PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO LABTAN Y DAQUIHON (AT LARGE), ALIAS BEBOT, HENRY FELICIANO Y LAGURA AND JONELTO LABTAN (AT LARGE), ACCUSED, HENRY FELI...

G.R. No. 127493. December 08, 1999

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Henry Feliciano appeals the decision of the Regional Trial Court of Cagayan de Oro City, Branch 25[1] convicting him of highway robbery and robbery with homicide on the basis of a sworn statement which he repudiated during the trial.

On April 23, 1993, an information[2] was filed against Henry Feliciano, Orlando Labtan, and Jonelto Labtan charging them with robbery with homicide committed as follows:

> "That on or about April 16, 1993, at about 2:30 in the afternoon, more or less, at Buntong, Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, and with grave abuse of confidence, did then and there wilfully, unlawfully and feloniously and by means of violence, take, rob and carry away P30.00/cash money to the damage and prejudice of the offended party (Florentino Bolasito); that on the occasion of the said robbery and for the purpose of enabling them (accused) to steal, take and carry away the P30.00 money, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously, and with evident premeditation and taking advantage of their number and strength and with intent to kill, accused Orlando Labtan, y Daquihon, alias Bebot Labtan and Jonelto Labtan, treacherously attack, assault and use personal violence upon Florentino Bolasito thereby inflicting upon him the following injuries: "Shock due to multiple stab wounds heart", with the use of a (sic) knives/bladed weapon which accused are conveniently provided, which directly caused the death of the said Florentino Bolasito.
>
> "Contrary to and in violation of Article 299 and 249 of the Revised Penal Code."

Subsequently, another information[3] dated May 20, 1993 was filed against Henry Feliciano and Orlando Labtan charging them with highway robbery committed as follows:

> "That on March 28, 1993, at more or less 10:30 o'clock in the evening while inside a motor vehicle in the national highway at Barangay Agusan up to the road at Camaman-an, all of Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named with intent to gain and against the will of the owners, by means of violence against and intimidation of persons, or force upon things with the use of knives which they were conveniently provided with, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously and criminally take, rob and carry away money or cash amounting to P720.00, pioneer stereo, booster and twitters owned by and belonging to Roman S. Mercado, and a Seiko Diver wristwatch owned by Ismael P. Ebon, all in all amounting to P10,800.00, against their will, to the damage and prejudice of the said offended parties in the total sum of P10,800.00

Philippine Currency.

"Contrary to and in violation of PD 532."

Only accused Feliciano pleaded not guilty to the two charges. Orlando Labtan had escaped the Maharlika Rehabilitation and Detention Center in Carmen, Cagayan de Oro City where he was detained while Jonelto Labtan has eluded arrest. The two cases were tried together.

The prosecution's case was mainly anchored on the three-page sworn statement executed by Feliciano, originally in Visayan language, before the Cagayan de Oro City Police Station, viz:[4]

"Preliminary: You Henry Feliciano y Lagura, I would like to inform you that you are here in [the] Theft and Robbery Section of Cagayan de Oro City Police Station to be investigated regarding an incident wherein a certain driver whose name is Florentino Bolasito, a resident of Abellanoso St., of this City (sic). Said driver was killed on April 13, 1993, whose body was found at Tipolohan, Camaman-an of this City since you knew everything about it.

I would like to inform you that according to our law you have the following rights:

1. You have the right to remain silent, and not to answer incriminating questions which will be used as evidence against you.

2. You have the right to choose an attorney to defend you in this investigation.

3. That if you can't (sic) get a lawyer, I can give you a counsel de officio to defend you.

Certification

This is to establish the fact that I myself voluntarily executed this certification and hereby affix my signature hereunder on the ____ day [of] April, [1993 in the] City of Cagayan de Oro, Philippines.

Sgd. Henry Feliciano y Lagura

(Affiant)

Assisted by his lawyer:

Sgd. Pepito A. Chavez

Notary Public

Until Dec. 31, 1993

PTR No. 10843256 1/8/93

Q: Before we (will) proceed [with] this investigation, did you understand all those rights I narrated to you?

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A: Yes, sir[,] I understand everything.

Q: Will you get a lawyer of your own to defend you in this investigation?

A: No, sir. I can't (sic) pay the services of lawyer.

Q: Since you will not get your own lawyer, will you agree that I'll (sic) give you Atty. Pepito Chavez as your counsel de officio in this investigation?

A: Yes, sir. I agree that Atty. Pepito Chavez will be my lawyer for the ascertainment of the truth.

Q: What is your highest educational attainment?

A: Grade 4 only at Baongca, Bukidnon.

Q:

In other words, you know how to read Visaya?

