

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL SAMOLDE Y TAMBUNTING AND ARMANDO ANDRES, ACCUSED.
RAMIL SAMOLDE Y TAMBUNTING, ACCUSED-APPELLANT.**

G.R. No. 128551. July 31, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated February 26, 1992, of the Regional Trial Court, Branch 74, Antipolo, Rizal, insofar as it finds accused-appellant Ramil Samolde guilty of the crime of murder and sentences him to suffer the penalty of reclusion perpetua and to pay the amount of P50,000.00 as civil indemnity for the death of Feliciano Nepomuceno.

The facts are as follows:

On August 10, 1989, accused-appellant Ramil Samolde was charged, together with Armando Andres, with the crime of murder, the information against them alleging ¾

That, on or about the 13th day of May 1989, in the municipality of Taytay, province of Rizal, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, with intent to kill, treachery and evident premeditation, taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and grab the service firearm a caliber .38 revolver with SN-982794 Smith & Wesson of one P/Cpl. Feliciano Nepomuceno y Cruz and shot the herein victim on the body, as a result of which the said P/Cpl. Feliciano Nepomuceno y Cruz sustained gunshot wounds which caused his death.[2]

When arraigned on November 29, 1989, both accused pleaded not guilty, whereupon, trial was held. [3]

The prosecution presented six witnesses, namely, Edgardo Cabalin,[4] Ricardo Nepomuceno, Dr. Dario L. Gajardo, P/Sgt. Benjamin Calderon, P/Sgt. Romeo De Leon, and Arsenia Nepomuceno.

Edgardo Cabalin, a neighbor of the victim and accused-appellant, testified that at around 5 o'clock in the afternoon of May 13, 1989, accused-appellant and Armando Reyes asked him to lend them a tear gas gun which they would use to get someone's firearm. However, Cabalin said, he did not lend his tear gas gun to them. He claimed that while he was having drinks with a friend at a store, he later learned that Nepomuceno had been shot. At that point, he and his friend knew who the assailants were. He explained that accused-appellant had a grudge against Nepomuceno because when the former was in jail for stealing a chicken, the latter beat him up.[5]

On cross-examination, Cabalin admitted that he did not really witness the killing of Nepomuceno. He only learned of this fact when he and his friend were drinking beer at the store of a certain Turong Duleng and the other people there were talking about the incident.[6]

Ricardo Nepomuceno, a nephew of the victim, testified that he knew the accused-appellant and Armando Andres because they grew up together in Taytay, Rizal until he moved to Morong, Rizal. He said that on May 13, 1989,

between 7:30 and 8 o'clock in the evening, he saw Ricardo Nepomuceno on Naval Street being followed by Armando Andres and accused-appellant. Ricardo said he was 15 to 20 meters away from the two. He recognized them because he had known them for a long time, and there was light coming from the electric post and from the houses along the street. According to this witness, when Feliciano Nepomuceno turned to Mahinhin Street, accused-appellant grabbed him from behind while Andres, who was in front, stabbed the victim on the side with a knife. As Feliciano Nepomuceno's gun fell, Andres picked it up and shot the victim three times. Afterwards, he ran towards the direction of Sky Theater. On the other hand, accused-appellant Samolde ran towards Salazar Street.

As soon as the assailants had fled, Ricardo Nepomuceno claimed he went to the aid of his uncle and put him on a tricycle to take him to the hospital. On the way, they were met by an ambulance and Feliciano Nepomuceno was transferred to it. However, he died before reaching the hospital. His body was later taken to Camp Crame for autopsy. Ricardo Nepomuceno said he did not know of any bad blood between his uncle and the accused.[7]

On cross-examination, Ricardo Nepomuceno reiterated that he saw Armando Andres stab the victim at the side as accused-appellant Samolde held the victim. He admitted, however, that he did not volunteer information to the police.[8]

Dr. Dario L. Gajardo examined the body of Feliciano Nepomuceno. His findings are as follows:

SPECIMEN SUBMITTED:

Cadaver of Feliciano Nepomuceno, about 52 years old, policeman, 171 cm. in height and a resident of #92 Int. Naval St., Taytay, Rizal.

PURPOSE OF LABORATORY EXAMINATION:

To determine the cause of death.

FINDINGS:

Fairly developed, fairly nourished male cadaver in primary flaccidity with postmortem lividity over the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

TRUNK AND UPPER EXTREMITY:

(1) Gunshot wound, point of entry, left infraclavicular region, measuring 0.8 by 0.7 cm., 13.5 cm. from the anterior midline, with an abraided collar, measuring 0.2 cm. laterally and superiorly, 0.1 cm. medially and inferiorly, directed posteriorwards, downwards and to the right, fracturing the 3rd left thoracic rib along the midclavicular line and 5th left thoracic rib along the midaxillary line, lacerating the upper lobe of both lungs and arch of the aorta, with a deformed .38 caliber slug recovered at the right axillary region, just beneath the skin.

