

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIETTA PATUNGAN Y PULGA, EDGAR ACEBUCHE Y CERVITO AND ELMERTO PULGA Y ACEBUCHE, ACCUSED-APPELLANTS.

G.R. No. 138045. March 14, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

At about 10:00 p.m. of May 22, 1994, Antonio Altarejos and his girlfriend Antonia Eluzon with a few other friends were having a drinking spree beside the chapel along Laura Calderon St., Purok 2, Barangay Old Balara, Quezon City. Antonio and Antonia noticed the van of their neighbor Alejandro Patungan parked in front of the chapel and saw two men seated inside, one is the accused Elmerto Pulga at the driver's seat and the other is the accused Edgar Acebuche.[1] Sometime that evening Elmerto Pulga drove the van away from the chapel and towards a vacant lot near Commonwealth Avenue to allow another car to park right in front of the chapel. After the drinking spree, at about 3:00 to 3:30 a.m., the following morning, the lovers Antonio and Antonia went to the basketball court to talk. Moments later they saw Alejandro Patungan and his wife Marietta come out of their house and walk toward the road. Marietta however, went back to their house while Alejandro proceeded without her.[2]

At about 3:45 p.m. of May 24, 1994, the decomposing body of Alejandro Patungan was found inside his van parked along Don Quixote St. Sampaloc, Manila. At 7:00 p.m. that day the cadaver was autopsied at the WPD-PNP Medico-Legal Section. The report states as follows:

"The body was bloated and in the state of decomposition. The face was dark colored, eyeballs, bulging, tongue half protruding and thick upper and lower lips. Bullae formation in the chest, abdomen and extremities with greenish discoloration in the inguinal regions spreading towards the abdomen. The abdomen was distended with gas.

"The following external injuries were noted.

- Stab wound, with the point of entry at the left cheek, 59 inches from heel, 8 cm. From anterior midline, measuring 4 x 2 cm. And exited at the left sub-mandibular region, 54 inches from heel, 4 cm. From anterior midline measuring 2 x 0.6 cm.
- Ligature mark around the neck measuring 0.5 cm.
- 8 stab or punctured wounds, oval in shape, in the base of the left lateral neck, supra and infra-clavicular region, with the average measurement of 0.3 x 0.5 cm.
- 51 stab or punctured wounds, evenly distributed in the entire abdomen, oval in shape and with the average measurement of 0.3 x 0.5 cm.

"INTERNAL FINDINGS:

- Lacerations of the sub-cutaneous tissues in the left cheek base of the left lateral neck, infra and supraclavicular regions. Three (3) stab or punctured wounds in the upper lobe of the left lung with massive bleeding in the left thoracic cavity.
- Injuries to the liver, stomach, spleen, small and large intestines, kidneys, inferior vena cava and abdominal aorta, with massive bleeding in the peritoneal cavity.
- About 1 ½ glassfuls of partially digested rice with meaty materials and without alcoholic odor was recovered from the stomach."

CAUSE OF DEATH: Multiple stab wounds and ligature strangulation."[3]

On August 16, 1994 an Information was filed against Marietta Patungan for parricide and against Elmerto Pulga and Edgar Acebuche for murder, to wit:

"The undersigned accuses MARIETTA PATUNGAN Y PULGA of the crime of PARRICIDE and EDGAR ACEBUCHE Y CERVITO and ELMERTO PULGA Y ACEBUCHE of the crime of MURDER, as committed as follows:

That on or about the 22nd day of May, 1994 in Quezon City, Philippines, the said accused, Marietta Patungan Y Pulga being the legal wife of victim ALEJANDRO PATUNGAN Y RANGEL, conspiring and confederating together with her co-accused EDGAR ACEBUCHE Y CERVITO and ELMERTO PULGA Y ACEBUCHE and another person whose true name, identity and whereabouts have not as yet been ascertained and helping one another, with intent to kill, evident premeditation, treachery and with the use of motor vehicle, did, then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of ALEJANDRO PATUNGAN Y RANGEL by then and there strangling him with an electric wire and stabbing him with a bladed weapon on the different parts of his body, thereby causing upon him multiple stab wounds which were the immediate and direct cause of his death thereafter, to the damage and prejudice of the heirs of the victim.

