

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIZAL ESPIRITU Y KINAO, ACCUSED-APPELLANT.

G.R. No. 128287. February 02, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A counsel-assisted, voluntary confession of guilt is evidence of strong persuasive weight. It becomes overwhelming when it is corroborated by independent prosecution evidence pointing to appellant as the perpetrator of a killing.

The Case

Rizal Espiritu y Kinao appeals the Decision[1] of the Regional Trial Court, Branch 6, Baguio City, convicting him of murder.

Before the Regional Trial Court of Baguio City on May 3, 1996, Prosecutor II Romeo N. Carbonell filed against Rizal Espiritu, along with two others -- Gerald Alicoy and Fred Malicdan -- an Information which reads:[2]

"The undersigned accuses GERALD ALICOY Y SIANO as principal by inducement and FRED MALICDAN Y MILLER and RIZAL ESPIRITU Y KINAO as principal by direct participation [in] the crime of MURDER, committed as follows:

"That on or about the 8th day of September, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident prem[e]ditation, after the accused GERALD ALICOY Y SIANO offered the sum of P20,000.00 to the accused FRED MALICDAN Y MILLER and RIZAL ESPIRITU Y KINAO for them to kill SATO SANAD[3] Y DOGA-ONG, the accused Fred Malicdan and Rizal Espiritu, did then and there willfully, unlawfully and feloniously attack, assault and stab Sato Sanad with a sharp pointed instrument several times on his back inflicting on said Sato Sanad several stab wounds at his back as a result of which said Sato Sanad died.

"The commission of the offense is qualified by evident premeditation in that the three (3) accused planned the killing where the accused Gerald Alicoy offered to the accused Fred Malicdan and Rizal Espiritu the sum of P20,000.00 for them to kill Sato Sanad and the accused Fred Malicdan and Rizal Espiritu carried out the plan and killed Sato Sanad.

"The commission of the offense is likewise qualified by treachery in that the accused Rizal Espiritu suddenly held and locked the neck of Sato Sanad with his hands and thereafter the accused Fred Malicdan stabbed Sato Sanad several times on his back and the accused adopted that mode of attack to ensure that the deceased could not put up a defense."[4]

When arraigned on May 14, 1996,[5] Espiritu[6] and his co-accused[7] entered a plea of not guilty. After the prosecution presented its evidence, a joint Motion to Dismiss[8] was filed by the counsels of Alicoy and Malicdan, namely, Jose M. Molintas and Fred Bagbagen. On August 20, 1996, the trial court issued an Order[9] acquitting the two accused for failure of the prosecution to prove their guilt beyond reasonable doubt. The trial of

Appellant Espiritu, however, continued.

On October 30, 1996, the court a quo rendered its Decision and the dispositive portion thereof reads:

"WHEREFORE, premises considered, the Court [f]inds accused Rizal Espiritu y Kinao guilty beyond reasonable doubt of the crime of murder as defined under Article 248 of the Revised Penal Code as amended by Section 6 of Republic Act 7659 as charged in the Information, and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the heirs of Sato Sannad the sum of P50,000.00 for his death; P200,000.00 as moral damages; and P50,000.00 as exemplary damages, all indemnifications are without subsidiary imprisonment in case of insolvency; and to pay the costs,

"In the service of his sentence, accused Rizal Espiritu is entitled to be credited 4/5 of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code." [10]

Hence, this appeal direct to this Court. [11]

The Facts

Version of the Prosecution

In the 35-page Brief for the Appellee, [12] the solicitor general narrated the prosecution's version of the facts as follows:

"Between 7:30 and 8:00 o'clock in the evening of September 8, 1995, Henry Saclangan saw Sato Sanad conversing with appellant Rizal Espiritu in front of Starlight Bakery located at Sunflower Street, Navy Base Subdivision, Baguio City. Later, he saw Sato Sanad and appellant, who placed his arm around the former's shoulder, walk.

"At about 9:00 o'clock in that evening, Jeffrey Bernabe was in his house at Sunflower St., Navy Base Subdivision, Baguio City conversing with friends. Momentarily, he heard someone outside shouting for help. When he went out, Jeffrey Bernabe saw a man, who turned out to be Sato Sanad, wounded and bleeding. Other people came out of their houses but no one dared to help Sato Sanad who lay prostrate on the ground. Jeffrey Bernabe went back to his house and boarded his truck. Accompanied by his friends and helpers, Jeffrey Bernabe brought Sato Sanad to the Baguio General Hospital where he died on arrival.

