

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR BACOR, ACCUSED APPELLANT.

G.R. No. 122895. April 30, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated April 13, 1993, of the Regional Trial Court, Branch 14, Oroquieta City, finding accused-appellant Victor Bacor guilty of murder and sentencing him to suffer an indeterminate penalty of imprisonment from ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum. In addition, the court ordered accused-appellant to indemnify the heirs of the victim, Dionesio Albores, in the amount of P50,000.00, and to pay the costs of the proceedings.

On appeal, the decision was affirmed with modification of the penalty. The Court of Appeals sentenced accused-appellant to reclusion perpetua and, in accordance with Rule 124, §13, par. 2 of the Rules on Criminal Procedure, certified the case to this Court for review.

Upon receipt of the case, the Court gave accused-appellant the opportunity to file an additional brief if he desired. He did not do so, however. Hence, the case was considered submitted for resolution.

The full text of the decision of the Court of Appeals reads:[2]

Accused-appellant assails the decision of the Regional Trial Court of Oroquieta City, Branch 14 dated April 13, 1993 convicting him of the crime of MURDER. The decretal portion of the decision reads:

"WHEREFORE, premises considered, the Court finds that the guilt of the accused, Victor Bacor, has been proved beyond reasonable doubt, and pursuant to Article 248 of the Revised Penal Code, there being one mitigating circumstance of voluntary surrender without any aggravating circumstance to effect the [same], the said accused, Victor Bacor, is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY, of Prision Mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY of Reclusion Temporal, as maximum, to indemnify the heirs of the victim, Dionisio Albores in the amount of P50,000.00; to suffer the other accessory penalties provided for by law and to pay the costs of the proceedings.

"The case with respect to the other accused, John Doe is hereby ordered sent to the archive, to be revived as soon as said accused is identified and arrested.

"SO ORDERED."

(Records, p. 102)

The indictment against accused-appellant and one John Doe reads:

"That on or about March 17, 1991, at about 9:00 o'clock in the evening, more or less, in barangay Señor, municipality of Sinacaban, province of Misamis Occidental, Philippines, and within the jurisdiction of this

Honorable Court, the aforementioned accused with intent to kill, conspiring, confederating and helping one another, did then and there, willfully, unlawfully, feloniously and treacherously attack, assault and shoot one DIONISIO ALBORES with the use of a shotgun while the latter was inside his dwelling, unaware, unarmed and defenseless, thereby inflicting multiple gun shot wounds on different vital parts of his body causing his [instantaneous] death.

"CONTRARY TO LAW, with qualifying circumstance of treachery and ordinary aggravating circumstance of dwelling."

(Records, p. 1)

Upon arraignment on September 4, 1991, accused-appellant pleaded not guilty. Trial then ensued. After the prosecution rested its case, the defense demurred to the evidence on the ground that accused's extrajudicial confession which is the only piece of evidence connecting him to the commission of the murder, is inadmissible for any purpose. The Omnibus Motion To Demur and Objection To The Admissibility Of Exhibit B For The Prosecution was denied by the trial court in an order dated June 4, 1992 after which the defense offered the testimonies of the accused himself and the latter's father, Cesar Bacor. Their main line of defense was that at the time the crime was being perpetrated, accused Victor Bacor was at home grating coconuts. It was however also established in the course of their testimony that Barangay Señor was only about one kilometer from Barangay SK Avanceña where accused Victor lived with his parents and was accessible by means of transportation. (TSN, October 27, 1992, p. 49-67)

The facts as established by the prosecution's evidence are summarized in the People's brief as follows:

"At about 9:00 o'clock in the evening of March 17, 1991, Julian Albores was resting at the living room of his house at Barangay Señor, Sinacaban, Misamis Occidental (TSN, Oct. 10, 1991, pp. 2-5). His companions in the house were his son Dionisio and the latter's common-law wife Delia, who were then eating in the kitchen (TSN, *ibid.*, pp. 5-6). Suddenly, Julian heard a gunfire followed by Delia's exclamation that Dionisio had fallen down on the floor (*ibid.*). Consequently, Julian rushed to the kitchen and found Dionisio lying face down on the kitchen floor made of bamboo slats (TSN, Oct. 10, 1991, pp. 4-8). As Julian tried to move Dionisio, blood oozed from his right armpit (*ibid.*). Julian shouted for his neighbor's help but no one helped him (TSN, Oct. 10, 1991, pp. 6-7). Immediately, thereafter, Julian brought his wounded son to the hospital for treatment but just a few minutes after arrival there, his son died (TSN, Oct. 10, 1991, pp. 7-8; Exh. 'A').