Contrary to law."[4]

On September 6, 1994 the three accused pleaded "not guilty" to the offense charged.[5]

In addition to the testimonies of Antonio and Antonia, the prosecution presented the extra-judicial confession of the accused Elmerto Pulga, the testimonies of the police officers who took the statement, of the lawyer from the Integrated Bar of the Philippines, Quezon City Chapter, Atty. Pedro Rudio, who allegedly assisted the accused Elmerto Pulga during the custodial investigation and of the medico-legal officer who conducted the autopsy. The extra-judicial confession[6] of accused Elmerto Pulga dated August 11, 1994 linked Marietta to the killing of her husband. It states as follows:

"T.

Bakit ka narito sa loob ng Integrated Bar of the Philippines, at nagbibigay ng malaya at kusang loob na salaysay?

S.

Ako po ay kusang sumuko sa mga pulis hinggil sa nalalaman ko sa pagkamatay ng aking bayaw na si ALEJANDRO PATUNGAN at kaya po ako'y nandito ay upang sabihin ko ang aking nalalaman at katotohanan sa mga pangyayari.

T.

Sino ba itong si ALEJANDRO PATUNGAN at kailan, saan ba siya namatay o pinatay?

S.

Siya po ay aking bayaw, asawa po siya ng aking kapatid na si MARIETTA PATUNGAN y PULGA at siya po ay pinatay ng ika 13 ng Mayo 1994, doon sa loob ng DAIHATSU VAN ng dalawang tao.

T. Anong oras ba ito naganap?

S. Humigit kumulang po sa alas 3:30 ng madaling araw ng petsa 23 ng Mayo 1994.

T. Papaano mong nalaman ang mga bagay na ito?

S.

Kaya ko po alam ang mga bagay na ito ay sapagkat kasama po ako dito sa pangyayaring ito, pero ito po ay nagawa ko lang dahil sa inutusan ako ng aking kapatid na si MARIETTA upang patayin ang aking bayaw dahil sa siya ay may kalaguyo na si JUNE ACEBUCHE na kaniyang kakutsaba at ang nakasama ko pa po dito ay ang aming pinsan na si EDGAR ACEBUCHE y Cervito na siyang sumaksak kay ALEJANDRO PATUNGAN.

T. Maari mo bang isalaysay sa akin ang mga buod ng pangyayaring to?

S.

Ako po ay kinausap ng aking kapatid na si MARIETTA ng mga buwan ng Nobyembre 1993 at ang sabi sa akin ay mayroon siyang problema sa buhay, at tinanong ko nga siya kung ano, ang sagot niya sa akin ay tungkol sa kaniyang kalaguyo na si JUNE ACEBUCHE at ang problema niyang talaga ay kung papaano silang magsasamang dalawa eh mayroong siyang asawa, (si ALEJANDRO PATUNGAN) at pilit niya akong kinukumbinsi na king maari ay iligpit ko si bayaw @ ALEX (ALEJANDRO) ayaw ko pong pumayag dahil sa takot po ako, pero tuwing magkikita kaming magkapatid ay lagi niya itong idinadaing sa akin at palagi na lang sinasabi na kung pwede ay patayin ko si ALEJANDRO na aking bayaw, at isang araw nga po ng buwan ng Abril 1994 ay kinausap na muli ako at sila na ngang pong dalawa na (MARIETTA AT JUNE ACEBUCHE) doon sa may JOLIBEE sa Farmers Plaza, Cuban, at pilit ng po akong sinasabihan na iligpit si bayaw dahil sa balakid ito sa kanila. At minsan pa sinabi sa akin ni MARIETTA na kung pwede ay magbayad na lang kami ng hired killer pero wala naman siyang pera kaya hindi ito natuloy, hanggang sabihin na lang niya sa akin na ako na lang ang gumawa at isama ko ang aming pinsan na si EDGAR ACEBUCHE. At ang plano ng po eh natuloy na, at kami nga eh nagpasya na yariin si bayaw ng ika 15 ng Mayo 1994, pero ito po ay hindi natuloy dahil sa may mga tao doon sa aming pinagbalakang lugar kaya ito po ay inulit namin sa utos na muli nina MARIETTA at JUNE kaya ng sumapit ang ika 22 ng Mayo 1994, doon kami pinapunta ni MARIETTA sa Flower shop sa Farmers Plaza Market, at binigyan pa nga kami niya ng pera at ang susi ng DAIHATSU VAN para pagpunta namin doon sa Calderon kung saan sila nakatira ay madali kaming makakapasok doon sa loob ng sasakyan. Dumating nga po kami doon sa Calderon at sumakay kami ni EDGAR ACEBUCHE doon sa loob at nagintay sa aking bayaw sa paglabas niya sa madaling araw, pero habang iniintay namin siya ay may dumaang isang pulang kotse at ng hindi nakadaan ay minabuti ko na lang na ilagay sa Hi-way ang Van sa utos ni EDGAR ACEBUCHE. Maya-maya nga po eh dumating na si ALEJANDRO PATUNGAN kasama ang aking kapatid na ang weapon namin sa utos niya (MARIETTA) na kapag dumating na sila ay uuwi siya kunyari sa kanila at maiiwan si bayaw, at ganun na nga ang nangyari, naiwan si bayaw doon sa labas hanggang sa magtungo na siya sa loob ng Van at nagulat pa nga siya ng makita kaming dalawa doon sa loob, pero nagtanong pa siya kung sasama kaming dalawa sa kanilang magasawa, at ang sabi ko naman ay oo, at ganun na nga, ng nakaupo na si bayaw sa manubela ay inatasan akong palihim ni EDGAR na sakalin ko si ALEJANDRO ng dala kong kable (Electric wire) at ganun na nga po ang ginawa ko, sinakal ko si alejandro at habang sakal ko siya, nagpapapalag ay sinaksak siya ni EDGAR ng isang beses sa tagilirang leeg, at ng hindi mamatay-matay at pinagsasaksak na niya ng todo (madaming beses) at nalugmok si bayaw ay agad na hinila ni

