

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME
“JIMMY” AGUSTIN, WILFREDO “SONNY QUIAÑO,
MANUEL “JUN” ABENOJA, JR., AND FREDDIE
“BOY” CARTEL, ACCUSED, JAIME “JIMMY”
AGU...**

G.R. No. 110290. January 25, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In five separate informations filed on 22 May 1987 with the Regional Trial Court (RTC), Branch 3, Baguio City, the accused were charged with murder in Criminal Cases Nos. 4647-R and 4648--R, with frustrated murder in Criminal Case No. 4649-R, and with attempted murder in Criminal Cases Nos. 4650-R and 4651-R. The crimes were allegedly committed on 6 September 1986 in Baguio City and resulted in the deaths of Dr. Napoleon Bayquen and Anna Theresa Francisco and the wounding of Anthony Bayquen, Dominic Bayquen, and Danny Ancheta.

The informations in the murder cases charged that the accused acted in conspiracy and alleged the presence of the qualifying circumstance of treachery and the ordinary aggravating circumstances of evident premeditation and price. [1]

Only the appellant and Wilfredo Quiaño were arrested. However, before Quiaño could be arraigned, he escaped on 12 July 1987 while under the custody of the Philippine Constabulary/PNP Regional Command I at Camp Dangwa, La Trinidad, Benguet. [2] The cases, which were consolidated and jointly tried, proceeded only against the appellant.

After the appellant pleaded not guilty at his arraignment on 4 September 1987, trial on the merits was held on various dates from 11 May 1988 until 10 January 1990.

On 30 May 1990, the trial court promulgated its decision [3] in the consolidated cases acquitting the appellant in Criminal Case No. 4649-R (frustrated murder) and Criminal Cases Nos. 4650-R and 4651-R (attempted murder) for insufficiency of evidence but convicting him in the two murder cases, Criminal Cases Nos. 4647--R and 4648-R, with treachery as the qualifying circumstance. [4] It also ruled that the aggravating circumstances of evident premeditation and price had been duly established. It then sentenced the appellant as follows:

"Upon these premises, the accused Jaime Agustin is found GUILTY of two (2) counts of murder, the prosecution having proven his guilt beyond reasonable doubt. In each of the criminal cases aforesaid, he should be sentenced to the maximum penalty of Death, there being two aggravating circumstances. However, since the death penalty is not imposable at this time, the accused is sentenced to Reclusion Perpetua. He is further ordered to indemnify the heirs of the victims; Anna Theresa Francisco the sum of Sixty Three Thousand Pesos (P63,000.00) as actual damages (Exhibits "F," "I" and "G"); and Dr. Napoleon Bayquen, the sum of Thirty Thousand Pesos (P30,000.00). With costs against the accused, Jaime Agustin.

SO ORDERED." [5]

The version of the prosecution is based on the testimonies of (1) Isidoro Magpantay, a member of the Baguio City Police Force, who identified the initial report (Exhibit "A"); (2) Christie Napeñas, a stenographic reporter in the Office of the City Fiscal of Baguio City, who took down the stenographic notes of City Fiscal Erdolfo Balajadia's investigations of accused Wilfredo Quiaño (Exhibit "D") on 30 January 1987 and of the appellant on 10 February 1987, and who identified her stenographic notes containing the statement of the appellant (Exhibit "B") and the transcript of said stenographic notes (Exhibit "C"); (3) Dominic Bayquen, the victim in Criminal Case No. 4650--R, who testified on the shooting incident; (4) Danny Ancheta, the victim in Criminal Case No. 4651-R, who testified on how they were shot; (5) Eulogio Francisco, the father of Anna Theresa Francisco, who identified her death certificate (Exhibit "I") and testified on the list of expenses (Exhibit "G"); (6) Rogelio Mumar, a supervising ballistics expert, who declared that the fourteen shells recovered from the scene of the crime were not fired from any of the three armalite rifles submitted to him; (7) Atty. Reynaldo Cajucom, who testified that he was the lawyer who assisted the appellant and accused Wilfredo Quiaño while they were being investigated by City Fiscal Balajadia; and (8) Lilian San Luis Bayquen, wife of Dr. Napoleon Bayquen and mother of Dominic Bayquen, who testified on what she did after Dominic informed her by telephone about the shooting incident.

