

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN SAYABOC Y SEGUBA, PATRICIO ESCORPISO Y VALDEZ, MARLON BUENVIAJE Y PINEDA, AND MIGUEL BUENVIAJE Y FLORES, APPELLANTS.

G.R. No. 147201. January 15, 2004

Ponente: DAVIDE JR., CJ.

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DAVIDE JR., CJ.:

Before us is the decision of 9 November 2000 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27, in Criminal Case No. 2912 finding appellant Benjamin Sayaboc guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of death; and (2) finding appellant Marlon Buenviaje guilty as principal and appellants Miguel Buenviaje and Patricio Escorpiso guilty as accomplices in the crime of homicide.

On 17 April 1995, an information was filed charging Benjamin Sayaboc, Patricio Escorpiso, Marlon Buenviaje, and Miguel Buenviaje with murder, the accusatory portion of which reads as follows:

That on or about December 2, 1994, in the Municipality of Solano, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, and who were then armed with a firearm, did then and there willfully, unlawfully and feloniously with evident premeditation, by means of treachery and with intent to kill, attack, assault and use personal violence upon the person of Joseph Galam y Antonio, by then and there suddenly firing at the said Joseph Galam y Antonio who has not given any provocation, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death thereafter, to the damage and prejudice of his heirs.[1]

At their arraignment, appellants Benjamin Sayaboc, Patricio Escorpiso, and Miguel Buenviaje pleaded not guilty to the charge of murder. Marlon Buenviaje, who was arrested only on 10 July 1997, also pleaded not guilty upon his arraignment.

The evidence for the prosecution discloses as follows:

At about 9:00 a.m. of 13 August 1994, while prosecution witness Abel Ramos was at a vulcanizing shop in Barangay Quezon, Solano, Nueva Vizcaya, he heard one Tessie Pawid screaming from across the road: “Enough, enough, enough!” In front of her were Marlon Buenviaje and Joseph Galam, who were engaged in a fisticuff. By the time Pawid was able to subdue the two men by standing between them and embracing Galam, Buenviaje’s face was already bloodied and Galam’s shirt collar torn. As Buenviaje was leaving, he turned to face Galam and, with his right index finger making a slicing motion across his throat, shouted: “Putang-ina mo Joseph, may araw ka rin, papatayin kita.” Galam retorted, “Gago, traydor, gold digger, halika.” Buenviaje did not respond anymore and left on a tricycle.[2]

More than three months thereafter, or on 2 December 1994, Galam was shot to death at the Rooftop Disco and Lodging House (Rooftop, for short) owned by him, which was located at Barangay Quezon, Solano, Nueva Vizcaya.

According to a waitress of the Rooftop Diana Grace Sanchez Jaramillo, earlier or at 3:00 p.m. of that fateful day, a man whom she later identified as Benjamin Sayaboc rang the doorbell of the Rooftop and asked whether a woman wearing a green t-shirt had checked in. She answered in the negative. As she was about to leave, Sayaboc asked another question, "What time does your bosing arrive?" She replied that she did not know. She then went to the second floor of the establishment.[3]

Tessie Pilar, the caretaker of the lodging house, narrated that between 5:30 and 5:45 p.m. Sayaboc, who was still seated in the swing beside the information counter with his hands tucked in the pocket of his jacket, ordered a bottle of beer. She then went up to the kitchen, but was delayed in delivering the beer because she gave some instructions to the dishwasher. When she gave the beer to Benjamin, the latter was angry and asked why it took her so long to bring the beer. Thereafter, she went upstairs and chatted with Jaramillo and some other waitresses. Then the vehicle of Joseph Galam arrived.[4]

Shortly thereafter, they heard four gunbursts emanating from the ground floor of the building. When Jaramillo looked down, she saw Sayaboc shooting Galam, causing the latter to fall to the ground face up, with blood spurting out of his chest. Sayaboc forthwith ran out and disappeared into the darkness.[5]

