

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JERRY RAPEZA Y FRANCISCO, APPELLANT.

G.R. NO. 169431 (FORMERLY G.R. NOS. 149891-92). April 04, 2007

Ponente: TINGA, J.

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TINGA, J.:

In the complex but exquisite scheme laid down by the Constitution, the Bill of Rights occupies a position of primacy, way above the articles on governmental power.[1] Once again, the Court extends fresh vitality to the rights of a person under custodial investigation, which, beginning with the 1987 Constitution, has been accorded equal but segregate weight as the traditional right against self-incrimination, to tip the scales of justice in favor of the presumption of innocence and the lot of an unlettered confessant.

This treats of the appeal from the Decision[2] dated 1 July 2005 of the Court of Appeals affirming the Consolidated Judgment[3] dated 24 July 2001 of the Regional Trial Court (RTC) of Palawan, Puerto Princesa City in Criminal Case Nos. 13064 and 13202 where Jerry Rapeza (appellant) was found guilty of two (2) counts of murder and sentenced to the penalty of reclusion perpetua for each count, plus a total of P100,000.00 as indemnity for the heirs of the two (2) victims.

In two (2) separate Informations, appellant, together with Mike Regino, was charged with the murder of the Spouses Cesar Ganson and Priscilla Libas,[4] with the following accusatory allegations:

Criminal Case No. 13064

That on or about the 21[st] day of October, [sic] 1995, more or less 4:00 o'clock in the afternoon at Cawa-Cawa District, Municipality of Culion, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with evident premeditation, treachery and abuse of superior strength, with intent to kill and while armed with bladed weapons, did then and there wilfully [sic], unlawfully and feloniously attack, assault and stab with their bladed weapons, to wit: knives, PRI[S]CILLA LIBAS, hitting her in the different vital parts of her body and inflicting upon her multiple stab wounds which causes (sic) hypovolemic shock which were (sic) the direct and immediate cause of her instantaneous death.[5]

Criminal Case No. 13202

That on or about the 21[st] day of October, [sic] 1995, more or less 4:00 o'clock in the afternoon at Cawa-Cawa District, Municipality of Culion, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, with evident premeditation, treachery and abuse of superior strength, with intent to kill and while armed with bladed weapons, did then and there wilfully, [sic] unlawfully and feloniously attack, assault and stab with their bladed weapons, to wit: knives, CESAR GANZON, hitting him in the different vital parts of his body and inflicting upon him multiple stab wounds which causes hypovolemic shock which were the direct and immediate cause of his instantaneous death.[6]

As Mike Regino was at large, only appellant was arraigned and he pleaded not guilty. Forthwith, joint trial ensued which resulted in the judgment of guilt against appellant as co-principal for two (2) counts of murder, with conspiracy and evident premeditation attending the commission of the felonies. Both cases were thereafter elevated to this Court on automatic review, but later referred to the Court of Appeals per *People v. Mateo*.^[7] The Court of Appeals affirmed the judgment of guilt.^[8]

The prosecution had sought to establish the facts and events recited below.

In the afternoon of 21 October 1995, an unidentified woman went to the Culion Municipal Station and reported a killing that had taken place in Sitio Cawa-Cawa, Barangay Osmeña, Culion, Palawan.^[9] The officer-in-charge, SPO2 Ciriaco Gapas, sent to the victims' house which was the scene of the crime an investigating team led by SPO2 Crisanto Cuizon, Jr. and PO2 Isidro Macatangay. There they saw two bloodied bodies, that of a woman lying on the floor of the sala and that of a man inside the bedroom. The investigating team wrapped the bodies in blankets and loaded them in a banca to be brought to the morgue.^[10] The victims were later identified as Priscilla Libas and Cesar Ganzon.

The Autopsy Reports^[11] show that the common cause of death of both victims was hypovolemic shock secondary to massive bleeding secondary to multiple stab wounds and that both bodies were in the early stages of decomposition. The medico-legal officer testified that Ganzon sustained six (6) wounds on different parts of his body while Libas bore sixteen (16) wounds.^[12] All the wounds of the victims were fatal and possibly caused by a sharp instrument.

Upon information supplied by a certain Mr. Dela Cruz that appellant had wanted to confess to the crimes, SPO2 Gapas set out to look for appellant.^[13] He found appellant fishing in Asinan Island and invited the latter for questioning. Appellant expressed his willingness to make a confession in the presence of a lawyer.^[14] Appellant was then brought to the police station after which SPO2 Gapas requested Kagawad Arnel Alcantara to provide appellant with a lawyer. The following day, appellant was brought to the house of Atty. Roberto Reyes, the only available lawyer in the municipality.^[15] The typewriter at the police station was out of order at that time and Atty. Reyes could not go to the police station as he was suffering from rheumatism.^[16] At the house of Atty. Reyes, in the presence of Vice-Mayor Emiliano Marasigan of Culion, two (2) officials of the Sangguniang Barangay, SPO2 Cuizon and an interpreter, SPO2 Gapas proceeded with the custodial investigation of appellant who was assisted by Atty. Reyes. Appellant was expressly advised that he was being investigated for the death of Libas and Ganzon.

Per the Sinumpaang Salaysay^[17] that appellant executed, he was informed of his constitutional rights in the following manner:

x x x x

Tanong: Bago kita kunan ng isang salaysay, ikaw ay mayroong karapatan sa ating Saligang Batas na sumusunod:

- a) Na, ikaw ay maaaring hindi sumagot sa tanong na sa iyong akala ay makaka-apekto sa iyong pagkatao;
- b) Na, ikaw ay may karapatang pumili ng isang manananggol o abogado na iyong sariling pili;
- c) Na, kung ikaw ay walang kakayahan kumuha ng isang ab[u]gado ang Pulisya ang siyang magbibigay sa iyo.
- d) Na, ang lahat na iyong sasabihin ay maaaring gawing ebidensya pabor o laban sa iyo.

