PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN NAAG Y ROQUE AND JOSELITO ALCANTARA, ACCUSED.

G.R. No. 123860. January 20, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated November 15, 1995, of the Regional Trial Court, Branch 72, Olongapo City, finding accused-appellant Edwin Naag y Roque guilty on two counts of murder aggravated by abuse of superior strength and sentencing him to suffer two terms of reclusion perpetua. Accused-appellant was ordered to pay the heirs of the deceased P38,000.00 for the funeral expenses, P100,000.00 for moral damages, and the costs.

The antecedent facts are as follows:

In an amended information, dated January 9, 1991, accused-appellant Edwin Naag y Roque was charged, together with Joselito Alcantara, with two counts of murder allegedly committed as follows:[2]

> That on or about the fifteenth (15th) day of November, 1990, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another armed with a knife and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and stab therewith spouses Atty. Rodrigo Fontelera, Sr. and Rosita Fontelera, with treachery and evident premeditation, and as a result thereof, said spouses Rodrigo and Rosita Fontelera suffered multiple stab wounds, which directly caused their death shortly thereafter, to the damage and prejudice of the members of the family and relatives of said spouses.
>
> All contrary to law and with the qualifying circumstance of evident premeditation.

Only accused-appellant was arrested and tried. The other accused, Joselito Alcantara, remained at large.

The evidence for the prosecution consisted of the autopsy reports and testimony of Dr. Richard Patilano, medico-legal officer of Olongapo City, the dying declarations of Rosita Fontelera, and accused-appellant's extrajudicial confession.

Dr. Patilano conducted autopsies on the victims in the evening of November 15, 1990 and prepared reports. His autopsy report (Exh. F)[3] on Rodrigo Fontelera, Sr. is as follows:

> This is a body of a 60 year old male, Filipino, Sthenic in body built, measuring about 5 feet and 2 inches in length, not yet rigid post mortem.
>
> **F I N D I N G S**
>
> Lips and nailbeds:
>
> pale

Stab Wounds:

13 Stab wounds over the face and neck areas. Most of the stab wounds were 1.5 cm in length with one extremity being sharp, mostly oriented at vertical position. The ones at the right lateral side of the neck severed the right jugular blood vessels. 8 stab wounds were located at the back of the head and at the nuchal area of the neck. The ones at the head were at horizontal orientation while those at the nuchal area were vertically oriented. STWs ranged from 1 cm to 3.5 cm in length, only one extremity was sharp. 6 STWs were located at the right side of the chest and abdominal areas, ranging from 0.5 cm to 3 cm in length, vertical or left oblique in orientation, only one extremity was sharp. 6 STWs were located at the back, most of the STWs were oriented at horizontal direction, mostly 1.5 cm long, one extremity sharp. 4 STWs were located at the posterior aspect of the left upper extremity, ranging from 0.5 cm to 1.5 cm long, mostly at vertical orientation, only one sharp extremity, 3 STWs were located at the antero-lateral aspect of the left arm, mostly were at vertical orientation, one extremity was sharp. 6 STWs were located at the right arm and forearm, posterior aspect, mostly were at vertical orientation with an average length of 1.5 cm. (Total STWs - 46)

Incised wounds:

1.5 cm over the distal phalanx, 2nd finger, right hand, posterior aspect; 1.5 cm over the distal phalanx, posterior aspect, 3rd finger, right hand, all were at horizontal orientation.

Lungs:

Left lower lobe - 1 STW, 1 cm. right lobe with adhesions.

Liver -

1 cm STW at the right lobe.

Stomach:

Full of undigested food, no alcoholic odor.

Cause of Death:

Hypovolemic Shock due to Multiple Stab Wounds

The autopsy report (Exh. G)[4] on Rosita Fontelera, on the other hand, reads:

This is a body of a 54 year old female, Filipino, Hypersthenic in body built, measuring about 4 feet and 11 inches in length, not yet rigid post mortem.

F I N D I N G S

Lips and nailbeds:

pale

Stab Wounds:

3 cm in length, sharp extremity directed towards the left, oriented at horizontal position, located at the right upper chest, 4th interspace, mid-clavicular line, directed backward and to the left, making a 1.5 cm STW at the right side of the heart which progressed into the right auricle causing massive bleeding with the left thoracic cavity; 2 cm, oriented horizontally, located at the right lower chest wall, arrested by the 6th right rib, sharp extremity directed leftward; 1.5 cm sharp extremity directed upward and to the left, oblique orientation, located at the right hypochondriac area resulting to 0.5 cm STW of the right lobe of the liver; 2.5 cm left oblique in orientation with sharp extremity directed upward and to the left, located at the left side of the abdomen; 1.5 cm

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horizontally oriented, located at the right upper back, bone-deep; 1.5 cm horizontally oriented, located at the right back, over the right scapula, bone-deep; 3.5 cm horizontally oriented, sharp extremity directed towards the left, progressed beneath the right scapula, inferior margin, making a 2 cm STW at the inferior margin of the right lung.

Incised wound:

6 cm, skin-deep over the upper third, posterior aspect, right arm; 2.5 cm left oblique in orientation located over the distal third, artero-medical aspect, left forearm.

Stomach:

Full of undigested food, no alcoholic odor.