"On March 18, 1991, Dr. Marlene Awayan, Municipal Health Officer of Sinacaban, Misamis Occidental, conducted a post-mortem examination of the remains of Dionisio Albores (TSN, Nov. 19, 1991, pp. 2-5; Exh. 'C'). Based on her examination, Dr. Awayan found that Dionisio Albores sustained 'multiple gunshot wounds, entrance at the right anterior chest, 3 inches (in) depth' and 'multiple protrusions hard object at the left posterior chest' and that the cause of his death was 'internal hemorrhage secondary to multiple gunshot wounds' (Exh. 'C', 'C-1', 'C-2').

"On June 6, 1991, appellant approached Jesus Bernido, Chief of the Intelligence Section of the Sinacaban Police Station and told the latter that he was the one responsible for the killing of Dionisio Albores (TSN, Nov. 19, 1991; p. 6). In view thereof, Bernido asked appellant what prompted him to surrender and appellant told him that it was due to his guilty conscience (*ibid.*). Consequently, Bernido, accompanied by SPO3 Maharlika Ydulzura, Chief Investigator of the Sinacaban Police Station, and two (2) other police escorts brought appellant to the Public Attorney's Office (PAO) in Oroquieta City (TSN, Oct. 22, 1991, pp. 3-4). Upon arrival at the PAO premises, SPO3 Ydulzura informed PAO Atty. Meriam Anggot that appellant wanted to make a confession of a crime he had committed (TSN, Nov. 12, 1991, pp. 3-4). Thereafter, in her presence, appellant was asked by the policemen if he had a lawyer and appellant replied that he had none (TSN, Nov. 12, 1991, pp. 3-4). Appellant was also asked if he wanted to avail of the services of the PAO and he answered in the affirmative (TSN, Nov. 12, 1991, pp. 3-4). Consequently, Atty. Anggot requested the policemen to leave her

and appellant alone inside the office and the policemen readily agreed and stayed outside (ibid.). She then inquired if appellant was not intimidated, coerced or forced and whether appellant was promised any reward (ibid.). She also informed appellant that he had the right to remain silent and not to answer questions which may incriminate him and that any statement he will make may be used against him in the future (ibid.). After being informed of such facts, appellant still declared that he was going to confess because he had committed a crime (TSN, Nov. 12, 1991, pp. 3-4).

"During the taking of appellant's confession, in the presence and with the assistance of PAO Atty. Anggot, SPO3 Ydulzura likewise reminded appellant in the Visayan dialect, which he knew and spoke, that he had the right to remain silent and the right against self-incrimination and to secure the services of a lawyer of his own choice to assist him in the taking of his confession (TSN, Oct. 22, 1991, pp. 6-8). Despite such reminder, appellant still agreed and accepted the appointment of PAO Atty. Meriam Anggot as his lawyer to assist him during the taking of his affidavit of confession (Exhs. 'B', 'B-3', 'B-4'; TSN, Oct. 22, 1991, pp. 3-7; TSN, Nov. 12, 1991, pp. 4-7). In his affidavit which was taken in the typewriter by SPO3 Ydulzura, appellant acknowledged and admitted that he was the one who shot Dionisio Albores at 9:00 o'clock in the evening of March 17, 1991 at Barangay Señor, Sinacaban, Misamis Occidental (Exhs. 'B', 'B-11', 'B-12'; TSN, Oct. 22, 1991, pp. 8-15). He declared therein that he shot Dionisio Albores because the latter threatened to kill him and because he knew that Dionisio was an ex-convict who had killed somebody with treachery in the past (TSN, Oct. 22, 1991, pp. 13-15; Exhs. 'B', 'B-15').