A: I know [,] sir how to read Visaya including English but I can't (sic) understand deep English.

Q: Tell me your name, age, occupation, residence and other personal circumstances?

A: I, Henry Felciano, 25 years old, married and a resident of Kolambog, Lapasan of this city and I am [a] jeepney driver of this City.

Q: Up to this time, are you still driving?

A: No more, sir.

Q: What is then your work at this time?

A: I go [to] work [with] my friends like Orlando Labtan alias Bebot Labtan who are residents of Kolambog,

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Lapasan of this City.

Q:

From what time did you go along with this [sic] persons?

A: Since the month of February, 1993.

Q: From the time you go (sic) with them, what have you done, if any?

A: On March 1993, I participated in a hold-up of a certain driver Mr. Roman Mercado[5] of Tablan who owned a jeep I use[d] to drive (before) and we got a car stereo including the jeep. Then, we brought the jeep to Buntong, Camaman-an and the driver, however, we freed the driver later.

Q: What else?

A: On March 1993 we hold-up (sic) a collector of my brother whose name is Carmen Tan y Feliciano[6] and we were able to get cash of P2,080.00; [a]nd, there was also [a] certain jeep, owned by Mr. Mangano that we carnapped and brought (it) to Aglayan, Malaybalay, Bukidnon.

Q: With the latest incident, what have you done?

A: Last April 16, 1993, we held-up a certain driver of [a] "PU Minica" whose name is Florentino Bolasito of Abellanosa St.

Q:

Will you tell us how the driver was killed and who killed them?

A: On April 16, 1993, at 2:30 in the afternoon, I, Bebot Labtan an Jonelto Labtan [were] hang[ing] around outside Ororama Superstore at J.R. Borja St., of this City, and the three of us went to a place where most of PU Minica cars were parked. We were able to board one PU Minica driven by an old man.

Q: As you boarded the PU Minica where did you go?

A: We ordered the driver to take us to Buntong, Camaman-an of this City. When we arrive[d] thereat, Jonelto

told us that he will visit his girlfriend while Bebot Labtan alighted, we remained inside the vehicle. As [the] driver demanded for the fare, however, we have no money to pay. Suddenly, I saw Bebot Labtan and Jonelto Labtan took a knife and stabbed the driver.

Q: After stabbing the driver, he died, and so Jonelto Labtan drove the PU towards Tipolohan and we leave (sic) behind the body of the driver, instead of me getting out from the car (sic), Jonelto did not stop the car (sic), so we proceeded towards Aluba Subd. And we left the PU Minica there.

A: After you left the PU Minica at Aluba, where did you go?

Q:

I went home at Balolong of this City, and I do not [know] where my companions proceeded.

Q: Who then stabbed the driver?

A: The one who stabbed [the driver] [,] sir [,] was Jonelto Labtan and Bebot Labtan.

Q: Did (sic) you able to get some money from the driver?

A: Jonelto Labtan was able to get P30.00, and we brought (sic) a (sic) coconut wine at Kolambog, Lapasan.

Q: With respect to this (sic) two (2) knives which were taken from you and Bebot Labtan, what can you say about this (sic) knives?

A: These two (2) knives, sir, the sharp knife with a knife case is owned by Bebot Labtan, this double blade is owned by Jonelto Labtan.

Q: Are these [the] knives which were used by Bebot Labtan and Jonelto Labtan in stabbing the PU Minica driver if you know?

A: Yes, sir. Bebot Labtan used this knife with a knife case, but this knife which is double bladed was not used, the other kitchen knife like a fan knife which was left inside the PU was used by Jonelto in stabbing.

Q:

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When (was then) were you arrested by the police authorities of the Theft and Robbery Section?

A: On April 20, 1993, while we, I and Bebot Labtan were at Tambo, Macasandig of this City waiting for the truck of Mr. Aberrastori to ride to bring us to Valencia, Bukidnon, we were apprehended by the policemen near the store of Mrs. Carmen Tan. It was then that time where Bebot Labtan was shot at his feet and the two knives were confiscated.

Q: I have no other questions, do you have anything to say.

A: No more, sir.

This is to certify that I have read the foregoing statements consisting of three (3) pages of which I have initiated and signed in the presence of Atty. Pepito Chavez, Attorney de officio, and I state that it is true and correct to the best of my knowledge and belief.