Sagot: Opo, sir.

Tanong: Nakahanda ka na bang ipag-patuloy ang pagsisiyasat na ito, na ang ating gagamiting salita ay salitang Tagalog, na siyang ginagamit nating [sic]?

Sagot: Opo, sir.

x x x[18]

Thereupon, when asked about the subsequent events, appellant made the following narration:

x x x

Tanong: Maari mo bang isalaysay ang pang-yayari [sic]?

Sagot: Opo, [n]oong Sabado ng umaga alas 8:00[,] petsa 21 ng Oktobre, 1995, kami ni Mike ay nagkaroon ng pag-iinuman sa kanilang bahay sa Cawa-Cawa at sinabi sa akin [sic] puntahan naming iyong matanda, dahil may galit daw si Mike sa dalawang matanda [Pris]cilla Libas at Cesar Ganzon) na nakatira din sa Cawa-Cawa at ang layo ay humigit-kumulang isang daang metro sa aming pinag-iinuman at kami ay nakaubos ng labing dalawang bote ng beer, mula umaga hanggang alas kuatro ng hapon at habang kami ay nag-iinom aming pinag-uusapan [sic] ang pagpatay sa dalawang matanda. Noong sinasabi sa akin ni Mike, ako umayaw ngunit ako ay pinilit at sinabihan ko rin siya (Mike) at pinag-tatapon [sic] pa niya ang bote ng beer at may sinabi pa si Mike "hindi ka pala marunong tumulong sa akin, pamangkin mo pa naman ako." At ang sagot ko sa kanya, ay maghintay ka, mamayang hapon natin[g] puntahan. At noong humigit-kumulang [sa alas] [sic] kuatro ng hapon, amin ng pinuntahan ang bahay ng mag-asawa, at pagdating namin sa bahay na dala naming [sic] ang patalim, tuloy-tuloy na kaming umakyat, at hinawakan ni Mike ang babae (Presing) at nilaslas na ang leeg at sinaksak ng sinaksak niya sa iba't ibang parte ng katawan at ako ay umakyat din sa bahay at nakita kong nakataob ang lalaki (Cesar)[,] aking hinawakan [sic] ko sa kanyang balikat, at siya ay nakaalam [sic] na mayroong tao sa kanyang likuran, akin nang sinaksak sa kaliwang tagiliran [sic] ng kanyang katawan, at hindi ko na alam ang sumunod na pang-yayari [sic] dahil ako[']y tuliro. At kami ay umalis at tumalon sa likod ng kusina, nang alam na naming [sic] na patay [na] iyong dalawang matanda.

x x x x[19]

An interpreter was provided appellant as he was not well versed in Tagalog being a native of Samar. As he is illiterate, appellant affixed only his thumbmark on the statement above his printed name. Bonifacio Abad, the interpreter, and Atty. Reyes, as the assisting counsel, also signed the statement. Atty. Reyes signed again as the notary public who notarized the statement.

Thereafter, a complaint for multiple murder was filed against appellant, and Regino was likewise arrested. Judge Jacinto Manalo of the Municipal Trial Court (MTC) of Culion conducted a preliminary investigation. Finding probable cause only as against appellant, Regino was ordered released.[20] The Provincial Prosecutor, however, reversed the finding of the MTC by including Regino in the Informations, but by then the latter had already left Culion.[21]

Testifying in his defense, appellant presented a different story during the trial. The defense presented no other witness.

Appellant testified that he did not know the victims and that he had nothing to do with their deaths. He was a native of Samar and he did not know how to read or write as he never attended school.[22] He arrived in Culion as a fisherman for the Parabal Fishing Boat.[23] As his contract had already expired, he stayed in Culion to look for work. He lived with Regino as the latter was his only friend in Cawa-Cawa.[24] Regino's house was about 40 meters away from the victims' house.

Several days after appellant's arrival, the killings took place. Appellant, along with Regino and another man

named Benny Macabili, was asked by a police officer to help load the bodies of the victims in a banca. Shortly thereafter, appellant was arrested and brought to the municipal hall where he was mauled by PO2 Macatangay and placed in a small cell.[25] Regino, too, was arrested with him. While under detention, appellant told the police that it was Regino who was responsible for the killing of the victims but the police did not believe appellant. But appellant later testified that he implicated Regino only in retaliation upon learning that the latter pointed to him as the perpetrator.[26] Appellant was then asked by SPO2 Gapas to sign a document so that he will be released. When appellant replied that he did not know how to sign his name, SPO2 Gapas took appellant's thumb, dipped it in ink and marked it on the document. [27] Appellant claimed he did not resist because he was afraid of being mauled again.

Appellant further denied going to the house of Atty. Reyes or meeting Abad, the alleged interpreter. He never left the jail from the time he was arrested except to attend the hearing before the MTC.[28] When appellant was brought to the MTC, nobody talked to him during the hearing nor did counsel assist him.[29] He was thereafter brought by a police officer to a hut in a mountain where he was told to go a little bit farther. He refused for fear of being shot. The police officer then got angry and punched him in the stomach.[30]

On the basis of appellant's extrajudicial confession, the RTC found him guilty of both crimes. The Court of Appeals upheld the trial court.

Appellant submits for our resolution two issues, namely: (1) whether his guilt was proven beyond reasonable doubt; and (2) whether the qualifying circumstance of evident premeditation was likewise proven beyond reasonable doubt.

