

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HECTOR MAQUEDA @ PUTOL, AND RENE SALVAMANTE (AT LARGE), ACCUSED, HECTOR MAQUEDA @ PUTOL, ACCUSED-APPELLANT.

G.R. No. 112983. March 22, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

As against a bustling city life, Britisher Horace William Barker, a consultant of the World Bank, and his Filipino wife, Teresita Mendoza, chose the peace and quiet of a country home not any near the metropolis of Manila or its environs, but in the rugged and mountainous terrain of Tuba, Benguet. Perhaps they thought they were in a veritable paradise, beyond the reach of worldly distractions and trouble. That illusion was shattered when in the early morning of 27 August 1991, in the sanctity of their own home, Horace was brutally slain and Teresita badly battered with lead pipes on the occasion of a robbery. Sufficient prima facie evidence pointed to Rene Salvamante, the victims' former houseboy, as one of the perpetrators of the ghastly crime.

As to Rene's co-conspirator, the prosecution initially included one Richard Malig y Severino in the information for robbery with homicide and serious physical injuries[1] filed on 19 November 1991 with Branch 10 of the Regional Trial Court (RTC) of Benguet at La Trinidad, Benguet.

Only Richard Malig was arrested. On 22 January 1992, prior to the arraignment of Richard Malig, the prosecution filed a motion to amend the information[2] to implead as co-accused Hector Maqueda alias Putol because the evaluation of the evidence subsequently submitted established his complicity in the crime, and at the hearing of the motion the following day, the Prosecutor further asked that accused Richard Malig be dropped from the information because further evaluation of the evidence disclosed no sufficient evidence against him.[3]

The motion to drop Malig was granted and warrants for the arrest of accused Salvamante and Maqueda were issued. Maqueda was subsequently arrested on 4 March 1992, and on 9 April 1992, he filed an application for bail.[4] He categorically stated therein that "he is willing and volunteering to be a State witness in the above-entitled case, it appearing that he is the least guilty among the accused in this case."

On 22 April 1992, the prosecution filed an Amended Information[5] with only Salvamante and Maqueda as the accused. Its accusatory portion reads as follows:

That on or about the 27th of August, 1991, at Tagadi, Upper Tadiangan, Municipality of Tuba, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, armed with lead pipes, and with intent of gain and against the will and consent of the owners thereof, did then and there willfully, unlawfully and feloniously enter the house of spouses TERESITA and WILLIAM HORACE BARKER and with violence against and intimidation of the persons therein ransack the place and take and carry away the following articles, to wit:

[An enumeration and description of the articles follow]

all having a total value of TWO HUNDRED FOUR THOUSAND TWO HUNDRED FIFTY PESOS (P204,250.00), Philippine Currency, belonging to the said Teresita and William Horace Barker; that on the occasion and by reason of the said robbery, both accused willfully, unlawfully and feloniously repeatedly strike Teresita Barker and William Horace Barker with lead pipes on the different parts of their body, leading to the death of William Horace Barker and inflicting various physical injuries on the former which required medical attendance for a period of more than thirty (30) days and have likewise incapacitated her from the performance of her customary labor for the same period of time.

Contrary to Law.

Since Rene Salvamante continues to elude arrest and has remained at large, trial proceeded against Maqueda only, after he entered a plea of not guilty on 22 April 1992.[6]

In its decision[7] promulgated on 31 August 1993, the trial court found accused Hector Maqueda guilty beyond reasonable doubt of the crime of robbery with homicide and serious physical injuries and sentenced him to suffer the penalty of reclusion perpetua and to "indemnify the victim, Teresita M. Barker in the amount of P50,000.00 for the death of William Horace Barker, P41,681.00 representing actual expenses, P100,000.00 as moral damages and to pay the costs."

The prosecution presented as its witnesses Mrs. Teresita Mendoza Barker, househelps Norie Dacara and Julieta Villanueva, Mike Tayaban, Dr. Francisco Hernandez, Jr., Francisco Cabotaje, Prosecutor Daniel Zarate, Ray Dean Salvosa, Glen Enriquez, SPO1 Rodolfo Tabadero, and Policarpio Cambod in its evidence in chief and Fredesminda Castrence and SPO3 Armando Molleno on rebuttal. Accused Hector Maqueda took the witness stand and presented SPO1 Aurelio Sagun, Jr. in his evidence in chief and Myrna Maqueda Katindig as his sur-rebuttal witness.

The version of the prosecution, as culled from the trial court's detailed and meticulous summary thereof, is as follows:

Between 10:30 and 11:00 p.m. of 26 August 1991, the spouses Horace William Barker and Teresita Mendoza Barker repaired to their bedroom after Teresita had checked, as was her wont, the main doors of their house to see if they had been locked and bolted.