Sgd. Henry Feliciano y Lagura

(Affiant)."[7]

In addition, the prosecution presented the testimony of Ismael Ebon that on March 28, 1993, at 10:30 p.m., he was driving along Bugo Highway, when two (2) men boarded his jeepney. He identified the men as Henry Feliciano and Orlando Labtan. Suddenly, Bebot Labtan pointed a double bladed knife on the right side of his neck. Feliciano then took the steering wheel and proceeded to Bolonsori. When they were near the house of a certain Policeman Lapis, Feliciano stopped the jeep. The two then divested him of his watch, P700.00 cash, car stereo, two (2) tweeters and one (1) booster. They threatened to kill him should he report to the police. However, when the two left, he proceeded to the Puerto Police Station and reported the hold-up. He then went to the garage and told Roman Mercado, the owner of the jeepney, that he was robbed. That night, the two of them reported the robbery to the Cagayan de Oro City Police Station. Ebon also stated that he knew Feliciano because the latter previously worked as driver of Roman Mercado.[8]

When the defense presented its case, only accused Henry Feliciano testified for his behalf. His defense consisted of an alibi and a repudiation of his sworn statement. He told the court that on March 28, 1993, when Ismael Ebon was held-up, he was in Maasin, Baungon, Bukidnon, his birthplace. He did not deny Ebon's claim that they were acquainted for he used to work as driver of Roman Mercado. However, when his driver's license expired on January 20, 1993, he went home to Bukidnon. On April 20, 1993, he went back to Cagayan de Oro City and stayed at the residence of his sister, Carmen Tan, who lives in Macasandig, Cagayan de Oro City. At 4:00 p.m. of the same day, Carmen asked him to buy snacks at a nearby store. While buying the snacks, he heard a shot and when he looked around, he saw a man lying on the ground. Two men in civilian clothes poked their guns at him.

One of them asked him whether he was a companion of the man lying on the ground. He said no. The two men brought him to the police station. The man lying on the ground was brought to the hospital. At the police station, the two men asked him to confess whether he was a companion of the person who was shot. He said no. They asked him whether he was one of those who robbed Ismael Ebon. Again, he said no. He was questioned for about an hour during which he was hit "at the right ands left breast, at the right and left ribs, and at the left side of [his] face." Afterwards, he was locked up in jail. In the morning of the following day, he was investigated and mauled for two hours. Again, he was asked whether Orlando Labtan was his companion. He insisted that he was not Labtan's companion for he does not even know him. After the investigation, a policeman approached him and brought a piece of paper for him to sign. He asked whether it was possible for him to read the contents. The policeman answered, "No need, just sign so that we can finish it." They then started to maul him. He was forced to sign the paper. At around 4:00 o'clock in the afternoon of April 22, 1993, he was brought to the office of Atty. Pepito Chavez. He was told to sit down while Atty. Chavez signed the papers. He did not know what was happening. Atty Chavez did not even talk to him before signing the document. He was then brought back to jail.[9]

Finding the sworn statement executed by Feliciano credible, the trial court convicted him and imposed the following penalties:[10]

> "WHEREFORE, premises considered, this court hereby finds accused Henry Feliciano guilty beyond reasonable doubt as principal by direct participation in the crime of robbery with homicide and hereby sentences the accused to reclusion perpetua and to indemnify the offended party the sum of P50,000.00 and to pay the offended party the sum of P35,000.00 representing funeral expenses and to pay the cost.
>
> This court hereby finds also the accused Henry Feliciano guilty beyond reasonable doubt of the crime of highway robbery committed on March 28, 1993 and sentences the accused to an indeterminate penalty of twelve (12) years of prision mayor as the minimum term to fourteen (14) years, eight (8) months of reclusion temporal in its minimum period as the maximum term and to indemnify Roman S. Mercado the sum of P8,000.00, representing the value of the P700.00 cash, stereo, booster, and twitter and to indemnify Ismael Ebon the sum of P2,500.00, the value of the Seiko Wrist watch divested from him and to pay the cost.
>
> "SO ORDERED."[11]

Hence, this appeal where accused-appellant assigns the following errors committed by the trial court:

> I
> ON THE CHARGE OF ROBBERY WITH HOMICIDE, THE COURT A QUO ERRED IN ADMITTING IN EVIDENCE, THE TAINTED EXTRA-JUDICIAL CONFESSION OF THE ACCUSED EXECUTED IN THE ABSENCE OF AN EFFECTIVE AND VIGILANT COUNSEL.
>
> II
> ON THE CHARGE OF HIGHWAY ROBBERY, THE COURT A QUO ERRED IN BELIEVING THE COMPLAINANT DRIVER WHO, IT TURNED OUT, FROM THE POLICE BLOTTER, SAID THAT THE PERPETRATORS WERE INITIALLY UNIDENTIFIED PERSONS THEN LATER IDENTIFIED ACCUSED FELICIANO WHOM HE KNEW VERY WELL AS A FELLOW DRIVER.
>
> III
> THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF ROBBERY WITH HOMICIDE AND HIGHWAY ROBBERY.