EDGAR sa bandang likuran ng Van at ako naman ay kaniyang inatasan na magmaneho at dadalin namin ang bankay sa Maynila (Sa DANGWA/DIMASALANG) ayon sa utos nina MARIETTA at JUNE ACEBUCHE na naayon sa plano nila, na papalabasin na itoy hinoldap sa pamimili ng bulaklak. At ganun na nga po, iniwan ko ang sasakyan sa may Don Quijote St, sa Maynila, (Sampaloc) at kami ni EDGAR ACEBUCHE ay umuwi na at naghiwalay lang kami sa aming bahay sa INC compound, Tangay and relo ni ALEJANDRO.

T. Kailan ka ba sumuko sa mga pulis?

S.

Ika 9 ng Agosto 1994 dahilan po sa nakukunsensiya ako sa mga pangyayaring ito na kakagawan ng aking kapatid at kalaguyo niya.

T.

Nais ko lang ipabatid sa iyo na sa iyoy walang sino mang pumilit, tumakot, o nangako ng ano mang bagay, upang gawin ang salaysay na ito, naiintindihan mo ba?

S. Opo, naiintindihan ko po."[7]

To establish the alleged motive in the killing of Alejandro, the prosecution also presented Adelaida Patungan, the sister of the deceased, who testified that her sister-in-law, the accused Marietta Patungan, had an affair with one of the helpers in the flower shop, who is her own cousin Jun Acebuche. Thus, witness stated that she saw the two eating together from the same plate and that she caught them holding hands. One time she saw Jun kiss Marietta. Her brother allegedly found out about the affair and dismissed Jun from work but he forgave Marietta for the sake of their children.[8]

The mother of the victim testified to establish the amount of funeral expenses incurred at P80,000.00, which amount the defense admitted.[9]

For the defense, accused Marietta Patungan admitted in court that she was with her husband at early dawn of May 23, 1994 and were on their way to buy flowers for their flower shop but she went back to their house to get a betamax tape and that her husband proceeded without her.[10] On August 9, 1994 she was invited by the police for questioning and that she was in fact questioned about her complicity in her husband's death at the police station without the assistance of counsel.[11] The other accused Edgar Acebuche denied participation in the murder of the victim and stated that sometime on August 8, 1994 he went to his cousin Marietta's flower shop in Cubao to look for a job when the police mistook him for Jun Acebuche and arrested him. He was also subjected to custodial investigation without the assistance of counsel.[12]