"Afterwards, SPO3 Ydulzura read the contents of appellant's affidavit to him, in the presence and with the assistance of PAO Atty. Anggot (TSN, Oct. 22, 1991, p. 15; Exh. 'B'). Subsequently, appellant, after correcting the date, signed his name on the affidavit (TSN, Oct. 22, 1991, pp. 15-17). Thereafter, appellant subscribed and swore to the veracity of his affidavit before Atty. Nora Montejó-Lumasag, Clerk of Court of the Regional Trial Court, Oroquieta City (TSN, Oct. 22, 1991, pp. 24-26). Before signing the affidavit, Atty. Lumasag read to appellant the contents thereof and informed him of his constitutional rights to remain silent, against self-incrimination and to counsel of his own choice. She also informed appellant about the consequences of his affidavit and that it may be used as evidence against him. She also asked him whether he understood the contents of the affidavit (ibid.). Subsequently, appellant was asked if the statements in the affidavit are true and correct and he declared that the statements therein are true and correct and that he was willing to sign the affidavit on his own free will (TSN, Oct. 22, 1991, pp. 24-26; Exhs. 'B', 'B-1' to 'B-2')."

(Rollo, pp. 45-51)

Accused-appellant now assigns the following errors:

"I

THE COURT ERRED IN NOT HOLDING THAT THE EXTRAJUDICIAL CONFESSION OF APPELLANT IS INADMISSIBLE IN EVIDENCE.

"II

THE COURT ERRED IN NOT GIVING WEIGHT TO THE EVIDENCES FOR APPELLANT.

"III

THE COURT ERRED IN FINDING APPELLANT GUILTY."

The main thrust of these assignment of errors is the inadmissibility of appellant's extrajudicial confession on the ground that his waiver of his right to remain silent was obtained sans observance of the procedural safeguards embodied in Article III, Section 12 of the 1987 Philippine Constitution, to wit:

"Section 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.

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

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(Underlining supplied).

There is no merit in the contention.

Atty. Miriam D. Angot, the PAO lawyer who assisted the appellant testified that before the in-custody interrogation started, she even asked the police escorts then present to leave the room. She then ascertained from accused-appellant Victor Bacor himself that the latter was not cajoled nor coerced into making the intended confession and apprised him further of his right to remain silent and not to answer any question propounded to him. He was warned that statements made by him might be used against him in the future. Bacor then intimated that he was confessing to the crime for the simple reason that he had done it (TSN, November 12, 1991, pp. 70-71). He was again informed of his constitutional rights by SPO3 Maharlika Ydulzura before the actual taking of his extrajudicial confession (Ibid, Exhibit B-3). Despite all these, the appellant proceeded into confessing that he was the one who killed the victim Dionesio Albores.

The pertinent portions of said extrajudicial confession as translated from the Visayan dialect to the English language are as follows:

"PRELIMINARY: Mr. Victor W. Bacor, you are presently under investigation regarding the MURDER of Ignacio Ampo and Dionisio Albores. Before proceeding with the investigation, we will inform you of your constitutional rights. You have the legal right to remain silent and not to answer questions which you think might incriminate you. Anything you say may be used in evidence against you in any court of the Philippines. You have the right to counsel of your own choice to assist you in today's investigation. If you cannot afford to pay the services of a lawyer but you want to have one, a lawyer will be provided by the government to assist you free of charge. Do you understand?

"ANSWER: Yes, I understand. I desire to have a lawyer but I cannot afford to pay one as of now.

"QUESTION: In front of you now is a lawyer of the Public Attorney's Office. Do you accept her as your counsel to assist you in this investigation?

"ANSWER: Yes, Sir. I accept. (Atty. Miriam O. Angot is officially appointed as lawyer of Mr. Victor W. Bacor during this Interrogation)

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"14 Question: Regarding the death of Dionisio Albores, do you have any knowledge of the facts surrounding that?

"Answer: Yes, Sir. I was the one who shot Dionesio Albores.

"15 Question: When and where was this killing?

"Answer: Last March 17, 1991, at 9:00 o'clock in the evening, in Barangay Señor, Sinacaban, Misamis Occidental.

"16 Question: Was there someone with you during the killing?

"Answer: There was, Sir. Berwin Rosales was with me during the killing.

"17. Question: Please tell us what happened.

"Answer: I had been drinking a little that night. Berwin Rosales mentioned something about my adversary, Dionesio Albores. So, we got the weapon which was then in the possession of the Rosales family, the same weapon used in killing Ignacio Ampo. When we got to Dionesio Albores' house, I was not able to shoot him at first because he was lying down with his wife. Then at nine o'clock in the evening, Dionesio Albores got up and approached his wife who was then eating in the kitchen. I shot him. He was hit near his armpit. That caused his death.

"QUESTION: What was the reason why you killed Dionesio Albores?