At around 6:00 a.m. of the following day, 27 August 1991, Norie Dacara, a househelp of the Barkers who shared a room with her cousin and fellow househelp, Julieta Villanueva, got up, opened the door to the garage, went to the lavatory to wash her face, and proceeded to the toilet. When she opened the door of the toilet and switched on the light, she saw Rene Salvamante. She knew Salvamante very well because he and his sister Melanie were the former househelps of the Barkers whom she and Julieta Villanueva had replaced and because Salvamante had acquainted her on her chores.

Salvamante suddenly strangled her. While she was fighting back, Norie happened to turn her face and she saw a fair-complexioned, tall man with a high-bridged nose at Salvamante's side, whom she identified at the trial as Maqueda. After she broke free from Salvamante, Norie fled towards the garage and shouted for help. Salvamante chased her and pulled her back inside the house.

Julieta Villanueva, who was awakened by the shouts of Norie, got out of her bed and upon opening the door of her room, saw a man clad in maong jacket and short pants with his right hand brandishing a lead pipe standing two meters in front of her. At the trial, she pointed to accused Maqueda as the man she saw then. She got scared and immediately closed the door. Since the door knob turned as if someone was forcing his way into the room, she held on to it and shouted for help.

The shouts awakened Teresita Mendoza Barker. She rose from her bed and went out of the room, leaving behind her husband who was still asleep. She went down the stairs and proceeded to the dining room. She saw Salvamante and a companion who was a complete stranger to her. Suddenly, the two rushed towards her and beat her up with lead pipes. Despite her pleas to get what they want and not to hurt her, they continued to beat her up until she lost consciousness. At the trial, she pointed to accused Maqueda as Salvamante's companion.

Salvamante also hit Norie with the lead pipe on her back and at the back of her right hand. She fell to the concrete floor, and after she had recovered, she ran to the garage and hid under the car. After a few seconds, she went near the door of the garage and because she could not open it, she called Julieta. Julieta opened the door and they rushed to their room and closed the door. When they saw that the door knob was being turned, they braced themselves against the door to prevent anyone from entering. While locked in their room, they heard the moans of Mrs. Barker and the shouts of Mr. Barker: "That's enough, that's enough, that's enough." When the noise stopped, Norie and Julieta heard the sound of water flowing from the toilet and the barking of dogs.

At 7:00 a.m. of that same day, 27 August 1991, Mike Tabayan and Mark Pacio were resting in a waiting shed beside the Asin road at Aguyad, Tuba, Benguet, which is only a kilometer away from the house of the Barkers. They saw two men approaching them from a curve. When the two men reached the shed, he and Mark noticed that the taller of the two had an amputated left hand and a right hand with a missing thumb and index finger. This man was carrying a black bag on his right shoulder.

Speaking in Tagalog, the taller man asked Mike and Mark whether the road they were following would lead to Naguilian, La Union. Mike replied that it did not. Five minutes later, a passenger jeepney bound for Baguio City and owned and driven by Ben Lusnong arrived at the waiting shed. The two men boarded it. Mike again noticed that the taller man had the defects above mentioned because the latter used his right hand with only three fingers to hold on to the bar of the jeepney as he boarded it. In the investigation conducted by the Tuba Police, he identified through a picture the shorter man as Salvamante, and at the hearing, he pointed to Maqueda as the taller man.

At 9:00 a.m. of 27 August 1991, Norie and Julieta gathered enough courage to leave the room where they had earlier barricaded themselves and proceed to the kitchen to get the key to the gate of the garage. In the dining room, they saw the Barkers bathed in their own blood. Norie and Julieta rushed out of the house and ran to the place of Janet Albon to seek help. After requesting Janet to call the police, they returned to the Barker's house but did not enter it for fear of what they had seen earlier. They just stayed near the road.

Soon after, security guards of the Baguio College Foundation (BCF) arrived. A team from the Baguio City Police Station, headed by Police Officer Policarpio Cambod, and which included Dr. Perfecto Micu of the City Health Department, also arrived. The team conducted an initial investigation only because it found out that the scene of the crime was within the jurisdiction of the Tuba Police Station, which, however, was difficult to get in touch with at that time. Dr. Perfecto Micu found the body of Mr. Barker inside the Barker house and Cambod prepared a sketch (Exhibit "JJ") showing its location. They went around the house and found a lead pipe (Exhibit "AA") at the toilet, a black T-shirt (Exhibit "CC"), and a green hand towel (Exhibit "DD"). He also discovered another lead pipe (Exhibit "BB") at the back of the door of the house. He then interviewed the two househelps who provided him with descriptions of the assailants. The team then left, leaving behind BCF Security Officer Glen Enriquez and a security guard. Cambod prepared a report of his initial investigation (Exhibit "KK").

Enriquez conducted his own investigation. At the master's bedroom, he saw several pieces of jewelry scattered on the floor and an empty inner cabinet. He noticed footprints at the back of the house, particularly at the riprap wall, and observed that the grass below it was parted as if someone had passed through and created a trail amidst the

grass down toward the Asin road of Tuba, Benguet. Upon his request, a security guard of the BCF, Edgar Dalit, was sent to the Barker house to secure the premises. Enriquez then left after Dalit's arrival.