In court, accused Elmerto Pulga repudiated his extra-judicial confession and stated that he was coerced by the police to admit participation in the murder of Alejandro Patungan and to implicate his sister Marietta as mastermind and cousin Edgar as co-conspirator. He narrated that he was arrested at around 9 a.m., August 9, 1994 and that he was detained and tortured by electrocution by the police until the following day, August 10, 1994, when he agreed to sign a prepared document. On August 11, 1994 he was brought to the IBP office where he met Atty. Rudio who signed the prepared extra-judicial confession as counsel for the accused.[13] A motion to withdraw the plea of "not guilty" to the offense charged to a plea of "guilty" to a lesser offense i.e., homicide, was filed by counsel for the accused. The trial court denied the motion and treated it instead as a motion to recall the accused Elmerto Pulga for further testimony.[14] On recall, accused Elmerto Pulga, admitted stabbing the deceased three times until he fell unconscious, after which he lost control of himself and stabbed the victim some more. He found a rope and pulled the victim by the neck to the back of the van. He stated that he alone was responsible for the death of his brother-in-law.

The trial court upheld the validity of the extra-judicial confession and rendered judgment convicting the three accused guilty of the crime charged. The March 16, 1999 decision of the trial court reads as follows:

"WHEREFORE, the Court renders judgment finding all accused guilty beyond reasonable doubt as principal of the crime as charged, that is PARRICIDE for MARIETTA PATUNGAN and MURDER for accused ELMERTO PULGA and EDGAR ACEBUCHE, defined and penalized in Article 146 and Article 248, respectively, of the Revised Penal Code, as amended, with the attendant circumstances of treachery and evident premeditation alleged in the Information, sentencing them therefor to death, and ordering them to pay jointly and severally to the heirs of Alejandro Patungan the amount of Fifty Thousand (P50,000.00) Pesos as indemnity for death, Eighty Thousand (P80,000.00) Pesos as actual damages, and P50,000.00 as moral damages." [15]

The case is before us on automatic review.

Counsel for the appellants assigns as error the trial court's appreciation of the testimonies of the prosecution witnesses and its finding in favor of the validity of the extra-judicial confession executed by Elmerto Pulga.

The Medico-legal officer who conducted the autopsy on the victim at 7:00 p.m. of May 24, 1994 stated that considering the advanced stage of decomposition of the cadaver the victim must have been dead for thirty-six hours. Based on such findings it is submitted by the appellants that witnesses Antonio and Antonia could not have seen the deceased at 3:30 a.m. of May 23, 1994. The medical findings as to the approximate time of death and the injuries sustained by the victim are in accord with the testimony of Elmerto Pulga who admitted that he killed the victim at around 10:00 p.m. of May 22, 1994 and that he stabbed him thrice while he was seated at the driver's seat. In assailing the validity of the extra-judicial confession, the appellants contend that the trial court failed to appreciate the underlying admissions in the testimonies of SPO3 Villacorte and Atty. Rudio that the accused Pulga was in fact denied the assistance of counsel during custodial investigation. The appellants pray for the acquittal of accused Marietta Patungan and Edgar Acebuche and the conviction of accused Elmerto Pulga for the lesser offense of homicide.

The Solicitor-General filed appellee's brief praying for the affirmance of the decision of the trial court. It is maintained that the exact time of death of the victim is immaterial in view of the extra-judicial confession of Elmerto Pulga which dovetails with the findings in the autopsy report. What the appellee considers material is the timing when Marietta lured her husband into the van where the two co-conspirators were waiting to execute their murderous scheme. Appellee maintains that Elmerto Pulga's belated repudiation of his extra-judicial confession, his failure to present any evidence to support his claim of torture in the hands of his investigators and his apparent unwillingness to file any administrative charge against them militates against his claim that his extra-judicial confession was obtained through violence. The appellee asserts that confessions are presumed valid unless proven to have been obtained through violence, intimidation, threat or reward and that in view of the appellants' failure to prove any of the aforementioned circumstances that vitiate consent, the trial court did not err in upholding the validity of Pulga's extra-judicial confession.

Considering the totality of the evidence, it appears that the principal evidence presented by the prosecution to establish the alleged conspiracy among the appellants to commit murder is the extra-judicial confession of accused Elmerto Pulga. The rest of the evidence presented is at most circumstantial to establish motive and the presence of the appellants at or near the place of the commission of the crime.

Section 12 (1), Article III of the Constitution provides:

"Sec. 12(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 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.

(1)

No torture, force violence threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(2)

Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him."