(2) Gunshot wound, point of entry, right infrascapular region, measuring 0.8 by 0.7 cm., 5 cm. from the posterior midline, with an abraided collar, measuring 0.2 cm. laterally, 0.1 cm. medially, superiorly and inferiorly, directed anteriorwards, downwards and to the left, fracturing the 10th right thoracic rib along the paravertebral line and 9th thoracic vertebra, lacerating the lower lobe of the right lung with a deformed .38 caliber slug recovered at the left thoracic cavity.

(3) Gunshot wound, thru and thru, point of entry, left mammary region, measuring 1.8 by 0.8 cm., 10 cm. from the anterior midline, with an abraided collar, measuring 0.2 cm. superiorly, 1 cm. laterally, 0.1 cm. medially and inferiorly, directed downwards and medialwards, making a point of exit at the epigastric region, measuring 3 by 6.2 cm., 5.5 cm. left of the anterior midline.

(4) Gunshot wound, thru and thru, point of entry, distal 3rd of the left arm, measuring 0.8 by 0.7 cm., 8 cm. lateral to its anterior midline, with an abraded collar, measuring 0.2 cm. laterally, 0.1 cm. medially, superiorly and inferiorly, directed horizonwards and medialwards, making a point of exit at the middle 3rd of the left arm, measuring 2 by 1.5 cm., 2 cm. medial to its anterior midline.

One thousand eight hundred (1,800) cc of blood and blood clots accumulated at the thoracic cavity.

Stomach is full of partially digested food particles consisting mostly of rice and the rest of the visceral organs are grossly unremarkable.

CONCLUSION

Cause of death is cardio-respiratory arrest due to shock and hemorrhage secondary to multiple gunshot wounds in the trunk and upper extremity.[9]

Dr. Gajardo testified that judging from the point of entry of the bullets in wound nos. 1 and 3, he concluded that the assailant was in front of the victim, while in wound no. 2, the assailant was at the back of the victim. He said that from the location of wound no. 2, it was possible that the victim was lying on his stomach when he was shot. Wound no. 4 was found on the left arm of the victim. Wound nos. 1, 2, and 3 were the fatal wounds which caused the victim's instantaneous death. Dr. Gajardo opined that these wounds were caused by a .38 caliber gun.[10]

On cross-examination, Dr. Gajardo said that although there were other injuries found in the body of the victim, these injuries were part of the gunshot wounds sustained by him, indicating that the victim fought off his assailants. No stab wound, however, was found on the body of the deceased. Dr. Gajardo conceded that it was possible that wound nos. 3 and 4 were caused by a different firearm because he was unable to recover the slugs from these wounds.[11] Dr. Gajardo explained that he placed the slugs which he recovered from the body of the victim inside an envelope attached to the medical report.[12] He said he did not place any markings on the slugs because this might destroy the evidence. He simply wrapped the slugs with pink paper with tag number M-079-89 corresponding to the number of the medical report.[13]

P/Sgt. Benjamin Calderon, chief investigator of the Taytay police, testified that, at about 8 o'clock in the evening of May 13, 1989, he went to the scene of the crime on Salazar Street near the corner of Mahinhin Street. He interviewed several people, including Edgardo Cabalin. Moreover, he was the one to whom accused-appellant and Armando Andres gave their statements in which they admitted that they killed Feliciano Nepomuceno. Sgt. Calderon said that the statements were given with the assistance of Atty. Emiliano Benito. He further said that the firearm taken from Feliciano Nepomuceno was recovered from the house of Armando Andres' relatives in Antipolo by police operatives led by Station Commander Daniel Hernandez.[14]

On cross-examination, Sgt. Calderon clarified that he was not one of those who arrested accused-appellant and Andres. According to Sgt. Calderon, Andres was arrested on June 19, 1989, but he executed his statement only on June 22, 1989, after he was provided with a lawyer. Sgt. Calderon said he advised accused Andres to get his own lawyer and when the latter failed to do so, he recommended Atty. Benito to Andres. Atty. Benito stayed with Andres from the start of the investigation until the execution of the latter's statement. Sgt. Calderon said that Andres was not given a physical examination prior to the investigation. On the other hand, accused-appellant, according to Sgt. Calderon, was arrested on June 6, 1989 in Bustos, Bulacan by P/Sgt. Rogelio De Leon. That same afternoon, Sgt. Calderon took Samolde's statement. Accused-appellant was assisted by Atty. Emiliano Benito who stayed with accused-appellant until the end of the investigation. Sgt. Calderon could not remember whether Samolde was physically examined.[15]