The evidence for the prosecution established the following facts. At past 7:30 p.m. of 6 September 1986 in Baguio City, Dr. Napoleon Bayquen, a dentist, together with his son, Anthony; Anthony's girlfriend, Anna Theresa Francisco; his daughter, Dominic; and Danny Ancheta, a family friend, were on their way aboard their Brasilia to the doctor's residence at Trancoville at 21-D Malvar Street, Baguio City, from his clinic at Hamada Building along Mabini Street. Anthony was driving the car. While they were cruising along Malvar Street and nearing the Baptist Church, a man came out from the right side of a car parked about two meters to the church. The man approached the Brasilia, aimed his armalite rifle through its window, and fired at the passengers. The Brasilia swerved and hit a fence. The gunman immediately returned to the parked car which then sped away.

All those in the car were hit and Dr. Bayquen and Anna Theresa died on the spot. Dr. Bayquen's head was blown off. Dominic was able to get out of the Brasilia to run to the Alabanza store where she telephoned her mother and told her what had happened. Later, she and her mother brought her father and Anthony to the hospital. [6] Danny Ancheta went home and was then brought to the Notre Dame Hospital for treatment. [7] Anna Theresa Francisco was brought to the funeral parlor. [8] The police later arrived at the crime scene and conducted an investigation. They recovered some empty shells of an armalite rifle. [9]

On 30 January 1987, accused Wilfredo "Sonny" Quiaño, an alleged former military agent or "asset" who had been picked up in La Union by the police authorities, confessed during the investigation conducted by Baguio City Fiscal Erdolfo Balajadia in his office that he was the triggerman in the fatal shooting of Dr. Bayquen and Anna Theresa Francisco. He implicated Manuel "Jun" Abenoja, Jr., allegedly a fellow military agent and the "bagman" who engaged him to kill Dr. Bayquen for a fee, Freddie "Boy" Cartel, who provided the armalite, and a certain "Jimmy." During the investigation, Wilfredo Quiaño was assisted by Atty. Reynaldo Cajucom, a representative of the Integrated Bar of the Philippines (IBP). Ms. Christie Napeñas, a stenographic reporter in the Office of Fiscal Balajadia, took down stenographic notes of the proceedings during the investigation. [10] Thereafter, she transcribed the notes and the transcription became the sworn statement of Wilfredo Quiaño which he signed, with the assistance of Atty. Cajucom, and swore to before City Fiscal Balajadia. [11]

In the morning of 10 February 1987, "Jimmy," who turned out to be appellant Jaime Agustin, was picked up in Sto. Tomas, Pangasinan, by military personnel and brought to Baguio City. At 4:00 p.m. of that date, he was taken to the office of City Fiscal Erdolfo Balajadia where he was investigated in connection with the crime. Atty. Reynaldo Cajucom assisted the appellant during the investigation. Ms. Christie Napeñas took down stenographic

notes of the proceedings during the investigation. The stenographic notes consisted of 22 pages (Exhibit "B"), each of which was signed afterwards by the appellant and Atty. Cajucom. Ms. Napeñas subsequently transcribed these notes which the prosecution marked as Exhibit "C." The appellant narrated therein his knowledge of the shooting of Dr. Bayquen and revealed the identities of his cohorts in the crime. In a confrontation two days later, he identified Quiaño as "Sonny," the triggerman.

The defense presented the appellant and his wife, Elizabeth Agustin. The appellant, who is a farmer and whose highest educational attainment was grade four, impugned the validity of his extrajudicial statement. He alleged that in the morning of 10 February 1987, he went to Carmen, Pangasinan, to buy some fertilizer and upon his return he was met by two armed men who took him to their car where two other companions, armed with armalites, were waiting. They then brought him out of Pangasinan. He later learned that they were on their way to Baguio City.

Inside the car, he was asked if he knew Boy and Jun, and he answered that he did not. Along Kennon Road, he was made to stoop down at the back seat whenever they would reach a toll booth, and then brought out three times near the ravines and made to kneel at gunpoint in order to force him to admit his involvement in the shooting, which he finally did out of fear. Then he was brought to the Office of the City Fiscal of Baguio City.