"At about 9:00 o'clock that same evening, Police Officer Johnson Ayagen of the Pacdal Police Substation, Baguio City, received a report from the base operator of a fight that occurred in Sunflower Street. He was ordered to immediately proceed to the place. Along the way, PO Ayagen met an Isuzu Elf Truck whose driver flagged him down. He was informed by Jeffrey Bernabe that he and his companions were bringing a wounded person to the hospital. PO Ayagen told the driver, Jeffrey Bernabe, to proceed to the hospital and to wait for him there as he would first proceed to the crime scene. The police met nobody at the crime scene. What they found were bloodstains on the ground; also, a bloodied, perforated maong jacket and false dentures. When they arrived at the hospital, Jeffrey Bernabe informed them that the victim was already dead.

"Dr. Vladimir Villaseñor of the PNP Crime Laboratory Service, Camp Bado Dangwa, Benguet, conducted an autopsy on the cadaver of Sato Sanad. Per Medico-Legal Report issued by Dr. Villaseñor, [13] the victim sustained the following injuries, to wit:

Trunk and Extremities:

- Stab wound, right suprascapular region, measuring 1.5 x 0.5cm, 5cm from the posterior midline, directed anteriorwards, downwards, and medialwards, lacerating the underlying soft tissues and muscles.
- Stab wound, right scapular region, measuring 1.2 x 0.4cm, 6cms from the posterior midline, directed anteriorwards, downwards and medialwards, lacerating soft tissues and muscles.
- Stab wound, right scapular region, measuring 1.5 x 0.6cm, 7cms from the posterior midline, directed

anteriorwards, downwards and medialwards, lacerating soft tissues and muscles.

- Stab wound, right infrascapular region, measuring 1.8 x 0.9cm, 14cms from the posterior midline 10cms deep, directed anteriorwards, slightly downwards and medialwards, passing through the 9th right intercostal space, lacerating the lower lobe of the right lung.
- Stab wound, right lumbar region, measuring 1.8 x 0.8cm, 12cms from the posterior midline.
- Stab wound, right para-vertebral region, measuring 1.6 x 0.6cm, 2cms from the posterior midline.
- Stab wound, right para-vertebral region, measuring 1.8 x 1cm, 19cms from the posterior midline, 10cms deep, directed anteriorwards, slightly upwards and medialwards, passing through the 8th right intercostal space, lacerating the lower lobe of the right lung.
- Stab wound, left suprascapular region, measuring 1.5 x 0.5cm, 9cms from the posterior midline, 8cms deep, directed anteriorwards, downwards and medialwards, passing through the 2nd left intercostal space, lacerating the upper lobe of the left lung.
- Stab wound, left suprascapular region, measuring 1.5 x 0.5cm, 8cms from the posterior midline, 9cms deep, directed anteriorwards, downwards and medialwards, passing through the 6th left intercostal space, lacerating the lower lobe of the left lung.
- Stab wound, left intrascapular region, measuring 0.5 x 0.3cm, 14cms from the posterior midline.
- Stab wound, left infrascapular region, measuring 1.7 x 0.6cm, 6cms from the posterior midline, 8cms deep, directed anteriorwards, slightly upwards and medialwards, fracturing the 9th left thoracic rib, lacerating the left lower lobe of the left lung.
- Stab wound, left para-vertebral region, measuring 1.5 x 0.5cm, 2cms from the posterior midlin[e], 8.5cms deep, directed posteriorwards, slightly upwards and medialwards, passing through the 9th left intercostal space, lacerating the lower lobe of the left lung.
- Stab wound, left lumbar region, measuring 2.5 x 0.8cm, .2cm from the posterior midline, directed anteriorwards, slightly downwards and medialwards, lacerating the underlying soft tissues and muscles.

CONCLUSION:

Cause of Death: Hemorrhage as a result of multiple stab wounds on the body.

"At the wake of Sato Sanad, Reyvo Sanad, his son, was informed by his cousin, Nestor Kiniao, that appellant Rizal Espiritu, a cousin of Nestor mentioned something about the killing of his father. Together, they sought out appellant. They found him in the company of his uncle, Alfredo Kiniao, who was also related to the wife of Sato Sanad. When confronted, appellant was persuaded to relate his participation in the killing of Sato Sanad. Appellant eventually confessed to being one of the assailants of Sato Sanad. Then, all those present agreed to meet the following day at the Baguio City Police where appellant would surrender.

"The following day, or on September 20, 1995, appellant, accompanied by Alfredo Kiniao, met with the victim's relatives at the Baguio City Police Station. However, the day before their meeting, Alfredo Kiniao had talked to Atty. Daniel Mangallay in his office and asked him to be appellant's counsel. Atty. Mangallay thus went to the Baguio City Police Station where he met the others. Atty. Mangallay conferred with appellant regarding the case and agreed to represent him.