"ANSWER: Before that, Dionesio Albores and I had a quarrel, and he threatened to kill me. I heard that Dionesio Albores had previously killed someone by means of treachery and that he had been imprisoned in Muntinglupa. So on March 17, 1991, I thought of killing him first.

"QUESTION: Where now is the weapon which you used in killing Dionesio Albores, the same weapon used by Charlie Manlquez in killing Ignacio Ampo?

"ANSWER: According to Laloy Rosales, the weapon was redeemed by the person who pledged it to him.

"QUESTION: Why are you now here before us and telling us what had happened?

"ANSWER: I voluntarily surrendered myself to Pfc. Jesus Bernido of the Sinacaban Police Station because I could no longer bear a guilty conscience.

"QUESTION: Were you coerced, manhandled or given money in order to make this confession?

"ANSWER: No, Sir. Everything is out of my own free will.

"QUESTION: Do you have anything more to say?

"ANSWER: No more, Sir.

"QUESTION: Are you willing to sign this statement you have made under oath in accordance with law?

"ANSWER: Yes, I am ready to do so, Sir."

(Records, pp. 4-6)

All throughout the custodial investigation, Atty. Miriam Angot of the Public Attorney's Office (PAO) took pains to explain meaningfully to the accused each and every query posed by SPO3 Maharlika Ydulzura. Accused then stamped his approval to the extrajudicial confession by affixing his signature on each and every page thereof in the presence of counsel Miriam Angot. (Exhibits B, B-1, B-2, B-8, B-19, B-20). Consequently, there was an effective waiver of the right to remain silent. (People vs. Ruelan, 231 SCRA 650).

Here is therefore a clear case of a criminal who had hearkened to the proddings of conscience. And by so doing, he had wittingly furnished the missing link necessary for his conviction.

Well-entrenched in our jurisdiction is the evidentiary rule that an extrajudicial confession corroborated by evidence of the corpus delicti is sufficient to support a conviction. (Rule 133, Section 3, Rules of Court).

The fact of death and the criminal agency, elements which are constitutive of the corpus delicti, had been amply established by the death certificate (Exhibit "A") and the medical certificate (Exhibit "C") the veracity of which had been affirmed on the witness stand by the examining physician. Details of the findings therein are as follows:

"POST MORTEM FINDINGS:

"BODY: MULTIPLE GUNSHOT WOUNDS, ENTRANCE AT THE RIGHT ANTERIOR CHEST, 3 INCHES DEPTH.

MULTIPLE PROTRUSIONS HARD OBJECT AT THE LEFT POSTERIOR CHEST.

"CAUSE OF DEATH:

INTERNAL HEMORRHAGE SECONDARY TO MULTIPLE GUNSHOT WOUNDS."

(Records, p. 118)

In sum: Bacor informed the police that he shot Dionesio Albores; that the latter was hit near the armpit; and that the latter died as a consequence thereof. The evidence of the corpus delicti shows conformance of the extrajudicial statement with reality. The facts dovetail with the confession of the accused. There is no reason to reject the same.

On the other hand, what can not be believed is Victor Bacor's subsequent denials and alibi. Alibi is an inherently weak and unreliable defense because it is easily contrived and fabricated (*People vs. Amiguin*, 229 SCRA 166; *People vs. Calope*, 229 SCRA 413; *People vs. Fuertes*, 229 SCRA 289). More so when it is established mainly by accused himself or his relatives. (*People vs. Torres*, 232 SCRA 32; *People vs. Apolonia*, 235 SCRA 124). For alibi to prosper, the accused must show that it was physically impossible for him to be at the locus criminis at the time of the commission of the felony (*People vs. Servillon*, 236 SCRA 385; *People vs. Apa-ap*, 235 SCRA 468; *People vs. Barte*, 230 SCRA 401). And, as already stated, the place where the accused-appellant claimed to be was only one kilometer away from the scene of the crime and easily accessible.