While he was giving his statement at the fiscal's office, the armed men stayed with him and their presence deterred him from telling the investigating fiscal that he was being threatened. He further declared that although he was given a lawyer, Atty. Reynaldo Cajucom, to assist him, he, nevertheless, asked for his uncle who is a lawyer, Atty. Oliver Tabin, and that Atty. Cajucom interviewed him for only two minutes in English and Tagalog but not in Ilocano, the dialect he understands. Then later, at Camp Dangwa to where he was taken, he told his wife to get in touch and talk with Atty. Tabin. Finally, he asserted that he was promised by his captors that he would be discharged as a state witness if he cooperates, but the plan did not push through because his co-accused, Quiaño, escaped. [12]

Elizabeth Agustin corroborated her husband's story that he went to Carmen in the morning of 10 February 1987 to buy some fertilizer and that he failed to return. Her efforts to locate him proved futile until days later when she finally learned that he was detained at Camp Dangwa. [13]

The trial court admitted the appellant's extrajudicial statement and gave scant consideration to his claim of force, intimidation, and other irregularities because of the following reasons: (a) the presence of material improbabilities in his tale of when and how he was allegedly taken at gunpoint from his hometown in Pangasinan; (b) it was improbable that he was made to kneel thrice at gunpoint along Kennon Road considering the vehicles which were passing along that road; (c) it was unbelievable that when he was in the Fiscal's Office he asked for his uncle, Atty. Tabin, considering that when he met his wife in Camp Dangwa, he told her to talk to Atty. Tabin if he could not go home for a period of one month; (d) no less than the City Fiscal of Baguio City interrogated him and yet he did not tell the fiscal that he was being forced to give a statement; (e) the fiscal even provided him with a lawyer who conferred with him and apprised him of his rights; (f) he signed each and every page of the stenographic notes of his statement and this was witnessed by no less than the City Fiscal of Baguio and the lawyer who assisted him; and (g) he disclosed in his statement that he voluntarily gave it because of his ill feeling against his co-accused who did not give him any money.

The trial court then concluded that "[t]here was conspiracy and the accused was a direct participant in the crime," and that while he tried to minimize his culpability, his "extrajudicial confession" shows that "he was in on the plan," and even "expected to be paid, to be rewarded monetarily"; and that he "decided to give a statement only when he was not given the money." Since the proof of corpus delicti required in Section 3, Rule 133 of the Rules

of Court was established by the prosecution's evidence, it found his conviction for murder inevitable.

The appellant filed a notice of appeal. In his brief, he imputes upon the trial court the commission of this lone error:

"THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN CONSIDERING ACCUSED-APPELLANT'S EXTRAJUDICIAL CONFESSION AS ADMISSIBLE EVIDENCE AGAINST HIM." [14]

The appellant insists that his extrajudicial confession was taken in violation of his rights under Section 11, Article III of the Constitution. He argues that the lawyer who assisted him, Atty. Reynaldo Cajucom, was not of his own choice but was foisted upon him by the City Fiscal. Worse, the said lawyer is a law partner of the private prosecutor, Atty. Arthur Galace, and conferred with him in English and Tagalog although he understood only Ilocano. Moreover, when Atty. Cajucom briefly conferred with him and when the City Fiscal interrogated him, his military escorts were present.

He stresses that the lawyer "who assists the suspect under custodial interrogation should be of the latter's choice, not one foisted on him by the police investigator or other parties," [15] and that where there are serious doubts on the voluntariness of the extrajudicial confession, the doubts must be resolved in favor of the accused. [16] He then concludes that his extrajudicial confession is inadmissible and his conviction cannot stand, there being no other evidence linking him to the crimes charged.

In its brief, [17] the appellee, reiterating the reasons of the trial court in upholding the validity of the confession, prays for the affirmance of the appealed decision.