Cause of Death:

Hypovolemic Shock Due to Multiple Stab Wounds

Dr. Patilano testified[5] that most of the 46 stab wounds inflicted on Rodrigo Fontelera, Sr. were fatal; that he was of the opinion that only one person frontally stabbed Fontelera, Sr., but "as [the stab wounds at the back] have different orientations," he could not tell how many stabbed Fontelera, Sr.

With regard to Rosita Fontelera, Dr. Patilano testified that she suffered fewer stab wounds than her husband and that, from the nature of her wounds, she (Rosita Fontelera) did not die immediately.

Dr. Patilano said that both victims were stabbed by means of a pointed, but not double bladed, instrument. However, he could not tell if only one instrument was used in stabbing the victims.

The second prosecution witness was Eufracio Banal, a member of the Scriptures Baptist Church. He testified[6] that on November 15, 1990, at around 5 p.m., while he was checking the sound system in his church, one of his churchmates, Angie Dizon, came rushing in and told him that Rosita Fontelera was at the "Siesta Pizza," which Angie owned, in need of urgent help. Banal said he followed Angie Dizon, and he found Rosita Fontelera lying on the pizza parlor’s floor, seriously wounded. While they were lifting her up in order to take her to the hospital, she said, "Si Edwin, si Edwin," twice. Rosita Fontelera died on arrival at the hospital. According to Banal, he did not know accused-appellant and only came to know him as the "Edwin" whom Rosita Fontelera referred to when he saw accused-appellant in court. Earlier, on November 16, 1990, Banal gave a sworn statement (Exh. Q)[7] about the final words of Rosita Fontelera. PO3 Ramon Fernandez testified[8] that he was the one who took down the statement of Eufracio Banal.

Pfc. Leo Batinga, another police investigator at the Olongapo Police Station, also testified.[9] He said that he received a telephone report of the incident at 6:20 in the evening of November 15, 1990. Together with other police officers, he proceeded to the victims’ residence at No. 21 21st Street, East Bajac-Bajac, where they found the body of Rodrigo Fontelera, Sr. with multiple wounds. They also found on the top of the lavatory a kitchen knife with a brown handle. A worker at the "Siesta Pizza," Mercy Salapanti Seballa, told them that Rosita Fontelera four times said "Edwin, taga-Novaliches" as she stumbled into "Siesta Pizza," seriously wounded.

Pfc. Batinga said he had asked the son of the victims, Rodrigo Fontelera, Jr., if he knew "a certain Edwin from Novaliches," and was told that Edwin is accused-appellant who was their former caretaker; that on orders of their station commander and then Olongapo City Mayor Richard Gordon, he and his fellow police officers went to accused-appellant’s house in Aguardiente, Novaliches, but accused-appellant was not there; that they later learned that accused-appellant had been arrested by the barangay tanod of Aguardiente, Novaliches; that accused-appellant was taken to Olongapo City; that there accused-appellant admitted to them that he was one of

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the assailants of the Fonteleras. Accused-appellant executed a waiver (Exh. A)[10] relative to his warrantless arrest and subsequent detention.

Atty. Norberto de la Cruz was the lawyer who signed accused-appellant's confession (Exh. O)[11] as assisting counsel. He testified[12] that on November 16, 1990, he was at the La Paz Batchoy Restaurant in front of the police station, when Pfc. Leo Batinga and Lt. Esteban showed him a "ready-made sworn statement, a sort of confession" of accused-appellant which they asked him to sign, as assisting counsel. According to Atty. De la Cruz, while accused-appellant said he had voluntarily executed the same, he (Atty. De la Cruz) nevertheless insisted that another investigation be conducted in his presence. According to Atty. De la Cruz, prior to the questioning by the police, he asked accused-appellant in the latter's native Bicol dialect whether he had been forced or intimidated to confess and the latter answered in the negative, and said "never mind" when Atty. De la Cruz told him he could be imprisoned as a result of his confession. The investigation was then conducted by Pfc. Batinga who typed accused-appellant's answers to the questions of the investigator. Aside from him, the other one present at the investigation was Lt. Esteban. Atty. De la Cruz said that, before signing, he read the confession (Exh. O). As the opening statement did not state that the confession was taken in his presence, he called the attention of the police investigators to the omission, but he was told "Never mind, anyway your name is at the bottom." He therefore signed the confession (Exh. O), which he later identified as the following:[13]

> SALAYSAY NI EDWIN NAAG NAIBINIGAY KAY PFC LEO BATINGA SA TANGGAPAN NG TAGAPAGSIYASAT NG KAGAWARAN NG PULISYA LUNGSOD NG OLONGAPO NITONG IKA-16 NG NOBYEMBRE 1990 SA GANAP NA ALAS 4:30 NG HAPON SA HARAP NI P/LT ESTEBAN:
>
> x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x
>
> LAYUNIN :
>
> Ang imbistigasyon ito ay may kaugnayan sa pagpatay sa magasawang ATTY RODRIGO FONTELERA at Gng Rosita Fontelera na naganap kahapon ika-15 ng Nobyembre 1990 mga alas 5:20 ng hapon sa kanilang bahay na nasa 21-21st. EBB, Olongapo City, naiintindihan mo?
>
> SAGOT :
>
> Opo.
>
> PAALALA :
>
> Bago tayo magsimula, nais kong ipagbigay alam sa iyo na sa Ilalim ng ating Saligang Batas, ikaw Edwin ay may mga KARAPATAN ng mga sumusunod:
>
> (1)
>
> KARAPATAN mong manahimik, magbigay o huwag magbigay ng ano man salaysay. Ihinto ng ano mang oras ang imbistigasyon ito;
>
> (2)
>
> KARAPATAN mong kumuha ng abogado na tutulong sa iyo at kung hindi mo kaya, magbibigay kami at ito ay walang bayad;
>
> (3)
>
> Ang sasabihin mo ay maaaring gamitin ng PANIG o LABAN sa iyo sa alin mang hukuman dito sa Pilipinas;
>
> TANONG :