At 5:00 p.m. of that same day, members of the Tuba Police Station arrived at the Barker house to conduct their investigation. Enriquez, who in the meantime was called by Dalit, returned to the Barker house.

The lead pipes, black T-shirt, and the green hand towel recovered from the Barker house by the Baguio City Police were first brought to the PNP Crime Laboratory Service at Camp Dangwa, La Trinidad, Benguet, and then to the court.

The body of William Horace Barker was taken to the Baguio Funeral Homes at Naguilian Road, Baguio City, where it was examined by Dr. Francisco P. Cabotaje, Municipal Health Officer of Tuba, Benguet. He found in it twenty-seven injuries, which could have been caused by a blunt instrument, determined the cause of death as hemorrhagic shock, and then issued a death certificate (Exhibits "P," "O," and "R").

The wounded Teresita Barker was brought to the Baguio General Hospital and Medical Center where she was treated and confined for eight days. The attending physician, Dr. Francisco L. Hernandez, Jr., first saw her at around 11:00 a.m. of 27 August 1991. She was in a comatose state. Dr. Hernandez found that she sustained multiple lacerations primarily on the left side of the occipital area, bleeding in the left ear, and bruises on the arm. One of the muscles adjoining her eyes was paralyzed. She regained consciousness only after two days. Dr. Hernandez opined that Mrs. Barker's injuries were caused by a blunt instrument, like a lead pipe, and concluded that if her injuries had been left unattended, she would have died by noontime of 27 August 1991 due to bleeding or hemorrhagic shock.

On 1 September 1991, a police team from the Tuba Police Station, Benguet, came to the hospital bed of Mrs. Barker, showed her pictures of several persons, and asked her to identify the persons who had assaulted her. She pointed to a person who turned out to be Richard Malig. When informed of the investigation, Dr. Hernandez told the members of the team that it was improper for them to conduct it without first consulting him since Mrs. Barker had not yet fully recovered consciousness. Moreover, her eyesight had not yet improved, her visual acuity was impaired, and she had double vision.

On 3 September 1991, the remains of Mr. Barker were cremated. Mrs. Barker was then discharged from the hospital and upon getting home, tried to determine the items lost during the robbery. She requested Glen Enriquez to get back the pieces of jewelry taken by the Tuba PNP (Exhibit "U"). The Tuba PNP gave them to Enriquez (Exhibit "V"). Mrs. Barker discovered that her Canon camera, radio cassette recorder (Exhibit "W-3"), and some pieces of jewelry (Exhibit "W-2") were missing. The aggregate value of the missing items was P204,250.00. She then executed an affidavit on these missing items (Exhibit "X").

Mrs. Barker underwent a CT Scan at the St. Luke's Hospital in Quezon City. It was revealed that she sustained a damaged artery on her left eye which could cause blindness. She then sought treatment at the St. Luke's Roosevelt Hospital in New York (Exhibit "L") where she underwent an unsuccessful operation. She likewise received treatment at the New York Medical Center (Exhibit "M").

On 29 November 1991, Ray Dean Salvosa, Executive Vice President of the BCF, ordered Glen Enriquez to go to Guinyangan, Quezon, to coordinate with the police in determining the whereabouts of accused Rene Salvamante. In Guinyangan, Enriquez was able to obtain information from the barangay captain, Basilio Requeron, that he saw Salvamante together with a certain "Putol" in September 1991; however, they already left the place.

On 21 December 1991, Enriquez, Melanio Mendoza, and three others went back to Guinyangan to find out whether Salvamante and "Putol" had returned. Upon being informed by Barangay Captain Requeron that the two

had not, Enriquez requested Requeron to notify him immediately once Salvamante or "Putol" returned to Guinyangan.

On 4 March 1992, Requeron's daughter called up Enriquez to inform him that "Putol," who is none other than accused Hector Maqueda, had been arrested in Guinyangan. Enriquez and Maj. Rodolfo Anagaran, Chief of the Tuba Police Station, together with another policeman, proceeded to Guinyangan. The Guinyangan Police Station turned over Maqueda to Maj. Anagaran who then brought Maqueda to the Benguet Provincial Jail.

Before Maj. Anagaran's arrival at Guinyangan, Maqueda had been taken to the headquarters of the 235th PNP Mobile Force Company at Sta. Maria, Calauag, Quezon. Its commanding officer, Maj. Virgilio F. Rendon, directed SPO3 Armando Molleno to get Maqueda's statement. He did so and according to him, he informed Maqueda of his rights under the Constitution. Maqueda thereafter signed a Sinumpaang Salaysay (Exhibit "LL") wherein he narrated his participation in the crime at the Barker house on 27 August 1991.