An extra-judicial confession to be admissible in evidence must be express and voluntarily executed in writing with the assistance of an independent and competent counsel[16] and a person under custodial investigation must be continuously assisted by counsel from the very start thereof[17] The presence of counsel is intended to secure the voluntariness of the extra-judicial confession.[18] The presence of a lawyer alone, will not suffice to fulfill the requirement of the constitutional provision. The assistance of counsel must be independent and competent that is, providing full protection to the constitutional rights of the accused.[19] A lawyer who simply goes through the motion of reciting the rights of the accused, or acts as a witness to a pre-prepared document containing the extra-judicial confession of the accused or holds an interest contrary to that of the accused does not qualify as independent and competent counsel.[20]

To establish the validity of Pulga's extra-judicial confession, the police investigator PO3 Jovencio Villacorte testified that appellant Pulga voluntarily surrendered to the police and told them the whole story of how his younger sister appellant Marietta Patungan masterminded the murder of her husband to be able to marry her lover, and how he and his cousin appellant Edgar Acebuche accomplished Marietta's bidding.[21] Atty. Pedro Rudio of the IBP, Quezon City Chapter, who supposedly assisted Pulga during the taking of the extra-judicial confession, testified that Pulga expressed his consent to be assisted by said counsel and signified that his confession is voluntary. Atty. Rudio stated that he even raised Pulga's shirt to check if he had been subjected to physical violence and found none.[22]

However, a closer examination of the transcript of stenographic notes regarding Pulga's extra-judicial confession is rather disturbing. PO3 Villacorte testified as follows:

"Q.

And the person of Elmer Pulga was taken in custody or apprehended because that is the term used, arrested. That was the term used by Gacute on August 9, 1994, correct sir?

A. In our blotter, sir, it was August 10,

Q. August 10?

A. Yes, sir.

Q.

And it was on August 10 that you propounded questions to Elmer Pulga when he was referred to you by Gacute, correct, sir?

A. Yes, sir.

Q.

And do you know that once a suspect is arrested or surrendered for that matter, assuming that he surrendered, that custodial investigation will start immediately?

A. Yes, sir.

Q. Do you know that a person who is undergoing custodial investigation is entitled to counsel?

A. Yes, sir.

Q. Did you provide him with a counsel when you talked to him?

A.

No, sir. First of all, when I conducted the investigation on August 10, he denied to us because he pointed to us.... (emphasis supplied).

COURT:

Ang tinatanong kung may abogado?

WITNESS:

No, sir, Without any counsel.

ATTY. PRADO:

Q: Do you know that a person under custodial investigation is entitled to counsel to assist him?

A. yes, sir.

Q.

Why did you not provide or why did you not make it sure that this Elmer Pulga was assisted by counsel when you were conducting the custodial investigation on August 10, 1994?

PROSECUTOR BAUTISTA:

Objection, your Honor please, there is no showing that the police investigator, our witness, mentioned or investigated accused Elmerto Pulga on August 10. The questioning and interviewing was done in the office of the IBP on August 11 when he executed an extra-judicial confession.

COURT:

You answer.

A. Because when I questioned Elmer Pulga, he denied to us, sir. (emphasis supplied).

COURT:

Q. But did you give him a lawyer?

A. No, sir.

Q. How come that there was a lawyer assisting Elmerto Pulga? How come?

A.

Later in the morning when he tell us that he has already the evidence and then he is telling us the truth and then

later I brought him to IBP to get a counsel there.

Q. Who requested you to bring him to IBP?

A. The block commander including Pulga, your Honor.

Q. So, the IBP provided the accused a counsel?

A. Yes, your Honor.

Q. Did he object to the nomination given by IBP?

A. No, sir.

COURT?

Go ahead.

ATTY. PRADO:

Q.

So, in short, Mr. Witness, from August 10 up to 2:00 o'clock in the afternoon or August 11, 1994, accused Elmerto Pulga was not assisted by counsel more specifically of his own choice, correct, sir?

A. Yes, sir.

Q.

Do you know that once a person is under custodial investigation, he is immediately entitled to a counsel especially of his own choice?

A. Yes, sir.

Q.

And why did you not make it sure that from August 10 up to August 11 up to 2:00 o'clock in the afternoon considering that this Elmer Pulga was already under custodial investigation he was not provided with counsel?

A.