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Ngayon masabi namin sa iyo ang LAYUNIN pati na ang iyong mga KARAPATAN, ito ba ay iyong nauunawan o naiintindihan?

SAGOT :

Opo.

TANONG :

Nais mo pa rin bang ipagpatuloy natin ito?

SAGOT :

Opo.

01.

T:

Ang buo mong pangalan at mga bagay hingil sa tunay mong pagkatao?

S:

EDWIN NAAG Y ROQUE, 21 anyos, binata, laborer at nakatira sa Agua Fiente Forest Hill Subd. Novaliches, Quezon City .

02.

T:

Kung ikaw ay nakapagaral, anong grado ang inabot mo at eskuwelahan?

S:

High School Graduate, Novaliches High School .

03.

T:

Nakakaintindi ka at nakakabasa ng wikang tagalog?

S:

Opo

04.

T:

Marunong kang sumulat ar bumasa?

S:

Marunong po

05.

T:

Kailan ka dumating ng Olongapo City ?

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S:

Kahapon mga alas 5:00 ng hapon ika-15 ng Nob. 1990.

06.

T:

Saan ka naman galing?

S:

Sa Novaliches po.

07.

T:

Anong oras kang umalis sa Novaliches?

S:

Mga alas 2:00 ng hapon.

08.

T:

Sino naman ang kasama mong dumating sa Olongapo kahapon ika-15 ng Nobyembre 1990 ng hapon?

S:

Sina Joel at Joselito Alcantara.

09.

T:

Taga saan naman itong sina Joel at Joselito Alcantara?

S:

Si Joselito po ay taga Cavite City hindi ko po alam doon. Si Joel na hindi ko naman alam din ang apelyido ay taga-Pangasinan alam po ito ng aking tatay.

10.

T:

Saan naman kayo nagtuloy ng dumating kayo sa Olongapo?

S:

Ako muna ang nagtuloy sa bahay ni Uncle Fontelera at Auntie Rosing (Referring to Rosita Fontelera) at sumunod na lang sila.

11.

T:

Ano naman ang sadya mo dito kay Atty. Fontelera at kanyang asawa?

S:

Nais ko sanang makausap si Atty. Fontelera na turing sana kaming kamaganak dahil naghirap kami sa pangangalaga ng kanilang lote sa Novaliches at kung ibebenta niya ang lupa, sana naman may bigyan kami ng kaunti. Pinalayas pa kami. E.N.

12.

T:

Ano naman ang nangyari, nakausap mo ba si Atty. Fontelera?

S:

Hindi ko po nakausap. Pumasok po itong si Joel at Joselito na bigla na lang sinaksak si Atty. at si Auntie Rosing. Nasaksak ko ng tatlong beses si Uncle Fontelera (Referring to Atty. Fontelera) at ng sasaksakin naman si Auntie Rosing, inawat si Joel ngunit sinabi ni Joel na testigo pa sa atin ito kayat ipinagpatuloy nito ang pagsaksak. Nakita ko po na nakatakbo pa si Auntie Rosing patungong Pizza at nagsisigaw ng Edwin Novaliches kayat natakot ako at lumabas kaagad ako kasama na sina Joel at Joselito at nagkita kami sa Victory Liner Terminal

13.

TANONG:

Magkakasama kayong umalis, saan naman kayo sumakay ng nasa Victory Liner Terminal na kayong tatlo?

SAGOT:

Dalawa lang kami ni Joselito Alcantara ang nagkita, si Joel po ay hindi ko alam kung saan nagtungo. Parehong Balintawak ang binababaan namin dalawa at doon kami nagkahiwalay.

14.

T:

Anong patalim ang ginamit mo, ni Joel at Joselito?

S:

Itong nasa ibabaw ng lamesa po sa ngayon ay si Joselito Alcantara. (Affiant was referring and pointing to a kitchen knife HIGH CARBON STAINLESS with a brown handle whose blade measure about 6 inches more or less). Ako po ay beinte nueve na naagaw kay Atty Fontelera. Naagaw po nito ang Beinte Nueve balisong kay Joselito at ito naman ay naagaw ko kay Atty Fontelera. Beinte Nueve rin ang ginamit ni Joel.

15.

T:

Sino ang unang sinaksak sa magasawa?

S:

Unang sinaksak si Atty. Fontelera nina Joel at Joselito at ako ay sumasak din ng tatlong beses kay Atty habang nasa dirty kitchen sa labas ng kainan. Ang sumunod ay si Auntie Rosing naman ang sinaksak ni Joel.

16.