On 9 April 1992, while he was under detention, Maqueda filed a Motion to Grant Bail (Exhibit "GG-6"). He stated therein that "he is willing and volunteering to be a State witness in the above entitled case, it appearing that he is the least guilty among the accused in this case." Prosecutor Zarate then had a talk with Maqueda regarding such statement and asked him if he was in the company of Salvamante on 27 August 1991 in entering the house of the Barkers. After he received an affirmative answer, Prosecutor Zarate told Maqueda that he would oppose the motion for bail since he, Maqueda, was the only accused on trial (Exhibit "II").

In the meantime, Ray Dean Salvosa arrived at the Office of Prosecutor Zarate and obtained permission from the latter to talk to Maqueda. Salvosa then led Maqueda toward the balcony. Maqueda narrated to Salvosa that Salvamante brought him to Baguio City in order to find a job as a peanut vendor; Salvamante then brought him to the Barker house and it was only when they were at the vicinity thereof that Salvamante revealed to him that his real purpose in going to Baguio City was to rob the Barkers; he initially objected to the plan, but later on agreed to it; when they were in the kitchen of the Barker house, one of the househelps was already there; Salvamante hit her with a lead pipe and she screamed; then Mrs. Barker came down, forcing him, Maqueda, to attack her with the lead pipe provided him by Salvamante. After he felled Mrs. Barker, he helped Salvamante in beating up Mr. Barker who had followed his wife downstairs. When the Barkers were already unconscious on the floor, Salvamante went upstairs and a few minutes later came down bringing with him a radio cassette and some pieces of jewelry.

Maqueda further divulged to Salvosa that they then changed clothes, went out of the house, walked toward the road where they saw two persons from whom they asked directions, and when a passenger jeepney stopped and they were informed by the two persons that it was bound for Baguio City, he and Salvamante boarded it. They alighted somewhere along Albano Street in Baguio City and walked until they reached the Philippine Rabbit Bus station where they boarded a bus for Manila.[8]

Accused Hector Maqueda put up the defense of denial and alibi. His testimony is summarized by the trial court in this wise:

Accused Hector Maqueda denied having anything to do with the crime. He stated that on August 27, 1991 he was at the polvoron factory owned by Minda Castrense located at Lot 1, Block 21, Posadas Bayview Subdivision, Sukat, Muntinlupa, Metro Manila. He was employed as a caretaker since July 5, 1991 and he worked continuously there up to August 27, 1991. It was his sister, Myrna Katindig, who found him the job as caretaker. As caretaker, it was his duty to supervise the employees in the factory and whenever his employer was not around, he was in charge of the sales. He and his 8 co-employees all sleep inside the factory.

On August 26, 1991, he reported for work although he could not recall what he did that day. He slept inside the factory that night and on August 27, 1991, he was teaching the new employees how to make the seasoning for the polvoron.

On December 20, 1991, he went home to Gapas, Guinyangan, Quezon Province as it was his vacation time from his job at the polvoron factory. He was to be back at work after New Year's Day in 1992. Upon alighting from the bus at Guinyangan, Quezon, he saw accused Rene Salvamante. He knows accused Salvamante as they were childhood playmates, having gone to the same elementary school. He had no chance to talk to him that day when he saw him and so they just waved to each other. He again saw accused Salvamante after Christmas day on the road beside their (Salvamante) house. Salvamante invited him to go to Calauag, Quezon Province and roam around. He agreed to go as he also wanted to visit his brother, Jose Maqueda who resided at Sabangdos, Calauag, Quezon. When the two accused were at Calauag, Salvamante asked Maqueda to accompany him (Salvamante) in selling a cassette recorder which he said came from Baguio City. Accused Maqueda knew that Salvamante worked in Baguio as the latter's mother told him about it. They were able to sell the cassette recorder to Salvamante's aunt. They had their meal and then went to visit accused Maqueda's brother. After that occasion, he never saw accused Salvamante again. After his Christmas vacation, he went back to work at the polvoron factory until February 29, 1992. One of his co-workers Roselyn Merca, who was a townmate of his asked him to accompany her home as she was hard up in her work at the factory. Hence, he accompanied Roselyn home to Guinyangan, Quezon. He was supposed to report back for work on March 2, 1992 but he was not able to as he was arrested by members of the CAFGU at the house of Roselyn Merca when he brought her home. He was then brought to the Guinyangan municipal jail, then to the Tuba Police Station, Tuba, Benguet. There he was told to cooperate with the police in arresting Salvamante so he would not stay long in the Province of Benguet. He was also told that if he would point to accused Salvamante, he would be freed and he could also become a state witness. He told them that he could attest to the fact that he accompanied accused Salvamante in selling the cassette recorder.