P/Sgt. Romeo De Leon also testified. He said that on June 6, 1989, he went to Bustos to arrest accused Ramil Samolde. Upon arriving in the town, he and his companions found that accused-appellant Samolde was in jail for

stealing a television set. Sgt. De Leon talked to the complainant in the theft case and convinced him to withdraw his complaint so that they could take accused-appellant with them to Taytay for proper investigation. As to Andres, Sgt. De Leon testified that he learned from Samolde that Andres had gone to Ilocos Sur. Accordingly, on June 19, 1989, Sgt. De Leon and his team went to Barrio Surbic, Narvacan, Ilocos Sur, and found Andres. Andres expressed regret for killing Nepomuceno.[16]

Sgt. De Leon stated on cross-examination that he was chief of the intelligence operation of the Taytay Police Station and that he was authorized to serve warrants of arrest. They arrested Samolde in Taytay on June 6, 1989. He said that during the six-hour trip to Taytay, they questioned accused-appellant regarding the whereabouts of Andres and the gun taken from Nepomuceno. Sgt. De Leon denied having used violence against Samolde. He said he asked Andres for the gun used in killing Feliciano Nepomuceno, and Andres said it was in Antipolo.

It was admitted that no counsel assisted Andres when he was interrogated. Sgt. De Leon denied using force against Andres during the twelve-hour trip from Narvacan to Taytay.[17]

Arsenia Nepomuceno, wife of the deceased Feliciano Nepomuceno, testified that on May 13, 1989, Perry Nepomuceno, a nephew, told her that her husband had been shot while on his way home. She went to the place where her husband was shot but he was no longer there, having been taken to the Angono Memorial Hospital. Accordingly, she and her nephew went to the hospital but they found that he had died. She testified that she spent P7,500.00 for food and beverages served during her husband's five-day wake and paid P475.00 for the electricity. She also paid P14,500.00 for the funeral services, P7,500.00 for the tomb, and P6,500.00 for the family lot. She said that her husband earned P1,800.00 a month as a policeman. She related how she spent sleepless nights after the death of her husband and how she was forced to accept sewing jobs to care for their four children.[18] The expenses for the funeral services were supported by a receipt for P14,500.00 issued by La Funeraria Oro.[19] She also presented receipts for P1,800.00 for the construction of Feliciano Nepomuceno's tomb[20] and P7,500.00 for the family plot in the Taytay Municipal Cemetery.[21]

Arsenia Nepomuceno admitted on cross-examination that she was not present when the receipt for P14,500.00 was issued by La Funeraria Oro, but she was present when the receipts for P1,800.00 and P7,500.00 for the tomb and cemetery plot were issued.[22]

Accused-appellant Ramil Samolde and Armando Andres testified in their behalf. Samolde testified that the victim, Feliciano Nepomuceno, was his neighbor in Taytay. He admitted harboring ill will and much bitterness towards the latter because he was an abusive policeman.[23] According to Samolde, at around 7:30 in the evening of May 13, 1989,[24] he was walking towards the market when he met Feliciano Nepomuceno. Nepomuceno pointed a gun at him and called him a thief. Samolde said he parried the gun and stabbed Nepomuceno with a carver, hitting the latter on the left side. When the gun fell to the ground, Samolde picked it up and shot Nepomuceno. He then went to his brother's house to ask for money so that he could go to Plaridel, Bulacan, where he stayed until he was arrested. He was detained in Bustos for two weeks, then transferred to the Taytay jail where he claimed he was beaten up by the police. Samolde testified that the police wanted to know who helped him kill Nepomuceno. He gave a statement implicating Andres because of a grudge which he bore against the latter. Accused-appellant claimed that although he was provided a lawyer, the latter was not really present during his investigation.

On cross-examination, accused-appellant testified that he was on his way to the Taytay market when he met Nepomuceno who, as he often used to, called him a thief. He reiterated that he stabbed Nepomuceno before shooting him with a service revolver. Accused-appellant said that as Nepomuceno held a gun to his face, he parried it and stabbed Nepomuceno, causing the latter to drop his gun. Accused-appellant said he then picked up the gun and shot Nepomuceno twice. Accused-appellant denied he had a companion. He testified that during his

detention, he was not allowed to be seen, lest visitors notice his swollen face. He later told his parents that he had been manhandled in jail, but the latter did not file a case against the policemen. As regards his counsel, accused-appellant stated that, contrary to what was stated in his extrajudicial confession, his lawyer did not really assist him. He was not informed of his constitutional rights when he executed his extrajudicial confession, and he did so only after he had been subjected to some brutality by the police. Upon inquiry by the trial court, accused-appellant stated that although he made two thrusts with his carver at Nepomuceno, he failed to hit the latter. He admitted that he is left-handed.[25]