Appellant mainly contends that the extrajudicial confession upon which the trial court placed heavy emphasis to find him guilty suffers from constitutional infirmity as it was extracted in violation of the due process guidelines. Specifically, he claims that he affixed his thumbmark through violence and intimidation. He stresses that he was not informed of his rights during the time of his detention when he was already considered a suspect as the police had already received information of his alleged involvement in the crimes. Neither did a competent and independent counsel assist him from the time he was detained until trial began. Assuming Atty. Reyes was indeed designated as counsel to assist appellant for purposes of the custodial investigation, said lawyer, however, was not appellant's personal choice.

Appellant likewise maintains that although the Sinumpaang Salaysay states that his rights were read to him, there was no showing that his rights were explained to him in a way that an uneducated person like him could understand. On the assumption that the confession is admissible, appellant asserts that the qualifying circumstance of evident premeditation was not amply proven as the trial court merely relied on his alleged confession without presenting any other proof that the determination to commit the crime was the result of meditation, calculation, reflection or persistent attempt.

The Solicitor General, on the other hand, contends that the constitutional guidelines on custodial investigation were observed. Hence, appellant's Sinumpaang Salaysay is admissible. Even if appellant was not informed of his constitutional rights at the time of his alleged detention, that would not be relevant, the government counsel argues, since custodial investigation began only when the investigators started to elicit information from him which took place at the time he was brought to the house of Atty. Reyes. Moreover, appellant did not interpose any objection to having Atty. Reyes as his counsel. As to the qualifying circumstance of evident premeditation, the Solicitor General submits that the same was sufficiently proven when accused proceeded to the victims' house together with Regino, armed with bladed weapons, in order to consummate their criminal design. He further argues that appellant's defense of denial and his lame excuse of being illiterate must be rejected in the face of a

valid voluntary extrajudicial confession.

The fundamental issue in this case is whether appellant's extrajudicial confession is admissible in evidence to warrant the verdict of guilt.

There is no direct evidence of appellant's guilt except for the alleged confession and the corpus delicti. Upon careful examination of the alleged confession and the testimony of the witnesses, we hold that the alleged confession is inadmissible and must perforce be discarded.

A confession is admissible in evidence if it is satisfactorily shown to have been obtained within the limits imposed by the 1987 Constitution.[31] Sec. 12, Art. III thereof states in part, to wit:

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.

(2) 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.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

x x x x

Republic Act No. 7438,[32] approved on 15 May 1992, has reinforced the constitutional mandate protecting the rights of persons under custodial investigation. The pertinent provisions read:

SEC. 2. Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers. —

a. Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

b. Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer private with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided by with a competent and independent counsel.

x x x x

f. As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

If the extrajudicial confession satisfies these constitutional standards, it must further be tested for voluntariness, that is, if it was given freely by the confessant without any form of coercion or inducement,[33] since, to repeat, Sec. 12(2), Art. III of the Constitution explicitly provides:

(2) 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.

Thus, the Court has consistently held that an extrajudicial confession, to be admissible, must conform to the

following requisites: 1) the confession must be voluntary; 2) the confession must be made with the assistance of a competent and independent counsel, preferably of the confessant's choice; 3) the confession must be express; and 4) the confession must be in writing.[34]

If all the foregoing requisites are met, the confession constitutes evidence of a high order because it is presumed that no person of normal mind will knowingly and deliberately confess to a crime unless prompted by truth and conscience.[35] Otherwise, it is disregarded in accordance with the cold objectivity of the exclusionary rule.[36] The latter situation obtains in the instant case for several reasons.

Appellant was not informed of
his constitutional rights in
custodial investigation.

A person under custodial investigation essentially has the right to remain silent and to have competent and independent counsel preferably of his own choice and the Constitution requires that he be informed of such rights. The *raison d'être* for this requirement was amply explained in *People v. Ayson*[37] where this Court held, to wit:

x x x x

In *Miranda*, Chief Justice Warren summarized the procedural safeguards laid down for a person in police custody, "in-custody interrogation" being regarded as the commencement of an adversary proceeding against the suspect.

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise those rights must be afforded to him throughout the interrogation. After such warnings have been given, such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer or make a statement. But unless and until such warnings and waivers are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him.

The objective is to prohibit "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statement without full warnings of constitutional rights."

The rights above specified, to repeat, exist only in "custodial interrogations," or "in-custody interrogation of accused persons." And, as this Court has already stated, by custodial interrogation is meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." The situation contemplated has also been more precisely described by this Court.

x x x After a person is arrested and his custodial investigation begins[,] a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and "cross-examined" not only by one but as many investigators as may be necessary to break down his morale. He finds himself in strange and unfamiliar surroundings, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study have taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence. Section 20 of the Bill of Rights seeks to remedy this imbalance.

x x x x[38]

We note that appellant did not voluntarily surrender to the police but was "invited" by SPO2 Gapas to the police station. There he was detained from 11 o'clock in the morning of 22 October 1995 up to the morning of 23

October 1995 before his extrajudicial statement was allegedly taken. At this juncture, appellant should have been informed of his constitutional rights as he was already considered a suspect, contrary to the finding of the trial court that the mandatory constitutional guidelines only attached when the investigators started to propound questions to appellant on 23 October 1995 in the house of Atty. Reyes.[39] In *People v. Dueñas, Jr.*,[40] we ruled, to wit:

Q

On December 18, 1996, when you arrested him what did he actually told [sic] you?

A

Before we put him in jail at the Baler Police Station he told us that he has [sic] to reveal something about the death of Elvira Jacob.

Q

So you already know [sic] that on December 18, 1996 that whatever Catalino Duenas will reveal to you will give you lead in solving the investigation in connection with the death of Elvira Jacob, isn't it?

A

Yes, sir.

Q

So, you still waited until December 23, 1996 for that revelation, isn't it?

A

Yes, sir. That's all, your honor.[41]

In the case at bar, SPO2 Gapas testified:

Q

By the way, when you conducted the investigation in the house of Atty. Reyes in Culion, why was Jerry Rapeza there?