"Prior to the investigation, Atty. Mangallay informed the police that appellant would voluntarily give his statement. Police Officer Wilfredo Cabanayan, who was assigned to take appellant's statements, apprised the

latter, in the presence of his lawyer, of his constitutional rights to remain silent, to have competent and independent counsel of his choice and his right against self-incrimination. After Atty. Mangallay, himself, had explained to appellant his constitutional rights, the latter signified his willingness and readiness to give his statement. Police Officer Cabanayan propounded his questions in Ilocano to which appellant replied in the same dialect. The questions and answers were then translated into English.

"Thereafter, appellant and Atty. Mangallay affixed their respective signatures on the sworn statement. During the proceeding, Atty. Mangallay was at all times assisting appellant. x x x.

"x x x x x x x x

"Thereafter, appellant, accompanied by Atty. Mangallay and Police Officer Cabanayan, was presented before Prosecutor Dizon for personal examination. Appellant declared that he understood his statement as explained to him by Prosecutor Dizon. Thereafter, appellant again signed his sworn statement.

"At the preliminary investigation conducted by Prosecutor Romeo Carbonell, appellant was likewise assisted by Atty. Mangallay. Accused Gerald Alicoy and Fred Malicdan were present with their respective counsel. During the clarificatory questions, appellant repeated the contents of his sworn statement given before the police which was recorded in the transcript of stenographic notes. Further, Prosecutor Carbonell conducted an ocular inspection of the scene of the crime with all the accused and their counsel present." [14]

Version of the Defense

Denying participation in the killing of Sanad, Appellant Espiritu assails the admissibility of his extrajudicial confession. In the 23-page Appellant's Brief, [15] the defense submitted its version of the facts in this wise:

"AFREDO KINAO, the uncle of the accused, stated that on September 17, 1995, he was at a vigil in Quirino Hill, when his son arrived and told him that they had to see the accused who was at the police station. He asked the police if they could bring out the accused. They were able to do so when they signed a promissory note. The police told him that Espiritu was a suspect in the killing of Sato Sannad and they had to return him on September 20, 1995. Upon their return, Espiritu told the police, that he [would] tell them what happened since his conscience was bothering him. The police advised them to get a lawyer to assist the accused.

"He added that on September 19, 1995, he went to Atty. Mangallay's house, but was advised to see the latter in his office on September 20, 1995. When informed by the police that a lawyer [was] needed, he went to Atty. Mangallay's office, and they proceeded to the police station. Upon their arrival, the statement of the accused was taken. Then they proceeded to the prosecutor's office for the subscription of the statement.

"RIZAL ESPIRITU stated that the victim's relatives asked him to give a statement to the effect that he together with Alicoy and Malicdan killed Sato Sannad. They offered him P50,000.00 and said that the two [would] be put in jail. He did not participate in the killing of Sannad. He went to the police station accompanied by Alfredo Kinao and the relatives of the victim on September 20, 1995. He was advised by the police to get a lawyer and Alfredo Kinao, left to get a lawyer but he did not authorize him to do so. The police started to take and prepare his statement at around 8:00 AM and the lawyer arrived at around 10:00 AM, when his statement was already being taken. Lawyer Mangallay did not give him any advice and did not explain in detail the contents of the statement. He was not advised nor informed that by giving the statement he could be imprisoned and even sentenced to death.

"On sur-rebuttal, he declared that it was only after he had related the incident that the police told him to get a lawyer. He was at the investigation room when the lawyer arrived together with Alfredo Kinao and at that time, his statement had already been taken by the police." [16]

The Trial Court's Ruling

The trial court convicted Espiritu on the basis of his confession and corroborating evidence of corpus delicti. The confession was admitted in evidence, because the Court believed that the appellant voluntarily executed it while being assisted by a competent and independent counsel. Further, during the investigation conducted by Assistant Prosecutor Romeo Carbonell, Espiritu affirmed that he had voluntarily executed the extrajudicial confession before the police, and he even reenacted how Sanad was killed.

Assignment of Errors

Appellant assigns the following errors to the court a quo:

"I. The court a quo gravely erred in admitting in evidence the uncounselled extra-judicial confession (Exhibit "B") of the accused-appellant.

"II. The court a quo erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of murder."[17]

In resolving this appeal, the Court will address two main issues: (1) the admissibility of the extrajudicial confession and (2) the sufficiency of the evidence of guilt.

This Court's Ruling

The appeal has no merit.

First Issue:

Admissibility of Extrajudicial Confession

In assailing the admissibility of his extrajudicial confession, appellant invokes paragraphs 1 and 3 of Section 12, Article III of the 1987 Constitution. He insists that his confession was obtained in violation of his rights (1) to have an independent and competent counsel and (2) to be informed of such right. Further, he argues that he was not advised by Atty. Mangallay of the consequences of the execution of a confession.

