

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELIZAR TOMAQUIN, APPELLANT.

G.R. No. 133188. July 23, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Once again, the Court is confronted with the issue of the admissibility of an extrajudicial confession. This appeal particularly involves the question of whether a barangay captain who is a lawyer can be considered an independent counsel within the purview of Section 12, Article III of the 1987 Constitution.

On December 17, 1996, the Cebu City Prosecutor filed an Information charging appellant with Murder, committed as follows:

That on or about the 15th day of December, 1996, about 2:30 a.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a bladed instrument (tres cantos), with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and use personal violence upon one Jaquelyn Luchavez Tatoy, by stabbing her with said bladed instrument, hitting her on the vital parts of her body, thereby inflicting upon her physical injuries causing:“CARDIO RESPIRATORY ARREST DUE TO SHOCK & HEMORRHAGE SEC. TO STAB WOUNDS TO THE TRUNK (POSTERIOR ASPECT)”

as a consequence of which, Jaquelyn Luchavez Tatoy died almost instantaneously.

CONTRARY TO LAW.[1]

On arraignment, appellant pleaded “not guilty” to the charge,[2] and trial thereafter ensued.

There were no eyewitnesses to the incident, and the prosecution’s evidence, aside from appellant’s extrajudicial confession, was mainly circumstantial.

As presented by the prosecution, the facts are as follows:

At around 11:00 in the evening of December 14, 1996, appellant Elizar Tomaquin @ Hapon, together with Rico and Romy Magdasal, Noel Labay, and a certain Cardo, were drinking “Red Horse” beer in Itom Yuta, Lorega, Cebu City. Appellant left the group at around 1:00 in the morning, saying he has a headache. At the behest of Rico Magdasal, the group transferred to Lorega proper. A few minutes later, they heard Rustica Isogan shouting for help as the latter heard Jaquelyn[3] Tatoy, her goddaughter, asking for help. Isogan got two flashlights and they proceeded upstairs to Jaquelyn’s house. The first to go up was a certain Moises, followed by the brothers Rico and Romy Magdasal, while Noel and Cardo remained downstairs. Rico noticed that the hinge and the “walling” of the main door were damaged, as if it were kicked open, and only the light in the kitchen was turned on. Rico also saw a black shoe on the stairs and another in the sala, which he claims belong to appellant. When they went into the kitchen, they saw Jaquelyn bloodied and sprawled face-up on the floor, with her head inside a plastic container. Jaquelyn was brought to the hospital, where she expired. A neighbor later found a tres cantos

with blood on it by the stairs, which Rico also identified to be appellant's.[4] A certain Rey got the black pair of shoes and tres cantos for safekeeping which were later turned over to Policeman Tariao of the Homicide Section, Ramos Police Station. The person who turned over the objects to Policeman Tariao was not identified.[5]

At around 12:00 in the afternoon of December 15, 1996, barangay tanods Julius Yosores and Armando Zabate of Lorega, Cebu City, searched for appellant because of the information given by Rico Magdasal that the shoes and tres cantos found in the scene of the crime belonged to appellant. Together with Rico, they went to the house of Wilson Magdasal where appellant was temporarily staying, and found him sleeping. Appellant was wearing a bloodstained maong shorts. The tanods told appellant that he is a suspect in the killing of Jaquelyn, and brought him to the house of barangay captain Atty. Fortunato Parawan. There, appellant was asked about the shirt he was wearing and he told them that it was in Wilson Magdasal's house. It was Edgar Magdasal who found his shirt, wet and bloodstained, among the soiled clothes. Atty. Parawan then told his tanods to take appellant to the police station.[6]

In the morning of the next day, December 16, 1996, appellant was investigated by SPO2 Mario Monilar of the Homicide Section, Ramos Police Station in Cebu City. After being apprised of his constitutional rights, appellant told SPO2 Monilar that he was willing to confess and asked for Atty. Parawan, the barangay captain, to assist him. SPO2 Monilar called Atty. Parawan but the latter told him that he will be available in the afternoon. When Atty. Parawan arrived at 2:00 in the afternoon, he conferred with appellant for around fifteen minutes. Atty. Parawan then called SPO2 Monilar and told him that appellant was ready to give his statement.[7] Appellant's extrajudicial confession, which was taken down completely in the Cebuano dialect,[8] reads:

Pasiuna: Mr. ELIZAR TOMAQUIN, pahibaloon ko ikaw nga ubos sa atong batakang balaod (Constitution) aduna kay katungod nga pahibaloon sa imong mga katungod, sama sa imong katungod sa pagpakahilum, ingon man duna kay katungod sa pagdamgop/pagpilig sa abogado o manlalaban aron motabang kanimo niining maong imbestighasyon nga may kalabutan sa kamatayon ni Jaqueline Tatoy niadtong mga alas 2:30 sa kaadlawon kapin kongkulang niadtong petsa 15 sa bulan sa Disyembre 1996, didto sa Brgy Lorega proper, Siyudad sa Sugbo. Kong ugaling dili ka maka-abot pagbayad o pagpangitago abogado aron motabang kanimo karon, ako isip negrepresenttar sa Estado mohatag akong abogado kanimo. Nasabtan ba kini nimo?