Meanwhile, at about 5:30 p.m. of that fateful day, as Joselito Parungao, Chief Barangay Tanod of Barangay Quezon, Solano, Nueva Vizcaya, was on his way to the Kowloon Restaurant located along the national road, he saw Marlon Buenviaje with his father Miguel Buenviaje and Patricio Escorpiso. The three were aboard a tricycle parked in a vacant lot between the Rooftop and Diego Theater. The younger Buenviaje was on the driver's seat, while the older Buenviaje and Escorpiso were inside the sidecar. Parungao ordered pancit bihon. While he was waiting outside of the restaurant, he noticed that the tricycle was still parked in the vacant lot, and the three occupants thereof were talking with each other. After getting his order and while he was getting out of the restaurant, Parungao heard four gunshots coming from behind the Rooftop building. He thereafter saw a person, whom he later came to know as Benjamin Sayaboc, walking briskly toward the tricycle and then rode behind Marlon Buenviaje. Afterwards, the tricycle sped off towards the center of the town.[6]

The employees of the Rooftop lost no time in bringing Galam to a hospital, where he was declared dead on arrival.[7] Dr. Antonio R. Labasan, who conducted an autopsy on his cadaver, found four gunshot wounds and opined that the first two of which were inflicted from behind and the last two were frontal.[8]

That evening, SPO4 Roberto Cagungao, Chief Investigator of the Solano Police Station, assigned some investigators to go to the scene of the crime to gather evidence. At about 10:00 to 11:00 p.m., he and Lt. Alejandro Parungao brought Pilar and Jaramillo to the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City. Pilar and Jaramillo were interviewed by the cartographic artist, who thereafter drew a cartographic sketch showing the face of the assailant.[9]

On 8 March 1995, Pilar and Jaramillo identified Benjamin Sayaboc at the PNP Provincial Headquarters in Bayombong as the gunman who shot Joseph Galam to death.[10]

On the afternoon of that day, SPO4 Cagungao was called to the Provincial Command Headquarters in Bayombong, Nueva Vizcaya, to take the statement of Sayaboc. When he arrived at the headquarters he saw Sayaboc being interviewed by reporters inside the investigation room. He then brought Sayaboc to the inner part of the room. Before taking the statement of Sayaboc, he advised the latter of his constitutional rights. Then Sayaboc told him that he wanted to have a counsel of his own choice. But since Sayaboc could not name one, Cagungao asked the police officers to get a lawyer. Half an hour later, the police officers brought Atty. Rodolfo Cornejo of the PAO, who then conferred with Sayaboc for a while. After Cagungao heard Sayaboc say, "okay," he continued the investigation, during which Atty. Cornejo remained silent the entire time. However, Cagungao

would stop questioning Sayaboc whenever Atty. Cornejo would leave to go to the comfort room.[11] That night Sayaboc executed an extrajudicial confession[12] in Ilocano dialect. He therein confessed to killing Joseph Galam at the behest of Marlon Buenviaje for the sum of P100,000. He likewise implicated Miguel Buenviaje and Patricio Escorpiso. The confession was also signed by Atty. Cornejo and attested to by one Fiscal Melvin Tiongson.

At the hearing on 22 June 1999, after the prosecution rested its case, 1counsel for accused Mike Buenviaje, Marlon Buenviaje and Patricio Escorpiso manifested that he be given fifteen days to file a motion for leave to admit demurrer to the evidence.[13] The trial court acceded. But instead of filing such motion first, he filed a Demurrer to Evidence on 12 July 1999.[14] The motion for leave to file the pleading was filed the next day only.[15]

The trial court denied the demurrer to evidence in an order[16] issued on 16 August 1999. Further, it ruled that because of they did not seek nor were granted express leave of court prior to their filing of the demurrer to evidence, the Buenviajes and Escorpiso were deemed to have submitted their case for judgment in accordance with Section 15, Rule 119 of the Rules of Court. Thus, only Sayaboc was allowed to proceed with the presentation of his defense.

Sayaboc denied having committed the crime and proffered the defense of alibi. He also flatly denied having met Atty. Cornejo or having been informed of his rights. He testified to having been beaten by six or seven police officers in the investigating room, who then coerced him to confess to having killed Galam.[17] Apart from his testimony, he submitted a handwritten statement dated 20 March 1995[18] and an affidavit dated 10 April 1995[19] to support his claim of police brutality and retraction of his confession.

In its decision dated 9 November 2000,[20] the trial court found Benjamin Sayaboc guilty of the crime of murder, with treachery as the qualifying circumstance and craft and price or reward as aggravating circumstances. It then sentenced him to the maximum penalty of death. As for Marlon Buenviaje, Miguel Buenviaje, and Patricio Escorpiso, the court held that the treachery employed by Sayaboc could not be taken against them and, therefore, declared them guilty of the crime of homicide only, with the first as principal and the two others as accomplices. Each was sentenced to suffer an indeterminate penalty and to pay solidarily with Sayaboc the amounts of P115,000 as actual damages; P25,000 as moral damages; and the costs of the suit in favor of the heirs of Joseph Galam.