The appeal is meritorious.

Under Article III, Section 12 of the 1987 Constitution, the rights of persons under custodial investigation are

provided as follows:

> "(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible against him."

In People v. Macam[12], the rational for the guarantee, was explained in this wise,

> "Historically, the counsel guarantee was intended to assure the assistance of counsel at the trial, inasmuch as the accused `was confronted with both the intricacies of the law and the advocacy of the public prosecutor.' However, as the result of the changes in the patterns of police investigation, today's accused confronts both expert adversaries and the judicial system well before his trial begins (U.S. v. Ash, 413 U.S. 300, 37 L Ed 2d 619, 93 S Ct 2568 [1973]). It is therefore appropriate to extend the counsel guarantee to critical stages of prosecution even before the trial. The law enforcement machinery at present involves critical confrontations of the accused by the prosecution at pre-trial proceedings `where the result might well settle the accused's fate and reduce the trial itself to a mere formality.'"

Thus, in People v. Gamboa[13], we stated that:

> "[T]he right to counsel attaches upon the start of an investigation, i.e. when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the respondent/accused. At such point or stage, the person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation, for the commission of an offense. The moment there is a move or even urge of said investigators to elicit admissions or confessions or even plain information which may appear innocent or inocuous at the time, from said suspect, he should then and there be assisted by counsel, unless he waives the right, but the waiver shall be made in writing and in the presence of counsel."

We find that accused-appellant Feliciano had been denied of his right to have a competent and independent counsel when he was questioned in the Cagayan de Oro City Police Station. SPO1 Alfonso Cuarez testified that he started questioning Feliciano at 8:00 a.m. of April 22, 1993 regarding his involvement in the killing of jeepney driver Florentino Bolasito, notwithstanding the fact that he had not been apprised of his right to counsel.

> "On cross-examination:
>
> Atty. Carlo Mejia
>
> Q: What [time] did you report to your office on April 22, 1993?
>
> SPO1 Alfonso cuarez

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A: I reported at eight o'clock in the morning.

x x x

Q: What time was Henry Feliciano brought to your office on April 22, 1993? What time did you start to investigate Henry Feliciano on April 22, 1993?

A: In the morning, at 8:00 o'clock, when I reported for work.

Q:

You already investigated the accused in this case at 8:00 o'clock in the morning on April 22, 1993?

A: Yes, sir.

Q: Of course, when you investigated the accused in the morning, he had no counsel yet?

A: I just interviewed him.

Q: We will just use the word interview. Was he assisted by counsel when you interviewed him in the morning?

A: None.

Q: What was the subject matter of the interview in the morning of April 22, 1993 to the accused Henry Feliciano?(sic)

A: About the PU driver that was killed.

Q: Of course, he related to you everything that transpired regarding that alleged death of a PU driver?

A: Yes, sir.

Q:

So that in the morning of April 22, 1993 you already had an idea, more or less, who committed or who killed the PU driver by the family name Bolasito, am I correct?

A: Yes, sir.

Q: All that time in the morning of April 22, 1993 the accused was not assisted by a legal counsel.

A: Not yet.

Q: What time did you decide to bring the accused to the office of Atty. Chavez on April 22, 1993?

A: About 10:00 o'clock in the morning of April 22, 1993.

Q: Are you trying to impress us that in the morning of April 22, 1993 you also brought the accused Henry Feliciano to the office of Atty. Chavez?

A: At 8:00 in the morning, I just interviewed him and at 10:00 o'clock in the morning I brought him to the office of Atty. Chavez.

Q: Are you trying to impress [upon] us that you brought accused Henry Feliciano to the office of Atty. Chavez at 10:00 o'clock in the morning and in the afternoon also you brought him to the office of Atty. Chavez?

A: No more. In the afternoon Atty. Chavez was the one who came to our office because that was what we agreed in the morning."[14]

At that point, accused-appellant had been subjected to custodial investigation without a counsel. In Navallo v. Sandiganbayan[15], we said that a person is deemed under custodial investigation where the police investigation is no longer a general inquiry into an unsolved crime but has began to focus on a particular suspect who had been taken into custody by the police who carry out a process of interrogation that lends itself to elicit incriminating statements.

When SPO1 Cuarez investigated accused-appellant Feliciano, the latter was already a suspect in the killing of jeepney driver Bolasito as shown by the joint affidavit of SPO4 Johny Salcedo and SPO1 Florencio Bagaipo who were the ones who arrested Feliciano. In their affidavit dated April 21, 1993, the two police officers stated:

"in the investigation conducted to (sic) Henry Feliciano, he admitted and confessed to us for (sic) his involvement of (sic) the death of the PU driver together with his companion Bebot Labtan, and the same was identified by many victims of robbery hold-up in this City. And also during the investigation, Henry Feliciano

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admitted to us regarding their confiscated bladed knife as the very weapon used in the stabbing of the PU minica driver."