Because, as I said, when he surrendered, he lied to us. He said he will confess but he even pointed one alleged suspect."^[23]

Contrary to PO3 Villacorte's assertion that Pulga was taken into custody on August 10, 1994, the police officer who actually took all three appellants into custody, SPO2 Orlando Gacute, testified that the appellants were all "invited" to the police station on August 9, 1994 and that they were all subjected to custodial investigation without counsel.^[24] This means that the appellants, and appellant Pulga, in particular, were in police custody and subjected to custodial investigation for two and a half days without the assistance of counsel before he decided to confess. Villacorte himself admitted that Pulga at first did not want to confess and pointed to another suspect as the perpetrator of the crime. This statement negates the police's claim of voluntary surrender and places in serious doubt the voluntariness of Pulga's extra-judicial confession.

Pulga testified that he was arrested on August 9, 1994. He narrated in court that during custodial investigation he was blindfolded with hands tied behind him and was electrocuted by the police investigators while he was either sitting on a steel bar or had a piece of wet cloth placed on his feet, to compel him to admit commission of the crime charged. He simply cried and could not do anything else but to accede to his tormentors' demand. He stated

that he signed a pre-prepared document at the precinct before he was taken to the IBP office near the Sulo Restaurant in Quezon City on August 11, 1994.[25] He explained that he narrated his ordeal only for the first time in court because he could not complain to the IBP lawyer, the fiscal nor to the medical officer out of fear of his police investigators and when he was taken to a medical officer for examination, the police escort answered the questions for him. None of his relatives visited him in jail and he only saw his lawyer in court.[26] Until he was brought to court he had no one to confide to and he was at the mercy of the police investigators while he was detained at the Quezon City Jail.[27] As a detention prisoner he was always escorted by the police when he was before the IBP lawyer, the fiscal and the medical officer and Pulga did not find the opportunity to complain to the authorities. To our mind, appellant Pulga's fear of his police escorts is well founded and his delay in revealing what he underwent during custodial investigation does not cast doubt on its veracity, as the prosecution suggests.

We also note from the above testimonies that it was only after appellant Pulga verbally confessed at the police precinct, without the assistance of counsel, when he was brought to the IBP office allegedly for the actual transcription of his confession in writing in the presence of a lawyer. It would appear to us that whatever statement Pulga allegedly gave to the police for transcription in the presence of counsel is the product of two and a half days of coercive and uncounselled custodial investigation. We are inclined to believe that when he was brought to the IBP office his body and his will were in no position to raise any objection much less to complain to the IBP lawyer about what he has gone through. The situation was not at all alleviated by the counsel who was supposed to assist Pulga at the taking of the extra-judicial confession. Said lawyer admitted that he was working on an appeal in another case two to three meters away from the police investigator who was then taking Pulga's statement. He stated that he was "not totally concentrated on the appealed case because he could still hear the investigation being conducted then." [28] Villacorte testified that while he was taking Pulga's statement the IBP lawyer was working on something else using two other tables four meters apart.[29] The mere presence of a lawyer is not sufficient compliance with the constitutional requirement of assistance of counsel. Assistance of counsel must be effective, vigilant and independent.[30] A counsel who could just hear the investigation going on while working on another case hardly satisfies the minimum requirements of effective assistance of counsel. Not only was Pulga subjected to custodial investigation without counsel, he was likewise denied effective assistance of counsel during the actual taking of his extra-judicial confession.

For the reasons above stated, We find that the extra-judicial confession of appellant Elmerto Pulga is inadmissible in evidence for having been obtained without effective assistance of counsel.

The other pieces of evidence presented by the prosecution fail to establish the charge of conspiracy among the appellants to murder the deceased. The prosecution relied heavily on Pulga's extra-judicial confession but the rest of the evidence presented fail to satisfy the required quantum of proof to establish conspiracy. The prosecution evidence simply establishes the presence of Pulga and Acebuche near or at the place where the victim was last seen alive. It is observed that Antonio and Antonia allegedly saw Pulga and Acebuche inside the van at around 10:00 p.m. and that the victim was last seen with Marietta at around 3:30 a.m. the following morning. There is no proof that Pulga and Acebuche were still inside the van at 3:30 a.m. and the only circumstance that might indicate that Marietta may have lured her husband to go inside the van to enable Pulga and Acebuche to kill him that morning was her alleged motive to get rid of her husband to marry her lover. It is on record that Marietta and her husband run a flower shop and it is not uncommon, much less suspicious, for them to buy flowers before dawn.[31] The estimated time of death of the victim is nothing but such, an estimate. Due to the advanced stage of decomposition of the body of the victim when it was autopsied at around 7:00 p.m. of May 24, 1994, the medico-legal officer who conducted the autopsy testified that the victim must have been dead for about thirty-six hours.[32]