T:

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Anong dahilan at pati itong sina Joselito at Joel ay nakisali sa pagsaksak dito sa magasawa?

S:

Kasi ang balak nilang dalawa ay makakuha ng mga gamit doon sa bahay.

17.

T:

Saan naman nila balak ito, sa Novaliches o dito na sa Olongapo?

S:

Sa Novaliches pa po.

18.

T:

May nakuha naman sila sa bahay ng magasawa?

S:

Wala po.

19.

T:

Kailan naman binalak ang pagnanakaw?

S:

Noon ika-14 ng Nobyembre 1990 mga alas 4:00 ng hapon.

20.

T:

Bakit naman binalak nila ito?

S:

Dahil alam nila abogado ito at maraming gamit. Naikuwento ko sa kanila.

21.

T:

Kailan mo pa nakilala itong si Joselito at Joel?

S:

Si Joselito mula ng Elementary at si Joel ay nitong 1990 lang.

22.

T:

Nang makarating ka sa Balintawak, saan ka nagtuloy?

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S:

Dumiretso ako ng NUTRI SNACK sa 58 Gen Luis Bo. Capri Novaliches.

23.

T:

Mga anong oras kang nakarating doon?

S:

Mga 9:30 ng gabi po.

24.

T:

Bakit ka naman nagtungo doon?

S:

Kakausapin ko si SUSIE PANGILINAN 20 anyos na aking girlfriend.

25.

T:

Nakausap mo naman?

S:

Opo.

26.

T:

Anong oras naman ang trabaho nitong si Susie Pangilinan?

S:

Alas 6:00 ng gabi hanggang alas 6:00 ng umaga po.

27.

T:

Anong nangyari ngayon?

S:

Nanghiram ako ng P 200.00 at ito po ay nag-check-out ng alas 10:00 ng gabi, sa trabaho at sumama sa akin.

28.

T:

Saan kayo nagtuloy ni Susie?

S:

Sa kanilang bahay po.

29.

T:

Habang naroroon kayo, may nangyari ba

S:

Opo.

30.

T:

Ano ito?

S:

Nakita ko po na dumating kayo. (affiant was referring to Lt Esteban and Pfc Batinga) may iba pa na may armalite kayat nagtago ako.

31.

T:

Ano ngayon ang nangyari?

S:

Nagbantay po ang mga pulis doon at pinagpapasok nila ang ibang bahay at ako naman po ay pinanonood lang sila. Nais ko sanang sumurender ngunit natakot ako na baka barilin ako ng naka-armalite. Ng madaling araw na. Nakita ako at nagkahabulan po ngunit hindi ako nahuli ng mga pulis. Ang mga Barangay na tumulong sa mga pulis ang siyang nakahuli sa akin at ibinigay ako sa Novaliches Police Substation at doon pinaguusapan ng mga pulis ang tungkol sa mga Pulis ng Olongapo City na nagreport rin doon na naghahanap sa akin.

32.

T:

Paano ka dinala ngayon dito sa Olongapo.

S:

Kinuha na lang ako ng mga pulis Olongapo sa Novaliches Police Sub Station at dinala dito sa inyong tanggapan.

33.

T:

Lalagdaan at panunumpaan mo ito?

S:

Opo.

34.

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T:

Ang suot mong damit at sapatos ng saksakin ang magasawang Fontelera?

S.

Itong suot kong pantalon ngayon (Affiant was referring and pointing to his striped pants a blue and black stripe pants believe to be with blood stain)

35.

TANONG:

(Karugtong)

SAGOT:

Puting ordinaryong T-shirt po. Naiwan ko po ito sa Novaliches) at ang sapatos po ay iyan. (Affiant was pointing to low cut white rubber shoes ROBERTSON).

36.

T:

May nais ka pa bang sabihin sa amin?

S:

Laging galit kasi si Uncle Fontelera.

37.

T:

Itong Auntie Rosing Fontelera mo may galit ka rin ba sa kanya?

S:

Wala naman po.

38.

T:

Lalagdaan mo ito?

S:

Opo.

[Sgd.] EDWIN NAAG
-Nagsalaysay

[Sgd.]
ASSISTED BY: ATTY NORBERTO DE LA CRUZ

SUBSCRIBED AND SWORN to before me this 17th day of Nov 90 at Olongapo City. I hereby certify that I personally examined the affiant and I am satisfied that he voluntary executed and understood the foregoing statement.

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[Sgd.]
ASS'T CITY PROSECUTOR

The last witness for the prosecution was the victims' son, Rodrigo Fontelera, Jr. He testified[14] that he used to meet accused-appellant whenever he went to Novaliches to spend vacations with his cousin Salvador Jordan. On the other hand, accused-appellant used to go three to four times a year to the Fontelera house in Olongapo City to do odd jobs. Fontelera, Jr. said that accused-appellant once told him that he (accused-appellant) felt bad because the senior Fontelera was ejecting accused-appellant's family from the lot they were occupying in Novaliches.

Fontelera, Jr. testified that his father earned from P100,000.00 to P150,000.00 a year from his law practice. He also said that he suffered shock and anxiety because of the circumstances under which his parents died. He submitted receipts (Exhs. L to L-7;[15] M to M-1[16]) as proof of the expenses for his parents' funeral services.