Tubag: OO, nasabtan ka ang akong katungod?

Pangutana: Pahabloon ko usab ikaw nga sumala usab sa atong Batakang Balaod, anfg tanan nga imong isulti karon dinhi, mahimong magamit ebedensya pabor o batok kanimo sa bisan asaing husgado sa atong nasud. Nasabtan be usab kini nimo?

Tubag: OO, nasabtan ko usab kanang taan.

Pangutana: Tinuod ba gayod nga nasabtan pag-ayo nimo anf mao nimong mga katungod ug anadam ka ba nga moperma karon dinhi timailhan sa imong tina-aw nga nga pagsabut? ingon man andam ka ba sa pagsulti sa matuod walay lain kon kili ang matuod lamang gayud?

Tubag: O

Tubag: Oo, andam ako nga mpemar Sir ug ania karon dinhi ai Atty Parawan ang among Brgy Captain nga maoy akong giisip nga abogado nga akong pinili nga maoy motabang kanako karon. Aron sa pagmatuod, ako kining

pirmahan ning ika petsa 16 sa bulan sa Disyembre 1996.

...

Pangutana: Sunlion ko, andama bas a pagsulti sa matuod Elizar Tomaquin kon dili ang matuod lamang gayud? Ingon man andam ka ba nga modawat sa resulta o linugdangan niini?

Tubag: Oo, andam gyud ako.

Pangutana: Palihog isulti ang imong ngalan inong man ang tanan nga circunstacia o rmay kalambigitan sa imong pagkatawo, sa imong grado, imong trabaho, imong pinuy-anan ug uban pa?

Tubag: Ako si Elizar Tomaquin kinsa nagdala sa bansagon o apelyedo sa akong mama sanglit dili man kasado and akong mama ug papa. Ang apelyedo sa akong papa, Cabagui ug and akon angga Hapon. Ako 19 anyos ang panuigon, ulitawo ug kasamtangan nga nagpuyo sa Brgy Lorega proper duol sa kapilaya San Roque apan ako lumad nga taga Bo. Tunga, Moalboal, Cebu diin didto ano nakatungha sa grade six.

Pangutana: Niadtong kaadlawon sa petsa 15 sa bulan sa Disyembre 1996, diin ka man?

Tubag: Sa sinugdanan nianang mga ala una kapin kon kulang kauba ko sa pag-inom si Rico Magdasal didito sa Brgy Lorega Proper ug taodtaod niadto nilakaw ako libot sa sitio Itom Tuta ug dayon nakong saka sa balay nila ni Jaqueline Tatoy sa Brgy Lorega nianang pagka mga alas 2:20 sa maong petsa/kadlawon agii sa aberto nga bentana sa akong tuyo sa pagkawat sa ilang colored nga TV.

Pangutana: Nganong nakahiabwo ka man na duna silay TV nga colored?

Tubag: Suweto man ko kay permi ko magtan-awan sa ilang colored TV.

Pangutana: Niadtong niagi ka sa ilang bentana aron pagkawat sa ilang TV, diin ka man punta deretso.

Tubag: Deretso ako sa may lamesa sa ilang sala diin didto gibutang ilang TV.

Pangutana: Nakuha ba gayod nimo anf maong TV?

Tubag: Wala, kay sa akong pag-alsa sa among TV nisyagit man si Jaqueline Tatoy nga naghidga sa ilang may terrace ug nidagan siya padulong sa kusina nila ug diha-diha akong siyang ginsunod, gilayog ug gidunggab makadaghan pinaagi sa akong tres kantps nga hinagiban (Gidtudo ni Eliza rang Tres Kantos nga nakit-an didto sa patyang lawas nga Jaqueline Tatoy).

Pangutana: Kapila nimo dunggaba ug diin maigo si Jaqueline Totay?

Tubag: Dili na ko nakahinumdom, ingon man dili sba ko makahinumdom kon diin to siya maigo. Basta manadaghan to nako siya dunggaba ginamit ko ang akong Tres kantos.