On March 5, 1992, he was brought to the Benguet Provincial Jail at La Trinidad, Benguet where he has remained under detention up to the present.[9]

The prosecution rebutted the testimony of Hector Maqueda by presenting Fredesminda Castrence and SPO3 Armando Molleno. Castrence, the owner of the polvoron factory where Maqueda worked, testified that she started her business only on 30 August 1991 and thus it was impossible for her to have hired Maqueda on 5 July 1991. SPO3 Molleno declared that he informed Maqueda of his constitutional rights before Maqueda was investigated and that Maqueda voluntarily and freely gave his Sinumpaang Salaysay (Exhibit "LL").[10]

Although the trial court had doubts on the identification of Maqueda by prosecution witnesses Teresita Mendoza Barker, Norie Dacara, and Julieta Villanueva and thus disregarded their testimonies on this matter, it decreed a conviction "based on the confession and the proof of corpus delicti" as well as on circumstantial evidence. It stated thus:

Since we have discarded the positive identification theory of the prosecution pinpointing accused Maqueda as the culprit, can we still secure a conviction based on the confession and the proof of corpus delicti as well as on circumstantial evidence?

In order to establish the guilt of the accused through circumstantial evidence, the following requisites must be present: 1) there must be more than one circumstance; 2) the facts from which the inferences are derived are proved; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (People vs. Pajarit, G.R. No. 82770, October 19, 1992, 214 SCRA 678). There must be an unbroken chain

of circumstances which leads to one fair and reasonable conclusion pointing to the defendant to the exclusion of all others, as the author of the crime (People vs. Abuyen, G.R. No. 77285, September 4, 1992, 213 SCRA 569).

The circumstances shown by the prosecution which tend to show the guilt of the accused are:

1. A physical demonstration to which the accused and his counsel did not offer any objection shows that despite his being handicapped, accused Maqueda could well and easily grip a lead pipe and strike a cement post with such force that it produced a resounding vibration. It is not farfetched then to conclude that accused Maqueda could have easily beat Mr. Barker to death.
2. His presence within the vicinity of the crime scene right after the incident in the company of accused Salvamante was testified to by Mike Tayaban, the only prosecution witness who noticed the defective hands of the accused. As they had to ask for directions from the witness in the Tagalog dialect shows that they were strangers to the place.
3. Accused Maqueda knows or is familiar with accused Rene Salvamante as they come from the same town. By his own testimony, accused Maqueda has established that he and Salvamante are close friends to the point that they went out together during the Christmas vacation in 1991 and he even accompanied Salvamante in selling the black radio cassette recorder.
4. His Motion to Grant Bail (Exhibit "HH") contains this statement 'That he is willing and volunteering to be a State witness in the above-entitled case, it appearing that he is the least guilty among the accused in this case;'. This in effect, supports his extrajudicial confession made to the police at Calauag, Quezon Province. Although he claims that he did not bother to read the motion as he was just told that his signature would mean his release from detention, this is a flimsy excuse which cannot be given credence. Had he not understood what the motion meant, he could have easily asked his sister and brother-in-law what it meant seeing that their signatures were already affixed on the motion.
5. This time, his admission to Prosecutor Zarate that he was at the Barker house that fateful morning and his even more damaging admissions to Ray Dean Salvosa as to what he actually did can be considered as another circumstance to already bolster the increasing circumstances against the accused.
6. The accused's defense is alibi. As stated in a long line of cases, alibi is at best a weak defense and easy of fabrication (People vs. Martinado, G.R. No. 92020, October 19, 1992, 214 SCRA 712). For alibi to be given credence, it must not only appear that the accused interposing the same was at some other place but also that it was physically impossible for him to be at the scene of the crime at the time of its commission (People vs. Pugal, G.R. No. 90637, October 29, 1992, 215 SCRA 247). This defense easily crumbles down as prosecution witness Mike Tayaban placed accused Maqueda at the vicinity of the crime scene.

The combination of all these circumstances plus his extrajudicial confession produce the needed proof beyond reasonable doubt that indeed accused Maqueda is guilty of the crime.[11]

The extrajudicial confession referred to is the Sinumpaang Salaysay (Exhibit "LL") of Maqueda taken by SPO2 Molleno immediately after Maqueda was arrested.

Maqueda seasonably appealed to us his conviction. In his 14-page brief, he pleads that we acquit him because the trial court committed this lone error:

x x x IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[12]

Only three pages of the brief, typed double space, are devoted to his arguments which are anchored on his alibi that at the time the crime was committed he was not in Benguet but in Sukat, Muntinglupa, Metro Manila, and the failure of the star witnesses for the prosecution to identify him. He alleges that Mrs. Barker, when investigated at

the hospital, pointed to Richard Malig as the companion of Rene Salvamante, and that when initially investigated, the two housemaids gave a description of Salvamante's companion that fitted Richard Malig.

We find no merit in this appeal. As hereinafter shown, the defense of alibi is unconvincing.

The accused's arguments which stress the incredibility of the testimonies of Mrs. Barker and the househelps identifying Maqueda are misdirected and misplaced because the trial court had ruled that Mrs. Teresita Mendoza Barker and the two housemaids, Norie Dacara and Julieta Villanueva, were not able to positively identify Maqueda. The trial court based his conviction on his extrajudicial confession and the proof of corpus delicti, as well as on circumstantial evidence. He should have focused his attention and arguments on these.

