to by him before Assistant City Fiscal Salvador O. Solima of the Cebu City Fiscal's Office who, before accused has actually affixed his signature on each and every pages of his extra-judicial confession, has informed him (accused) of his constitutional rights and has explained the contents of his extra-judicial confession.

"Moreover, per certification made by Assistant City Fiscal Salvador O. Solima of the Cebu City Fiscal's Office, clearly shows that accused in executing the same has done so voluntarily and after having understood the contents thereof which is in the visayan language a language known to him, found on the last page thereof now marked as Exhibit "J-7-B."

"Furthermore, this sworn statement of accused Dasig is collaborated by the sworn statement of his co-accused Edwin Nunez dated August 18, 1987 which is sworn and subscribed to before City Fiscal Jopelinito Pareja of the City Fiscal's Office of Cebu City." [4]

The settled jurisprudence on the matter is that a confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat or promise of reward or leniency. [5] The case of *People of the Philippines v. Parojinog* is four square to the case at bar. In *Parojing* this court had this to say:

"Anent his claim that Atty. Fuentes was not his choice, Section 12 (1) of Article III of the 1987 Constitution provides:

Sec. 12(1).- Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.'

"It is very clear from the aforequoted provision that a person under investigation for the commission of an offense may choose his own counsel but if he cannot afford the services of counsel, he must be provided with one. While the initial choice of the lawyer in the latter case is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. In the instant case, the records show that no objection was voiced by the accused throughout the entire proceedings of the investigation and afterwards when he subscribed to its veracity before City Prosecutor Luzminda V. Uy. Thus, he apparently acquiesced to the choice of the investigators. He complained for the first time that Atty. Fuentes was not his choice only during trial. Thus it was too late." [6]

Appellant relies on the much abused claim that his extra-judicial confession was legally defective and hence, should not have been admitted and considered by the trial judge. This accusation is whimsical and obviously a mere refuge for appellant's turnabout. In an attempt to avoid criminal liability, he now questions the integrity of the police authorities and the reputation of the lawyer who stood by him during the investigation. Indubitably

established and now a matter of record is the fact that appellant was assisted by Atty. Parawan who even signed the former's sworn declarations. It is likewise a matter of record that before appellant made his extra-judicial confession, he was first asked if he was amenable to the services of Atty. Parawan to which query he answered affirmatively. Finally, the alleged use of force and intimidation has not been substantiated by evidence other than his self-serving testimony. As has been pointed out, such allegation is another naive effort of appellant to back track from his prior voluntary admission of guilt. Evidently, the taking of his extra-judicial confession was done with regularity and legality.[7]

Nevertheless, there is merit in appellant's argument that granting he is guilty, what he committed was a political crime of simple rebellion, and hence he should not be convicted of murder with direct assault.

The Solicitor General agrees with the accused-appellant on this point as manifested in the People's brief, which We quote:

"However, as correctly pointed by appellant, the lower court erroneously convicted him of Murder with Assault Upon a Person in Authority, instead of Rebellion.

"Rebellion is committed by taking up arms against the government, among other means. (Article 135, Revised Penal Code). In this case, appellant not only confessed voluntarily his membership with the sparrow unit but also his participation and that of his group in the killing of Pfc. Manatad while manning the traffic in Mandaue City in the afternoon of August 4, 1987. It is of judicial notice that the sparrow unit is the liquidation squad of the New People's Army with the objective of overthrowing the duly constituted government. It is therefore not hard to comprehend that the killing of Pfc. Manatad was committed as a means to or in furtherance of the subversive ends of the NPA. Consequently, appellant is liable for the crime of rebellion, not murder with direct assault upon a person in authority." [8]

The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion though crimes in themselves are deemed absorbed in one single crime of rebellion.[9] The act of killing a police officer, knowing too well that the victim is a person in authority is a mere component or ingredient of rebellion or an act done in furtherance of the rebellion. It cannot be made a basis of a separate charge.

Moreover, in the case of *People v. Mangallan*. [10] We held that where the accused who was charged with murder admitted his membership with the NPA and the killing of a suspected PC informer, the crime committed is not murder but rebellion punishable under Articles 134 and 135 of the Revised Penal Code.

As to the proper imposable penalty, the Indeterminate Sentence Law is not applicable to persons convicted of rebellion (Sec. 2 R.A. 4203), contrary to the insinuation of the Solicitor General. Article 135 of the Revised Penal Code imposes the penalty of prision mayor and a fine not exceeding P20,000.00 to any person who promotes, maintains, or heads a rebellion. However, in the case at bar, there is no evidence to prove that appellant Dasig headed the crime committed. As a matter of fact he was not specifically pinpointed by Pfc. Catamora as the person giving instructions to the group which attacked Pfc. Manatad.

Appellant merely participated in committing the act, or just executed the command of an unknown leader. Hence, he should be made to suffer the penalty of imprisonment of eight (8) years of prision mayor. For the resulting death, appellant is likewise ordered to pay the heirs of Pfc. Manatad FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity.

Premises considered, We uphold the findings of the trial court that the extra-judicial confession was legally obtained. However, appellant being a confessed member of the sparrow unit, the liquidation squad of the New People's Army whose objective is to overthrow the duly constituted government, the crime committed is simple

rebellion and not murder with direct assault.

WHEREFORE, accused Rogelio Dasig is found guilty of participating in an act of rebellion beyond reasonable doubt and is hereby sentenced to suffer the penalty of imprisonment of eight (8) years of prision mayor, and to pay the heirs of Pfc. Redempto Manatad, P50,000.00 as civil indemnity.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

- [1] Rollo, p. 5.
- [2] Pp. 11-18, Records.
- [3] TSN, pp. 5-8, March 8, 1990.
- [4] Decision, p. 12-13.
- [5] People v. Parojinog, G.R. No. 95850, 203 SCRA 673.
- [6] Id. at p. 680.
- [7] People v. Quijano, G.R. No. 84361, 197 SCRA 761.
- [8] Plaintiff-Appellee's Brief, p. 13; Rollo, p. 99.
- [9] Enrile v. Amin, G.R. No. 93335, 189 SCRA 573.

[10] 160 SCRA 116.

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