A

I invited Jerry Rapeza and upon my invitation he voluntarily came to me.

Q

In the first place, why did you invite him?

A

To ask [a] question about the crime committed in the Island of Cawa-Cawa.

x x x

Q That was the only reason why you invited him, being a transient in that place you made him a suspect?

A In the first place[,] Your Honor, he was not a suspect but 2 days after the commission of the crime a certain person came to me and said that Jerry Rapeza requested that he will give his confession but in front of a lawyer, so he said: "Puntahan nating [sic] ang isang taong nagngangalang Jerry Rapeza."

x x x

Q And based on your experienced [sic], would it not be quite strange that a person who committed a crime would voluntarily give confession because ordinarily a criminals [sic] will find a way to escape?

A Yes, sir. [B]ut at that time the person who assisted me strongly believed that Jerry Rapeza would confess so I did not make any "tanong-tanong" in order to solve that crime so I proceeded to that place and talked to the suspect.

Q So you already considered Jerry Rapeza as a suspect?

A When that person informed me that Jerry Rapeza would like to confess.

x x x x [Emphasis ours.][42]

Already being held as a suspect as early as 21 October 1995, accused should have been informed of his constitutional rights. SPO2 Gapas admitted that appellant was not so informed, thus:

Q

What was he doing?

A

He was fishing, sir.

Q

And you told him that you're going to arrest him?

A

He did not refuse to go with me, sir.

x x x x

Q

From the Island you brought him to the station?

A

Yes, sir.

Q

And there you arrived at the station at around 11:00 o'clock in the morning?

A

Yes, sir.

Q

And then you started to conduct the investigation as Investigator of the Police Station?

A Yes, sir.

x x x x

Q And what was the[,] result of your investigation?

A According to him he would confess and he would give his confession in the presence of a lawyer so I talked to Kgd. Arnel Alcantara.

x x x x[43]

Q On October 22, 1995[,] when you brought him to the Police Station, did you start the investigation at that time?

A Not yet sir, I only talked to him.

Q When did you start the investigation?

A I started the investigation when Jerry Rapeza was in front of his lawyer.

Q When was that?

A October 23, 1995[,] noon time, sir.

Q From the Island you just talked to him?

A Yes, sir.

Q You did not consider that as part of the investigation?

A Yes sir, my purpose at that time was to certain (sic) the suspect of the said crime.

x x x x

Q Please answer my question[,] Mr. Witness, on October 22, 1995, did you inform him of his constitutional rights?

A No sir, I did not.

x x x x(Emphasis ours.)[44]

Even supposing that the custodial investigation started only on 23 October 1995, a review of the records reveals that the taking of appellant's confession was flawed nonetheless.

It is stated in the alleged confession that prior to questioning SPO2 Gapas had informed appellant in Tagalog of his right to remain silent, that any statement he made could be used in evidence for or against him, that he has a right to counsel of his own choice, and that if he cannot afford the services of one, the police shall provide one for him.[45] However, there is no showing that appellant had actually understood his rights. He was not even informed that he may waive such rights only in writing and in the presence of counsel.

In order to comply with the constitutional mandates, there should likewise be meaningful communication to and understanding of his rights by the appellant, as opposed to a routine, peremptory and meaningless recital thereof.[46] Since comprehension is the objective, the degree of explanation required will necessarily depend on the education, intelligence, and other relevant personal circumstances of the person undergoing investigation.[47]

In this case, it was established that at the time of the investigation appellant was illiterate and was not well versed in Tagalog.[48] This fact should engender a higher degree of scrutiny in determining whether he understood his rights as allegedly communicated to him, as well as the contents of his alleged confession.

The prosecution underscores the presence of an interpreter in the person of Abad to buttress its claim that appellant was informed of his rights in the dialect known to him. However, the presence of an interpreter during the interrogation was not sufficiently established. Although the confession bears the signature of Abad, it is

uncertain whether he was indeed present to assist appellant in making the alleged confession.

For one thing, SPO2 Cuizon did not mention Abad as one of the persons present during the interrogation. He testified:

Q

Who were present during that investigation?

A

Vice Mayor Marasigan and the two other SB members.

Q

Can you identify who are these two SB members?

A

SB Mabiran and SB Alcantara.

Q

Who else?

A

No more, sir.

Q

So, there were two SB members, Vice Mayor Atty. Reyes, Gapas and you?

A Yes, sir.

x x x x[49]

For another, the prosecution did not present Abad as witness. Abad would have been in the best position to prove that he indeed made the translation from Tagalog to Waray for appellant to understand what was going on. This significant circumstance lends credence to appellant's claim that he had never met Abad.

According to the appellate court, appellant admitted in his Brief that the confession was made in the presence of an interpreter. The passage in appellant's Brief on which the admission imputed to him was based reads, thus:

The extra-judicial confession was allegedly made in Tagalog when accused-appellant is admittedly not well versed in said language. Even if the confession was made in the presence of an interpreter, there is no showing that the rights of a person under investigation were effectively explained and/or interpreted to accused-appellant. The interpreter was not even presented in Court to prove that said rights were translated in a language understood by accused-appellant. [50]

Clearly, the imputation is erroneous. Throughout his Brief, appellant disputes the allegation that he ever met the interpreter much less made the confession with the latter's assistance. The evident import of the passage is that on the assumption that there was an interpreter present still there was no indication that the rights of a person under investigation were effectively imparted to appellant, as the interpreter could not translate that which was not even said in the course of the proceeding.

Moreover, SPO2 Gapas testified on direct examination:

Q

As a way of refreshing your mind[,] Mr. Witness, can you take a look at this statement [referring to appellant's Sinumpaang Salaysay] those appearing on page 1 of the same up to the word "Opo sir," kindly take a look at this, do you remember that you were the one who profounded (sic) this (sic) questions?