From its ratiocinations, the trial court made a distinction between an extrajudicial confession — the Sinumpaang Salaysay -- -and an extrajudicial admission — the verbal admissions to Prosecutor Zarate and Ray Dean Salvosa. A perusal of the Sinumpaang Salaysay fails to convince us that it is an extrajudicial confession. It is only an extrajudicial admission. There is a distinction between the former and the latter as clearly shown in Sections 26 and 33, Rule 130 of the Rules of Court which read as follows:

SEC. 26. Admission of a party. — The act, declaration or omission of 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.

In a confession, there is an acknowledgment of guilt. The term admission is usually applied in criminal cases to statements of fact by the accused which do not directly involve an acknowledgment of his guilt or of the criminal intent to commit the offense with which he is charged.[13] Wharton distinguishes a confession from an admission 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.[14]

And under Section 3 of Rule 133, an extrajudicial confession made by the accused is not sufficient for conviction unless corroborated by evidence of corpus delicti.

The trial court admitted the Sinumpaang Salaysay of accused Maqueda although it was taken without the assistance of counsel because it was of the opinion that since an information had already been filed in court against him and he was arrested pursuant to a warrant of arrest issued by the court, the Sinumpaang Salaysay was not, therefore, taken during custodial investigation. Hence, Section 12(1), Article III of the Constitution providing as follows:

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.

is not applicable,[15] i.e., the police investigation was "no longer within the ambit of a custodial investigation." It heavily relied on *People vs. Ayson*[16] where this Court elucidated on the rights of a person under custodial

investigation and the rights of an accused after a case is filed in court. The trial court went on to state:

At the time of the confession, the accused was already facing charges in court. He no longer had the right to remain silent and to counsel but he had the right to refuse to be a witness and not to have any prejudice whatsoever result to him by such refusal. And yet, despite his knowing fully well that a case had already been filed in court, he still confessed when he did not have to do so.[17]

The trial court then held that the admissibility of the Sinumpaang Salaysay should not be tested under the aforementioned Section 12(1), Article III of the Constitution, but on the voluntariness of its execution. Since voluntariness is presumed, Maqueda had the burden of proving otherwise, which he failed to do and, hence, the Sinumpaang Salaysay was admissible against him.

As to the admissions made by Maqueda to Prosecutor Zarate and Ray Dean Salvosa, the trial court admitted their testimony thereon only to prove the tenor of their conversation but not to prove the truth of the admission because such testimony was objected to as hearsay. It said:

In any case, it is settled that when testimony is presented to establish not the truth but the tenor of the statement or the fact that such statement was made, it is not hearsay (People vs. Fule, G.R. No. 83027, February 28, 1992, 206 SCRA 652).[18]

While we commend the efforts of the trial court to distinguish between the rights of a person under Section 12(1), Article III of the Constitution and his rights after a criminal complaint or information had been filed against him, we cannot agree with its sweeping view that after such filing an accused "no longer [has] the right to remain silent and to counsel but he [has] the right to refuse to be a witness and not to have any prejudice whatsoever result to him by such refusal." If this were so, then there would be a hiatus in the criminal justice process where an accused is deprived of his constitutional rights to remain silent and to counsel and to be informed of such rights. Such a view would not only give a very restrictive application to Section 12(1); it would also diminish the said accused's rights under Section 14(2) Article III of the Constitution.

The exercise of the rights to remain silent and to counsel and to be informed thereof under Section 12(1), Article III of the Constitution are not confined to that period prior to the filing of a criminal complaint or information but are available at that stage when a person is "under investigation for the commission of an offense." The direct and primary source of this Section 12(1) is the second paragraph of Section 20, Article II of the 1973 Constitution which reads:

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 ...

The first sentence to which it immediately follows refers to the right against self-incrimination reading:

No person shall be compelled to be a witness against himself.

which is now Section 17, Article III of the 1987 Constitution. The incorporation of the second paragraph of Section 20 in the Bill of Rights of the 1973 Constitution was an acceptance of the landmark doctrine laid down by the United States Supreme Court in *Miranda vs. Arizona*.^[19] In that case, the Court explicitly stated that the holding therein "is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings." It went on to state its ruling:

Our holding will be spelled out with some specificity in the pages which follow but briefly stated, it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against

self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some question or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.[20]

It may be pointed out though that as formulated in the second paragraph of the aforementioned Section 20, the word custodial, which was used in *Miranda* with reference to the investigation, was excluded. In view thereof, in *Galman vs. Pamaran*,[21] this Court aptly observed:

The fact that the framers of our Constitution did not choose to use the term "custodial" by having it inserted between the words "under" and "investigation," as in fact the sentence opens with the phrase "any person" goes to prove that they did not adopt in toto the entire fabric of the *Miranda* doctrine.