The prosecution tried to establish that Atty. Pepito Chavez provided effective and independent counselling to accused-appellant Feliciano which cured the initial lack of counsel. However, this is belied by the very testimony of Atty. Chavez showing he performed his duty in a lackadaisical fashion:

"Assistant City Prosecutor Nicolas C. Caballero, Jr.

Q: Atty. Chavez, you stated that you are a practicing lawyer in Cagayan de Oro City as well as in Misamis Oriental?

"Atty. Pepito Chavez

A: Yes, sir.

Q: Do you remember having assisted in the investigation of one Henry Feliciano on April 22, 1993 at about 3:30 in the afternoon when the said Henry Feliciano was (sic) investigated whose written statement was taken by SPO1 Cuarez in the presence of Cabigon?

A: Yes, sir.

Q: Where was this statement taken?

A: At the office of the Theft and Robbery Section at Operation Kahusay ug Kalinaw.

Q:

How did you happen to assist Henry Feliciano in the taking of his written statement?

A: Because SPO3 Cuarez approached me in my office and requested me to assist Henry Feliciano in the taking of his testimony.

Q: What time was that when SPO1 Alfonso Cuarez came to your office and requested you to assist Henry Feliciano?

A: If I can remember right, Police Officer Cuarez came to my office about three o'clock in the afternoon.

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Q: Where is your office in Cagayan de Oro City?

A: Located at Pabayo-Gomez.

Q: What did you do after Alfonso Cuarez came to your office and requested you to assist in the taking of the written statement or sworn statement of Henry Feliciano?

A: I told him I will follow later because at that time when he came to my office I was working on some paper works.

Q:

When you said him, you were referring to Alfonso Cuarez?

A: Yes, sir.

Q: What happened after you told him you will follow later?

A: At about 3:25, if I remember right, I was able to come to Operation Kahusay ug Kalinaw particularly the office of the Theft and Robbery Section.

Q: When you arrived at the Operation Kahusay ug Kalinaw, who were there?

A: Police Officer Cabigon and Cuarez.

Q: Who else were there? What about Henry Feliciano?

A: Yes, I have also seen Henry Feliciano.

Q:

If you see again Henry Feliciano, will you be able to identify him?

A: Yes, sir.

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Q: Look around if he is present in the courtroom?

A: (Witness pointing to a person with a green t-shirt and when asked his name he answered Henry Feliciano.)

Q: What did you do after you arrived at the office of the Theft and Robbery Section and saw Henry Feliciano, Cabigon and Cuarez?

A: I started my investigation or confrontation with Henry Feliciano informing him, appraising him of his constitutional right to counsel, that he has a right to remain silent and appraise him if it is his desire that I be his lawyer because I told him if he has no desire that I will be his lawyer, then he can look for another.

Q: What else did you inform him or asked him aside from what you testified already?

A: I told him did you come to confess or testify because of fact that the police offered you some consideration or money where you promised of release.

Q:

And what was the reaction of the said Henry Feliciano?

A: As far as I can remember, Henry Feliciano told me that he is forced to testify only to tell the truth.

Q: While you were conferring with Henry Feliciano, where was Eleuterio Cabigon and Alfonso Cuarez?

A: Alfonso Cuarez was there listening to us.

Q: How far away from you?

A: About one arms length (sic).

Q: What about Eleuterio Cabigon?

A: About three meters near.

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Q:

Did Alfonso Cuarez participate in your discussions or conference with Henry Feliciano?

A: Yes. He sometimes clarified some answers propounded by Henry Feliciano in the course of the investigation.

Q: For example, what answer?

A: As far as I can remember, the question was reduce into writing.

Q: Before that, I am referring to the point where you had a conference with Henry Feliciano before the start of the investigation; where was Alfonso Cuarez?

A: He was listening to us.

Q: Was there a participation of Alfonso Cuarez during your discussion?

A: Yes, he was the one typing the questions asked by me and the answers propounded by Henry Feliciano.

Q: And these questions were the ones you testified a while ago.

A: Yes, sir.

Q:

After that, what happened after you asked these questions and you got the answer from him? What did Alfonso Cuarez do to him?

A: Alfonso Cuarez told him that is it really his desire ... we are giving you Atty. Chavez as your counsel. Are you willing? And he said yes.

Q: What was the answer of Henry Feliciano?

A: He answered in the affirmative.

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Q: Exactly, how did he answer?

A: Yes, I am very much willing.

Q: After that, when did the investigation start?