A

Yes, sir, I was the one who profounded [sic] that [sic] questions.

Q

And you are very definite that the answer is in [the] affirmative, in your question and answer?

A

I am not very sure, sir.

Q

You are not very sure because he has a lawyer?

A

Yes, sir.

x x x x[51]

SPO2 Gapas could not say for certain if appellant had indeed understood his rights precisely because he did not explain them to appellant. In any event, SPO2 Gapas would be incompetent to testify thereon because appellant's alleged confession was made through an interpreter as he did not understand Tagalog. SPO2 Gapas' testimony as regards the contents of appellant's confession would in fact be hearsay. In *U.S. v. Chu Chio*,^[52] this Court rendered inadmissible the extrajudicial confession of the accused therein because it was not made immediately to the officer who testified, but through an interpreter. Thus, the officer as witness on the stand did not swear of his own knowledge as to what the accused had said. Similarly in this case, SPO2 Gapas's testimony as to what was translated to appellant and the latter's responses thereto were not of his personal knowledge. Therefore, without the testimony of Abad, it cannot be said with certainty that appellant was informed of his rights and that he understood them.

Not having been properly informed of his rights prior to questioning and not having waived them either, the alleged confession of appellant is inadmissible.

Confession was not made with
the assistance of competent and
independent counsel of appellant's
choice.

Appellant denies that he was ever assisted by a lawyer from the moment he was arrested until before he was arraigned. On the other hand, the prosecution admits that appellant was provided with counsel only when he was questioned at the house of Atty. Reyes to which appellant was allegedly taken from the police station.

SPO2 Gapas testified that he "talked" to appellant when they got to the police station at 11 o'clock in the morning of 22 October 1995 and the result of their "talk" was that appellant would give his confession in the presence of a lawyer. Appellant was then held in the police station overnight before he was allegedly taken to the house of Atty. Reyes.

The constitutional requirement obviously had not been observed. Settled is the rule that the moment a police officer tries to elicit admissions or confessions or even plain information from a suspect, the latter should, at that juncture, be assisted by counsel, unless he waives this right in writing and in the presence of counsel.[53] Appellant did not make any such waiver.

Assuming that Atty. Reyes did assist appellant, still there would be grave doubts as to his competence and independence as appellant's counsel for purposes of the custodial investigation. The meaning of "competent counsel" and the standards therefor were explained in *People v. Deniega*[54] as follows:

The lawyer called to be present during such investigations should be as far as reasonably possible, the choice of the individual undergoing questioning. If the lawyer were one furnished in the accused's behalf, it is important that he should be competent and independent, i.e., that he is willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would be merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. In *People v. Basay*, this Court stressed that an accused's right to be informed of the right to remain silent and to counsel "contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle."

Ideally therefore, a lawyer engaged for an individual facing custodial investigation (if the latter could not afford one) "should be engaged by the accused (himself), or by the latter's relative or person authorized by him to engage an attorney or by the court, upon proper petition of the accused or person authorized by the accused to file such petition." Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.

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

x x x x (Emphasis supplied)[55]

The standards of "competent counsel" were not met in this case given the deficiencies of the evidence for the prosecution. Although Atty. Reyes signed the confession as appellant's counsel and he himself notarized the statement, there is no evidence on how he assisted appellant. The confession itself and the testimonies of SPO2 Gapas and SPO2 Cuizon bear no indication that Atty. Reyes had explained to appellant his constitutional rights. Atty. Reyes was not even presented in court to testify thereon whether on direct examination or on rebuttal. It appears that his participation in the proceeding was confined to the notarization of appellant's confession. Such participation is not the kind of legal assistance that should be accorded to appellant in legal contemplation.

Furthermore, Atty. Reyes was not appellant's counsel of choice but was picked out by the police officers allegedly through the barangay officials. Appellant's failure to interpose any objection to having Atty. Reyes as his counsel cannot be taken as consent under the prevailing circumstances. As discussed earlier, appellant was not properly informed of his rights, including the right to a counsel preferably of his own choice. SPO2 Gapas testified thus:

x x x x

Q

Now Mr. Witness, you will agree with me that the accused[,] when he allegedly gave his voluntary confession[,] he [sic] did not read the document when he made his thumbmark?

A

He did not because according to him he is illiterate.

Q

Illiterate because he only placed his thumbmark and you have all the freedom to manipulate him and in fact he doesn't know that he is entitled to have a lawyer of his own choice?

A

He doesn't know.

x x x[56]

Strikingly, while it was made to appear in the alleged confession that appellant was informed of his right to a counsel of his own choice and that if he cannot afford the services of one, the police shall provide him with one, it was overlooked that it was not similarly made to appear in the same statement that appellant was advised that he had the option to reject the counsel provided for him by the police authorities.[57]

Set against the clear provisions of the Constitution and the elucidations thereof in jurisprudence, the foregoing lapses on the part of the police authorities preclude the admissibility of appellant's alleged confession.

Confession is not voluntary.

It is settled that a confession is presumed voluntary until the contrary is proved and the confessant bears the burden of proving the contrary.[58] The trial court found that appellant's bare denials failed to overcome this presumption. However, several factors constrain us to hold that the confession was not given under conditions that conduce to its admissibility.

First, the confession contains facts and details which appear to have been supplied by the investigators themselves.

The voluntariness of a confession may be inferred from its language such that if, upon its face, the confession exhibits no suspicious circumstances tending to cast doubt upon its integrity, it being replete with details-which could only be supplied by the accused-reflecting spontaneity and coherence, it may be considered voluntary.[59] The trial court applied this rule but without basis. On closer examination of the evidence, the key details in the alleged confession were provided not by appellant but by the police officers themselves.