We disagree. We are convinced that the confession of Appellant Espiritu is admissible in evidence, as it was satisfactorily shown that it was (1) voluntary and (2) made with the assistance of a competent and independent counsel.[18]

With respect to the first requisite, we find that Espiritu readily admitted killing Sanad when he was confronted by the relatives of the deceased.[19] Thereafter, without being "invited" by the investigating officers, he went to the police station and voluntarily gave his statement to SPO1 Wilfredo P. Cabanayan.[20] Later, appellant affirmed before Prosecutor Romeo Carbonell the fact that he, with Atty. Mangallay, had gone to the police station to surrender and that the said counsel had assisted him when the police started taking his statement.[21] In his confession, appellant admitted that he and Malicdan killed Sanad, after being hired by Alicoy to do so for the sum of P20,000. Aside from describing the details of how he and his cohort killed Sanad, Espiritu, during an ocular inspection, even pointed out the place where the killing had been committed.

These acts of the appellant are clear manifestations that, contrary to his protestations, no "torture, force, violence, threat, intimidation or any other means" was used against him to force him to confess.

Competent and

Independent Counsel

The defense contends that Atty. Mangallay was retained by Alfredo Kinao and not by appellant. It is also argued that the said lawyer was unable to advise or to explain the contents of the extrajudicial confession to the appellant before the latter signed it.

We are not persuaded. At the outset, we must clarify that the right to counsel does not mean that the accused must

personally hire his own counsel. The constitutional requirement is satisfied when a counsel is (1) engaged by anyone acting on behalf of the person under investigation or (2) appointed by the court upon petition of the said person or by someone on his behalf.[22] Thus, that Atty. Mangallay was retained not by the appellant personally but by his uncle, Alfredo Kinao, is not proof of counsel deprivation. The fact remains that Kinao, in hiring the counsel, acted on behalf of Appellant Espiritu. Besides, Espiritu did not object when Atty. Mangallay represented him during the investigations before the police and the city prosecutor. In fact, he expressly acknowledged Atty. Mangallay as his counsel.[23]

The meaning of "competent counsel" was explained in *People v. Deniega*[24] as follows:

"xxx [T]he lawyer called to be present during such investigations should be as far as reasonably 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*,[25] 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.

"x x x x x x x x

"x x x The competent or independent lawyer so engaged should be present from the beginning to end, i.e., at all stages of the interview, counseling or advising caution reasonably at every turn of the investigation, and stopping the interrogation once in a while either to give advice to the accused that he may either continue, choose to remain silent or terminate the interview."

Undoubted is the competence of Atty. Mangallay who was himself presented by the prosecution as witness. Without violating the rule on privileged communication, he testified:

"Q

So all the while the provisions of this preliminary questions from A, B and C were asked, it was only the police who [h]as all the time been talking to the accused?

A

Of course, before the Police Officer propounded those questions, we agreed that it be propounded in Ilocano dialect so that the accused can understand, sir.

Q

Who agreed, you?

A

The accused, me and the Police Officer, sir.

Q

And do you know if it was reduced first in Ilocano version before it was translated in English version?

A

It was propounded in English dialect and then into the Ilocano dialect and after that, the accused was asked if he understood the same, sir.

Q

What do you mean, if he understood the same?

A

Of course, if he got the meaning of what was propounded to him, sir.

Q

What, for example?

A

That he had the right to counsel.

Q

And what did the accused say?

A

The accused clearly stated that he understood the same.

Q

No more?

A

No more, sir.

Q

And, [were] those the only questions being propounded during the preliminary questions?

A

Of course there were several questions.

Q

What [were] those questions?

A

That the accused ha[d] the right to remain silent.

Q

And what did the accused say?

A

Of course, he said that he [was] willing to give his statement.

Q

And what else, no more? [Those were] all the questions that were asked by the police?

A

There were other questions, sir.

Q

What [were] those other questions?

A

Likewise, he was apprised of his right to self-incrimination, sir.

Q

What else, how did the Police apprise the right of the accused to self incrimination?

A

The Police Officer informed the accused [of his] being a person entitled to counsel of his own; that he ha[d] the right to remain silent; that he may refuse to give any and that whatever statement he may give [could] be used against him, sir.

Q

And what did the accused say?

A

The accused said, he [was] willing to give his statement and [to have] me as his counsel, sir.

x x x x x x x x

Q

Under what instance did you assist the accused?

A

Of course under all the circumstances surrounding the taking of the sworn statement, sir.

Q

[In what particular] circumstance can you remember that you assisted actually the accused?

A

From the time he was asked or apprised of his rights up to the time he ended his sworn statement, I was assisting him, sir.