After a careful study of the records of Criminal Cases Nos. 4647-R and 4648-R and a painstaking evaluation of the evidence, we find this appeal to be impressed with merit. Indeed, the extrajudicial admission -- not extrajudicial confession -- of the appellant, which is the only evidence of the prosecution linking him to the commission of the crime charged, is wholly inadmissible because it was taken in violation of Section 12, Article III of the Constitution. We also see in these cases a blatant disregard of the appellant's right under Section 2 of Article III when he was unlawfully arrested.

Before we go any further, it should be pointed out that, contrary to the pronouncement of the trial court and the characterization given by the appellant himself, the assailed extrajudicial statement is not an extrajudicial confession. It is only an extrajudicial admission. We take this opportunity to once more distinguish one from the other. Sections 26 and 33, Rule 30 of the Rules of Court [18] clearly show such a distinction.

In a confession, there is an acknowledgment of guilt. Admission is usually applied in criminal cases to statements of fact by the accused which do not directly involve an acknowledgment of guilt of the accused or of the criminal intent to commit the offense with which he is charged. [19] Wharton [20] defines a confession as follows:

"A confession is an acknowledgment in express terms, by a party in a criminal case, of his guilt of the crime charged, while an admission is a statement by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts, to prove his guilt. In other words, an admission is something less than a confession, and is but an acknowledgment of some fact or circumstance which in itself is insufficient to authorize a conviction, and which tends only to establish the ultimate fact of guilt."

We have examined the assailed extrajudicial statement of the appellant, and we are satisfied that nothing therein indicates that he expressly acknowledged his guilt; he merely admitted some facts or circumstances which in themselves are insufficient to authorize a conviction and which can only tend to establish the ultimate fact of guilt. Nevertheless, when what is involved is the issue of admissibility in evidence under Section 12, Article III of

the Constitution, the distinction is irrelevant because Paragraph 3 thereof expressly refers to both confession and admission. Thus:

"(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."

The first two paragraphs of Section 12 read:

"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.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited."

These first and second paragraphs are taken from Section 20, Article IV (Bill of Rights) of the 1973 Constitution which read:

"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."

The first two paragraphs of Section 12, Article III of the present Constitution have broadened the aforesaid Section 20 in these respects: (1) the right to counsel means not just any counsel, but a "competent and independent counsel, preferably of his own choice"; (2) the right to remain silent and to counsel can only be waived in writing and in the presence of counsel; and (3) the rule on inadmissibility expressly includes admissions, not just confessions.

In *Morales vs. Enrile*, [21] this Court, applying Section 20, Article IV of the 1973 Constitution, laid down the duties of an investigator during custodial investigation and ruled that the waiver of the right to counsel would not be valid unless made with the assistance of counsel:

"At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means -- by telephone if possible -- or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence."

We reiterated the above ruling in *People vs. Galit*, [22] *People vs. Lumayok*, [23] *People vs. Albofera*, [24] *People vs. Marquez*, [25] *People vs. Penillos*, [26] and *People vs. Basay*, [27] among other cases.

The right to be informed of the right to remain silent and to counsel contemplates "the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle." [28] It is not enough for the investigator to merely repeat to the person under investigation the provisions of Section 20, Article IV of the 1973 Constitution or Section 12, Article III of the present Constitution; the former must also

explain the effects of such provision in practical terms, e.g., what the person under investigation may or may not do, and in a language the subject fairly understands. The right to be informed carries with it a correlative obligation on the part of the investigator to explain, and contemplates effective communication which results in the subject understanding what is conveyed. Since it is comprehension that is sought to be attained, the degree of explanation required will necessarily vary and depend on the education, intelligence, and other relevant personal circumstances of the person undergoing the investigation.