The prosecution failed to establish the actual date of the killings. This is disturbing, to say the least.

The trial court found that the killings were reported to the police at four o'clock in the afternoon of 21 October 1995. That when the investigating team arrived at the scene of the crime, the bodies of the victims were already rank and decomposing,[60] and that two days after the crimes were committed, SPO2 Gapas had set out to look for appellant following information from a certain Mr. Dela Cruz that appellant would like to confess to the crimes.

Indeed, SPO2 Gapas testified that he received a report of the killings on 21 October 1995 and sent a team to investigate the incident. On direct examination, he declared that two days after the commission of the crime, he received information that appellant would give his confession in front of a lawyer.[61] However, on cross-examination, he stated that it was on the following day or on 22 October 1995 when he found appellant and invited him to the police station and that appellant's custodial investigation had taken place on 23 October 1995.

Likewise, SPO2 Cuizon's testimony is far from enlightening. He testified, thus:

x x x x

Q

Now, on October 24, 1995, where were you?

A

I was in Culion Police Station.

Q

While you were there in the Police Station, what happened?

A

A woman reported to us regarding this incident.[62]

x x x x

Q When was the investigation conducted?

A October 24, 1995.

Q On the same day that you discover [sic] the cadavers?

A The investigation was conducted on October 25, 1995.

x x x x[63]

The actual date of the commission of the crimes is material in assessing the credibility of the prosecution witnesses and of the admissibility of the alleged confession.

While the prosecution insists through the recitals of the Informations and the testimony of its witnesses that the killings took place on 21 October 1995, the totality of its evidence shows otherwise, i.e. the killings took place earlier. When the bodies were discovered on 21 October 1995, they were already decomposing, a factor that indicates that the victims had been dead long before then. How then could appellant have killed the victims at 4 o'clock in the afternoon of 21 October 1995 as expressly stated in the confession, when that was the same date and time when the bodies were discovered? Had appellant voluntarily confessed and had he really been the killer, he would have given the correct date and time when he committed the horrid acts. The only sensible way to sort out the puzzle is to conclude that the police officers themselves supplied 21 October 1995 and four o'clock in the afternoon as the date and time of the killings in appellant's statement, a barefaced lie on which the prosecution based its allegations in the Informations and which SPO2 Gapas repeated on the witness stand.

Moreover, the police officers went to the house of the victims on 21 October 1995 where they found the bodies. The autopsy on the victims's bodies was done the following day or on 22 October 1995 while appellant's statement was allegedly taken on 23 October 1995. By then, the investigators knew how and where the victims were killed, circumstances that could have enabled them to fill up the details of the crime in the extrajudicial confession.[64]

Curiously, the autopsy report on Ganzon's body shows that he sustained six (6) stab wounds, four (4) on the right side of his body and two (2) on the left side. Yet, it is stated in appellant's extrajudicial confession that he stabbed Ganzon on his left side. Quite oddly, SPO2 Cuizon testified that Ganzon was wounded on the left arm only. His full account on this aspect runs, thus:

Q

Where did you go?

A

I immediately proceeded to the house of the victim.

Q

What did you find out when you went to the house of the victim?

A

I have seen blood on the ground floor of the house.

x x x x

Q

When you opened the house[,] you are [sic] with Macatangay?

A

Yes, sir[,] I was with POII Macatangay but he was a little bit far from the victim and I was the one who opened the door and went upstairs.

Q

What did you find out inside the house?

A

I have seen a woman lying down with her hands "nakadipa" on the ground and blooded (sic).

x x x x

Q Where else did you go when you were already inside the house?

A I went to the other bedroom.

Q And what did you find out?

A An old man with his face facing downward.

Q The woman already dead was in the sala?

A Yes, sir.

x x x x[65]

Q Do you know in what bedroom (sic) of her body she was wounded?

A The neck was slashed and both arms and both foot (sic) were wounded.

Q How about the man?

A Left arm, sir.

Q Where else?

A No more, sir.

x x x x[66] (Emphasis ours.)

The prosecution's evidence likewise fails to establish when the custodial investigation had taken place and for

how long appellant had been in detention. Strangely, the confession is undated and it cannot be ascertained from it when appellant made the confession or affixed his thumbmark thereon. What emerges only is the bare fact that it was notarized by Atty. Reyes on 23 October 1995. One can only speculate as to the reason behind what seems to be a lack of forthrightness on the part of the police officers.

These unexplained inconsistencies cast doubt on the integrity and voluntariness of appellant's alleged confession.

Second, again appellant was not assisted by counsel.

To reiterate, the purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads appellant to make self-incriminating statements.[67] And in the event the accused desires to give a confession, it is the duty of his counsel to ensure that the accused understands the legal import of his act and that it is a product of his own free choice.

It bears repeating that appellant was held in the police station overnight before he was allegedly taken to the house of Atty. Reyes. He was not informed of his rights and there is no evidence that he was assisted by counsel. Thus, the possibility of appellant having been subjected to trickery and intimidation at the hands of the police authorities, as he claims, cannot be entirely discounted.

Confession was not sufficiently corroborated.

Courts are slow to accept extrajudicial confessions when they are subsequently disputed unless they are corroborated.[68] There must be such corroboration so that when considered in connection with the confession, it will show the guilt of accused beyond a reasonable doubt.[69]

As a general rule, a confession must be corroborated by those to whom the witness who testified thereto refers as having been present at the time the confession was made[70] or by any other evidence.[71]

The inconsistencies in the testimonies of the police officers as well as any lingering doubt as to the credibility of appellant's statement could have been laid to rest by the testimonies of Atty. Reyes, of Abad, and of those allegedly present during the custodial investigation. However, they were not presented in court.