Q

And it was only the accused who had been answering the preliminary questions asked by the police, is that correct?

A

Of course, it was [he] who was being asked.

Q

So it was [he] who was giving the answer?

A

After being explained, sir.

Q

Who explained, the police?

A

Both of us, sir.

Q

Was your explanation put into writing?

A

Of course not, sir.

x x x x x x x x

Q

When you said that before Rizal Espiritu gave his statement, the only thing you [did] was to confirm what was told you by Alfredo Kinao, [was] that correct?

A

Aside from that, I also asked him if he [was] willing to give his statement to the police, sir.

Q

Is that all?

A

Of course, I explained the consequences of such statement, sir.

Q

Like what [was] the consequence of giving the statement?

A

As what had been repeatedly asked xxx him or propounded to him, any statement [could] be used against him, sir.

Q

[Was] that all that you asked xxx the client, sir?

A

Of course, I also informed him that the crime he was charged of [was] a heinous crime, sir.

Q

Is that all?

A

I also explained to him that being a heinous crime, the penalty there[for was] death, sir.

Q

Is that all?

A

I also asked him if he [was] willing to suffer any consequence of giving his statement, sir.

Q

And did you tell him in particular the consequences [of] giving his statement?

A

Yes, sir, even before I was officially engaged by them.

Q

What did you tell him as a consequence?

A

As a consequence, he [could] be charged [with] a crime of murder, sir.

Q

[Was] that all that you told him?

A

That of course, if found guilty, he [could] be punished, sir.

Q

[With] death?

A

Yes, sir.

Q

[Was] that all that you advised your client before he gave his statement?

A

Among other things, I really asked him if he was really voluntarily and freely giving his statement despite all the explanation that I made, sir.

Q

And when he said yes, you were convinced and that was it, you advised him nothing more, nothing less tha[n] was stated, is that correct?

A

It was of his own voluntary decision, sir."[26]

The assistance rendered to appellant by Atty. Mangallay met the standards that had been set in *Deniega* for the purpose of safeguarding the right of the accused against involuntary confession. In the present case, the counsel was vigilant in informing Espiritu of his rights. He was clear in explaining to his client every question propounded by the investigating officer. And he was not negligent in relating to the appellant the legal consequences of the latter's extrajudicial confession.

Verily, a review of the records reveals no infirmity in the manner in which appellant's extrajudicial confession was taken. Witness Cabanayan testified that Atty. Mangallay assisted Espiritu throughout the time that the latter gave his statement.[27] Even the aforementioned uncle of the appellant, Defense Witness Alfredo Kinao, attested to such facts.[28]

Second Issue:

Guilt Proven Beyond Reasonable Doubt

We hold that appellant's guilt has been proven beyond reasonable doubt by his counsel-assisted and voluntary confession, which was corroborated on material points by the prosecution witnesses. The defense has not given this Court any reason why we should reverse or modify the trial court's assessment of the credibility of said witnesses and their testimonies.[29] Indeed, appellant does not question the prosecution's evidence which established the *corpus delicti*. [30]

Pertinent portions of appellant's confession are quoted hereunder:

"Q:

Sometime on September 7, 1995, at about 6:00 PM, where were you?

A:

I was then at San Carlos Heights, Baguio City.

Q:

What were you doing at the said place?

A:

I visited my cousins who [were] residents [of] the said place.

Q:

Were you able to visit your cousins?

A:

No, sir.

Q:

Why?

A:

Because while walking on my way along the San Carlos Heights [R]oad, I was met by a young boy [who] asked me if I kn[e]w a certain `RIZAL'.

Q:

What [was your] answer if there [was] any?

A:

I replied that I was the one whom he was asking [about] and then he told me to look for `GERALD'.

Q:

Do you know this Gerald whom the boy was referring to?

A:

Upon learning that the young boy was referring to [my] barcada (friend), named Gerald Alicoy who resides at Lamag Village, San Carlos Heights, Baguio City, I then proceeded to their house.

Q:

Were you able to go to the house of Gerald Alicoy?

A:

No, because I saw Gerald Alicoy standing with a male person [in] a basketball court along the road before reaching their house.

Q:

What did you do upon seeing Gerald Alicoy?

A:

I went near and he uttered `NAIMBAG TA NADANUNAN NAKA DIAY UBING'[;] I then replied `WEN TA NASABAT KO DIAY PAGNAAN'.

Q:

What else did Gerald Alicoy tell you if there were any?

A:

He asked me `KAYAT YO TI AGKACUARTA?'

Q:

What did you answer?

A:

I answered him 'KAYAT KO A'.

Q:

What else did Gerald Alicoy tell you?