Pangutana: Gawas nga imo to siyang gidunggab, wala ba nimo pahimudsi and iyang pagkapbabaye o wala ka bay plano sa pag rape kaniya niadtong higayona?

Tubag: Wala gyud to nako siya pahimudsi og wala gyud koy tuyo sa pag rape niya. Ang ako ra gyud nga tuyo mao ra gyud and pagkawat sa ilang TV apan kay nisiyagit man siyang nakaila man kayo siya nako, nahadlok kong mahibaw-an sa ako untang pagkawat sa ilang TV, hinungdan nga ako siyang gilayog ug gidunggab makadaghan.

Pangutana: Nganog nakahibawo or nakaila ka man nga si Jaqueline Tatoy tong naisiyagit ug imong gidunggab?

Tubag: Duna ma hayag nga suga sa elektresidad sa ilang may kusina.

Pangutana: Kaila ba nimong daan si Jaqueline Tatoy?

Tubag: Oo, Sir ka saw ala pa ang among hitabo permi man kong nagtan-awan sa ilang TV.

Pangutana: Human nim dunggaba si Jaqueline Tatoy unsa may sunod nimonh gibuhat?

Tubag: Dihang sa akong pagtoo nga patay na siya, ako naidagan agi sa pultahan nga akong gisikaran dayon kanaog subay sa hagdan didto nabiyaaan nako ang akong sapatos.

Pangutana: Diin ka man paduiong dagan?

Tubag: Didto ako padulong sa akong gipuya-an sa ilang Wilson Magdasal sa maong Brgy.

Pangutana: Unya unsa may sunod nimonh gibuhat og nahibaw-an?

Tubag: Niadtong hapon sa petsa 15 sa bulan sa Disyembre 1996, didtoy mga Brgy Tanods sa balay ni Wilson Magdasal diin ila akong gipangutaan tali sa maong hitabo og igo lan ako nitudlo sa akong white Slave shirt nga akong gihumulan ug tubig sa planggana sa tumong nga makuha ang mansa sa dugo nga pinisik sa akong paggdunggab patay ni Jaqueline Tatoy.

Pangutana: Ngano ug unsa may diay kalabutan niadtong maong slaveless white shirt nimo?

Tubag: Mao na ang akong gisul-ob dihang akog kawaton unta ang TV nila ni Jaqueline ug sa iyang pagsiyagit ako siyang gidunggab-dunggab patay. (Elizar Yomaquin positivo nga nitudlo ug niangkong sa maong whitel sleve less shirt)

Pangutana: Kinign nia karon dinhi nga sapatos itom nga nakuha didto so hagdan sa balay nila ni Jaqueline Tatoy human siya nakit-i nga patay, unsa may imong ikasulti niini?

Tubag: Mao kana ang akong sapatos nga nabiyaaan didto sa ilang hagdan human sa hitabo ug gain sa akong pagdagan akong napatiran kadtong ilang container.

Pangutana: Sa pagkakaran, wala na akoy ipangutana kanimo. Ikay aduna ka pa bay ikasul ti o bakwion ba hinoon sa mao nimong gipamahayag nga naglangkob sa duha ka pahina lakip niining maong pahina?

Tubag: Wala na akoy ikadugang pagsulti ni bakwion ba hinnon. Nao kana ang tanan.

Pangutana: Andam ka ba pagperme niini sa pagmatuod nga wlay tawo nga nagpugos, naghulga, nagsaad ug gnate o nag hadlok ba hinoon kon dili sa imong kaugalingon nga kabubut-on lamang.

Tubag: Oo, andam ako pageram. Aron matuoron kining tanan kini akong permaahn ning petsa 16 sa Diusyembre 1996, Siyudad Sugbo, Pilipinas.[9]

On the witness stand, appellant did not deny that he had a drinking spree with Rico Magdasal and three other persons. His version of the incident is that it was Rico who committed the crime and not him. Appellant testified that Rico asked his help in stealing the television set from the Tatoy's residence. When Jacquelyn saw them, she ran towards the kitchen but she did not reach it as Rico had stabbed her on the back with the tres cantos. Appellant claims that it was Rico who owns the tres cantos, as well as the pair of shoes, left inside Tatoy's house. Afraid of what happened, appellant went home to Wilson Magdasal's house and slept there. He was awakened the next morning by barangay tanod Julius Yosores who kicked him. Yosores also boxed and poked a gun at him. Appellant claims that Rico and Edgar Magdasal maltreated him in the presence of barangay captain Atty. Fortunato Parawan when he was brought to the latter's house. He was made to admit committing the crime because Rico has a family while he is single.[10]