From this decision, the appellants raise the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT SAYABOC GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND SENTENCING HIM TO DEATH.

II

ASSUMING ARGUENDO THAT ACCUSED SAYABOC IS GUILTY, HE IS GUILTY ONLY OF THE CRIME OF HOMICIDE.

III

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE EXTRAJUDICIAL CONFESSION OF ACCUSED SAYABOC WHEN IT WAS TAKEN WITHOUT THE ASSISTANCE OF A COMPETENT AND INDEPENDENT COUNSEL NOR BY AN EFFECTIVE AND VIGILANT COUNSEL.

IV

THE TRIAL COURT ERRED IN FINDING FATHER AND SON BUENVIAJE AND ACCUSED

ESCORPISO LIKEWISE GUILTY WHEN IT DENIED THEM THEIR CONSTITUTIONAL RIGHT TO BE HEARD BY THEMSELVES AND COUNSEL AFTER THEY FILED THEIR DEMURRER TO EVIDENCE ALLEGEDLY WITHOUT FIRST SEEKING EXPRESS LEAVE OF COURT.

In the first and second assigned errors, the appellants contend that the crime committed by Sayaboc was homicide only, there being no proof of treachery because the two eyewitnesses did not see the commencement of the shooting. Besides, treachery, as well as evident premeditation, was not specifically designated as a qualifying circumstance in the information. Neither can the aggravating circumstances of craft and price or reward be appreciated because they were not alleged in the information, albeit proved during trial. Sections 8 and 9 of Rule 110 of the 2000 Rules of Criminal Procedure, which require aggravating and qualifying circumstances to be alleged in the information, are beneficial to the accused and should, therefore, be applied retroactively.

As to the third assigned error, the appellants argue that the extrajudicial confession of Sayaboc may not be admitted in evidence against him because Atty. Cornejo, the PAO lawyer who was his counsel during the custodial investigation, was not a competent, independent, vigilant, and effective counsel. He was ineffective because he remained silent during the entire proceedings. He was not independent, as he was formerly a judge in the National Police Commission, which was holding court inside the PNP Command of Bayombong, Nueva Vizcaya.

Finally, appellants Marlon Buenviaje, Miguel Buenviaje, and Patricio Escorpiso claim that they were denied due process because they were not able to present evidence in their defense. They ask this Court to relax the rule of criminal procedure in favor of enforcing their constitutional right to be heard by themselves and counsel.

On the other hand, the Office of the Solicitor General (OSG) maintains that Sayaboc's extrajudicial confession that he shot the victim in the back is adequate proof of treachery. Invoking *People v. Aquino*,^[21] the OSG contends that for treachery to be considered as a qualifying circumstance, it needs only to be specifically alleged in the information and does not have to be preceded by the words qualifying or qualified by. As to the proven circumstances of craft and price or reward, the same cannot be appreciated because they were not specifically alleged in the information, as required by the 2000 Rules of Criminal Procedure, which are applicable to actions that are pending and undetermined at the time of their passage.

The OSG further asserts that Sayaboc's extrajudicial confession is admissible in evidence against him, since it was made after he was informed of, and accorded, his constitutional rights, particularly the right to an independent counsel of his own choice. No evidence was adduced during the trial to substantiate the claim that Atty. Cornejo used to be connected with the NAPOLCOM. Moreover, this claim was made for the first time in this appeal, and was based merely on an information furnished by defense counsel Atty. Virgil Castro (now deceased) to Sayaboc's counsel in this appeal, which makes the said information hearsay twice removed.

As to the fourth assigned error, the OSG counters that no exceptional circumstance exists in this case that may warrant the relaxation of the rule that the denial of a unilateral demurrer to evidence carries with it a waiver of the accused's right to present evidence.

Beginning with the admissibility of Sayaboc's extrajudicial confession, we hold that such cannot be used in evidence in this case.

Section 12 of Article III of the 1987 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 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.

...

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.