Clearly then, the second paragraph of Section 20 has even broadened the application of *Miranda* by making it applicable to the investigation for the commission of an offense of a person not in custody.[22] Accordingly, as so formulated, the second paragraph of Section 20 changed the rule adopted in *People vs. Jose*[23] that the rights of the accused only begin upon arraignment. Applying the second paragraph of Section 20, this Court laid down this rule in *Morales vs. Enrile*: [24]

7. 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.

Note that the first sentence requires the arresting officer to inform the person to be arrested of the reason for the arrest and show him "the warrant of arrest, if any." The underscored phrase simply means that a case had been filed against him in a court of either preliminary or original jurisdiction and that the court had issued the corresponding warrant of arrest. From the foregoing, it is clear that the right to remain silent and to counsel and to be informed thereof under the second paragraph of Section 20 are available to a person at any time before arraignment whenever he is investigated for the commission of an offense. This paragraph was incorporated into Section 12(1), Article III of the present Constitution with the following additional safeguards: (a) the counsel must be competent and independent, preferably of his own choice, (b) if the party cannot afford the services of

such counsel, he must be provided with one, and (c) the rights therein cannot be waived except in writing and in the presence of counsel.

Then, too, the right to be heard would be a farce if it did not include the right to counsel.[25] Thus, Section 12(2), Article III of the present Constitution provides that in all criminal prosecutions the accused shall "enjoy the right to be heard by himself and counsel." In *People vs. Holgado*,²⁶ this Court emphatically declared:

One of the great principles of justice guaranteed by our Constitution is that "no person shall be held to answer for a criminal offense without due process of law", and that all accused "shall enjoy the right to be heard by himself and counsel." In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one *de officio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own.

It was, therefore, wrong for the trial court to hold that Section 12(1), Article III of the Constitution is strictly limited to custodial investigation and that it does not apply to a person against whom a criminal complaint or information has already been filed because after its filing he loses his right to remain silent and to counsel. If we follow the theory of the trial court, then police authorities and other law enforcement agencies would have a heyday in extracting confessions or admissions from accused persons after they had been arrested but before they are arraigned because at such stage the accused persons are supposedly not entitled to the enjoyment of the rights to remain silent and to counsel.

Once a criminal complaint or information is filed in court and the accused is thereafter arrested by virtue of a warrant of arrest, he must be delivered to the nearest police station or jail and the arresting officer must make a return of the warrant to the issuing judge,[27] and since the court has already acquired jurisdiction over his person, it would be improper for any public officer or law enforcement agency to investigate him in connection with the commission of the offense for which he is charged. If, nevertheless, he is subjected to such investigation, then Section 12(1), Article III of the Constitution and the jurisprudence thereon must be faithfully complied with.

The Sinumpaang Salaysay of Maqueda taken by SPO2 Molleno after the former's arrest was taken in palpable violation of his rights under Section 12(1), Article III of the Constitution. As disclosed by a reading thereof, Maqueda was not even told of any of his constitutional rights under the said section. The statement was also taken in the absence of counsel. Such uncounselled Sinumpaang Salaysay is wholly inadmissible pursuant to paragraph 3, Section 12, Article III of the Constitution which reads:

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

However, the extrajudicial admissions of Maqueda to Prosecutor Zarate and to Ray Dean Salvosa stand on a different footing. These are not governed by the exclusionary rules under the Bill of Rights. Maqueda voluntarily and freely made them to Prosecutor Zarate not in the course of an investigation, but in connection with Maqueda's plea to be utilized as a state witness; and as to the other admission, it was given to a private person. The provisions of the Bill of Rights are primarily limitations on government, declaring the rights that exist without

governmental grant, that may not be taken away by government and that government has the duty to protect;[28] or restrictions on the power of government found "not in the particular specific types of action prohibited, but in the general principle that keeps alive in the public mind the doctrine that governmental power is not unlimited." [29] They are the fundamental safeguards against aggressions of arbitrary power,[30] or state tyranny and abuse of authority. In laying down the principles of the government and fundamental liberties of the people, the Constitution did not govern the relationships between individuals.[31]

Accordingly, Maqueda's admissions to Ray Dean Salvosa, a private party, are admissible in evidence against the former under Section 26, Rule 130 of the Rules of Court. In *Aballe vs. People*, [32] this Court held that the declaration of an accused expressly acknowledging his guilt of the offense may be given in evidence against him and any person, otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood it. The said witness need not repeat verbatim the oral confession; it suffices if he gives its substance. By analogy, that rule applies to oral extrajudicial admissions.

To be added to Maqueda's extrajudicial admission is his Urgent Motion for Bail wherein he explicitly stated that "he is willing and volunteering to be a state witness in the above entitled case, it appearing that he is the least guilty among the accused in this case."