In an apparent attempt to show Marietta's implied admission of guilt, the prosecution presented one of the police officers who "invited" the appellants for questioning who testified that appellant Marietta tried to commit suicide after the investigation, i.e., that Marietta stabbed herself with a Batangas knife in the bathroom at the police precinct when she found out that her brother Elmerto pointed to her as the mastermind of the murder of her husband.[33] However, no medical record was presented to substantiate this testimony and we note that the police officer did not testify that he saw Marietta stab herself. Marietta denied that she tried to commit suicide and testified that she woke up in the hospital.[34] Whether or not she stabbed herself is not proven by the prosecution and can by no means be considered as an implied admission of guilt of appellant Marietta. We may add that even if she did attempt to commit suicide a female suspect under custodial investigation in a police-dominated atmosphere and without the assistance of counsel, Marietta cannot be expected to act rationally.

The evidence as it stands, without the extra-judicial confession of appellant Pulga, is not sufficient to support conviction for parricide against appellant Marietta nor for murder against appellant Acebuche. For this reason we are constrained to acquit them of the crimes charged.

Only the judicial admission of Elmerto Pulga remains on record for consideration of the court. He testified as follows:

"Q:

When you said you agreed to leave at 10:00 o'clock in the evening on May 22, 1994, what did you actually do with your brother-in-law then?

A:

I was the one driving the car in going to Dangwa and while the car was running he told me, "Bakit ka nakikialam pag sinasaktan ko ang asawa ko. Nakikisali ka."

Q: Aside from you brother-in-law, who was with you then in that van you were driving?

A: We were only two.

Q:

What happened after your brother-in-law told you that statement, "Bakit ka nakikialam pag sinasaktan ko ang asawa ko. Nakikisali ka."

A: Nauwi po yan sa pagtatalo dahil ayaw siyang pumayag sa aking paliwanag.

Q: After that pagtatalo or verbal tussle, what happened next?

A:

When we arrived at Dangwa, I turned over the key to him and I told him that, "Ikaw na lang ang umuwi." And after that, my brother-in-law got a screwdriver and stabbed me and I was able to grapple.

Q: After that, when you were able to grapple that screwdriver from your brother-in-law, what did you do?

A: I stabbed him, sir.

Q: How many times, Mr. Witness?

A:

Three times. After I stabbed him three times, I remember what he was doing to my sister and "nawala ako sa aking sarili."

Q:

Are you telling the court, Mr. Witness that you recall having stabbed your brother-in-law three times and the rest you do not know anymore?

A:

I cannot remember, sir how many times I stabbed him. "[35]

ON CROSS-EXAMINATION, Pulga testified:

Q: How many times did you stab Alejandro Patungan?

A: Three times, I stabbed him and then after he fell unconscious, I was not able to control myself.

Q: And so after stabbing him three times you left the place?

A: No, ma'am. I lost control and "binanatan ko siya ng binanatan."

Q: And you kept stabbing him?

A: Yes, ma'am.

Q: And then you left the place, the premises?

A: And I saw a rope that I put around his neck and pulled him back.

Q: So which occurred first, the stabbing or the strangulation?

A: The stabbing, ma'am. "[36]

Pulga's admission that he stabbed the victim thrice coincides with the autopsy report that the victim sustained three stab wounds. Pulga's statement that he was seated at the driver's seat while the victim sat at the passenger's seat which means that Pulga was at the left side of the victim also coincides with the medical finding which states that the stab wounds, except those on the victim's abdomen, were all on the left side of the body of the victim. The prosecution tried to establish the impossibility of Pulga pulling the victim by himself to the back of the van but no competent evidence was presented to prove the theory. The autopsy report reveals that the victim was 63 inches tall[37] and Pulga testified that he stands 5 feet 4 inches tall.[38] The alleged impossibility was not proven by the prosecution with moral certainty. At any rate, we hold that there is no other evidence on record to show that Pulga was not alone in the commission of the crime.

Pulga's admission can be sustained but he cannot be convicted for murder in the absence of proof of any of the qualifying circumstances alleged in the information, i.e., treachery and evident premeditation. The number of stab wounds sustained by the victim, fifty-one in the abdomen and three in the upper part of his body, by itself is not aggravating unless it was shown, and it was not herein shown, to have been intentionally inflicted to add suffering to the victim.[39] On the contrary, Pulga testified that he countlessly stabbed the victim after he fell unconscious. Accordingly, Pulga is hereby convicted of homicide and to suffer the penalty of reclusion temporal.[40] In the absence of any mitigating or aggravating circumstance, the said penalty is to be imposed in its medium period[41] of 14 years, 8 months and 1 day to 17 years and 4 months.