A:

He told me and his companion whom I came to know as FRED MALICDAN the following[:] 'NO CASTA GARUD INKAYO TIRAEN NI SATO TAKNO MATAY ITED KO TI B[EI]NTE MIL (P20,000.00) KANIAYO', 'KET DAYTOY TI CADUAM NI FRED, SAAN KA NGA AGDANAG'.

Q:

Did you ask Gerald Alicoy who [was] this Sato he was referring to?

A:

I kn[e]w that he was referring to SATO SANNAD who [was] an old acquaintance [in] Manila and [a] resident of Navy Base, Baguio City.

Q:

Did Gerald Alicoy tell you if he kn[e]w Sato Sannad?

A:

On the same day that Mr. Alicoy asked [us] to kill Mr. Sannad, he told us that he knew such person because the latter [was] a co worker of his in Tagaytay.

Q:

Did you ask Gerald Alicoy why he ordered you to kill Sato Sannad?

A:

No, sir and he ha[s] told us why.

Q:

After Gerald Alicoy promised to pay you P20,000.00 [for] killing Sannad, what did you do?

A:

Both Fred Malicdan and I agreed as to the time and the meeting place in the presence of Alicoy

Q:

Did Fred Malicdan tell you your meeting place and its time?

A:

He told me that we [would] me[e]t at about 5:00 PM to 5:30 PM at the parking space for jeepneys bound for San Carlos Heights, Baguio City at Kayang St., Baguio City, o[n] September 8, 1995.

Q:

What else ha[d] you agreed [to] if there were any?

A:

Nothing more and we parted ways and I went home.

Q:

As agreed upon, were you able to see or me[e]t Fred Malicdan?

A:

Yes, at about 5:00 PM of September 8, 1995, we both met at the parking space of jeepneys bound for San Carlos Heights at Kayang St., Baguio City.

Q:

After you both met, what happened?

A:

He told me that we [would] then proceed to Navy Base, Baguio City [to] which I agreed and while walking I told Malicdan to verify first [if] Sannad [was] present inside the restaurant. As I entered the restaurant I saw Sannad so I went back immediately and informed Fred Malicdan that Mr. Sato [was] inside the restaurant drinking.

Q:

What did Malicdan tell you if there were any?

A:

He told me that we [would] wait [for] Sannad to go out [of] the restaurant where he was drinking.

Q:

[Did] you [wait]?

A:

Yes, we both waited about ten(10) minutes until Sato Sannad went out towards the Hilltop Hotel.

Q:

What did you do next?

A:

Fred Malicdan and I followed him without [his] knowing that he [was being] followed by us until he rode in a moving jeepney bound for Pacdal, Baguio City at the side of Plaza Theater.

Q:

What did you do next?

A:

We hailed and boarded a taxi and ordered the driver to bring us to Navy Base, Baguio City.

Q:

Were you and Malicdan [able to reach] Navy Base?

A:

No, we stopped right after the bridge at Leonard Wood Road, Baguio City.

Q:

Why did you stop there?

A:

Because Fred was assuming that Sannad would take that road in going to their residence.

Q:

Were you about to wait [for] Sannad?

A:

After 10 minutes of waiting [for] the jeepney where Sannad was riding [it] passed by us and stopped at the crossing going towards the residence of Sannad.

Q:

Did Sannad alight from the jeep?

A:

Yes, sir.

Q:

What did you do when Sannad alighted?

A:

We followed him and that [was] already past seven o'clock in the evening.

Q:

What happened next?

A:

We continued following him until he stopped and bought [a] cigarette at a store.

Q:

What happened next?

A:

While paying [for] the cigarette, he saw me and invited me to have a drink.

Q:

How far were you when he was inviting you to drink?

A:

I was about five meters away from him.

Q:

What happened next when he invited you to drink?

A:

I told him that we need not drink.

Q:

What happened next?

A:

He then [came] near me and as he was approaching he saw Fred Malicdan who was about 15 meters behind me so he likewise approached him.

Q:

What happened when he approached Fred Malicdan?

A:

As Sannad was walking towards Malicdan, I immediately followed him and held his neck with my left hand and locked [it] with my right hand.

Q:

What else did you do if there were any?

A:

I dragged hi[m] towards a garbage [box] beside the road near a store.

Q:

What else did you do?

A:

I shoved his body and he slumped on the garbage on his stomach.

Q:

Where was Fred Malicdan at that time?

A:

He was right behind Sannad while I was on his(Sannad) [right side] still holding his neck.

Q:

What happened next?

A:

Fred Malicdan repeatedly stabbed him and thereafter I tried to hold him up while Malicdan opened the garbage box.

Q:

What did you do next?

A:

We were about to drop him into the garbage box but in the process I [loosend] my grip on him so he immediately shouted `ARAYATEN DAK' for three times.