Appellant also repudiated his extrajudicial confession, saying that Atty. Parawan merely asked him to sign a blank sheet of paper and in exchange, Atty. Parawan promised to assist and help him with his expenses.[11]

After trial, the Regional Trial Court of Cebu City (Branch 18) (RTC for brevity) rendered its decision on October 24, 1997, convicting appellant of the crime of Murder, to wit:

WHEREFORE, in view of all the foregoing considerations, accused Elizar Tomaquin is found guilty beyond reasonable doubt of the crime of Murder and is hereby imposed the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the heirs of Jaquelyn Tatoy in the sum of P50,000.00 and to pay the costs. The accused is, however, credited in full during the whole period of his detention provided he will signify in writing that he will abide by all the rules and regulations of the penitentiary.

SO ORDERED.[12]

Hence, this appeal.

In his Brief, appellant raises the following Assignment of Errors:

- THE TRIAL COURT ERRED WHEN SHE (SIC) CONVICTED ACCUSED-APPELLANT BASED ON HIS UNCOUNSELLED CONFESSION;
- THE TRIAL COURT LIKEWISE ERRED WHEN SHE (SIC) GAVE FULL CREDENCE AND FULL FAITH ON THE TESTIMONY OF THE PROSECUTION WITNESSES;[13]

Appellant's extrajudicial confession was taken and transcribed entirely in the Cebuano dialect. Rule 132, Section 33 of the Revised Rules on Evidence provides:

Sec. 33. Documentary evidence in an unofficial language.-- Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.

The rule is that when there is presented in evidence an exhibit written in any language other than the official language (Filipino or English), if there is an appeal, that exhibit should be translated by the official interpreter of the court, or a translation should be agreed upon by the parties, and both original and translation sent to this court.[14] In this case, there is no official translation of appellant's extrajudicial confession in the Filipino or English language. If the Court were to strictly follow the rule, then appellant's extrajudicial confession should not have been admitted by the trial court as evidence for the prosecution.

Nevertheless, considering that appellant did not interpose any objection thereto, and the parties and the judicial authorities or personnel concerned appeared to be familiar with or knowledgeable of Cebuano in which the document was written,[15] such extrajudicial confession was appropriately considered by the trial court as evidence for the prosecution.

As stated at the outset, the crucial issue in this case is whether or not the extrajudicial confession executed by appellant, with the assistance of Atty. Fortunato Parawan, is admissible in evidence against him. There is no need at this point to secure an official translation of the confession to English.

Section 12, Article III of the 1987 Constitution provides:

(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.

The words "competent and independent counsel" in the constitutional provision is not an empty rhetoric. It stresses the need to accord the accused, under the uniquely stressful conditions of a custodial investigation, an informed judgment on the choices explained to him by a diligent and capable lawyer.[16]

As heretofore stated, Atty. Fortunato Parawan, at that time, was the barangay captain of Barangay Lorega, Cebu City. Under the 1991 Local Government Code, a barangay captain performs the following duties and functions:

(a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:(1) Enforce all laws and ordinances which are applicable within the barangay;

...

(3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions; . . .[17]

Simply put, Atty. Parawan, as barangay captain, is called upon to enforce the law and ordinances in his barangay and ensure peace and order at all times.

In fact, as barangay captain, Atty. Parawan is deemed a person in authority under Article 152 of the Revised Penal Code, to wit:

ART. 152. Persons in authority and agents of persons in authority. – Who shall be deemed as such. – In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission, shall be deemed a person in authority. A barrio captain and a barangay chairman shall also be deemed a person in authority.

On these bases, it is not legally possible to consider Atty. Parawan as an independent counsel of appellant.

In *People vs. Culala*,^[18] the Court reiterated the rule that a municipal attorney cannot be an independent counsel because as a legal officer of the municipality, he provides legal assistance and support to the mayor and the municipality in carrying out the delivery of basic services to the people, including the maintenance of peace and order, and it was seriously doubted whether he can effectively undertake the defense of the accused without running into conflict of interests. Thus, the Court held that he is no better than a fiscal or a prosecutor who cannot represent the accused during custodial investigations.^[19]

This is reiterated in *People vs. Taliman*,^[20] and *People vs. Velarde*,^[21] where we further ruled that a municipal mayor cannot likewise be an independent counsel as required by the Constitution.