This court is not blind to the suffering of the victim's family arising from his untimely death, but we are bound to uphold the constitutional rights of the accused. Let this be a stern lesson to the police authorities and to the prosecution to perform their sworn tasks with utmost regard to the mandates of the Constitution. Criminals cannot be apprehended, prosecuted and punished under the law by resorting to non-legal means.

WHEREFORE, appellants Marietta Patungan and Edgar Acebuche are acquitted of the crimes charged against them and the judgment of conviction rendered by the trial court is hereby reversed and set aside. The judgment of conviction for murder against appellant Elmerto Pulga is hereby likewise set aside and a new one entered convicting him of the crime of homicide, and imposing the indeterminate penalty of 10 years of prision mayor in its medium period, as minimum to 17 years and 4 months of reclusion temporal in its medium period, as maximum. This Court affirms the pecuniary awards given by the trial court and orders the appellant Pulga to pay the heirs of the victim the sum of P50,000.00 as indemnity for death, P80,000.00 for actual damages and P50,000.00 for moral damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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- [1] Eluzon, tsn., pp. 22-26, October 10, 1994; Altarejos, tsn., pp. 5-10, October 11, 1994.
- [2] Eluzon, *ibid.*, pp. 31-34; Altarejos, *ibid.*, pp. 13-14.
- [3] Exhibit "E", p. 7, Folder of Exhibits; Dr. Lagonera, tsn., pp. 3-6, October 10, 1994.
- [4] Rollo, p. 53.
- [5] Rollo, p. 23-24.
- [6] Folder of Exhibits, p. 4, marked as "Exh. 1".
- [7] Folder of Exhibits, pp. 3-4.
- [8] Tsn., November 14, 1994, pp. 13-17.
- [9] Tsn., September 26, 1994, p. 3.
- [10] Tsn., October 7, 1996, p. 28.
- [11] *Ibid.*, pp. 34-38.
- [12] Tsn., October 13, 1997, p. 10.
- [13] Tsn., July 17, 1995, pp. 10-17; March 18, 1996, pp. 7-10.
- [14] Tsn., November 4, 1997, p. 5.
- [15] Rollo, p. 53.
- [16] *People vs. Calvo, Jr.*, 269 SCRA 676.
- [17] *People vs. Dela Cruz*, 279 SCRA 245.
- [18] *People vs. Andal*, 279 SCRA 474.
- [19] *People vs. Januario*, 267 SCRA 608.
- [20] *People vs. Binamira*, 277 SCRA 232; *People vs. Dela Cruz*, *supra.*; *People vs. Espanola*, 271, SCRA 689.
- [21] Tsn., October 3, 1994, pp. 5-6.

- [22] Tsn., September 27, 1994, pp. 7-12.
- [23] Tsn., October 3, 1994, pp. 22-27.
- [24] Tsn., September 26, 1994, pp. 5-9.
- [25] Tsn., March 18, 1996, pp. 9-10; October 7, 1996, p. 8.
- [26] Tsn., August 1, 1995, pp. 4-13.
- [27] Appellant Pulga was later transferred to MMRC in Bicutan, p. 81, OR.
- [28] Tsn., September 27, 1994, pp. 8, 49.
- [29] Tsn., October 3, 1994, pp. 49-50.
- [30] People vs. Sahagun, June 19, 1997.
- [31] Tsn., October 17, 1994, pp. 7-8; November 14, 1994, p. 7; October 7, 1996, pp. 26.
- [32] Tsn., October, 10, 1994, p.11.
- [33] Tsn., September 26, 1994, pp. 5-7.
- [34] Tsn., October 7, 1996, pp. 39-40.
- [35] Tsn., December 15, 1997, pp. 9-11.
- [36] Tsn., January 12, 1998, pp. 5-6.
- [37] Folder of Exhibits, p. 7.
- [38] Tsn., January 12, 1998, p. 6.
- [39] Reyes, Revised Penal Code, Book I, pp. 456-457, 1998 ed.
- [40] Art. 248, RPC.
- [41] Art. 64, (1), RPC.

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