Q:

When he shouted what did you do?

A:

I freed him and we ran away.

Q:

Should you see again the weapon used by Malicdan in stabbing Sannad, can you identify the same?

A:

Yes, sir.

Q:

Are you willing to suffer the consequences of your wrongful act?

A:

Yes, sir.

Q:

Are you also willing to testify against Gerald Alicoy and Fred Malicdan?

A:

Yes, sir."^[31]

As a consequence of the confession of the appellant, his conviction becomes inevitable.^[32] Such confession is evidence of a high order, "since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience."^[33]

As mentioned earlier, the confession of Espiritu was corroborated by the testimonies of the prosecution witnesses. The latter affirmed the appellant's statement as to the time and the place of the incident, the weapon used and the location of the stab wounds on the victim's body.

First, Dr. Vladimir Villaseñor^[34] autopsied the body and testified that, based on the injuries inflicted, the weapon used was a pointed instrument and that the assailant was positioned behind the victim. Second, Police Officer Johnson Ayagen testified that he saw a garbage box near the crime scene, a detail specifically mentioned by Espiritu in his extrajudicial confession.^[35] Third, Witness Jeffrey Bernabe, upon hearing the cries for help, proceeded to the place of the incident, where he found the victim lying on the ground at about the same time as that which Espiritu mentioned in his confession.^[36] Lastly, the prosecution witnesses and Espiritu point to the same locus criminis.

Treachery

The court a quo correctly qualified the killing to murder. The essence of treachery is the swift and unexpected attack of the malefactors on their unarmed prey without the latter giving the slightest provocation.^[37] Appellant

and his cohort executed their plan in a manner that rendered their victim surprised and unable to defend himself. We agree with the observation of the trial court that the great number of wounds inflicted on the back of Sato Sanad manifests the treacherous nature of the attack.

On the other hand, we cannot appreciate evident premeditation which was alleged in the Information. The records of this case do not show any evidence whatsoever to prove this aggravating circumstance.

Proper Penalty and Damages

Aside from the absence of an aggravating circumstance, the trial court had one other reason for imposing reclusion perpetua and not death: the mitigating circumstance of voluntary surrender. This mitigating circumstance is appreciated when the following requisites concur: "(1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary." [38] The foregoing requisites are borne by the records, which show that Espiritu surrendered to the police even in the absence of a warrant for his arrest. [39]

Likewise, we affirm the award of P50,000 as indemnity ex delicto, consonant with prevailing jurisprudence. [40] However, we cannot sustain the award of moral [41] and exemplary damages, [42] as the Court finds nothing in the records to support the same. [43]

WHEREFORE, the ASSAILED DECISION is hereby AFFIRMED, but the award of moral and exemplary damages is deleted. Costs against appellant.

SO ORDERED.

Romero, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Judge Ruben C. Ayson.

[2] Records, p. 1.

[3] Sometimes spelled as "Sannad" in the records.

[4] Rollo, p.11.

[5] >Order dated May 14, 1996; records, p. 50.

[6] He was assisted by Counsel de Parte Daniel Mangallay. Subsequently, Atty. Mangallay withdrew, and the court appointed Atty. Frisco Domalsin as counsel de oficio of the appellant. (Order, dated June 6, 1996; records, p. 70.)

[7] Assisted by Counsel Fred Bagbagen.

[8] Records, p. 172.

[9] Records, pp. 201-217.

[10] Decision, pp. 28-29; rollo, pp. 56-57.

[11] The case was deemed submitted for resolution on October 16, 1998, when Atty. Marvin R. Osias of the Public Attorney's Office filed his Manifestation in Lieu of a Reply Brief. (Rollo, p. 179.)

[12] Rollo, pp. 137-174. The Brief for the Appellee was signed by Solicitor General Ricardo P. Galvez, Assistant

Solicitor General Antonio L. Villamayor and Solicitor Raul J. Mandin.

[13] See records, p. 76.

[14] Appellee's Brief, pp. 4-15; rollo, pp. 143-154. Citations omitted.

[15] Rollo, pp. 71-95. The Appellant's Brief was signed by Public Attorney IV Arceli Adan-Rubin, Public Attorney III Amelia C. Garchitorena and Public Attorney II Marvin R. Osias.

[16] Appellant's Brief, pp. 12-13; rollo, pp. 84-85.

[17] Appellant's Brief, pp. 1 and 13; rollo, pp. 73 and 85.

[18] *People v. Deniega*, 251 SCRA 626, 637, December 29, 1995.

[19] TSN, June 7, 1996, pp. 20-21.

[20] TSN, June 7, 1996, pp. 44-58; and June 11, 1996, pp. 2-39.