Jurisprudence provides that extrajudicial confessions are presumed to be voluntary.[22] The condition for this presumption, however, is that the prosecution is able to show that the constitutional requirements safeguarding an accused's rights during custodial investigation have been strictly complied with, especially when the extrajudicial confession has been denounced. The rationale for this requirement is to allay any fear that the person being investigated would succumb to coercion while in the unfamiliar or intimidating environment that is inherent in custodial investigations. Therefore, even if the confession may appear to have been given voluntarily since the confessant did not file charges against his alleged intimidators for maltreatment,[23] the failure to properly inform a suspect of his rights during a custodial investigation renders the confession valueless and inadmissible.[24]

In this case, contrary to SPO4 Cagungao's claim that he conferred with Sayaboc for half an hour informing him about his constitutional rights, the extrajudicial confession provides only the following:

PRELIMINARY:

I would like to inform you Mr. Sayaboc that questions will be asked to you regarding an incident last December 2, 1994 at the Rooftop, Brgy. Quezon, Solano, Nueva Vizcaya, in connection with the shooting of Joseph Galam, owner of the said Disco House as a result of his death. Before questions will be asked [of] you I would like to inform you about your ri[g]hts under the new Constitution of the Philippines, as follows: That you have the right to remain silent or refuse to answer the questions which you think will incriminate you; That you have the right to seek the services of a counsel of your own choice or if not, this office will provide you a lawyer if you wish.

QUESTIONS:

After informing you all your constitutional rights, are you willing to give your true statement regarding the death of Joseph Galam?

ANSWER:

Yes, sir.

QUESTIONS:

Do you want to get a lawyer to assist in this investigation?

ANSWER:

Yes, sir. I want to seek the assistance of Atty. Rodolfo Cornejo.

QUESTIONS:

Atty. Rodolfo Cornejo is here now, do you want him to assist you in this investigation?

ANSWER:

Yes, sir.[25]

Apart from the absence of an express waiver of his rights, the confession contains the passing of information of the kind held to be in violation of the right to be informed under Section 12, Article III of the Constitution. In

People v. Jara,[26] the Court explained:

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

The right to be informed requires “the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.”[27] It should allow the suspect to consider the effects and consequences of any waiver he might make of these rights. More so when the suspect is one like Sayaboc, who has an educational attainment of Grade IV, was a stranger in Nueva Vizcaya, and had already been under the control of the police officers for two days previous to the investigation, albeit for another offense.

We likewise rule that Sayaboc was not afforded his constitutional right to a competent counsel. While we are unable to rule on the unsubstantiated claim that Atty. Cornejo was partial to the police, still, the facts show through the testimonies of Sayaboc and prosecution witness SPO4 Cagungao that Atty. Cornejo remained silent throughout the duration of the custodial investigation. The trial court attributed the silence of Atty. Cornejo to the garrulous nature and intelligence of Sayaboc, thus:

As already stated, Sayaboc was a garrulous man and intelligent. It was in his character for him to want to be a central figure in a drama, albeit tragic – for others. He would do what he wanted to do regardless of the advice of others. Hence, Atty. Cornejo could only advise him of his constitutional rights, which was apparently done. The said counsel could not stop him from making his confession even if he did try.[28]

We find this explanation unacceptable. That Sayaboc was a “garrulous” man who would “do what he wanted to do regardless of the advice of others” is immaterial. The waiver of a right is within the rights of a suspect. What is lacking is a showing, to the satisfaction of this Court, of a faithful attempt at each stage of the investigation to make Sayaboc aware of the consequences of his actions. If anything, it appears that Sayaboc’s counsel was ineffectual for having been cowed by his client’s enthusiasm to speak, or, worse, was indifferent to it.

The right to a competent and independent counsel means that the counsel should satisfy himself, during the conduct of the investigation, that the suspect understands the import and consequences of answering the questions propounded. In People v. Deniega,[29] we said:

The desired role of counsel in the process of custodial investigation is rendered meaningless if the lawyer merely gives perfunctory advice as opposed to a meaningful advocacy of the rights of the person undergoing questioning. If the advice given is so cursory as to be useless, voluntariness is impaired.

This is not to say that a counsel should try to prevent an accused from making a confession. Indeed, as an officer of the court, it is an attorney’s duty to, first and foremost, seek the truth. However, counsel should be able, throughout the investigation, to explain the nature of the questions by conferring with his client and halting the investigation should the need arise. The duty of a lawyer includes ensuring that the suspect under custodial investigation is aware that the right of an accused to remain silent may be invoked at any time.