Similarly in this case, considering that Atty. Parawan's role as a barangay captain, was a peacekeeping officer of his barangay and therefore in direct conflict with the role of providing competent legal assistance to appellant who was accused of committing a crime in his jurisdiction, Atty. Parawan could not be considered as an independent counsel of appellant, when the latter executed his extrajudicial confession. What the Constitution requires is the presence of an independent and competent counsel, one who will effectively undertake his client's defense without any intervening conflict of interest.^[22]

Neither does Atty. Parawan qualify as a competent counsel, i.e., an effective and vigilant counsel. An "effective and vigilant counsel" 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. As held in *People vs. Velarde*:^[23]

. . . The competent and independent lawyer so engaged should be present 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.^[24]

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.^[25]

The assistance rendered by Atty. Parawan to appellant cannot be fittingly described as effective and vigilant. As testified by Atty. Parawan, hereinbelow quoted verbatim, this was what transpired when he went to the Ramos police station to assist appellant during the investigation:

Q What happened when you arrived at the Ramos Police Station at around 2:00 o'clock in the afternoon of December 16, 1996?

A I go (sic) to the room where Policeman Monilar and the accused and had a conversation with the accused.

Q What transpired during that conversation with the accused.

A I asked him. Are you going to get me as your lawyer?

Q And may we know what did he answer?

A Yes, Cap. Okay Cap.

Q When you said “Cap” what did he mean by that word “Cap.”

A Being a Barangay Captain.

Q After the accused told you that you were his counsel of choice. What did you do next if any?

A I informed Elizar Tomaquin that do you know what will be the implication of your admission, you will be imprisoned.

Q After you asked him whether he knew of the implication of his confession that could be ... because of that confession. What was his reaction?

A Yes Cap. I know. And then I told him as follows: “Because of this confession you will be imprisoned.”

Q And what did he say after you told him again that if he would execute that affidavit of confession he would surely be imprisoned?

A No I even continue that “why did he do that?”

Q And what did he answer?

A He answered to me that he was drunk at that time.

Q And so what transpired next?

A So I told him are you willing now to give your confession, then policeman Monilar went inside the room and we had that investigation.

Q Now how was the investigation of the accused done?

A It was made in a question and answer form.

Q And in what language were the questions framed?

A In the vernacular, vesaya.

Q What did you do during the question and answer form of investigation?

A I just observed them.

Q But did you stay there until the whole taking of the confession was over?

A Yes I was there in the presence of two persons coming from my Barangay.

...

Q When you arrived and saw Mr. Monilar with the accused as an Attorney did you immediately inquire what had happened before you arrived like; Did you start the investigation? did you inquire from that from Mr. Monilar?

A He was already preparing this top portion here.

INTERPRETER:

Q Witness pointing to the upper portion of the certification up to the signature to that portion above the names typewritten thereon.

...

Q And that means to say that when he prepared this from the top most portion to that portion immediately right before the typewritten name Elizar Tomaquin and Atty. Fortunato Parawan you were not around. Correct?

A I was not around but we have already a conversation earlier with Monilar.[26]

Records also show that appellant was presented to SPO2 Monilar in the morning of December 16, 1996. When appellant intimated that he was willing to confess and requested the presence of Atty. Parawan, SPO2 Monilar called up Atty. Parawan and informed him of appellant's decision. Atty. Parawan arrived at the Ramos Police Station only at 2:00 in the afternoon.[27] By the time Atty. Parawan arrived, the investigation had already started and SPO2 Monilar had already asked and elicited information from appellant. Worse, Atty. Parawan merely "observed" during the entire investigation and failed to advise or explain to appellant the questions being propounded by SPO2 Monilar. He did not even bother to ask appellant if the extrajudicial confession he was about to execute was being voluntarily given.

Moreover, that Atty. Parawan is not an effective and vigilant counsel is bolstered by his own testimony that he already suspected appellant as having committed the crime when the latter was brought to his house by the barangay tanods, viz.:

Q Being an attorney naturally your first question to your arresting tanods was where was he arrested and how was he arrested and what is the reason why he was arrested. Correct?

A Yes.

...

Q You are telling this Court now Atty. Parawan that before the Barangay Tanods could explain to you the circumstances of his arrest you already started to ask questions like; Why did you have blood in your pants. Where is your t-shirt you wore. Where did you get that information since you were not in the house of Jaqueline Tatoy when she was killed?

A It was like this. I heard that the victim suffered multiple stab wounds. So when I saw blood stains with all probability it might come from the victim. It was conclusion something like when I saw that t-shirt stained with blood.

Q So you mean to this Court that you already reached the conclusion of mine (sic) that Elizar Tomaquin one of your constituents in the Barangay was already on your conclusion in mine (sic) the killer of Jacquilyn Tatoy before your tanods turned it over to the police for investigation. Is that what you are telling Atty. Parawan?