Abad's testimony was likewise crucial in proving that appellant had understood every part of his alleged confession. Confessions made in a language or dialect not known to the confessant must also be corroborated by independent evidence.[72] As appellant is unschooled and was not familiar with the Tagalog dialect, his confession which was in Tagalog necessarily had to be read and translated to Waray allegedly by Abad. This Court has held that "such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the said answers is naturally pregnant with possibilities of human, if unintentional, inadequacies and incompleteness which render the said confession unsafe as basis of conviction for a capital offense, unless sufficiently corroborated." [73] A confession may be admissible if it is shown to have been read and translated to the accused by the person taking down the statement and that the accused fully understood every part of it.[74] To repeat, we cannot accept SPO2 Gapas' testimony as regards the contents of appellant's alleged confession for being hearsay evidence thereon. Since appellant allegedly made the confession to SPO2 Gapas through Abad, Abad's testimony is thus indispensable in order to make the confession admissible.

Consequently, the non-production of these material witnesses raises a doubt which must be resolved in favor of appellant[75] and the confession should be disregarded as evidence.[76] Verily, we are left with the unconvincing testimony of two police officers against whose abuse of authority the Constitution protects the appellant. As their respective testimonies are sated with inconsistencies and hearsay evidence, we find the same insufficient bases to

hold appellant's extrajudicial confession admissible against him.

The only other prosecution evidence under consideration are the autopsy reports with which the alleged confession supposedly dovetails, as the trial court concluded. However, a perusal of the alleged confession would reveal that does not fit the details in the autopsy report. As discussed earlier, Ganzon was found to have sustained six (6) stab wounds on different parts of his body while appellant allegedly admitted stabbing him on his left side only. The confession does not even state how many times appellant stabbed the old man. SPO2 Cuizon testified that he saw only one stab wound on Ganzon's body and it was on the latter's left arm. Thus, it is not with the autopsy reports that the alleged confession dovetails but rather with what the police authorities would like us to believe as the truth.

Nevertheless, since the confession is inadmissible, it becomes irrelevant whether it dovetails with the autopsy reports. The corroboration that medico-legal findings lend to an extrajudicial confession becomes relevant only when the latter is considered admissible. In *People v. De la Cruz*,^[77] we held, to wit:

It is significant that, with the exception of appellant's putative extrajudicial confession, no other evidence of his alleged guilt has been presented by the People. The proposition that the medical findings jibe with the narration of appellant as to how he allegedly committed the crimes falls into the fatal error of figuratively putting the horse before the cart. Precisely, the validity and admissibility of the supposed extrajudicial confession are in question and the contents thereof are denied and of serious dubiety, hence the same cannot be used as the basis for such a finding. Otherwise, it would assume that which has still to be proved, a situation of *petitio principii* or *circulo en probando*.^[78]

No motive could be ascribed to appellant.

For the purpose of meeting the requirement of proof beyond reasonable doubt, motive is essential for conviction when there is doubt as to the identity of the perpetrator.^[79] In view of the inadmissibility of the confession, there is no other evidence that directly points to appellant as the culprit. However, the prosecution failed to show any motive on appellant's part to commit the felonies. Appellant consistently denied having known the victims. Although the confession states that Regino allegedly sought appellant's help in killing the victims as Regino was his nephew, the fact of their relationship was denied by appellant and was never established by the prosecution. In *People v. Aguilar*,^[80] we held that "the absence of apparent motive to commit the offense charged would, upon principles of logic, create a presumption of the innocence of the accused, since, in terms of logic, an action without a motive would be an effect without a cause."^[81]

Furthermore, appellant's conduct after the killings was not that of a guilty person. He never attempted to flee even if he knew that the police authorities were already investigating the incident as he was summoned to help load the bodies in a banca. Being a transient in the place, he could have easily disappeared and left the island but he remained there to continue looking for work.

Taken together, these circumstances generate serious doubts that must be resolved in appellant's favor, congruently with the constitutional presumption of innocence.

In view of the inadmissibility of appellant's confession, which is the sole evidence of the prosecution against him, the resolution of the issue of whether the qualifying circumstance of evident premeditation had attended the commission of the crimes has become academic. Indeed, there exists no other prosecution evidence on which appellant's guilt beyond reasonable doubt may be based.

In conclusion, the overriding consideration in criminal cases is not whether appellant is completely innocent, but rather whether the quantum of evidence necessary to prove his guilt was sufficiently met. With the exclusion of

appellant's alleged confession, we are left with no other recourse but to acquit him of the offenses charged for the constitutional right to be presumed innocent until proven guilty can be overcome only by proof beyond reasonable doubt. In fact, unless the prosecution discharges the burden of proving the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.[82]

WHEREFORE, the Decisions of the Regional Trial Court, Branch 52, Palawan, Puerto Princesa City in Criminal Case Nos. 13064 and 13202 and the Court of Appeals in CA-G.R. CR-H.C. No. 00642 are REVERSED and SET ASIDE. Appellant Jerry Rapeza y Francisco is hereby ACQUITTED for insufficiency of evidence leading to reasonable doubt. The Director of the Bureau of Prisons is ordered to cause the immediate release of appellant from confinement, unless he is being held for some other lawful cause, and to report to this Court compliance herewith within five (5) days from receipt hereof.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1] *People v. Tudtud*, 458 Phil. 49 (2003).

[2] *Rollo*, pp. 3-16; penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rodrigo V. Cosico and Danilo B. Pine.

[3] *CA rollo*, pp. 17-40; penned by Judge Fernando R. Gomez, Jr., Regional Trial Court of Palawan, Puerto Princesa, Branch 52.

[4] The victims were reportedly husband and wife but the fact of their marriage was not established during the trial. Furthermore, although it appeared they were both of advanced age, their respective ages were not established.