Accused-appellant testified in his behalf.[17] He knew the victims because accused-appellant's father was the adopted son of Rosita Fontelera's parents. They all hailed from Bicol. Moreover, his father was caretaker of the Fontelera lot in Novaliches. He said that at around four 4 o'clock in the afternoon of November 15, 1990, he went to Olongapo City with Joselito Alcantara and a certain Joel to do some repairs on the Fontelera house; that while outside the house talking to Rosita Fontelera, he heard a commotion inside; that when he went inside, he saw Joel and Joselito stabbing Atty. Fontelera, Sr.; that he managed to pacify Joel and take him outside the house; that when he returned inside the house, however, he saw Joselito attacking Atty. Fontelera, Sr.; that when he went outside to look for Rosita Fontelera so that they could take Atty. Fontelera, Sr. to the hospital, he found Rosita Fontelera herself being stabbed; that he saw her run to the house while shouting "Edwin, Edwin, Novaliches"; that due to confusion, accused-appellant immediately left and took a bus home to Novaliches, arriving there between 9 and 10 p.m.; that when he saw many policemen arrive at their house, he became afraid and went to his girlfriend's house and from there, called up his father; that upon the advice of his father, he surrendered to their barangay captain who turned him over to the custody of the police in Novaliches; that he was fetched from Novaliches by the Olongapo police on November 16, 1990 at around 9 a.m. and brought to their station in Olongapo City; that he was subjected to torture and electric shock and doused several times with water taken from the urinal; that at one point he was even taken outside the police station and told to run which he, however, refused to do knowing that he would be shot on the pretext that he was escaping; that Lt. Batinga asked him to sign a piece of paper (which turned out to be a confession) in exchange for his release; that he only signed one page out of the three pages; and that Atty. De la Cruz did not sign the document in his presence.

On cross-examination, accused-appellant testified[18] that he had known Joselito Alcantara for about five years because they were neighbors in Novaliches and that Joel, whose surname he did not know, was actually Joselito's friend; that they had been working at the Fontelera house for two days already prior to the incident; that Atty. Fontelera shouted "bad words" at him and his companions because he was drunk; that he signed the document purporting to be his confession inside the detention cell and never affirmed his signature thereon before the prosecutor.

Jose Naag, accused-appellant's uncle, also testified.[19] He said that on November 15, 1990, he accompanied accused-appellant to the barangay authorities. Two days before, on November 13, 1990, at around 7 a.m., he saw accused-appellant at the bus terminal and was told by him that he (accused-appellant) was going to Olongapo City.

On rebuttal, Rodrigo Fontelera, Jr. testified[20] that, although for a time accused-appellant stayed on his parents' lot in Novaliches, the actual caretaker of the lot was his aunt Mely Roque who is his mother's sister, and that accused-appellant was a relative of the husband of Mely Roque. He denied that accused-appellant did some repairs on the Fontelera house in November 1990.

On November 15, 1995, the trial court rendered its decision. It dismissed accused-appellant's claim that he had no hand in the killing of the Fonteleras. It held that he bore them a grudge because the Fonteleras drove accused-appellant from the Fontelera lot in Novaliches. The court noted that accused-appellant's name was mentioned several times by Rosita Fontelera as she was dying and that accused-appellant fled. The court considered the killings of the couple qualified by evident premeditation and aggravated by abuse of superior strength. However, it did not appreciate the mitigating circumstance of voluntary surrender because accused-appellant did not surrender immediately to the police who went looking for him in his house in Novaliches. The dispositive portion of its decision[21] reads:

> WHEREFORE, in view of the foregoing considerations, the Court finds the guilt of the accused has been proved beyond reasonable doubt and hereby sentences accused Edwin Naag y Roque guilty of the crime of Double Murder with the aggravating circumstance of abuse of superior strength and is hereby sentenced to suffer two (2) terms of reclusion perpetua; to indemnify the family of the victims in the sum of THIRTY-EIGHT THOUSAND PESOS (P38,000.00) funeral expenses, ONE HUNDRED THOUSAND PESOS (P100,000.00) moral damages and to pay the costs.

Hence, this appeal. Accused-appellant contends:[22]

> - WITH THE TOTALITY OF FACTS AND CIRCUMSTANCES PROFFERED IN THE COURSE OF TRIAL ON THE MERITS, THE TRIAL COURT LIKEWISE ERRED IN "PRESUMING" CONSPIRACY.
>
> - THE TRIAL COURT ERRED IN ITS MISPLACED RELIANCE ON CIRCUMSTANTIAL EVIDENCE, INTERTWINED WITH OTHER DOCTRINES OF LAW ON EVIDENCE IN SECURING A CONVICTION.
>
> - THE TRIAL COURT MADE A WRONG AND SWEEPING VERDICT THAT "FLIGHT" IS PER SE ALWAYS TRANSLATED AS ONE OF GUILT.
>
> - THE TRIAL COURT'S FAVORABLE PRONOUNCEMENT ON DYING DECLARATION, ABSENT ITS PRE-REQUISITE ELEMENTS IS ERRONEOUS.
>
> - WITH THE DEARTH AND PAUCITY OF FACTS AND CIRCUMSTANCES INDUBITABLE AND ESTABLISHED IN THE COURSE OF TRIAL, THE COURT A QUO ERRED IN CONCLUDING THAT THE MIRANDA SAFEGUARDS ARE OBSERVED.