On the other hand, Armando Andres told the court that he was born in Taytay and that he earned his living by driving a tricycle. He said that although he knew accused-appellant Ramil Samolde, they were not friends. Andres said he likewise knew the victim, Feliciano Nepomuceno, but did not know where he lived. Andres claimed that on May 13, 1989, he was in Surbic, Ilocos Sur, where he had been living with his sister. He learned that he was implicated in the killing of Nepomuceno only when the police came to arrest him in Ilocos Sur on June 19, 1989. Like accused-appellant, Andres also claimed he was beaten up by a policeman at the Taytay jail; that the sworn statement he gave had been prepared by the police; that he was not given any opportunity to read it before he signed it; and that he did so because he was subjected to torture and intimidation by the police. He said he could not remember whether he had a lawyer when he gave his sworn statement.

On cross-examination, Andres explained that he knew accused-appellant because the latter used to ride on his tricycle, but he denied that he and accused-appellant were close friends. He likewise denied being acquainted with the victim Nepomuceno, reiterating that he only knew the latter by face. He denied shooting Nepomuceno. He also disclaimed going to the house of a certain Leandro Nalo in Antipolo, Rizal. He further denied burying in Antipolo Nepomuceno's .38 caliber revolver. He admitted having gone to Ilocos Sur only on May 15, 1989, and not on May 13, 1989, but denied that he was hiding.[26]

On February 26, 1992, the trial court rendered judgment as follows:

In view of all the foregoing, the Court finds Ramil Samolde y Tambunting and Armando Andres y Mendoza GUILTY beyond reasonable doubt of the crime of Murder, and they are hereby sentenced to suffer the indeterminate penalty of Reclusion Perpetua, and to pay jointly and severally the heirs of deceased Feliciano Nepomuceno, by way of indemnity, the sum of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

For failure of accused Ramil Samolde and Armando Andres to agree voluntarily in writing before or during their temporary imprisonment to abide by the same disciplinary rules imposed upon convicted prisoner, they shall be credited in the service of their sentence each with 4/5 of the time during which they have undergone preventive imprisonment.

SO ORDERED.[27]

Only Ramil Samolde has appealed. He contends that:

- The Court erred in finding there is complicity by circumstantial evidence; and
- Accused-Appellant was given P10,000.00 by Armando Andres to confess to the murder.[28]

Armando Andres did not appeal.

We find accused-appellant's contentions to be without merit.

First. To be sure, the testimony of Ricardo Nepomuceno cannot be relied upon to sustain the conviction of accused-appellant. Nepomuceno claimed that he saw the incident happen because he was at the scene of the

crime. He claimed he had come from his parents' house, and he saw the deceased being followed at Naval Street by accused-appellant and Armando Andres. Yet he never volunteered information to the police.[29] We can understand the reluctance of a witness to testify in a case that does not concern him personally. But the victim in this case was the witness' own uncle. Until he testified at the trial of the case on June 20, 1990, more than one year after allegedly witnessing the killing of his uncle on May 13, 1989, Ricardo Nepomuceno never told anyone about what he allegedly knew about the killing. Such unexplained delay of an alleged eyewitness to the murder of a kin in reporting the matter to the authorities casts grave doubts on the credibility of his testimony. As we held in a similar case:[30]

The rule is ordinarily to the effect that delay by a witness in divulging what he or she knows about the commission of a crime, such as the identity of the offender, is not by itself a setback to the evidentiary value of such a witness' testimony. The courts, however, have been quick to deny evidentiary weight where such delay is not sufficiently justified by any acceptable explanation.

For instance, well-founded fear of reprisal, or the unpredictable manner by which individuals react when confronted by a gruesome event as to place the viewer in a state of shock for sometime, have been considered as permissible situations resulting in delay. Invariably, however, even under the foregoing circumstances the delay must not be undue in point of time. Thus, failure to reveal what one had witnessed about a crime for a number of days, or weeks, or even a number of months, is allowable. But, that will not hold true where, as in the case now being reviewed, the delay had unreasonably stretched all too far out into a year and four months, especially in the absence of any compelling or rational basis for such self-imposed and lengthy silence.

His belated disclosure raises the suspicion that his testimony was fabricated in order to provide evidence to the prosecution.[31]

Moreover, Ricardo Nepomuceno's narration of the events is incredible. He testified:

Q: Now, on May 13, 1989 . . . between the hours of 7:30 to 8:00 in the evening, do you still recall where were you?