A: About 3:30 in the afternoon.

Q:

After Henry Feliciano, as you said, answered in the affirmative, what happened then?

A: Before I started the formal investigation to [sic] him, I reiterated that question about his desire to take me as his counsel, and he again answered in the affirmative.

Q: After that, for the second time, what happened?

A: Then I started his investigation.

Q: Were you the one who investigated him?

A: At first, it was Alfonso Cuarez. Sometimes, I interrupted in the investigation.

Q: How did Alfonso Cuarez start the investigation?

A: In the appraisal of Henry Feliciano of his constitutional rights.

Q: After that, what happened?

A: As far as I can remember, he proceeded with the incident where Henry Feliciano was involved in a series of robberies.

Q:

While these questions were being asked of Henry Feliciano, where were you?

A: I was there.

Q: How many meters away from Henry Feliciano?

A: About one arm's length, I sat behind him.

Q: While these questions were asked of Henry Feliciano, a you testified as series of robberies were committed, what did you do? What was your reaction?

A: At first, I interrupted with the answer of Henry Feliciano thinking that it was not the truth or it might be that the testimony will be counted against him in the court. So, I whispered to him if it is the truth, and he insisted it is the truth.

Q: When you whispered to him, you are referring to Henry Feliciano?

A: Yes, sir.

Q: Atty. Chavez, after the termination of the investigation which was taken by SPO1 Alfonso Cuarez in your presence of SPO4 Eleuterio Cabigon on one Henry Feliciano, what happened after that?

A: I examined the question and answer taken, then I read it to Henry Feliciano, appraised him, translated to him, clarified to him after he testified.

Q:

What was the reaction of Henry Feliciano?

A: He willingly listened to my explanation and clarification about what he confessed.

Q:

And after listening to your explanation, what happened?

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A: I required him to sign. Before finally requiring to sign, if you will change your mind about what you confessed, you still have the right to.

Q: What did Henry Feliciano say?

A: It is the truth; and after being clarified, he willingly signed the confession.

Q: After Henry Feliciano signed the same written statement of (sic) him, what did you do?

A: After that, Alfonso Cuarez, Henry Feliciano and me (sic) went to my office to have that notarized, so that when I came to the Operation Kahusay ug Kalinaw for the taking of the confession of Henry Feliciano, I was not bringing with me my bill and other paraphernalias (sic).

Q: When Henry Feliciano signed the written statement, where were you, Cabigon and Alfonso cuarez?

A: The same location at that time when Henry Feliciano was taken his confession (sic)."[16]

The right to counsel is a fundamental right and contemplates not a mere presence of the lawyer beside the accused. In People v. Bacamante[17], the term "effective and vigilant counsel" was explained thus:

> "necessarily and logically [requires] that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent."

In People v. dela Cruz,[18] an effective counsel was characterized as:

> "one who can be made to act in protection of his [accused's] rights, and not by merely going through the motions of providing him with anyone who possesses a law degree.
>
> "Again, about the only matter that bears out the presence of such counsel at that stage of custodial interrogation are the signatures which she affixed on the affidavit. Withal, a cursory reading of the confession itself and SPO1 Atanacio's version of the manner in which he conducted the interrogation yields no evidence or indication pointing to her having explained to the appellant his rights under the Constitution. Indeed, from our earliest jurisprudence, the law vouchsafes to the accused the right to an effective counsel, one who can be made to act in protection of his rights, and not by merely going through the motions of providing him with anyone who possesses a law degree."

Atty. Chavez did not provide the kind of counselling required by the Constitution. He did not explain to accused-appellant the consequences of his action - that the sworn statement can be used against him and that it is possible that he could be found guilty and sent to jail.

We also find that Atty. Chavez's independence as counsel is suspect - he is regularly engaged by the Cagayan de

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Oro City Police as counsel de officio for suspects who cannot avail the services of counsel. He even received money from the police as payment for his services:

"On cross-examination:

Atty. Carlo Mejia

Q: Mr. Alfonso Cuarez, how long have you known Atty. Chavez?

A: I know him for a long time ago (sic).

Q: How many times have you utilized Atty. Chavez to assist prisoners under the custody of the Cagayan de Oro Police Department?

A: As far as I can remember, three times already.

Q: Is Atty. Chavez being paid by your office to assist detained prisoners?

A: Sometimes we pay him P400.00 but if we have none, he will assist for free.

Q:

So Atty. Chavez is paid by the Cagayan de Oro Police Station?

A: It is not the Cagayan de Oro Police who paid but it is only my initiative to give him.

Q: It is only on your own personal initiative to pay Atty. Chavez?

A: Yes.

Q: And of course, Atty. Chavez, if you have the money, also accepts the money you pay to him?