We understand the difficulty and frustration of police investigators in obtaining evidence to bring criminals to justice. But even the hardest of criminals have rights that cannot be interfered with. Those tasked with the enforcement of the law and who accuse those who violate it carry the burden of ensuring that all evidence obtained by them in the course of the performance of their duties are untainted with constitutional infirmity. The purpose of the stringent requirements of the law is to protect all persons, especially the innocent and the weak,

against possible indiscriminate use of the powers of the government. Any deviation cannot be tolerated, and any fruit of such deviation shall be excluded from evidence.

For these reasons, the extrajudicial confession of Sayaboc cannot be used in evidence against him. We hold, however, that the prosecution has discharged its burden of proving his guilt for the crime of homicide.

From the records of the case, there can be no doubt that Sayaboc shot and killed Galam in the early evening of 2 December 1994. He was seen waiting at the Rooftop from 3:00 to 6:00 p.m. of that day, shooting Galam shortly after the latter's arrival, and fleeing from the scene of the crime to a waiting tricycle. Credible witnesses described Sayaboc's appearance to the police soon after the shooting incident and prepared affidavits about the incident. They identified Sayaboc at the police station while he was in custody, during the preliminary investigation, and, again, in open court. Such positive identification constitutes more than sufficient direct evidence to uphold the finding that Sayaboc was Galam's killer. It cannot just be rebutted by Sayaboc's bare denial and weak alibi.

Appellants' claim that the information against them is insufficient for failure to specifically state that treachery and evident premeditation were qualifying circumstances holds no water. In *People v. Aquino*,^[30] we held that even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as qualifying or qualified by to properly qualify an offense. Nevertheless, from our review of the case, we find that neither evident premeditation nor treachery has been sufficiently proved to qualify the crime to murder.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Thus, two conditions must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means, method or form of attack employed by him. For treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack. Where no particulars are known as to how the killing began, its perpetration with treachery cannot merely be supposed.^[31]

In this case, the trial court concluded that the fact that the witnesses did not hear any shout or conversation between the assailant and the victim immediately before the attack could only mean that Sayaboc had approached his victim through stealth.^[32] While not improbable, that conclusion is merely an inference. The fact remains that none of the witnesses testified as to how the aggression began. The witnesses testified having heard four shots, the last two of which were seen as having been fired while Sayaboc was facing Galam. The autopsy conducted by Dr. Labasan reveals two frontal wounds at the thigh and the shoulder, and two wounds on the right side of Galam's back. Although it is plausible that the initial shots were fired from behind, such inference is insufficient to establish treachery.^[33]

Neither can we appreciate evident premeditation as a qualifying circumstance. Evident premeditation exists when it is shown that the execution of a criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent. The requisites of evident premeditation are (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.^[34]

Without the extrajudicial confession narrating when Sayaboc was hired to kill Galam, the testimony that the former inquired about the latter while waiting in the Rooftop from 3:00 p.m. to 6:00 p.m. of that fateful day does not prove the time when Sayaboc decided to kill Galam. Settled is the rule that when it is not shown how and

when the plan to kill was hatched or what time had elapsed before that plan was carried out, evident premeditation cannot be considered.[35]

The aggravating circumstances of craft and price or reward, even if proved, can neither be considered because they were not specifically alleged in the information. Section 8, Rule 110 of the 2000 Revised Rules of Criminal Procedure requires that the information specify the aggravating circumstances attending the commission of the crime for it to be considered in the imposition of penalty. This requirement is beneficial to an accused and may, therefore, be given retroactive effect.[36]

Thus, appellant Benjamin Sayaboc can be found guilty of the crime of homicide only, which is punishable by reclusion temporal. There being no mitigating or aggravating circumstances appreciated for or against him, the penalty to be imposed upon him should be in the medium period. Applying the Indeterminate Sentence Law, he should be meted a penalty whose minimum is within the range of prision mayor and whose maximum is within the range of reclusion temporal in its medium period.

We cannot subscribe to the contention of appellants Marlon Buenviaje, Miguel Buenviaje, and Patricio Escorpiso that the case should be remanded to the trial court because they were denied the right to be heard by the trial court. It must be remembered that their demurrer to evidence filed on 12 July 1999 was without prior leave of court. The motion for leave to file the said pleading was filed only the next day. The filing of the demurrer was clearly without leave of court. The trial court, therefore, correctly applied the rule on demurrer to evidence found in Section 15, Rule 119 of the 1985 Rules of Criminal Procedure when it disallowed the abovementioned appellants to present evidence on their behalf.