I.

The prosecution's case is anchored on accused-appellant's extrajudicial confession (Exh. O) and on Rosita Fontelera's dying declarations.

A. Anent the extrajudicial confession, accused-appellant claims that there was really no investigation made in the presence of counsel because after he had been interrogated by the police, he was simply made to sign the confession. Accused-appellant makes capital of the testimony of Atty. Norberto De la Cruz that he had been asked to sign a prepared confession of accused-appellant.

To be sure, what Atty. De la Cruz said was that he refused the request and demanded another investigation to be conducted in his presence and that the confession which he signed, which is marked Exhibit O, was the result of accused-appellant's interrogation during which he was present.

However, we are inclined to believe accused-appellant's claim that he was interrogated without the assistance of counsel. In the first place, the opening statement of the confession (Exh. O) says that the confession was taken in the presence of P/Lt. Esteban, but not in the presence of Atty. De la Cruz as well. Atty. De la Cruz's explanation, that when he noticed the omission and asked that his presence be mentioned he was assured that it was not

necessary because anyway his name appeared at the bottom of the confession, is too pat to be believed. The opening statement is intended to indicate the circumstances under which the confession was taken, including the persons present, and, therefore, there was no reason why the name of Atty. De la Cruz was omitted. The reason seems to be that Atty. De la Cruz was not really present at the investigation allegedly conducted on November 16, 1990.

In the second place, an examination of Exhibit O shows that Atty. De la Cruz's name was simply added at the end of the confession after it had been prepared. The confession appears to have been prepared on a typewriter different from that used to type the name of the accused-appellant, Atty. De la Cruz, and the acknowledgment clause and the name of the Assistant City Prosecutor before whom the confession was sworn to. The text of the confession is darker suggesting that the ribbon used was new, whereas the names of accused-appellant, Atty. Norberto de la Cruz, and the Assistant City Prosecutor, as well as the acknowledgment clause are lighter, suggesting that the ribbon used was almost faded. It is not quite probable that the typist simply changed the ribbon of his machine, otherwise the first portion should be lighter and the latter part darker. For these reasons, we hold that accused-appellant was interrogated without the assistance of counsel, in violation of Art. III, §12(1).

Nor does it appear that accused-appellant effectively waived effectuation of the rights in 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.

The following appears in accused-appellant's confession:

> PAALALA:
>
> Bago tayo magsimula, nais kong ipagbigay alam sa iyo na sa Ilalim ng ating Saligang Batas, ikaw Edwin ay may mga KARAPATAN ng mga sumusunod:
>
> (1)
>
> KARAPATAN mong manahimik, magbigay o huwag magbigay ng ano man salaysay. Ihinto ng ano mang oras ang imbistigasyon ito;
>
> (2)
>
> KARAPATAN mong kumuha ng abogado na tutulong sa iyo at kung hindi mo kaya, magbibigay kami at ito ay walang bayad;
>
> (3)
>
> Ang sasabihin mo ay maaaring gamitin ng PANIG o LABAN sa iyo sa alin mang hukuman dito sa Pilipinas;
>
> TANONG :
>
> Ngayon masabi namin sa iyo ang LAYUNIN pati na ang iyong mga KARAPATAN, ito ba ay iyong nauunawan o naiintindihan?
>
> SAGOT:
>
> Opo.
>
> TANONG:

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> Nais mo pa rin bang ipagpatuloy natin ito?
>
> SAGOT:
>
> Opo.

Authoritative interpretations of the Miranda rule[23] as embodied in Art. III, §12(1) require, however, that the suspect in custodial interrogations be warned: (1) that he has a right to remain silent; (2) that he has a right to the assistance of counsel; (3) that if he cannot afford counsel one will be provided to him; and (4) that anything he will say can and will be used against him.[24] While accused-appellant was told what his rights were and answered in the affirmative when asked whether he understood what he had been told, the crucial question is whether he effectively waived the effectuation of these rights. We find that he did not and, therefore, his confession (Exh. O) is inadmissible in evidence. Accused-appellant was not asked whether he was willing to testify even without the assistance of counsel. If he was willing to testify only with the assistance of counsel, he should have been asked if he had one. If he said he wanted to have counsel but could not afford one, he should have been asked if he wanted one to be appointed for him.[25] As a result of the investigator's failure to ask these questions before taking down accused-appellant's statement, there was no effective waiver of his rights to remain silent and to counsel.

B. The trial court likewise relied on Rosita Fontelera's dying declarations for its conclusion that accused-appellant was one of those who killed the Fonteleras. As already stated, as Rosita Fontelera lay dying, she was heard repeatedly saying "Si Edwin, si Edwin." Two witnesses, Eufracio Banal and Pfc. Leo Batinga, testified to this fact. Accused-appellant also admitted that, as he was coming out of the Fontelera house to tell Rosita Fontelera that her husband had been stabbed, the latter shouted, "Edwin, Novaliches, Edwin, Novaliches," as she was running from him. It is contended, however, that the declaration is incomplete and cannot be taken to mean that Rosita Fontelera was pointing to accused-appellant as an assailant. Accused-appellant cites the case of People v. De Joya,[26] in which it was held:

> . . . It is not disputed that "Paqui" is the nickname of appellant Pioquinto de Joya. It must be noted at once, however, that the words "Si Paqui" do not constitute by themselves a sensible sentence. Those two words could have been intended to designate either (a) the subject of a sentence or (b) the object of a verb. If they had been intended to designate the subject, we must note that no predicate was uttered by the deceased. If they were designated to designate the subject of a verb, we must note once more that no verb was used by the deceased. The phrase "Si Paqui" must, moreover, be related to the question asked by Alvin: "Apo, Apo, what happened?" Alvin's question was not: "Apo, Apo, who did this to you?"
>
> It has been held that a dying declaration to be admissible must be complete in itself. . . . The doctrine of completeness has also been expressed in the following terms in Prof. Wigmore's classic work:
>
> The application of the doctrine of completeness is here peculiar. The statement as offered must not be merely a part of the whole as it was expressed by the declarant; it must be complete as far it goes. But it is immaterial how much of the whole affair of the death is related, provided the statement includes all that the declarant wished or intended to include in it. Thus, if an interruption (by death or by an intruder) cuts short a statement which thus remains clearly less than that which the dying person wished to make, the fragmentary statement is not receivable, because the intended whole is not there, and the whole might be of a very different effect from that of the fragment; yet if the dying person finishes the statement he wishes to make, it is no objection that he has told only a portion of what he might have been able to tell." (Italics supplied)
>
> The reason upon which incomplete declarations are generally excluded, or if admitted, accorded little or no weight, is that since the declarant was prevented (by death or other circumstance) from saying all that he wished to say, what he did say might have been qualified by the statements which he was prevented from

> making. That incomplete declaration is not therefore entitled to the presumption of truthfulness which constitutes the basis upon which dying declarations are received.

This case is, however, different from People v. De Joya. In this case, the deceased was saying "Si Edwin, si Edwin" not only when found inside the pizza parlor by Banal and Seballa but also as she was running away wounded. The circumstances in which she was saying "Si Edwin, si Edwin" make it clear that she was referring to accused-appellant as her assailant or at least one of her assailants.

Indeed, accused-appellant himself testified that he heard Rosita Fontelera shouting, "Edwin, Edwin, Novaliches" as she was running away from him. Contrary to accused-appellant's claim that he was approaching Rosita Fontelera to inform her that her husband, Atty. Fontelera, had been stabbed, it is clear that Rosita Fontelera was fleeing from him and running inside the pizza parlor beside her house to seek refuge from her attacker. She was running away from accused-appellant because the latter was after her.

Rule 130, §42 provides that "[s]tatements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto, with respect to the circumstances thereof, may be considered as part of res gestae."[27] It was in the context of a startling event that Rosita Fontelera was shouting "Edwin, Edwin, Novaliches." In that context, her words can only mean that accused-appellant was her attacker. After all, she did not just name accused-appellant when she staggered into the pizza parlor seriously wounded but also as she was fleeing from her assailant. Rosita Fontelera became hysterical and shouted accused-appellant's name and place of residence. That is why, in panic, accused-appellant fled.

Indeed, there is circumstantial evidence strongly pointing to accused-appellant's guilt, to wit: (1) accused-appellant's admitted he was present at the time of the killing of the Fonteleras; (2) he later fled from the place and went into hiding; and (3) accused-appellant had a motive for killing the Fonteleras.

Accused-appellant admitted being at the Fontelera residence in Olongapo City at the time of the killing. He was from Novaliches. Why he went to Olongapo City, to the residence of the Fonteleras, has not been satisfactorily explained. His claim that he went to the Fontelera residence to do some repair jobs was belied by Rodrigo Fontelera, Jr. who denied that there were repairs done on their house in November 1990.[28] Now, Joselito Alcantara and Joey were total strangers to the Fonteleras. It was accused-appellant who was known to the Fonteleras. It is hard to believe accused-appellant's claim that it was his companions alone who killed the couple and that he had no part in the commission of the crime.

Accused-appellant himself testified[29] that while he was outside the house talking with Rosita Fontelera, he heard a commotion from inside. Upon entering the house, he allegedly saw "My two companions . . . stabbing Atty. Fontelera, [Sr.];" that after stopping Joel and bringing him outside the house, accused-appellant went back inside the house for his other companion, Joselito Alcantara, but by then Atty. Fontelera, Sr. had already suffered many stab wounds; that when he went outside to call Rosita Fontelera, "[he] saw that Mrs. Fontelera was likewise stabbed," presumably by Joel whom accused-appellant had earlier brought outside the house; that when accused-appellant approached Rosita Fontelera, the latter, "suddenly stood up and ran to the house"; that Rosita then started shouting his name, as a consequence of which he became so "confused . . . that I . . . went straight to the terminal."

Now, why should Rosita Fontelera run towards the house shouting "Edwin, Edwin, Novaliches" if she was not running away from accused-appellant because the latter was attacking her? And why should accused-appellant panic and flee from the scene of the killing and go into hiding in Novaliches if he was not guilty? Flight is evidence of guilt.[30] For as the proverb says, "the wicked flee when no man pursueth; but the righteous are as bold as a lion."[31] Accused-appellant's excuse that he went home to "tell my parents about what happened"[32]

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is puerile and is not worthy of credence. The explanation in his brief[33] that it was because he feared for his safety and that he wanted "to surrender in a safer place like his hometown" is an admission that he is guilty of the killing of the couple. He feared for his safety because of possible revenge by relatives and friends of the victims.