A: Yes, sir."

In People v. Deniega,[19] expounding on the constitutional requirement that the lawyer provided be "competent and independent," we stated that:

> "It is noteworthy that the modifiers competent and independent were terms absent in all organic laws previous to the 1987 Constitution. Their addition in the fundamental law of 1987 was meant to stress the primacy accorded to the voluntariness of the choice, under the uniquely stressful conditions of a custodial investigation, by according the accused, deprived of normal conditions guaranteeing individual autonomy, an informed judgment based on the choices given to him by a competent and independent lawyer.
>
> "Thus, the lawyer called to be present during such investigation should be as far as possible, the choice of the individual undergoing questioning. If the lawyer were one furnished in the accused's behalf, it is important that he should be competent and independent, i.e., that he is willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. In People v. Basay, this Court stressed that an accused's right to be informed of the right to remain silent and to counsel `contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.'
>
> "Ideally, therefore, a lawyer engaged for an individual facing custodial investigation (if the latter could not afford one) `should be engaged by the accused (himself), or by the latter's relative or person authorized by him to engage an attorney or by the court, upon proper petition of the accused or person authorized by the accused to file such petition. Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.'"

In People v. Sahagun,[20] we stated that the constitutional requirement that a lawyer should be independent was not complied with when a lawyer who just happened to be following-up a case at the NBI was asked to counsel the accused:

> "[T]he counselling given by Atty. Dizon to Villareal was not sufficiently protective of Villareal's rights as an accused as contemplated by the Constitution. To start with, Atty. Dizon is not really known to Villareal. He was requested to act as counsel because he happened to be at the NBI following-up a client's case. Given that circumstance, it cannot be expected that Atty. Dizon would give an advice to Villareal that would offend the agent conducting the investigation. Thus, it appears that Atty. Dizon did no more than recite to Villareal his constitutional rights. He made no independent effort to determine whether Villareal's confessions were free and voluntary. x x x . He did not inquire from Villareal how he was treated in the last 24-hours. He did not seek any of Villareal's relatives or friends to find out if he has any defense which Villareal was not free to disclose due to his confinement.
>
> "Atty. Dizon's lack of vigilance as a counsel is likewise underscored by the fact that he himself testified that Villareal gave his confession under the impression that he was only a witness and not an accused in the case. This revelation should have jolted Atty. Dizon and should have driven him to exert extra efforts to find out whether Villareal was tricked in making his confession. Again, he did not take an extra effort."

In People v. Januario,[21] the main evidence relied upon for the conviction of appellants was their own extrajudicial confessions which admittedly were extracted and signed in the presence and with the assistance of a lawyer who was applying for work in the NBI. We held that

> "(s)uch counsel cannot in any wise be considered "independent" because he cannot be expected to work against the interest of a police agency he was hoping to join, as a few months later he in fact was admitted into its work force. For this violation of their constitutional right to independent counsel, appellants deserve acquittal. After the exclusion of their tainted confessions, no sufficient and credible evidence remains in the Court's records to overturn another constitutional right: the right to be presumed innocent of any crime until the contrary is proved beyond reasonable doubt.
>
> "Perfunctorily informing a confessant of his constitutional rights, asking him if he wants to avail of the services of counsel and telling him that he could ask for counsel if he so desires or that one could be provided

> him at his request, are simply not in compliance with the constitutional mandate. In this case, appellant Canape was merely told of his constitutional rights and posthaste, asked whether he was willing to confess. His affirmative answer may not, by any means, be interpreted as waiver of his right to counsel of his own choice."

We also find that Atty. Chavez notarized the sworn statement seriously compromised his independence. By doing so, he vouched for the regularity of the circumstances surrounding the taking of the sworn statement by the police. He cannot serve as counsel of the accused and the police at the same time. There was a serious conflict of interest on his part.[22]

In People v. de Jesus,[23] we stated that an independent counsel cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to the accused.

We have examined the three-page sworn statement allegedly executed by Feliciano and we failed to see any badge of spontaneity and credibility to it. It shows signs of what we call stereotype advice to which we have already called the attention of police officers. In People v. Jarra,[24] we said:

> "[T]he stereotyped `advice' appearing in practically all extrajudicial confessions which are later repudiated has assumed the nature of `legal form' or mode. Police investigators either automatically type it together with the curt `Opo' as the answer or ask the accused to sign it or even copy it in their handwriting. Its tired, punctilious, fixed and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing of a spontaneous, free and unconstrained giving up of a right is missing."