The filing of a demurrer to evidence without leave of court is an unqualified waiver of the right to present evidence for the accused.[37] The rationale for this rule is that when the accused moves for dismissal on the ground of insufficiency of evidence of the prosecution evidence, he does so in the belief that said evidence is insufficient to convict and, therefore, any need for him to present any evidence is negated. An accused cannot be allowed to wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience. The purpose behind the rule is also to avoid the dilatory practice of filing motions for dismissal as a demurrer to the evidence and, after denial thereof, the defense would then claim the right to present its evidence.[38]

The trial court, therefore, correctly applied Section 15, Rule 119 of the 1985 Rules of Criminal Procedure on demurrer to evidence when it disallowed the abovementioned appellants to present evidence on their behalf. They cannot now claim that they were denied their right to be heard by themselves and counsel.

On the basis of the evidence for the prosecution, we find the existence of conspiracy between Marlon Buenviaje and Sayaboc.

It has been held that price or reward is evidence of conspiracy.[39] But the same was not established by competent proof in this case. The extrajudicial confession[40] and the newspaper reports[41] adduced by the prosecution, which both contained Sayaboc's statement pointing to Marlon Buenviaje as the one who paid him P100,000 to kill Galam, are inadmissible in evidence. The first, as earlier stated, was executed in violation of Sayaboc's constitutional rights. The second are hearsay, since the authors of such reports were not presented as witnesses to affirm the veracity thereof.[42]

Conspiracy need not, however, be established by direct proof; it may be shown by circumstantial evidence.[43] As correctly found by the trial court and concurred with by the OSG, the concatenation of circumstantial evidence shows that Marlon Buenviaje conspired with Sayaboc, thus:

- On 13 August 1994, Marlon Buenviaje had a fistfight with Joseph Galam, causing him injuries on his face and prompting him to make a threat to kill the latter;[44]
- More than three months later, Galam was killed by Sayaboc, who had no discernible motive to do so;[45]
- Shortly after shooting Galam, Sayaboc joined Marlon Buenviaje and the other appellants in the tricycle, which was waiting in a vacant lot near the crime scene;[46]
- The tricycle driven by Marlon Buenviaje sped away and disappeared;[47]
- Marlon Buenviaje became a fugitive from justice for a long time, or until 10 July 1997; and
- During the pendency of the case, the relatives of Marlon Buenviaje offered prosecution eyewitness Diana Grace Jaramillo a job abroad, allowances, and two motorcycles in consideration of her retraction of her testimony against Sayaboc.[48]

Circumstantial evidence is sufficient for conviction when (1) there is more than one circumstances established; (2) the facts from which the inferences are derived have been proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. All these requisites are present in the case at bar. Being a conspirator equally guilty as Sayaboc, Marlon Buenviaje must be meted the same penalty as that of Sayaboc.

However, as to Miguel Buenviaje and Patricio Escorpiso, there is paucity of evidence linking them to the killing. They might have been with Marlon Buenviaje in that tricycle, but there is nothing to show that they knew of the conspiracy to kill Galam. Absent any active participation in furtherance of the common design or purpose to kill Galam, their mere presence near the crime scene or in the tricycle driven by Marlon Buenviaje does not necessarily make them conspirators. Even knowledge, acquiescence or approval of the act – without the cooperation and the agreement to cooperate – is not enough to establish conspiracy.[49]

Now on the civil liability of Sayaboc and Marlon Buenviaje. The trial court's award of actual damages, representing the wake and burial expenses, is reduced to P106,436, this being the amount supported by receipts. The award of moral damages is, however, increased to P50,000 conformably with current jurisprudence.[50] In addition, the heirs of the victim are entitled to P50,000 as civil indemnity ex delicto.

WHEREFORE, the decision of the Regional Trial Court of Bayombong, Nueva Ecija, Branch 27, in Criminal Case No. 2912 is MODIFIED. Appellants Benjamin Sayaboc and Marlon Buenviaje are found guilty beyond reasonable doubt of the crime of homicide and are each sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum and to pay jointly and severally the heirs of Joseph Galam the amounts of P106,436 as actual damages; P50,000 as civil indemnity; P50,000 as moral damages; and the cost of the suit. Appellants Miguel Buenviaje and Patricio Escorpiso are hereby ACQUITTED on the ground of reasonable doubt.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Jr., Azcuna, and Tinga, JJ., concur.

[1] Original Record (OR), 1-2.