A: I came from the house of my parents and I was about to go home to Morong.

Q: And while walking at Naval St. as you said at about that time between the hours of 7:30 and 8:00 o'clock in the evening, do you recall of any unusual incident that took place within the vicinity?

. . . .

A: I saw Armando Andres and Ramil Samolde they were also walking along and following Cpl. Nepomuceno.

Q: Now, on what street did you see both accused Ramil Samolde and Armando Andres following Feliciano Nepomuceno?

A: Also in Naval St.

Q: And will you tell us at about what distance were you from the 3?

A: About 15 meters.

Q: Now, while walking and following the 3 what happened, if any?

A: Upon reaching the corner of Naval and Mahinhin they turn towards Mahinhin St. so they were blocked to my view.

Q: Now, you said that you saw the two accused following Cpl. Feliciano Nepomuceno. Now, you were in there back, is it not?

A: Yes, sir.

Q: Now, will you tell us why you were able to recognize the two accused when as you said you were at their

back?

A: I have known them for a long time that is why even if their back[s are] against me I can still recognize them.

Q: Now, considering the length of time that you have known both accused were you their playmates?

A: We used to meet at the place of Ramil because we used to play with the gamecock.

....

Q: Now, considering the three of you grew up together in the same place at Naval St., Taytay, Rizal, you can recognize anyone of them at the distance of about 15 meters, do I get you right?

A: Yes, sir.

Q: Now, will you describe that place Naval St. during nighttime at around 7:30 to 8:00 in the evening with regards to the lighting, it is dark or it is lighted?

A: It is lighted and it is bright.

Q: Now, what is the source of this light which you said illumin[ed] the street?

A: From the post of the Meralco.

Q: Now, is that street thickly populated?

A: Yes, sir.

Q: And the houses along these streets were lighted at that time?

A: Yes, sir.

Q: Now, you made mention a while ago that the three referring to both accused and Feliciano Nepomuceno executed a turn, to what street did the three proceed?

A: To Mahinhin St.

Q: And what did you do after that?

A: Upon reaching the street corner I also turn towards them.

Q: You mean to say you likewise turn to Mahinhin St.?

A: Yes, sir.

Q: What happened next, if any?

A: Upon turning on the street I already saw that Ramil Samolde was embracing Cpl. Nepomuceno on the back.

Q: And what about Armando Andres what was he doing then?

A: He was in front and holding a knife as he just stabbed Nepomuceno.

Q: Now, did you see what portion of the body of Cpl. Nepomuceno was stabbed by Armando Andres?

A: As far as I know it was on the side.

Q: Left side or right side?

A: I cannot recall, sir.

Q: Now, what happened next, if any?

A: After Armando stabbed Cpl. Nepomuceno his gun fell.

Q: And as the gun of Cpl. Nepomuceno fell on the ground what happened next?

A: It was picked up by Armando.

Q: And what did Armando do with that gun?

A: He fired it to Cpl. Nepomuceno.

Q: Now, how many gunshots did you hear?

A: Three (3) times, sir.

Q: After that what happened next, if any?

A: They run away in different direction.[32]

Answering questions on cross-examination, Ricardo Nepomuceno reiterated that he saw Andres holding a pointed instrument which the latter used to stab the victim. As he testified:

Q: Mr. Witness, you are under oath in testifying in connection with this case, are you sure you saw Armando holding a knife, is that correct?

A: I know that he was holding an instrument.

Q: Will you describe what he is holding?

A: A pointed instrument.

Q: And according to you while Andres is holding that knife, did you see Armando stabbed the victim Cpl. Nepomuceno, is that correct?

A: Yes, sir.

Q: Are you sure of that?

A: Yes, sir.

Q: And are you sure what portion of the body does Cpl. Nepomuceno was hit?

A: I saw that he was hit on his side of the body.[33]

The above testimony is, however, belied by the results of the physical examination of the victim as well as by the testimony of Dr. Dario L. Gajardo. The medico-legal report states that Feliciano Nepomuceno sustained four gunshot wounds, three of which were fatal, but there was no stab wound. Dr. Gajardo testified:

Q: In your findings, it appears that there are four (4) gunshot wound[s], is that correct?

A: Yes, Sir.

Q: No other injuries at the body of the victim that you have found?

A: Well, there were other injuries which is part.

Q: Did you find any stab wound on the body of the victim?