In cases involving crimes [committed] prior to the effectivity date of R.A. 7659 (An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Penal Laws, And For Other Purposes), it is mandatory for the courts to reduce the capital punishment to reclusion perpetua in view of the constitutional proscription embodied in Article [III], Section 19 (1) of the organic act. This rule however applies only when the death penalty should be imposed after giving proper consideration to the presence of mitigating and aggravating circumstances (*People vs. Muñoz*, 170 SCRA 1071; *People vs. de la Cruz*, 216 SCRA 476). In *People vs. Muñoz*, the Supreme Court sitting en banc had the occasion to rule:

"A reading of Section 19(1) of Article III will readily show that there is really nothing therein which expressly declares the abolition of the death penalty. The provision merely says that the death penalty shall not be imposed unless for compelling reasons involving heinous crimes the Congress hereafter provides for it and, if already imposed shall be reduced to reclusion perpetua. The language, while rather awkward, is still plain enough. And it is a settled rule of legal hermeneutics that if the language under construction is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation.

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"The question as we see it is not whether the framers intended to abolish the death penalty or merely to prevent its imposition. Whatever the intention was, what we should determine is whether or not they also meant to require a corresponding modification in the other periods as a result of the prohibition against the death penalty.

"It is definite that such a requirement, if there really was one, is not at all expressed in Article III, Section 19(1) of the Constitution or indicated therein by at least clear and unmistakable implication. It would have been so easy, assuming such intention, to state it categorically and plainly, leaving no doubt as to its meaning. One

searches in vain for such a statement, express or even implied. The writer of this opinion makes the personal observation that this might be still another instance where the framers meant one thing and said another or strangely, considering their loquacity elsewhere - did not say enough.

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" x x x (W)e return to our original interpretation and hold that Art. III, Sec. 19(1) does not change the periods of the penalty prescribed by Art. 248 of the Revised Penal Code except only insofar as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged.

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"Coming back to the case at bar, we find that there being no generic or mitigating circumstance attending the commission of the offenses, the applicable sentence is the medium period of the penalty prescribed by Article 248, which conformably to the new doctrine here adopted and announced, it is still reclusion perpetua."

In the light of the aforecited Supreme Court ruling we are therefore bound to consider in fixing the appropriate penalty to be imposed herein the whole range of the penalty prescribed under Article 248 of the Revised Penal Code for the crime of murder, i.e., reclusion temporal in its maximum period to death.

Conformably with Article 77 in relation to Article 64 (no. 4) of the Revised Penal Code, each of the three distinct penalties given under Article 248 shall form a period and the penalty to be imposed shall be determined after reasonably offsetting the mitigating and aggravating circumstances. In this light, we impose the medium period which is reclusion perpetua considering that the mitigating circumstance of voluntary surrender of the accused was offset by the aggravating circumstance of dwelling.

WHEREFORE, the judgment of conviction of the lower court is hereby **AFFIRMED** with the **MODIFICATION** that the sentence imposed on accused-appellant Victor Bacor is **RECLUSION PERPETUA** together with its accessory penalties and to indemnify the heirs of the victim in the amount of P50,000.00.

Furthermore, in view of the penalty of reclusion perpetua to be imposed on appellant Bacor, this case is hereby **CERTIFIED** and the entire record thereof is elevated to the honorable Supreme Court in accordance with Rule 124, Section 13 of the Revised Rules of Court (People vs. Cruz, 203 SCRA 683 [1991]).

SO ORDERED.

We have examined the evidence in this case and considered the arguments of the parties. We now find that the Court of Appeals correctly affirmed the conviction of accused-appellant. The findings and conclusions of the appellate court as contained in the aforequoted decision are accordingly adopted by the Court.

The main question in this case is whether accused-appellant validly waived his right to remain silent and, therefore, whether his confession is admissible in evidence against him. The question turns on the application of Art. III, §12(1) of the Constitution which provides:

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.

This is a corollary of the right against self-incrimination found in Art. III, §17. It has been noted that the Constitution has separated the right of persons under custodial investigation from the traditional right against self-incrimination not only to emphasize but also to guarantee the right to proper treatment of those under

investigation.[3]

To implement the right of persons under custodial interrogation, R.A. No. 7438, §2(d)[4] requires that any confession must be in writing and signed by the confessant in the presence of his counsel.

Decisions of this Court hold that for an extrajudicial confession to be admissible in evidence, it must satisfy the following requirements: (1) the confession must be voluntary; (2) it must be made with the assistance of a competent and independent counsel preferably of the confessant's choice; (3) it must be express; and (4) it must be in writing.[5] The Court finds that accused-appellant's confession satisfies the said requirements.