In further ensuring the right to counsel, it is not enough that the subject is informed of such right; he should also be asked if he wants to avail of the same and should be told that he can ask for counsel if he so desires or that one will be provided him at his request. If he decides not to retain counsel of his choice or avail of one to be provided for him and, therefore, chooses to waive his right to counsel, such waiver, to be valid and effective, must be made with the assistance of counsel. That counsel must be a lawyer. [29]

The waiver of the right to counsel must be voluntary, knowing, and intelligent. [30] Consequently, even if the confession of an accused speaks the truth, if it was made without the assistance of counsel, it is inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given. [31]

The extrajudicial admission of the appellant, [32] contained in twenty-two pages of yellow pad, does, indeed, appear to be signed by him and Atty. Reynaldo Cajucom. What we find in these yellow pads are stenographic notes. These were transcribed by the stenographer who took down the stenographic notes, but for reasons not explained in the records, the transcript of the notes (Exhibit "C"), which consists of twelve pages, [33] was not signed by the appellant and Atty. Cajucom. Assuming that the transcript of the notes is a faithful and accurate account, it is obvious that this was not subscribed and sworn to by the appellant since it does not indicate any jurat. On the other hand, the same stenographic reporter, who took down the stenographic notes when accused Wilfredo Quiaño was being investigated by City Fiscal Balajadia, transcribed the notes, and the transcription [34] was subscribed and sworn to by the accused before City Fiscal Balajadia and also signed by Atty. Cajucom, who represented the accused in the investigation.

Since we cannot even read or decipher the stenographic notes in the yellow pads, we cannot expect the appellant, who is a farmer and who reached only the fourth grade, to read or decipher its contents. We have to rely solely on the transcript and presume its accuracy. A perusal of the transcript convinces us that the appellant was not given a fair deal and was deprived of his rights under Section 12(1), Article III of the Constitution. Firstly, he was not fully and properly informed of his rights. The transcript (Exhibit "C") shows the following preliminary questions of the City Fiscal and the answers of the appellant:

"01.

QUESTION

--

Mr. Jaime Agustin, I am informing you that you are under investigation in connection with the death of Dr. Nap Bayquen of which you are one of the principal suspects. I am informing you of your constitutional rights before you give any statement. First, you have the right to remain silent meaning, you may give a statement or you may not give any statement. If you will not give a statement, you will not be forced to do so, do you understand this right?

ANSWER

--

I understand, sir.

02.

Q

--

If you will give a statement, you have the right to be assisted by a lawyer of your own choice, if you cannot afford to secure the services of a lawyer the government will provide a lawyer for you, do you understand this right?

A

--

I understand, sir.

03.

Q

--

Now, do you want to be assisted by a lawyer?

A

--

Yes, sir.

04.

Q

--

I am now informing you that a lawyer in the person of Atty. Reynaldo Cajucom is now present in this investigation room, do you wish to avail of his assistance in connection with this investigation?

A

--

I want, sir.

05.

Q

--

I am also informing you that whatever you say in this investigation can be used as evidence in your favor and it can also be used as evidence against you in any criminal or civil case, do you understand that?

A

--

Yes, sir, I understand.

06.

Q

--

After informing you of your constitutional rights, are you now willing to give a statement?

A

--

Yes, sir, I agree.

Investigator

--

Atty. Reynaldo Cajucom, the witness or respondent Jaime Agustin has chosen you to give him assistance in this investigation, are you willing to assist him?

Answer

--

I am willing, Fiscal, to assist the witness.

Investigator

--

Have you conferred with him before he will give his statement?

Answer

--

Yes, fiscal.

Investigator

--

Have you appraised [sic] him of his constitutional rights?

Answer

--

Yes, fiscal.

Investigator

--

Do you know after examining him whether or not he is giving a free and voluntary statement of his own volition without any intimidation or force exerted on him?

A

--

As stated by him, fiscal, he is willing to give a free and voluntary statement in relation to what really happened."

It is at once observed that the appellant was not explicitly told of his right to have a competent and independent counsel of his choice, specifically asked if he had in mind any such counsel and, if so, whether he could afford to hire his services, and, if he could not, whether he would agree to be assisted by one to be provided for him. He was not categorically informed that he could waive his rights to remain silent and to counsel and that this waiver must be in writing and in the presence of his counsel. He had, in fact, waived his right to remain silent by agreeing to be investigated. Yet, no written waiver of such right appears in the transcript and no other independent evidence was offered to prove its existence.