A: None, Sir.[34]

In *People v. Padica*,^[35] it was held that the absence of stab wounds does not negate a witness' testimony that the victim was stabbed by his assailants. In that case, however, the apparent inconsistency between the witness' testimony and the evidence is explained by the fact that, although the accused tried to stab the victim, the weapon failed to penetrate and hit the body. In the present case, however, Dr. Gajardo categorically stated not only that there was no stab wound found on the body of the victim but also that the other injuries sustained by him were part of the gunshot wounds inflicted on him.^[36] These other wounds, such as the abrasions, were caused by the struggle between the victim and his assailants.^[37] No lacerations were reported to have been sustained by the victim.

Nor is the extrajudicial confession of accused-appellant admissible in evidence. Accused-appellant was not informed of his constitutional rights before his statement was taken.

The pertinent portions of his extrajudicial confession read:

PALIWANAG: Ikaw ngayon ay nasa ilalim ng isang pagsisiyasat. Bago kita tanungin ng mga bagay-bagay na may kinalaman sa kasong ito ay nais kong ipabatid ko sa iyo ang iyong mga karapatan na gaya ng mga

sumusunod:

Na: Ikaw ay may karapatan manatiling tahimik, at may karapatan magbigay o huwag ng salaysay kung gusto mo.

Na: Ano mang salaysay kung magbibigay ka ito ay maaaring gamitin katibayan laban o pabor sa iyo sa alin mang hukuman dito sa kapuluan Pilipinas.

Na: Ikaw ay may karapatan din sa tulong at pagharap ng sino mang manananggol na iyong nais.

- TANONG: Matapos mong mabatid ang iyong mga karapatan alinsunod sa ating bagong saligang batas, ikaw ba ay nahahandang magbigay ng isang malaya at kusang loob na salaysay na ang iyong sasabihin ay pawang katotohanan lamang?

SAGOT: Opo.

- T: Ikaw ba ay mayroon abogado sa oras na ito, upang makatulong mo sa imbestigasyon na ito?

S: Mayroon po, si Atty. Emiliano Benito, na siyang aking nagustuhan abogado, upang makatulong ko sa pagsisiyasat sa akin.

- T: Sa harap ng iyong abogado, nauunawaan mo bang lahat ang iyong mga karapatan na aking ipinaliwanag sa iyo?

S: Opo, kaya po ako kumuha o pumili ng aking abogado.

- T: Mailalagda mo ba ang iyong pangalan, bilang patunay na nauunawaan mo ang mga karapatan mo at bilang patotoo na ikaw ay may katulong na abogado sa oras ng pagsisiyasat sa iyo?

S: Opo.

Assisted by: (SGD.)RAMIL SAMOLDE

(Sgd.) Atty. Emiliano Benito Nagsasalaysay[38]

Clearly, accused-appellant was not properly apprised of his constitutional rights. Under Art. III, §12(1) of the Constitution, a suspect in custodial investigation must be given the following warnings: “(1) He must be informed of his right to remain silent; (2) he must be warned that anything he says can and will be used against him; and (3) he must be told that he has a right to counsel, and that if he is indigent, a lawyer will be appointed to represent him.”[39] As the abovequoted portion of the extrajudicial confession shows, accused-appellant was given no more than a perfunctory recitation of his rights, signifying nothing more than a feigned compliance with the constitutional requirements. This manner of giving warnings has been held to be “merely ceremonial and inadequate to transmit meaningful information to the suspect.”[40] For this reason, we hold accused-appellant’s extrajudicial confession is invalid.

However, apart from the testimony of Ricardo Nepomuceno and the extrajudicial confession of accused-appellant, there is sufficient evidence in the records showing accused-appellant’s guilt. Accused-appellant confessed in open court that he had killed Feliciano Nepomuceno. It is this admission of accused-appellant which should be considered.[41]

Now accused-appellant testified that on the day in question, he met the deceased and, as he had done in the past, the latter poked a gun at him at the same time called him a thief. Angered by what had been done to him, accused-appellant said he pushed Nepomuceno’s hand away and stabbed him with a carver. Then, when Nepomuceno dropped his gun to the ground, accused-appellant picked it up and shot Nepomuceno. Accused-appellant claimed that he merely implicated Armando Andres because he had a grudge against

Andres.[42]

The trial court dismissed this attempt to exculpate Andres and convicted the latter. We think the trial court correctly did so. Indeed, accused-appellant now claims that he was given P10,000.00 by Andres to make the admission in court in order to exonerate the latter.[43] But the fact that Armando Andres chose not to appeal is proof of the falsity of this claim. This flipflop makes accused-appellant's explanation as to why he admitted slaying Feliciano Nepomuceno very doubtful.