First. Accused-appellant's confession, as quoted in the decision of the Court of Appeals, leaves no doubt as to its voluntariness and spontaneity. Accused-appellant does not deny that he surrendered to the police on June 6, 1991, almost three months after the fatal shooting of Dionesio Albores, and confessed to the crime because he "could no longer bear a guilty conscience." In his testimony before the trial court, he admitted that the signature on pages 1, 2, and 3 of his sworn confession (Exh. B) was his without any claim that he was forced, coerced, or threatened to make the confession.[6] Indeed, the details contained in his confession could have been known to accused-appellant alone.

Second. Accused-appellant claims that he gave the confession without being warned of his constitutional rights. This is not true. The record shows that he was advised of his rights, particularly the right to remain silent, not only once but thrice: first, by his counsel, Atty. Meriam Anggot of Public Attorney's Office (PAO); second, by SPO3 Maharlika Ydulzura, the investigator who took accused-appellant's confession; and lastly, by the branch clerk of court of the Regional Trial Court of Oroquieta City, Atty. Nora Montejo-Lumasag, before whom accused-appellant swore to the veracity of his confession. Each time, he was asked whether he was willing to give a statement and he said he was. This is sufficient.[7] Contrary to accused-appellant's contention, there is no need for a separate and express written waiver of his constitutional rights.[8] Accused-appellant was not arrested. He presented himself to the authorities to confess to the crime because, he said, he was being bothered by his conscience. By voluntarily executing his extrajudicial confession, which he did in the presence of and with the assistance of counsel and after having been informed of his constitutional rights, accused-appellant effectively waived his right to remain silent.[9]

Accused-appellant, when asked, said he wanted to have the assistance of counsel. Atty. Anggot of PAO was appointed counsel de officio to assist accused-appellant and the latter expressly accepted her appointment as his counsel before giving his confession.[10] As this Court has held, a PAO lawyer can be considered an independent counsel within the contemplation of the Constitution considering that he is not a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to that of the accused-appellant.[11] Thus, the assistance of a PAO lawyer in the present case satisfies the constitutional requirement of a competent and independent counsel for the accused.

Judging from Atty. Anggot's testimony before the trial court, there is no reason not to consider her a competent and independent counsel. She testified that before the taking of accused-appellant's confession, she requested SPO3 Ydulzura and the other policemen to step out of the room so that she could privately confer with the accused-appellant, free from pressure or intimidation. She also testified on the circumstances surrounding her appointment as counsel for accused-appellant. She said:[12]

ATTY. ACOSTA ON DIRECT

WIT. MERIAM ANGGOT

Q Will you kindly inform this Honorable Court what public office if any were you holding in June, 1991?

A I am connected with the Public Attorneys Office based in Oroquieta City with the designation as Public Attorney II.

Q On June 6, 1991, at about 3:00 o'clock in the afternoon were you in your office?

A Yes.

Q Do you know who came to your office at that time on that date?

A

There were more or less four (4) or five (5) persons one of them is Victor Bacor, the accused in this case, the other one is Policeman Ydulzura and the two escorts whom I believe [were] policeman and I could not longer mention their names.

Q What was their purpose in coming to your office?

A

They told me that subject Victor Bacor who is the accused in this case is going to make his confession of a certain crime that he has committed.

Q

Since he was going to make a confession regarding his commission of a crime, you mean he was there to ask you to represent him as his lawyer during that time?

A

Well, I was told that the subject person is going to make a confession and he was asked whether he wanted to have his lawyer or whether he has a lawyer but he said that he has none and he was again asked by the policeman whether he will avail [of] the services of the Public Attorney's Office and he said that he will.

Q

Before the witness was to make a detailed confession/statements of the crime that he had committed, what if any did you inform him regarding his rights?

A

Before the interrogation started, I requested the policemen who escorted the subject person to leave us and after they left the office and stayed outside, I asked the subject person whether he was not intimidated, coerced or forced and informed him of the consequences of his making the confession, and whether he was not promised of any reward in order to make such confession and I further told him that he has the right to remain silent and not to answer any question propounded to him and that his statement might be used against him in the future.

Q And what if any was his reply?

A Well, he said that he is going to confess because he has done the crime.

Q Was that confession reduced to writing?

A Yes, it was typewritten.

....

Q As the affidavit was formed, what was done to its contents if there was?

A

I was present all the time when the interrogation was conducted and in fact, I explain[ed] to him the question or every question propounded and I let him understand and explained to him that his answers to the questions are very crucial to his person.