A It is somewhat like that. That is why I ordered my tanod to bring him to the Homicide.[28]

The Court cannot imagine how Atty. Parawan could have effectively safeguarded appellant's rights as an accused during the investigation when he himself entertained the suspicion that appellant is guilty of the crime charged, and naturally, he would want appellant to admit having committed it.

It was posited that appellant cannot challenge Atty. Parawan's qualification as a competent and independent counsel because he was his choice.

As provided in Section 12, Article III of the 1987 Constitution, "(A)ny person under investigation for the commission of an offense shall have the right ... to have competent and independent counsel preferably of his own choice. Ideally, the lawyer called to be present during such investigations should be as far as reasonably possible, the choice of the individual undergoing questioning, but the word "preferably" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling his defense.[29] What is imperative is that the counsel should be competent and independent. That appellant chose Atty. Parawan does not estop appellant from complaining about the latter's failure to safeguard his rights.

It appears that appellant chose Atty. Parawan because he was the barangay captain of Brgy. Lorega where appellant resides, and apparently, appellant trusts Atty. Parawan to protect his rights. The latter, however, fell short in tending to the trust reposed on him. Appellant did not finish Grade 1 and does not know how to read and write.[30] As between him and Atty. Parawan who presumably knows the intricacies of the law and appellant's predicament, Atty. Parawan should have known better and exercised his sound judgment before conceding to appellant's choice. But it did not occur to him to inhibit himself from acting as appellant's counsel and instead, he even let appellant go through the investigation and execute the extrajudicial confession knowing fully well that he was biased as regards appellant's innocence. Quoted verbatim, Atty. Parawan testified thus:

Q Atty. Parawan comparing yourself to the accused who is a graduate of Batchelor (sic) of Law compared to your constituent who is jobless, illiterate [and] of low intelligence. The question is this: It did not occur to your mine (sic) to inhibit yourself despite the request by telling the accused as barangay Captain there could be a conflict of interest and bias that I would not be in (sic) effective counsel or assistance to you. Did it not occur to your mine (sic) or not?

A It did not occur to my nime (sic).

...

Q But as experienced attorney you know very well that when you assist a suspect in the police station and the circumstances he was arrested the best assistance a lawyer could give is would be to tell the accused to remain silent. Would you agree?

...

A It did not occur to my mine (sic) that time.[31]

Clearly, Atty. Parawan failed to meet the exacting standards of an independent and competent counsel as required by the Constitution. Thus, the extrajudicial confession executed by appellant, even if gospel truth, is deemed an uncounselled confession and therefore, inadmissible in evidence.

In this regard, it may not be amiss to repeat the declaration of the Court in *People vs. Deniega*,[32] stressing the role of the courts in ascertaining that extrajudicial confessions meet the exacting standards of the Constitution:

Every so often, courts are confronted with the difficult task of taking a hard look into the sufficiency of extra-judicial confessions extracted by law enforcement authorities as the sole basis for convicting accused individuals. In cases of crimes notable for their brutality and ruthlessness, the impulse to find the culprits at any cost occasionally tempts these agencies to take shortcuts and disregard constitutional and legal safeguards intended to bring about a reasonable assurance that only the guilty are punished. Our courts, in the process of establishing guilt beyond reasonable doubt, play a central role in bringing about this assurance by determining whether or not the evidence gathered by law enforcement agencies scrupulously meets exacting standards fixed by the Constitution. If the standards are not met, the Constitution provides the corresponding remedy by providing a strict exclusionary rule, i.e., that "[a]ny confession or admission obtained in violation of (Article III, Section 12(1) . . . hereof shall be inadmissible in evidence."

Without appellant's extrajudicial confession, the prosecution's case now teeters precariously on circumstantial evidence, namely:

- Rico Magdasal's testimony that:
- appellant left their drinking session at 1:00 in the morning of December 16, 1996;
- the tres cantos and pair of shoes found inside Jaquelyn's residence belongs to appellant; and
- appellant was wearing a pair of maong shorts and white sando shirt on the night of the crime, which blood-stained shirt was found among the soiled clothes in Wilson Magdasal's house;
- Medical Technologist Jude Daniel Mendoza's testimony that the blood stains on appellant's sando shirt and the tres cantos was of human origin.[33]

These circumstances, however, are not sufficient to demonstrate positively and convincingly that it was appellant who killed Jaquelyn.

Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence would be sufficient to convict if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[34] As

jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[35]

The circumstantial evidence in this case does not constitute an unbroken chain leading to one fair and reasonable conclusion that appellant is the guilty person.