We have held that a judicial confession constitutes evidence of a high order. The presumption is that no sane person would deliberately confess to the commission of a crime unless prompted to do so by truth and conscience.[44] Indeed, it is hard to believe that a person, of whatever economic status, would confess to a crime that he did not commit for monetary considerations and thus barter away his liberty, and for that matter, even his life, for a mess of potage, for that is what the mere sum of P10,000.00 allegedly paid to him to make the confession means.

On the other hand, the fact that accused-appellant felt bitter towards the victim for having tortured him in jail was the motivating factor which made him kill the latter. The attempt of accused-appellant and Andres to borrow a tear gas gun from a neighbor so that they could take the victim's gun and their flight after getting their quarry, when taken together with accused-appellant's judicial confession, place beyond the shadow of doubt the guilt of accused-appellant.

"Generally, motive is proved by the acts or statements of the accused before or immediately after the commission of the offense - deeds or words that may express the motive or from which his reason for committing the offense may be inferred." [45] In this case, Edgardo Cabalin, a neighbor, testified that accused-appellant harbored ill feelings towards the victim. Cabalin related that, at one time, accused-appellant, who had been jailed for stealing, was beaten up in jail by Feliciano Nepomuceno, a member of the police.[46] (Accused-appellant himself said the victim was an abusive policeman and admitted that he felt much bitterness towards him.[47]) Cabalin testified that at around 5 o'clock in the afternoon of May 13, 1989, the same day the victim was killed, accused-appellant and Armando Andres tried to borrow a tear gas gun from him because they were planning to take someone's gun, but, Cabalin said, he did not lend them his tear gas gun.[48] Accused-appellant thus had a motive to kill Nepomuceno.

Another circumstance to be taken against accused-appellant was his flight after the commission of the crime. Accused-appellant was arrested in Bulacan. Apparently, he went into hiding in Bulacan to avoid arrest. In a similar case, it was held that the fact that the accused disappeared shortly after the commission of the crime and could not be found in their respective residences such that an alias warrant had to be issued for their arrest were strong indications that they committed the crime. Flight has been held to be an indication of guilt.[49]

Second. The question of whether the killing of Feliciano Nepomuceno was committed with treachery and with evident premeditation remains to be resolved. In this case, the trial court found the killing to be attended by the qualifying circumstance of treachery.

We do not agree. For treachery to be appreciated as a qualifying circumstance, the following elements must concur: "(1) the employment of means of execution which gives the person assaulted no opportunity to defend himself or retaliate; and (b) that said means of execution were deliberately or consciously adopted by the assailant." [50] As already stated, Ricardo Nepomuceno's testimony cannot be given credence. No other evidence was presented by the prosecution to prove the mode and manner in which accused-appellant and Armando Andres executed the crime. For this reason, there is no basis for appreciating treachery in this case.

We hold, however, that there was evident premeditation so as to make the killing murder. The elements of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[51]

As stated earlier, accused-appellant and Armando Andres tried to borrow Cabalin's tear gas gun. This attempt by accused-appellant and his co-accused to arm themselves prior to the commission of the crime constitutes direct evidence that the killing of Feliciano Nepomuceno had been planned with care and executed with utmost deliberation. Such act also shows that the accused-appellant and his co-accused had a previous agreement to kill Feliciano Nepomuceno. From the time the two agreed to commit the crime to the time of the killing itself, sufficient time had lapsed for them to desist from their criminal plan had they wanted to. Instead, they clung to their determination and went ahead with their nefarious plan. That nobody saw the killing of Nepomuceno even indicates that the two planned to commit the crime at such time and place where the victim was alone and help would be difficult to obtain. The killing of Nepomuceno was done under such circumstances that the assailants foresaw the problems they might encounter, i.e., the victim was armed and thus knew how to defend himself, and figured out the means to deal with them. "The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment." [52] Clearly, the elements of evident premeditation are present in this case.

Third. As to the question of damages, the trial court correctly awarded P50,000.00 as civil indemnity to the heirs of Feliciano Nepomuceno, in accordance with our recent rulings.[53] We find that aside from the civil indemnity, however, the heirs of Feliciano Nepomuceno are entitled to actual damages for expenses incurred during Feliciano Nepomuceno's wake and burial. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party.[54] In the case at bar, the funeral expenses were shown by a receipt issued by La Funeraria Oro, Inc. in the amount P14,500.00.[55] In addition, the prosecution presented receipts issued in favor of Arsenia Nepomuceno to show the payment of P1,800.00 for the construction of Feliciano Nepomuceno's grave[56] and P7,500.00 for the family lot located at the Taytay Municipal Cemetery.[57] These receipts are sufficient to prove the amount of actual damages with reasonable certainty. The heirs of the victim are, therefore, entitled to the full amount of P23,800.00 as actual damages representing the expenses sustained by them for the death of Feliciano Nepomuceno.