Finally, accused-appellant had the motive to kill the couple. He went to Olongapo City and brought along his two companions because he resented his family's eviction from the land of the Fonteleras in Novaliches. In his own words, Atty. Fontelera, Sr. "fired" his father as caretaker of the land.[34] He thus had a motive to think ill of them.

This concatenation of details constitute circumstantial evidence which, under Rule 133, §4 of the Revised Rules on Evidence, is sufficient to convict accused-appellant 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.

II.

Judging from the number and severity of the stab wounds inflicted on the victims, the crime committed was murder qualified by treachery. Apparently, accused-appellant and his companions made sure they succeeded in killing their victims without risk to themselves.[35] Treachery absorbs the circumstance of abuse of superior strength,[36] so there was no need for the trial court to take it into account as an aggravating circumstance. On the other hand, there is no basis for appreciating evident premeditation as there is no evidence of the planning and preparation to kill or when the plan was conceived.[37]

Since the killing of the couple was committed inside their house, the aggravating circumstance of dwelling should be appreciated. Considering the presence of one aggravating circumstance and the absence of any mitigating circumstance, the penalty for the crimes committed in this case would have been death. However, as the crimes were committed after the effectivity of the 1987 Constitution and prior to the reimposition of the death penalty by R.A. No. 7659, the trial court properly imposed on accused-appellant two terms of reclusion perpetua for the killing of both Rodrigo Fontelera, Sr. and Rosita Fontelera.

III.

With regard to the question of damages, Rodrigo Fontelera, Jr. presented receipts showing that the victims' family spent P18,000.00 for "funeral coach chandeliers, (First Class) embalming" (Exh. L);[38] P4,000.00 for the vault (Exh. L-3);[39] P1,100.00 for two tombstones (Exhs. L-7 and L-5);[40] P1,000.00 for "exc. fee" (Exhs. L-2 and L-6);[41] and P950.00 for "Prep." fees for Rosita Fontelera (Exh. L-4);[42] or the total amount of P25,050.00. Accordingly, the amount of P38,000.00 awarded as funeral expenses to the heirs of Rodrigo Fontelera, Sr. and Rosita Fontelera should be reduced to P25,050.00.

The award of P100,000.00 as indemnity for the death of Rodrigo Fontelera, Sr. and Rosita Fontelera is in accord with our current rulings[43] and should be affirmed. The award of P100,000.00 as moral damages for each death is likewise appropriate.[44]

WHEREFORE, the decision of the Regional Trial Court, Branch 72, Olongapo City, is AFFIRMED with the MODIFICATION as above indicated.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 23-31 (Per Judge Eliodoro G. Ubiadas)

[2] Id., p. 8.

[3] Records, p. 177.

[4] Id., p. 178.

[5] TSN, pp. 12-19, Jan. 6, 1993.

[6] TSN, pp. 2-12, Aug. 24, 1992.

[7] Records, p. 187.

[8] TSN, pp. 13-14, Dec. 16, 1991.

[9] TSN, pp. 3-24, Mar. 4, 1991; TSN, pp. 2-12, Dec. 16, 1991.

[10] Records, p. 173.

[11] Id., pp. 184-186.

[12] TSN, pp. 5-25, Sept. 29, 1993.

[13] Records, pp. 184-186.

[14] TSN, pp. 11-29, Jan. 26, 1993.

[15] Records, pp. 266-272.

[16] Id., p. 273.

[17] TSN, pp. 2-55, Jan. 9, 1995.

[18] TSN, pp. 2-28, Jan. 23, 1995; TSN, pp. 2-9, Feb. 20, 1995.

[19] TSN, pp. 3-8, May 29, 1995.

[20] TSN, pp. 2-7, Oct. 30, 1995.

[21] Rollo, p. 31.

[22] Appellant’s Brief, pp. 1-2; id., pp. 39-40.

[23] Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694 (1966)

[24] E.g., People v. Duero, 104 SCRA 379 (1981)

[25] People v. Bacor, G.R. No. 122895, April 30, 1999.

[26] 203 SCRA 343, 348-350 (1991)

[27] See People v. Tulagan, 143 SCRA 107 (1986)

[28] TSN, p. 4, Oct. 30, 1995.

[29] TSN, pp. 12-17, Jan. 9, 1995.

[30] People v. Payot, G.R. No. 119352, June 8, 1999.

[31] Prov. 28:1.

[32] TSN, p. 17, Jan. 9, 1995.

[33] Appellant's Brief, pp. 6-7; Rollo, pp. 44-45.

[34] TSN, pp. 54-56, Jan. 9, 1995.

[35] See People v. Paragua, 257 SCRA 118 (1996)

[36] People v. Ching, 279 SCRA 129 (1997)

[37] People v. Patarawan, 274 SCRA 130 (1997)

[38] Records, p. 272.

[39] Id., p. 267.

[40] Id., pp. 268, 270.

[41] Id., pp. 266, 271.

[42] Id., p. 269.

[43] People v. Floro, G.R. No. 120641, Oct. 7, 1999; People v. Suplito, G.R. No. 104944, Sept. 16, 1999.

[44] Ibid.

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