Q Do you still recall before whom this affidavit was subscribe[d] and sworn to?

A It was subscribed and sworn to before Atty. Nora Montejo-Lumasag.

SPO3 Ydulzura, on the other hand, testified, thus:[13]

ATTY. ACOSTA ON DIRECT

WIT. MAHARLIKA YDULZURA

Q Will you kindly inform this Honorable Court what position if any were you holding in June 1991?

A I am the chief investigator of the Sinacaban Police Station.

Q On June 6, 1991 in the afternoon of that date, where were you?

A I, together with Victor Bacor and some of my co-members of the PNP, were in the Office of the PAO.

Q What was your purpose in going to the Office of the PAO on that date?

A I was going to take the confession of Victor Bacor in the presence of a lawyer.

....

Q What was done while you were in the office of the PAO?

A I began to extract the confession of Victor Bacor.

Q Before you extract his confession, was he represented by a lawyer?

A

Yes.

Q Who was the lawyer representing him at that time?

A

Atty. Meriam Anggot.

Q Will you kindly inform this Honorable Court how . . . you [took] the confession of Victor Bacor?

A I did the writing in the presence of Atty. Meriam Anggot and put it directly in the typewriter.

Q Who [typed] the contents in that affidavit?

A I was the one.

Q In what dialect or language used?

A That was in Visayan dialect, sir.

Q Was it taken in the language or dialect known to Victor Bacor?

A Yes, sir.

. . . .

Q

You said that you are the one who [typed] this affidavit, kindly inform this Honorable Court what was your first question that was propounded upon Victor Bacor?

A

Yes, I inform[ed] him that he has the right to remain silent that he has the right not to answer any question propounded on him that may incriminate him and that he has the right to secure a lawyer of his choice to assist him during the taking of the confession.

Q When that question was propounded upon Victor Bacor, was Atty. Meriam Anggot present?

A Yes, sir.

Q Was that question placed in the affidavit of Victor Bacor?

A Yes, that is under the preliminary question your Honor.

Q

You said that accused was represented by Atty. Meriam Angot during the taking of his affidavit did the accused confirm or agree that he should be represented by Atty. Anggot during the taking of his affidavit?

A Yes, sir.

Q Was that also shown in the affidavit?

A Yes, sir, I made him place his name.

Not only was the confession signed by accused-appellant with the assistance of counsel, it was also sworn to by him before the branch clerk of court who, before administering the oath to accused-appellant, read the affidavit of confession to him and informed him of his rights and the consequences of his confession. Accused-appellant stood pat on his decision to tell it all. As Branch Clerk of Court Montejo-Lumasag testified:[14]

ATTY. ACOSTA ON DIRECT

WIT. NORA MONTEJO-LUMASAG

Q What position if any were you holding in June, 1991 Atty. Nora Montejo Lumasag?

A I am the Clerk of Court of Regional Trial Court of Oroquieta City.

Q Did you report for duty on June 6, 1991?

A Yes.

Q Do you recall on that date a certain person by the name of Victor Bacor who was sworn to your office??

A Yes.

Q Would you kindly inform this Honorable Court who accompan[ied] him in going to your office?

A It was SPO3 Maharlika Ydulzura.

Q

Who else?

A Also Atty. Meriam Anggot.

Q What was their purpose [for going] to your office?

A Their purpose was to swear before me [accused-appellant's] extrajudicial confession.

Q

I am showing to you an affidavit which is found on pages 4 to 6 of the record which [are] now marked as Exhibits B, B-1 and B-2, respectively, kindly examine the same and inform this Honorable Court what relation this affidavit has with that affidavit that you have mentioned which was sworn to before you?

A This is the very affidavit that was sworn before me by Victor Bacor.

....

Q

Before Victor Bacor affix[ed] his signature on this Exhibits B, B-1 and B-2, what if any was done as to the content of this affidavit?

A

I read to him the contents of the affidavit and inform[ed] him of his constitutional rights, that he has the right to remain silent, that he has the right to have a counsel of his own choice and about the consequence of his act, that it might be used as evidence against him in the future and further ask[ed] him whether he understood the contents of the affidavit and, after that he sign[ed] the confession.

Q Did you read the contents of the affidavit word for word?

A Yes, sir.

Q After you read to him the contents of the affidavit what if any did he tell you?

A

He said that the statements in the affidavit are true and correct and that he is willing to sign the same in his own free will.