As regards the victim's loss of earning capacity, the only evidence offered by the prosecution is the widow's testimony that, at the time of his death, Feliciano Nepomuceno was earning P1,800.00 a month. Awards for the loss of earning capacity partake of the nature of damages and must thus be proved not only by credible and satisfactory evidence but also by unbiased proof.[58] In the case at bar, we find the testimony by the widow Arsenia Nepomuceno to be self-serving and insufficient to justify an award of unearned income to her.

WHEREFORE, the decision of the Regional Trial Court, Branch 74, Antipolo, Rizal is **AFFIRMED** with the **MODIFICATION** that, in addition to the award of P50,000.00 as civil indemnity, accused-appellant is ordered to pay to the heirs of the victim Feliciano Nepomuceno the amount of P23,800.00 as actual damages for the expenses incurred by them as a result of the victim's death. The decision of the trial court is final as to Armando Andres who did not appeal therefrom.

SO ORDERED.

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

- [1] Per Judge Sinforoso S. Nano.
- [2] Records, p. 1.
- [3] Id., p. 11.
- [4] Also referred to as Edgardo Cabalen in the records.
- [5] TSN, pp. 3-9, April 18, 1990.
- [6] TSN, pp. 3-4, May 23, 1990.⁶
- [7]⁷ TSN, pp. 2-7, June 20, 1990.
- [8] Id., pp. 8-10.
- [9] Exh. G; Records, p. 9.
- [10] TSN, pp. 5-10, June 27, 1990.
- [11] Id., pp. 11-14.
- [12] Id., p. 14.
- [13] Id., p. 15.
- [14] TSN, pp. 2-12, Aug. 30, 1991.
- [15] TSN, pp. 4-12, Sept. 5, 1990.
- [16] Id., pp. 12-16.
- [17] TSN, pp. 2-9, Sept. 7, 1990.
- [18] TSN, pp. 2 - 7, March 22, 1990.
- [19] Exh. B; Records, p. 91.
- [20] Exh. C; Id., p. 92.
- [21] Exh. D; Id., p. 93.
- [22] TSN, pp. 3-5, March 29, 1990.
- [23] TSN, pp. 2-3, Dec. 11, 1991.
- [24] The transcript of stenographic records related the incident to have occurred in the morning.
- [25] TSN, pp. 3-13, Dec. 11, 1991.
- [26] TSN, pp. 2-11, Dec. 12, 1991.
- [27] RTC Decision, p. 5; Records, p. 172.

[28] Brief for the Accused-Appellant, pp. 6 & 9; Rollo, pp. 40 & 43.

[29] TSN, p. 10, June 20, 1990.

[30] *People v. Bautista*, 290 SCRA 58 (1998).

[31] See *People v. Jalon*, 215 SCRA 680 (1992).

[32] TSN, pp. 3-5, June 20, 1990. (Emphasis added)

[33] *Id.*, p. 9. (Emphasis added)

[34] TSN, p. 11, June 27, 1990. (Emphasis added)

[35] 221 SCRA 362 (1993).

[36] TSN, p. 11, June 27, 1990.

[37] *Id.*, p. 14.

[38] Exh. M; Records, p. 101.

[39] *People v. Obrero*, G.R. No. 122142, May 17, 2000.

[40] *Id.*, citing *People v. Santos*, 283 SCRA 443 (1997); *People v. Binamira*, 277 SCRA 232 (1997); *People v. Basay*, 219 SCRA 404 (1993).

[41] *People v. Flores*, 195 SCRA 295 (1991).

[42] TSN, pp. 3-5, Dec. 11, 1991.

[43] Brief for the Accused-Appellant, pp. 9-10; Rollo, pp. 43-44.

[44] *People v. De los Santos*, 150 SCRA 311, 320 (1987).

[45] *People v. Melchor*, 307 SCRA 177, 185-186 (1999).

[46] TSN, p. 9, April 18, 1990.

[47] TSN, p. 3, Dec. 11, 1991.

[48] TSN, pp. 5-8, April 18, 1990.

[49] *People v. Padlan*, *supra*.

[50] *People v. Sesbreño*, G.R. No. 121764, Sept. 9, 1999.

[51] *Id.*

[52] *People v. Derilo*, 271 SCRA 633, 648 (1997).

[53] *People v. Borreros*, 306 SCRA 680 (1999).

[54] *People v. Suelto*, G.R. No. 126097, Feb. 8, 2000.

[55] Exh. B; Records, p. 91.

[56] Exh. C; *Id.*, p. 92.

[57] Exh. D; *Id.*, p. 93.

[58] People v. Cotas, G.R. No. 132043, May 31, 2000.

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