In the light of his admissions to Prosecutor Zarate and Ray Dean Salvosa and his willingness to be a state witness, Maqueda's participation in the commission of the crime charged was established beyond moral certainty. His defense of alibi was futile because by his own admission he was not only at the scene of the crime at the time of its commission, he also admitted his participation therein. Even if we disregard his extrajudicial admissions to Prosecutor Zarate and Salvosa, his guilt was, as correctly ruled by the trial court, established beyond doubt by circumstantial evidence. The following circumstances were duly proved in this case:

(1)

He and a companion were seen a kilometer away from the Barker house an hour after the crime in question was committed there;

(2)

Rene Salvamante, who is still at large, was positively identified by Mrs. Barker, Norie Dacara, and Julieta Villanueva as one of two persons who committed the crime;

(3)

He and co-accused Rene Salvamante are friends;

(4)

He and Rene Salvamante were together in Guinyangan, Quezon, and both left the place sometime in September 1991;

(5)

He was arrested in Guinyangan, Quezon, on 4 March 1992; and

(6)

He freely and voluntarily offered to be a state witness stating that "he is the least guilty."

Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if:

(a)

There is more than one circumstance;

(b)

The facts from which the inferences are derived are proven; and

(c)

The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Or, as jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[33] We do not hesitate to rule that all the requisites of Section 2, Rule 133 of the Rules of Court are present in this case.

This conclusion having been reached, the defense of alibi put up by the appellant must fail. The trial court correctly rejected such defense. The rule is settled that for the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed, he must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[34] Through the un rebutted testimony of Mike Tayaban, which Maqueda does not controvert in his brief, it was positively established that Maqueda and a companion were seen at 7:00 a.m. of 27 August 1991 at the waiting shed in Aguyad, Tuba, Benguet, a place barely a kilometer away from the house of the Barkers. It was not then impossible for Maqueda and his companion to have been at the Barker house at the time the crime was committed. Moreover, Fredisminda Castrence categorically declared that Maqueda started working in her polvoron factory in Sukat only on 7 October 1991, thereby belying his testimony that he started working on 5 July 1991 and continuously until 27 August 1991.

WHEREFORE, in view of the foregoing, the instant appeal is DISMISSED and the appealed decision of Branch 10 of the Regional Trial Court of Benguet in Criminal Case No. 91-CR-1206 is AFFIRMED in toto.

Costs against accused-appellant HECTOR MAQUEDA @ PUTOL.

SO ORDERED.

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

[1] Original Records (OR), 1.

[2] Id., 37.

[3] Id., 49.

[4] Exhibit "HH"; Id., 62. Maqueda signed it together with his sister, Myrna M. Catinding, and her husband.

[5] Id., 86.

[6] OR, 94.

[7] Id., 922-949; Rollo, 48-75. Per Judge Romeo A. Brawner.

[8] RTC Decision, 3-12, 14-15; OR, 924-933, 935-936; Rollo, 59-60, 61-62.

[9] OR, 933-934; Rollo, 59-60.

[10] RTC Decision, 14-15; OR, 935-936.

[11] OR, 946-947; Rollo, 72-73.

[12] Rollo, 87.

[13] U.S. vs. Corrales, 28 Phil. 362 [1914].

[14] 2 Wharton's Criminal Evidence § 337 (12th ed., 1955). See also 2 Underhill's Criminal Evidence § 385 (5th ed., 1956); Wigmore on Evidence § 821 (3rd ed., 1940); People vs. Agustin, G.R. No. 110290, 25 January 1995; and People vs. Lorenzo, G.R. No. 110107, 26 January 1995.

[15] OR, 943; Rollo, 69.

[16] 175 SCRA 216 [1989].

[17] OR, 945; Rollo, 71.

[18] Id., 939; Id., 65.

[19] 384 U.S. 436 [1966].

[20] Id. at 445.

[21] 138 SCRA 294, 319-320 [1985].

[22] See 1 JOAQUIN G. BERNAS, The Constitution of the Republic of the Philippines 344 (1st ed. 1987).

[23] 37 SCRA 450 [1971].

[24] 121 SCRA 538, 554 [1983]. See also People vs. Penillos, 205 SCRA 546 [1992]; People vs. De Jesus, 213 SCRA 345 [1992]; People vs. Tujon, 215 SCRA 559 [1992]; People vs. Basay, 219 SCRA 404 [1993].

[25] BERNAS, supra note 23, at 380.

[26] 85 Phil. 752, 756-757 [1950].

[27] Sections 3 and 4, Rule 113, Rules of Court.

[28] Quinn vs. Buchanan, 298 SW 2d 413, 417 [1957].

[29] Bustamante vs. Maceren, 48 SCRA 155, 167 [1972].

[30] 16 Am Jur 2d 206, quoting Dumbauld in The Bill of Rights, 140 [1957].

[31] People vs. Marti, 193 SCRA 57 [1991].

[32] 183 SCRA 196 [1990].

[33] People vs. Tiozon, 198 SCRA 368 [1991]; People vs. Dela Cruz, 229 SCRA 754 [1994].

[34] People vs. Penillos, 205 SCRA 546 [1992]; People vs. Dela Cruz, 207 SCRA 632 [1992]; People vs. Casinillo, 213 SCRA 777 [1992]; People vs. Florida, 214 SCRA 227 [1992].

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