[21] TSN (taken during the preliminary investigation conducted by the Office of the City Prosecutor of Baguio), October 26, 1995, pp. 2-3.

[22] *People v. Miana*, 216 SCRA 799, 804, December 23, 1992; *People v. Vasquez*, 196 SCRA 564, 568, April 30, 1991; *People v. Albofera*, 152 SCRA 123, 134, July 20, 1987. See also *People v. Burgos*, 144 SCRA 1, September 4, 1986; *People v. Galit*, 135 SCRA 465; and *Morales Jr. v. Enrile*, 121 SCRA 538, April 26, 1983.

[23] TSN, June 7, 1996, p. 49.

[24] 251 SCRA 626, 637, December 29, 1995, per Kapunan, J.

[25] 219 SCRA 404, 418.

[26] TSN, August 6, 1996, pp. 16-19 & 21-22.

[27] TSN, June 7, 1996, pp. 44-58.

[28] TSN, August 27, 1996, pp. 8-12.

[29] *People vs. Nardo*, 270 SCRA 672, April 4, 1997; *People vs. Lakibul*, 217 SCRA 575, January 27, 1993; *People vs. Pajares*, 210 SCRA 237, June 23, 1992.

[30] Corpus delicti is "the body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man or the charred remains of a house burned down. In a derivative sense, it means the substantial fact that a crime was committed. It is made up of two elements: (a) that a certain result has been prove[n], for example, a man has died or a building has been burned, and (b) that some person is criminally responsible for the act. Section 3, Rule 133 of the Rules of Court does not mean that every element of the crime charged must be clearly established by independent evidence apart from the confession. Otherwise, the utility of the confession as a species of proof would vanish if it were necessary, in addition to the confession, to adduce other evidence sufficient to justify conviction independently of such confession. Otherwise stated, the other evidence need not, independently of the confession, establish the corpus delicti beyond a reasonable doubt." (*People v. Lorenzo*, 240 SCRA 624, 637, January 26, 1995, per Davide, Jr., J. See also *People v. Cabodoc*, 263 SCRA 187, 202, October 15, 1996; *People v. Gutierrez*, 258 SCRA 70, 75-76, July 5, 1996; *People v. Barlis*, 231 SCRA 426, 442-443, March 24, 1994; *People v. Roluna*, 231 SCRA 446, 452, March 24, 1994.)

[31] Extrajudicial confession, pp. 2-4; records, pp. 25-27.

[32] Section 3, Rule 133 of the Rules of Court.

[33] *People v. Montiero*, 246 SCRA 786, 793, July 31, 1995, per Puno, J.; *People v. Remollo*, 227 SCRA 375, 386, October 22, 1993; *People v. Alvarez*, 201 SCRA 364, September 5, 1991; *People v. Pamon*, 217 SCRA 501, January 25, 1993; *People v. Gaddi*, 170 SCRA 649, 657-658, February 27, 1989.

[34] TSN, June 11, 1996, pp. 39-70.

[35] TSN, July 24, 1996, p. 6.

[36] TSN, August 6, 1996, pp. 3-10.

[37] *People v. Umadhay*, GR No. 119544, August 3, 1998; *People v. Crisostomo*, GR No. 116059, July 23, 1998; *People v. Molina*, GR No. 115835-36, July 22, 1998; *People v. Villamor*, GR No. 124981, July 10, 1998; *People v. De la Cruz*, GR Nos. 109619-23, June 26, 1998; *People v. Lagarteja*, GR No. 127095, June 22, 1998; *People v. Oliano*, GR No. 119013, March 6, 1998.

[38] *People v. Sumalpong*, 284 SCRA 464, January 20, 1998, per Panganiban, J. See also *People v. Sion*, 277 SCRA 127, August 11, 1997; *People v. Castillo*, 261 SCRA 493, September 6, 1996; *People v. Rapanut*, 263 SCRA 515, October 24, 1996.

[39] Exhibit "N," records, pp. 109-110.

[40] *People v. Quitlong*, GR No. 121562, July 10, 1998; *People v. Lagarteja*, GR No. 127095, June 22, 1998; *People v. Obello*, GR No. 108772, January 14, 1998; *People v. Marollano*, GR No. 105004, July 24, 1997; and *People v. Caballes*, GR No. 102723-24, June 19, 1997.

[41] It must be shown that the heirs experienced "x x x physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury." (Article 2217 of the Civil Code)

[42] Article 2230 of the Civil Code states: "In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. x x x."

[43] *People v. Nialda*, GR No. 115946, April 24, 1998; *People v. Oliano*, GR No. 119013, March 6, 1998; *People v. Renato Albao*, GR No. 117481, March 6, 1998; *People v. Sol*, GR No. 118504, May 7, 1997.

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