For one, appellant's act of leaving the drinking session at 1:00 in the morning does not establish appellant's whereabouts at the time the crime was committed. There is nothing in the testimony of Rico Magdasal and the other prosecution witnesses that will show if appellant indeed went to Jaquelyn's house after he left the group. No one saw him enter or leave her residence. If at all, what was proved is that appellant was found by the barangay tanods sleeping at home in the afternoon of the same day.

Added to that is the prosecution's failure to establish the chain of custody of these valuable pieces of evidence.

Prosecution witness Armando Zabate testified that the pair of black shoes and tres cantos were given to a certain Rey for safekeeping. These were later turned over to a Policeman Tariao of the Ramos Police Station. Zabate, however, did not identify the person who turned over the objects to the police.[36] There was no showing who turned over those articles to the police and Rey was not presented to identify if these were the same pair of shoes and tres cantos found in Jaquelyn's house and turned over to the police. Policeman Tariao was not called to the witness stand so as to confirm if those articles were the same evidence turned over to him and later presented in court. Ordinarily, it would not be indispensable for the prosecution to allege and prove every single fact of the case. But in this case, the pieces of evidence are crucial to the prosecution's case. Also, the fact that a civilian obtained and received the evidence, the possibility that the integrity of these articles could have been compromised cannot be ignored. The Court even noted that during his direct examination, SPO2 Monilar was confused as to whether the pair of shoes presented in court was the same ones that were turned over to the police. It turned out that the marking he made on the shoes were washed off because at one time, the shoes fell in the canal located in front of the police station and they had to clean and wash the shoes![37] Such sloppy handling renders the chain of custody of those pieces of evidence dubious, and damaging to the prosecution's case.

And even if appellant did own the pair of shoes and tres cantos, the fact that it was found in the scene of the crime merely proved that he was in the residence of Jaquelyn at some point in time. But it does not prove when particularly he was there, his authorship of the crime or his motive for being there. While the motive of an accused in a criminal case is generally held to be immaterial, not being an element of the crime, motive becomes important when, as in this case, the evidence of the commission of the crime is purely circumstantial.[38]

The prosecution's evidence that is perceived to be conclusive of appellant's guilt is mainly the testimony of Rico Magdasal. Such testimony, however, is uncorroborated. The rule is that the testimony of one witness is sufficient to sustain a conviction, if such testimony positively establishes the guilt of the accused beyond reasonable doubt.[39] Moreover, the doctrine of long standing that the testimony of a lone witness, if credible and positive, is sufficient to convict an accused applies only to eyewitnesses. Thus, an uncorroborated circumstantial evidence is certainly not sufficient for conviction when the evidence itself is in serious doubt.[40] Rico's lone testimony is not sufficient to establish appellant's guilt beyond reasonable doubt.

In addition, appellant vehemently denied Rico's allegations. According to appellant, it was Rico who actually owns the pair of shoes and tres cantos; that it was he who bid appellant to go to the Tatoys' residence and lift their TV set; and that it was Rico who stabbed Jaquelyn. Considering appellant's denial and his different version

of the incident, it became incumbent upon the prosecution to rebut appellant's allegations with further evidence to corroborate the statement of Rico. It must be noted that there were other persons present during their drinking spree, namely, Romy Magdasal, Noel Labay, and a certain Cardo. These persons could have been presented as witnesses to back up Rico's claim but the prosecution did not do so. Rico testified that appellant owned the tres cantos found by the stairs; but Rico also stated he only "heard" that the tres cantos was found by the stairs.[41] Who found the tres cantos that was supposed to have been used to stab Jaquelyn? The neighbor who allegedly found it by the stairs was not presented in court to identify if the tres cantos presented by the prosecution was the alleged weapon in the stabbing of Jaquelyn. Such failure of the prosecution to corroborate the material points of Rico's testimony weakened their case.

The Court also has serious misgivings on the probative value of the white sando shirt that appellant was allegedly wearing at the time of stabbing Jaquelyn, which Edgar Magdasal later found bloodstained among the soiled clothes.

First, when appellant was asked by the barangay tanods about the shirt he was wearing, he told them that it was in Wilson Magdasal's house. According to barangay tanod Armando Zabate, it was Edgar Magdasal who found the shirt, "somewhat wet and bloody," among the soiled clothes.[42] Edgar Magdasal, however, was not presented to testify as to where he found the shirt, the state the shirt was in when he found it, and how he knew that it was the shirt worn by appellant.

Second, Medical Technologist Jude Daniel Mendoza testified that the bloodstains on appellant's sando shirt, as well as the tres cantos, were human blood.[43] Mendoza, however, did not conduct further tests to ascertain the type of blood found on these pieces of evidence nor did he match it with the victim's blood type,[44] hence, it does not connect the bloodstains to the herein victim. In *People vs. Rodriguez*, the Court ruled that the maong pants allegedly belonging to appellant and found positive of type O blood has no probative value since the blood type of appellant and the victim were not taken for purposes of comparison.[45]

The same ruling applies with regard to the bloodstains found on the tres cantos.