Secondly, Atty. Cajucom can hardly be said to have been voluntarily and intelligently "accepted" by the appellant as his counsel to assist him in the investigation. Atty. Cajucom's presence in the Office of the City Fiscal at the time the appellant was brought there for investigation is unclear to us. At least two possibilities may explain it: it was a mere coincidence in the sense that he happened to be attending to some professional matter, or he was earlier called by the City Fiscal for the purpose of giving free legal aid to the appellant. These possibilities are not remote but whether it was one or the other, it is clear to us that Atty. Cajucom was in fact foisted upon the appellant, for as shown in the above-quoted portion of Exhibit "C," the City Fiscal immediately suggested the availability of Atty. Cajucom without first distinctly asking the appellant if he had a counsel of his own choice and if he had one, whether he could hire such counsel; and if he could not, whether he would agree to have one provided for him; or whether he would simply exercise his right to remain silent and to counsel. In short, after the appellant said that he wanted to be assisted by counsel, the City Fiscal, through suggestive language, immediately informed him that Atty. Cajucom was ready to assist him.

While it is true that in custodial investigations the party to be investigated has the final choice of counsel and may reject the counsel chosen for him by the investigator and ask for another one, [35] the circumstances obtaining in the custodial interrogation of the appellant left him no freedom to intelligently and freely do so. For as earlier stated, he was not even asked if he had a lawyer of his own choice and whether he could afford to hire such lawyer; on the other hand, the City Fiscal clearly suggested the availability of Atty. Cajucom. Then too, present at that time were Capt. Antonio Ayat and Sgt. Roberto Rambac, military officers of RUC I, who brought him to the City Fiscal's Office for investigation in the afternoon of the day when he was unlawfully arrested in Sto. Tomas, Pangasinan. Along Kennon Road, on the way to Baguio City, he was coerced and threatened with death if he would not admit knowing "Jun" and "Sonny" and his participation in the crime. This testimony was un rebutted by the prosecution. The presence of the military officers and the continuing fear that if he did not cooperate, something would happen to him, was like a Damocles sword which vitiated his free will.

Why it was the City Fiscal who had to conduct the custodial investigation is beyond us. Nothing in the records shows that at that time the criminal cases against the culprits had already been filed with the City Fiscal's Office for preliminary investigation and had, therefore, ceased to be a police matter. If they had been so filed, then the City Fiscal should have followed the usual course of procedure in preliminary investigations. It appears, however, from the informations in Criminal Cases Nos. 4647-R and 4648-R that it was Assistant City Fiscal Octavio M. Banta who conducted the preliminary investigation and who prepared, signed, and certified the informations. City Fiscal Balajadia merely approved them and administered the jurat in the certification. The conclusion then is inevitable that he did not conduct the preliminary investigation.

Even assuming for the sake of argument that the appellant voluntarily agreed to be assisted by Atty. Cajucom, we doubt it very much if he was an independent counsel. While we wish to give him the benefit of the doubt because he is an officer of the court upon whose shoulders lies the responsibility to see to it that protection be accorded the

appellant and that no injustice be committed to him, [36] and, moreover, he generally has in his favor the presumption of regularity in the performance of his duties, [37] there are special circumstances in these cases which convince us that he was unable to assist the appellant in a satisfactory manner. For one, he admitted on cross-examination that at that time, and even until the time he took the witness stand, he was an associate of the private prosecutor, Atty. Arthur Galace, in these and the companion cases. Thus:

“q

Mr. Witness, at the time you assisted the accused you belonged to the office of Atty. Galace, you were an associate at the time when you assisted the accused?

a

I was represented [sic] then as IBP Legal Aid.

q

The question is not answered, we are only requesting him if he was an associate of Atty. Galace up to the present?

a

Yes.” [38]

Then we have misgivings on whether Atty. Cajucom was in fact understood by the appellant when the former informed the appellant of his constitutional rights in English and Tagalog considering that the appellant, a fourth grader and a farmer, could only understand Ilocano. Thus:

"ATTY. TABIN:

So in other words when you appraised [sic] him of his constitutional rights using English Language and Tagalog Dialect you did not have any Ilocano dialect Interpreter....

x x x

WITNESS:

As far as I can remember, I explained it in Tagalog and English." [39]

And when asked whether he was sure if the appellant understood him, Atty. Cajucom merely answered:

"a. At least I put out everything as far as I could give to him to appraise [sic] him of his constitutional rights." [40]

Then too, even if he were fully understood by the appellant, we are not satisfied that his explanations were adequate. On direct examination, he gave the following answers:

“q -

Did you explain the constitutional rights of the accused to caution him of the consequences of his statement?

a -

I explained to him that he has the right to remain silent, to confront in person the witnesses against him and that he has the right to choose a counsel to assist him in the hearing of the case which was being investigated then.

q -

And what was his reply regarding the consequences of this statement?

a -

He told me that he is willing to give a truthful statement and in order to shed light." [41]

It appears to us that Atty. Cajucom did not actually impress upon the appellant that he was one of the accused; rather, Atty. Cajucom made the appellant believe that he was only a witness. Thus:

"q

[by the prosecutor]

- But, nevertheless, you gave the precautionary measure entitled to any witness?

a -

Yes, sir.

q -

Why do you say that it was given voluntarily?

a -

Before presenting him to the investigation we were given time to talk personally without any other people and that was the time that I explained to him all his rights and consequences pertaining to him as witness to this case." [42]

On cross-examination, Atty. Cajucom also declared:

"ATTY. TABIN:

That is why I am requesting him how he explained in that language, Your Honor.

WITNESS:

I told him that this is a grave case which he would be giving some narrations as a witness and his involvement would mean the most grievous offense and if found guilty will bring him for some years in jail and I told him that I could help him if he will be presenting the truth and if he is innocent, and the only thing he would narrate is the truth. This is in combination, English and Tagalog, and most of the time, I made it in Tagalog." [43]

Moreover, considering that the appellant is familiar only with Ilocano, the Court has serious doubts about his ability to understand Atty. Cajucom's explanation of his constitutional rights since Atty. Cajucom did so in English and Tagalog.

Finally, Atty. Cajucom knew, as admitted by him on cross-examination, that the appellant was picked up on 10 February 1987 by military men in Pangasinan without a warrant for his arrest. [44] Since the crimes with which the appellant was charged were allegedly committed on 6 September 1986 or more than five months earlier, no arrest without a warrant could have been legally and validly effected. A warrantless arrest should comply with the conditions prescribed in Section 5, Rule 113 of the Rules of Court. Said section provides:

"SEC. 5. Arrest without warrant when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

(a)

When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to

commit an offense;

(b)

When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c)

When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."

None of these exceptional circumstances were present at the time the appellant was arrested on 10 February 1987. The prosecution did not even insinuate that the crimes were committed in the presence of the arresting officers (for otherwise they could have arrested the appellant on 6 September 1986 yet) or that the appellant was a prisoner who had escaped from his place of detention; or that the crimes had just been committed for they were in fact committed more than five months earlier. Atty. Cajucom knew or ought to have known that the arrest was unlawful. If he were then truly moved by his duty to fully assist the appellant, he should have forthwith taken the appropriate measures for the immediate release of the appellant instead of allowing the City Fiscal to investigate him. Needless to say, the conduct of Atty. Cajucom under the circumstances only strengthen our belief that the appellant had all the cards stacked against him.

Thus, we do not hesitate to declare the appellant's extrajudicial statement inadmissible in evidence because it was obtained in violation of Section 12(1), Article III of the Constitution. Since it is the only evidence which links him to the crimes of which he was convicted, he must then be acquitted.

His acquittal must not write finis to these murder cases. These crimes must be solved and the triggerman and the mastermind apprehended. We see in these cases the failure of the Government to exert the necessary efforts to bring the guilty parties to the bar of justice. Until now, the accused, who were implicated by the triggerman as having ordered for a price the murder of Dr. Bayquen, remain at large and the records do not show any diligent effort to effect their arrest. The triggerman escaped while in the custody of the PC/INP at Camp Dangwa. Why he was able to do so has not been adequately explained. The City Prosecutor's Office of Baguio City should then use all the resources at its command, in coordination with the law-enforcement agencies of the Government, such as the National Bureau of Investigation and the Philippine National Police, to immediately arrest the other accused.