[5] *Records*, Vol. I, p. 1.

[6] *Records*, Vol. II, p. 1.

[7] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[8] The appellate court modified the judgment with an additional award of P50,000.00 each in both cases to the heirs of the victims by way of moral damages.

[9] *TSN*, 15 January 1997, p. 4.

[10] *Id.* at 6-8.

[11] *Records*, Vol. I, pp. 160-166.

[12] *TSN*, 15 February 2000, pp. 3-12.

[13] *TSN*, 6 October 1998, p. 15.

[14] *Id.* at 23.

[15] *Id.* at 12.

[16] *Id.* at 11.

[17] *Records*, Vol. I, pp. 157-159, Exhibits "A" to "A-2."

[18]Id. at 157.

[19]Id. at 157-158.

[20] Per Order dated 26 February 1996; id. at 7-9.

[21] Per Resolution dated 10 June 1996; id. at 2-4.

[22] TSN, 29 May 2001, p. 9.

[23] Id. at 4.

[24] Id. at 7.

[25] Id. at 13-16.

[26] Id. at 40-41.

[27]Id. at 22.

[28]Id. at 18.

[29]Id. at 23.

[30]Id. at 37-38.

[31] People v. Santos, 347 Phil. 723, 733 (1997).

[32] Otherwise known as An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof.

[33] See People v. Mojello, G.R. No. 145566, 9 March 2004, 425 SCRA 11, 23; and People v. Santos, *supra* note 31.

[34] People v. Porio, 427 Phil. 82, 93 (2002), citing People v. Gallardo, 323 SCRA 219 (2000) and People v. Bacor, 306 SCRA 522 (1999); See People of the Philippines v. Oranza, 434 Phil. 417, 430 (2002); People v. Valdez, 395 Phil. 207, 224 (2000); People v. Base, 385 Phil. 803, 815 (2000); People v. Lumandong, 384 Phil. 390, 403 (2000); People v. Calvo, Jr., 336 Phil. 655, 661 (1997).

[35] U.S. v. De los Santos, 24 Phil. 329 (1913).

[36] People v. Santos, *supra* note 31.

[37] G.R. No. 85215, 7 July 1989, 175 SCRA 216.

[38] Id. at 229-231.

[39] CA rollo, p. 85.

[40] G.R. No. 151286, 31 March 2004, 426 SCRA 666.

[41] Id. at 679-680.

[42] TSN, 6 October 1998, pp. 14-16.

[43] TSN, 6 October 1998, pp. 22-23.

[44] Id. at 26-28.

[45] Records, Vol. 1, p. 157; Exhibit i; 1/2 A, i; 1/2 supra note 17.

[46] *People v. Porio*, supra note 34 at 98, citing *People v. Espiritu*, 302 SCRA 533 (1999), citing *People v. Deniega*, 251 SCRA 626 (1995).

[47] *People v. Canoy*, 385 Phil. 73 (2000).

[48] When appellant testified in court, he already understood and spoke Tagalog. He explained that he learned it from his inmates in the provincial jail. He was transferred to the provincial jail in April 1996 and testified in court only five (5) years later or on 29 May 2001.

[49] TSN, 15 January 1997, p. 17.

[50] CA rollo, p. 152.

[51] TSN, 6 October 1998, pp. 9-10.

[52] 8 Phil. 677 (1907).

[53] *People v. Delmo*, 439 Phil. 212 (2002), cited in *People v. Dueñas, Jr.*, supra note 40.

[54] 321 Phil. 1028, 1041-1042 (1995).

[55] *People v. Alberto*, 436 Phil. 434, 444 (2002), citing *People v. Deniega*, supra note 46.

[56] TSN, 6 October 1998, p. 28.

[57] See *People v. Canoy*, supra note 47.

[58] *People v. Porio*, supra note 34 at 93-94.

[59] *People v. Satorre*, 456 Phil. 98, 107 (2003); *People v. Abayon*, 199 Phil. 404 (1982).

[60] CA rollo, pp. 17-18.

[61] TSN, 6 October 1998, p. 15.

[62] TSN, 15 January 1997, p. 4.

[63] *Id.* at 15.

[64] See e.g. *People v. Dueñas, Jr.*, supra note 40 at 677-678, citing *People v. Abayon*, supra note 58.

[65] TSN, 15 January 1997, pp. 6-7.

[66] *Id.* at 21-22.

[67] See *People v. Dueñas, Jr.*, supra note 40.

[68] *U.S. v. De Leon*, 27 Phil. 506, 511 (1914); *U.S. v. Agatea*, 40 Phil. 596, 601 (1919); *People v. Fontanosa, et al.*, 126 Phil. 583 (1967).

[69] *People v. Satorre*, 456 Phil. 98 (2003).

[70] *U.S. v. Gregorio*, 4 Phil. 433 (1905); See *People v. Cunanan*, 110 Phil. 313 (1960); *People v. Mojica*, 119 Phil. 796 (1964); *People v. Condemena*, 132 Phil. 380 (1968).

[71] 5 Moran, *Comments on the Rules of Court*, 271 (1980 ed.).

[72] 5 Moran, Comments on the Rules of Court, 272 (1980 ed.).

[73] People v. Maisug, No. L-22187, 28 March 1969, 27 SCRA 742, 753.

[74] Id.

[75] See People v. De la Cruz, 33 Phil. 653 (1997).

[76] U.S. v. Marcial, et al., 7 Phil. 281 (1907).

[77] Supra note 75.

[78] Id. at 666.

[79] People v. Yatar, G.R. No. 150224, May 19, 2004, 428 SCRA 504; See People v. Ballesteros, 349 Phil. 366 (1998).

[80] 197 Phil. 210 (1982).

[81] Id. at 219-220.

[82] People v. Satorre, supra note 59 at 111.

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