Q After signing this affidavit what if any did you say to him?

A I requested him to swear under oath as to the truthfulness of the same.

Q And did he do so?

A Yes, sir.

Well-settled is the rule that a confession is presumed to be voluntarily and validly made unless the contrary is proven and that the burden of proof is upon the party who claims the contrary.[15] In this case, this presumption has not been overcome. Not only is accused-appellant's confession replete with details that only he could have supplied, but the circumstances surrounding its execution also belie his claim that he did not validly waive his right to remain silent. Hence, both the trial and the appellate courts correctly convicted accused-appellant on the basis of the confession since, as they noted, it was corroborated by evidence of the corpus delicti which dovetails with the confession.[16]

Against this evidence of the prosecution, accused-appellant's alibi cannot prevail. He claimed that he was at his parents' house at SK Avancena, Sinacaban, Misamis Occidental at the time of the killing of Dionesio Albores. His father, Cesar Bacor, admitted, however, that their house in Barangay Avancena is just one (1) kilometer from the house of the victim in Barangay Señor where the crime was committed and that transportation was easily available.[17] It was thus not impossible for accused-appellant to have gone to Barangay Señor to commit the crime.

Even if we consider accused-appellant's defense of alibi a retraction of his confession, the same is of no moment. In this jurisdiction, retractions of confessions are generally considered unreliable and are looked upon with disfavor. The asserted motives for the repudiation of a confession are commonly held suspect and subject to serious doubt.[18]

Finally, we hold that the Court of Appeals correctly sentenced accused-appellant to reclusion perpetua. When the crime of murder was committed on March 17, 1991, the same was punishable under Art. 248 of the Penal Code by reclusion temporal, in its maximum period, to death. Each of the three (3) distinct penalties covered thereby forms a period[19] and the penalty to be imposed is determined after reasonably offsetting the attending mitigating and aggravating circumstances.[20] In the instant case, the mitigating circumstance of voluntary surrender of the accused-appellant is offset by the aggravating circumstance of dwelling considering that the latter circumstance is not absorbed by the qualifying circumstance of treachery.[21]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena JJ., concur.

[1] Per Judge Vicente T. Baz, Jr.

[2] Per Justice Portia Aliño-Hormachuelos and concurred in by Justices Artemon D. Luna and Ramon A. Barcelona; Rollo, pp. 3-20.

[3] Joaquin A. Bernas, *The 1987 Constitution of the Republic of The Philippines: A Commentary* 409 (1996).

[4] R.A. No. 7438, §2(d) provides: "Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in evidence in any proceeding."

- [5] *People v. Deniega*, 251 SCRA 626 (1995); *People v. Espanola*, 271 SCRA 689 (1997); *People v. Cabiles*, 284 SCRA 199 (1998).
- [6] TSN, p. 16, Oct. 27, 1992.
- [7] See *People v. Alberca*, 257 SCRA 613 (1996).
- [8] Appellant's Brief, pp. 5-6; CA Rollo, pp. 21-22.
- [9] *People v. Ruelan*, 231 SCRA 650 (1994).
- [10] Exhibit B, Records, p. 4.
- [11] See *People v. Oracoy*, 224 SCRA 759 (1993); *People v. Bandula*, 232 SCRA 566 (1994).
- [12] TSN, pp. 2-4, Nov. 12, 1991.
- [13] TSN, pp. 3-4, 6-7, Oct. 22, 1991.
- [14]4 TSN, pp. 24-27, Oct. 22, 1991.
- [15] *People v. Ruelan*, 231 SCRA 650 (1994); *People v. Enanoria*, 209 SCRA 577 (1992); *People v. Estevan*, 186 SCRA 34 (1990).
- [16] *People v. De la Cruz*, 279 SCRA 245 (1997); *People v. Lorenzo*, 240 SCRA 624 (1995).
- [17] TSN, p. 8, Oct. 27, 1992.
- [18] *People v. Fabro*, 277 SCRA 19 (1997); *People v. Logronio*, 214 SCRA 519 (1992).
- [19] Revised Penal Code, ART. 77.
- [20] *Id.*, Art. 64(4).
- [21] *People v. Uycoque*, 246 SCRA 769 (1995); *People v. Dayson*, 242 SCRA 124 (1995); *People v. Ruzol*, 100 Phil. 537 (1956); *People v. Jimenez*, 99 Phil. 285 (1956).

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