Appellant enjoys in his favor the presumption of innocence until the contrary is proven. Proof of the guilt of the accused should not be tainted with ambiguity. Although appellant's defense is weak, conviction must come from the strength of the prosecution's evidence and not from the weakness of the defense. In this case, the prosecution's evidence is not strong enough to justify a finding of guilt beyond reasonable doubt.[46] Acquittal, therefore, is inevitable.

WHEREFORE, appellant Elizar Tomaquin is hereby ACQUITTED and ordered RELEASED immediately, unless he is being detained for some other legal cause.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant unless he is being lawfully held for another cause, and to inform this Court of the date of his release, or the ground for his continued confinement, within ten (10) days from notice of herein decision.

Costs de officio.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Records, p. 1.

- [2] Id., p. 17.
- [3] Also referred to as Jacqueline in other parts of the records.
- [4] TSN, Rico Magdasal, February 19 and 21, 1997; March 5, 1997.
- [5] TSN, Armando Zabate, February 7, 1997, pp. 3-4.
- [6] TSN, Armando Zabate, February 7, 1997, pp. 5-9.
- [7] TSN, SPO2 Mario Monilar, March 17, 1997, pp. 5-6.
- [8] Appellant Tomaquin's extrajudicial confession was not officially translated into the English language.
- [9] Exhibit "K", pp. 8-9, Records.
- [10] TSN, Elizar Tomaquin, May 26, 1997, pp. 8-25; May 27, 1997, pp. 2-4; May 28, 1997, pp. 2-4.
- [11] TSN, Elizar Tomaquin, May 28, 1997, pp. 19-21.
- [12] Records, p. 200.
- [13] Rollo, p. 126.
- [14] People vs. Siojo, 61 Phil. 307, 314 (1935), citing Ahag vs. Cabiling, 18 Phil., 415.
- [15] People vs. Salison, Jr., 253 SCRA 758, 771 (1996).
- [16] People vs. Suela, 373 SCRA 163, 182 (2002).
- [17] Section 389, Chapter 3, Title One, Book III, Local Government Code of 1991, as amended.

[18] 316 SCRA 582 (1999).

- [19] People vs. Culala, supra., p. 591.

[20] 342 SCRA 534 (2000).

[21] 384 SCRA 646 (2002).

- [22] People vs. Velarde, supra., at p. 658; People vs. Sahagun, 274 SCRA 208, 216 (1997).
- [23] People vs. Velarde, supra.
- [24] Id, p. 659.
- [25] People vs. Labtan, 320 SCRA 140, 159 (1999).
- [26] TSN, Atty. Fortunato Parawan, May 15, 1997, pp. 4-6; 15-16.
- [27] TSN, SPO2 Mario Monilar, March 17, 1997, pp. 5-7.
- [28] TSN, Atty. Fortunato Parawan, May 15, 1997, p. 9.
- [29] People vs. Barasina, 229 SCRA 450, 466 (1994).
- [30] TSN, Elizar Tomaquin, May 26, 1997, p. 5; Rollo, p. 190, Decision, p. 9.
- [31] TSN, May 15, 1997, pp. 12-13.

[32] 251 SCRA 626, 641-642 (1995).

[33] Rollo, p. 197, Decision, p. 16.

[34] *People vs. Dela Cruz*, 326 SCRA 324, 334 (2000).

[35] *People vs. Leaño*, 366 SCRA 774, 785-786 (2001); *People vs. Yip Wai Ming*, 264 SCRA 224, 243 (1996).

[36] TSN, Armando Zabate, February 7, 1997, pp. 3-4.

[37] TSN, SPO2 Monilar, April 28, 1997, p. 3.

[38] *People vs. Leaño*, *supra*.

[39] *People vs. Montero*, 76 SCRA 437, 444 (1977).

[40] *People vs. Ferras*, 289 SCRA 94, 106 (1998).

[41] TSN, Rico Magdasal, March 15, 1997, p. 3.

[42] TSN, Armando Zabate, February 7, 1997, p. 7.

[43] TSN, Jude Daniel Mendoza, February 12, 1997, pp. 9-11.

[44] TSN, Jude Daniel Mendoza, February 17, 1997, pp. 2-7.

[45] 341 SCRA 645, 656 (2000).

[46] *People vs. Parel*, 261 SCRA 720, 736 (1996).

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