- [2] TSN, 25 August 1998, 8-21; 22 September 1998, 7-8.
- [3] TSN, 12 October 1995, 5-6, 9-16.
- [4] TSN, 7 September 1995, 7, 10-18.
- [5] TSN, 7 September 1995, 14-23; TSN, 12 September 1995, 26, 34-35; TSN, 28 February 1996, 7-15.
- [6] TSN, 23 April 1996, 4-15.
- [7] TSN, 7 September 1995, 23; TSN, 28 February 1996, 23; TSN, 11 March 1999, 4-5.
- [8] TSN, 31 January 1996, 2-13.
- [9] TSN, 23 February 1999 (9:40 a.m.), 10, 15-18.
- [10] TSN, 29 February 1996, 5- 7; TSN, 12 September 1995, 26.
- [11] TSN, 23 February 1999 (3:30 p.m.) 18-27, 34.

[12] OR, 531-535.

[13] OR, 542.

- [14] Id., 550-556.
- [15] Id., 557.
- [16] Id., 560-561.
- [17] TSN, 25 August 1999, 4-11; TSN, 7 September 1999, 4-6.

[18] OR, 186.

- [19] Id., 187.
- [20] Id., 711-724.
- [21] G.R. Nos. 144340-42, 6 August 2002, 386 SCRA 391.
- [22] *People v. Hernandez*, 347 Phil 56 (1997).
- [23] *People v. Continente*, G.R. Nos. 100801-02, 25 August 2000, 339 SCRA 1, 24.
- [24] See *People v. Labtan*, G.R. No. 127493, 8 December 1999, 320 SCRA 140, 166; See also *People v. Suela*, G.R. Nos. 133570-71, 15 January 2002, 373 SCRA 163, 185-186.
- [25] OR, 531, English Translation.
- [26] L-61356-57, 30 September 1986, 144 SCRA 516, 530-53.
- [27] *People v. Basay*, G.R. No. 86941, 3 March 1993, 219 SCRA 404, 418.
- [28] Rollo, 80.
- [29] 321 Phil. 1028, 1043 (1995).
- [30] *Supra* note 21.

- [31] *People v. Loterono*, G.R. No. 146100, 13 November 2002, 391 SCRA 593, 605.
- [32] *Rollo*, 76.
- [33] *People v. Ablao*, G.R. No. 69184, 26 March 1990, 183 SCRA 658, 668; See also *People v. Sambulan*, G.R. No. 112972, 24 April 1998, 289 SCRA 500.
- [34] *People v. Rabanillo*, 367 Phil. 114 (1999); *People v. Bariquit*, G.R. No. 122733, 2 October 2000, 341 SCRA 600, 627; *People v. Enriquez*, G. R. No. 138264, 20 April 2001, 357 SCRA 269, 288.
- [35] *People v. Basao*, G.R. No. 128286, 20 July 1999, 310 SCRA 743, 780; *People v. Magno*, G.R. No. 134535, 19 January 2000, 322 SCRA 494.
- [36] *People v. Salalima*, 415 Phil. 414 (2001); *People v. Moreno*, G.R. No. 140033, 25 January 2002, 374 SCRA 667, 680; *People v. Mactal*, G. R. No. 141187, 28 April 2003.
- [37] *People v. Turingan*, G.R. No. 121628, 4 December 1997, 282 SCRA 424, 447.
- [38] *Id.*
- [39] *People v. Tiguman*, G.R. Nos. 130502-02, 24 May 2001.
- [40] Exh. “Z,” (English Translation), OR 531.
- [41] Exhs. “E” and “F,” OR, 510-511.
- [42] *People v. Mantung*, G.R. No. 130372, 20 July 1999. See also *People v. Fajardo*, G.R. No. 105954-55, 28 September 1999; *People v. Geralde*, G.R. No. 128622, 14 December 2000.
- [43] *People v. Morano*, G.R. No. 129235, 18 November 2002.
- [44] TSN, 25 August 1998, 13-21.
- [45] TSN, 28 February 1996, 8-9.
- [46] TSN, 23 April 1996 (10:00 a.m.), 12-14.
- [47] TSN, 7 September 1995, 15-17.
- [48] TSN, 29 February 1996, 11-12, 19-21.
- [49] *People v. Mandao*, G.R. No. 135048, 3 December 2002.
- [50] *People v. Bajar*, G.R. No. 143817, 27 October 2003.

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