Since April 27, 1992 when Republic Act No. 7438[25] was enacted, the constitutional rights of persons under custodial investigation have been further operationalized:

> "Section 2. Rights of Persons Arrested, Detained, or Under Custodial Investigation; Duties of Public Officers.
>
> (a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.
>
> (b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.
>
> (c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.
>
> (d) 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 of the parents, older brothers and sisters, his spouses, 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 any proceeding.
>
> (e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by the person in the presence of his counsel; otherwise such waiver shall be null and void and of no effect.
>
> (f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him

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> or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's immediate family shall include his or her spouse, fiance or fiancee, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward."

Consequently, it is disappointing to see how up to now some police officers still sidestep the constitutional mandate, the consequence of which is all too familiar - the inadmissibility of the statement, confession, or admission taken.[26]

In People v. dela Cruz,[27] we stated that "a confession made in an atmosphere characterized by deficiencies in informing the accused of all rights to which he is entitled would be rendered valueless and inadmissible, perforated, as it is, by non-compliance with the procedural and substantive safeguards to which an accused is entitled under the Bill of Rights and as now further implemented and ramified by statutory law."

On the charge of robbery with homicide, the only evidence presented by the prosecution was the sworn statement which we have found inadmissible. Thus, we are forced to absolve accused-appellant of this charge. With respect to the charge of highway robbery, the prosecution presented the testimony of Ismael Ebon. However, Ebon failed to identify Feliciano as the perpetrator when he reported to the police immediately after the incident:

> "CASE NO. 2143 dated 0030 H 29 March 93. Ismael Ibon y Petalcorin, 27 m(sic), of Reyes Bugo, CDO, driver of PUJ Bugo Liner bearing Plate No. KBJ-748, and Christopher Impoc y Amba, 16, s(sic), of Zone 4, Tablon, this City, jointly came to this OKK-CIS and reported that they were allegedly victimized by two unidentified robbers who was (sic) armed with a (sic) knives and taken from the possession of the above driver his cash money P700.00 and took our stereo Pioneer Brand with Booster and twitter. The incident was (sic) occurred at Agusan, this City, and the suspect was desembarked (sic) at Camaman-an, this City at 10:30 p.m., this date."[28]

Ismael Ebon and accused-appellant Feliciano are acquainted. There is no reason for Ebon to withhold the identity of the perpetrator except for the fact that he was not certain of it.[29] Consequently, there is no evidence pointing to Feliciano as one of those who held-up Ebon.

IN VIEW WHEREOF, the decision of the trial court is SET ASIDE. Accused-appellant Henry Feliciano is ACQUITTED on both charges of robbery with homicide and highway robbery due to lack of evidence to sustain a conviction. The Director of the New Bilibid Prisons (NBP) is directed to inform this Court compliance with the Decision within ten (10) days from its receipt. No costs.

SO ORDERED.

Davide, Jr., CJ., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Decision penned by Judge Noli T. Catli dated January 8, 1996.

[2] Criminal Case No. 93-774.

[3] Criminal Case No. 93-1114.

[4] As translated in English, Rollo, pp. 115-118.

[5] Should have been translated as "x x x I participated in the hold-up of the driver of Mr. Roman Mercado x x x," as per original.

[6] Should have been translated as "collector of my sister Carmen Tan x x x," as per original.

[7] As translated in English, Rollo, pp. 115-118.

[8] TSN, Ismael Ebon, August 4, 1993, pp. 3-11.

[9] TSN, Henry Feliciano, August 9, 1995, pp. 3-24.

[10] Judgment, p. 6; Rollo, p. 111.

[11] Id, pp. 113-114.

[12] 238 SCRA 306 [1994].

[13] 162 SCRA 642, 651 [1988].

[14] TSN, Alfonso Cuarez, March 4, 1994, pp. 12-14.

[15] 234 SCRA 175 [1994]; also see People v. Marra, 236 SCRA 565 [1994].

[16] TSN, Atty. Pepito Chavez, April 20, 1994, pp. 3-11.

[17] 47 SCRA 47 [1995].

[18] 279 SCRA 245, 255 [1997].

[19] 267 SCRA 626, 637-638 [1995].

[20] 274 SCRA 208, 216 [1997].

[21] 267 SCRA 608, 612 [1997].

[22] People v. Sahagun, 274 SCRA 208 [1997].

[23] 213 SCRA 345 [1994].

[24] 144 SCRA 516 [1986], see also the recent case of People v. Muleta, G.R. No. 130189, June 25, 1999.

[25] "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations thereof."

[26] People v. Parel, 261 SCRA 720 [1996]; People v. Bandula, 232 SCRA 566 [1994].

[27] 279 SCRA 245 [1997].

[28] TSN, Ruben Salcedo, December 6, 1995.

[29] People v. Meneses, 288 SCRA 95 [1998].

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