WHEREFORE, judgment is hereby rendered REVERSING the challenged judgment of the Regional Trial Court, Branch 3, Baguio City, in Criminal Case No. 4647-R and Criminal Case No. 4648-R, and ACQUITTING appellant JAIME "JIMMY" AGUSTIN. His immediate release from confinement is hereby ORDERED unless for some other lawful cause his continued detention is warranted.

Costs de oficio.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records (OR), Criminal Case No. 4647-R, 1-2; Id., Criminal Case No. 4648-R, 1-2. The records of the three other cases were not anymore forwarded to this Court in view of the acquittal therein of the appellant.

[2] Id., Criminal Case No. 4647-R, 33.

- [3] Id., 406-416; Rollo , 25-35. Per Judge Marcelino F. Bautista, Jr.
- [4] Id., 415; Id., 34.
- [5] OR, Criminal Case No. 4647-R, 415-416; Rollo , 34-35.
- [6] TSN, 11 May 1988, 23-24.
- [7] TSN, 12 May 1988, 7-10.
- [8] TSN, 20 May 1988, 3-4.
- [9] Police Report, Exhibit "A," OR, 96-97; TSN, 11 May 1988, 3-11.
- [10] TSN, 11 May 1988, 14-18.
- [11] Exhibit "D," OR, 131-142.
- [12] TSN, 11 May 1989, 3-16; 10 January 1990, 2-23; 10 April 1989, 2-12.
- [13] TSN, 10 April 1989, 3-4, 9.
- [14] Rollo , 51.
- [15] Citing People vs. Jimenez, 204 SCRA 719 [1991].
- [16] Citing People vs. Solis, 182 SCRA 182 [1990].
- [17] Rollo , 92.
- [18] These sections provide:
- "SEC. 26. Admission of a party. -- The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.
- x x x
- SEC. 33. Confession. -- The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him."
- [19] U.S. vs. Corrales, 28 Phil. 362 [1914].
- [20] 2 Wharton's Criminal Evidence § 337 (12th ed. 1955). See also 2 Underhill's Criminal Evidence § 385 (5th ed. 1956); 3 Wigmore on Evidence § 821 (3d ed. 1940).

[21] 121 SCRA 538 [1983].

[22] 135 SCRA 465 [1985].

[23] 139 SCRA 1 [1985].

[24] 152 SCRA 123 [1987].

[25] 153 SCRA 700 [1987].

[26] 205 SCRA 546 [1992].

[27] 219 SCRA 404 [1993].

[28] *People vs. Nicandro*, 141 SCRA 289 [1986]. See *People vs. Duhan*, 142 SCRA 100 [1986]; *People vs. Albofera*, supra at note 24, *People vs. Canela*, 208 SCRA 842 [1992]; *People vs. Basay*, supra at note 27.

[29] *People vs. Basay*, supra at note 27, citing *People vs. Pecardal*, 145 SCRA 647 [1986]; *People vs. Lasac*, 148 SCRA 624 [1987]; *People vs. Decierdo*, 149 SCRA 496 [1987].

[30] *People vs. Nolasco*, 163 SCRA 623 [1988].

[31] *People vs. Repe*, 175 SCRA 422 [1989]; *People vs. Esteven* 186 SCRA 34 [1990]; *People vs. Javar*, 226 SCRA 103 [1993].

[32] Exhibit "B" and sub-markings; OR, 98-118a.

[33] OR, 119-130.

[34] Exhibit "D"; Id., 131-142.

[35] *People vs. Parojinog*, 203 SCRA 673 [1991]<; *People vs. Baello*, 224 SCRA 218 [1993].

[36] *People vs. Alvarez*, 201 SCRA 364 [1991]; *People vs. Pinzon*, 206 SCRA 93 [1992]; *People vs. Remollo*, 227 SCRA 375 [1993].

[37] *People vs. Barlis*, 231 SCRA 428 [1994].

[38] TSN, 19 July 1988, 17.

[39] TSN, 19 July 1988, 12.

[40] Id.

[41] TSN, 19 July 1988, 9.

[42] Id. (Emphasis supplied).

[43] Id., 14.

[44] TSN, 19 July 1988, 15-16.

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