

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RICARDO TIPAY ET AL., DEFENDANTS. RICARDO TIPAY, APPELLANT.***G.R. No. 49014. March 31, 1944*

Ponente: OZAETA, J.

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At or shortly before noon on August 25, 1942, in the cockpit of Gerona, Tarlac, and in the presence of a large crowd of cockpit habitues, the ex-mayor of that town, Nicolas Garcia, was treacherously daggered to death. The assassin escaped unscathed and unidentified.

More than six months later, to wit, on March 6, 1943, an inspector of the Bureau of Constabulary named Pablo Fernandez filed a complaint in the justice of the peace court of Gerona against Ricardo Tipay, Hipolito Ablan, and Joaquin Tipay for the murder above mentioned, based upon three self-incriminating supposed affidavits written in English and signed or thumbmarked respectively by the three accused.

When the case was called for trial in the Court of First Instance of Tarlac, the accused Joaquin Tipay pleaded guilty while the other two accused, Ricardo Tipay and Hipolito Ablan, pleaded not guilty. The prosecution was not able to present a single eyewitness to the commission of the crime, and relied for the conviction of the accused solely upon their extra judicial affidavits.

The trial court convicted Joaquin Tipay upon his plea of guilty, which he reiterated on the witness stand, declaring that he alone stabbed the ex-mayor to death because he had been ordered to do so by one Vicente Balbin, "a lieutenant of the soldiers who had fought in Bataan," who threatened to have him killed also if he disobeyed the order. The accused Hipolito Ablan was acquitted because the trial court found that his alleged extra judicial confession or affidavit, Exhibit E, had been extorted from him by Inspector Pablo Fernandez by means of force and physical violence upon the said accused, aside from a promise to liberate him after signing it. The accused Ricardo Tipay was convicted upon his supposed extra judicial confession or affidavit, Exhibit C, and, together with Joaquin Tipay, was sentenced to suffer "cadena (sic) perpetua," with the accessories of the law, and to indemnify the heirs of the deceased in the sum of P2,000. Ricardo Tipay alone has appealed from that sentence.

As already intimated, the only evidence against the appellant is his extrajudicial supposed confession which Inspector Pablo Fernandez admitted having dictated in English, altho he claimed that it was a translation of what appellant had declared before him in Ilocano. Fernandez further declared that he first investigated the appellant while he was serving sentence in the provincial jail for illegal possession of firearms, in the first week of February 1943, when, witness affirmed, he readily admitted his guilt, but that he did not take down his confession in writing then and only did so when he investigated him for the second time on March 2, 1943.

It appears that the appellant is a 27-year-old rustic, engaged in farming as a land tenant, completely illiterate and, of course, totally ignorant of the English language, in which the affidavit Exhibit C was written. He swore during the trial as a witness in his own behalf that one day he was called to the headquarters of the Constabulary in Tarmac, where Inspector Fernandez made him sign or thumbmark the said affidavit, without asking him questions

and without interpreting to him the contents of said document, but simply telling him that once he had signed it he would be permitted to go home. The appellant's supposed affidavit, Exhibit C, is couched in almost the same words as his co-accused Hipolito Ablan's supposed affidavit, Exhibit E. Exhibit C begins and ends thus:

"Now comes Ricardo Tipay alias Ernesto Gapayan, married, 27 years old, residing at San Juan de Mata, Tarlac, Tarlac, farmer by occupation and under oath deposes and says:

"That between the months of June, 1942, up to December 8, 1942, I was a member of the guerrilla band under Lieutenant Vicente Balbin of Gerona, Tarlac. That on August 25, 1942, myself together with other guerrilla members namely, Joaquin Tipay, Hipolito Ablan, and three other fellows whose names I do not know, received an order from Lieutenant Balbin to go to the cockpit located in the poblacion of Gerona, Tarlac, to kill the mayor of that town, Nicolas Garcia, * * *

"Further, the deponent sayeth not."

Exhibit E correspondingly reads as follows:

"Now comes Hipolito Ablang, married, 35 years of age, residing at San Juan de Valdez, Tarlac, Tarlac, farmer by occupation and under oath deposes and says:

"That between the months of June 1942 up to October 1942, I was a member of the guerrilla band under Lt. Vicente Balbin of Gerona, Tarlac. That on August 25, 1942, myself together with five other guerrilla members, namely Joaquin Tipay, Ricardo Tipay and three other fellows whose names I can not remember were ordered by Lt. Vicente Balbin to go to the cockpit located at the poblacion at Gerona, Tarlac, for the purpose of killing the mayor of that town, Nicolas Garcia. * * *

"Further, the deponent sayeth not."

On their face these two separate declarations could not have been spontaneously made by two different individuals. Assuming that the declarants spoke freely in their own mother tongue, the above-quoted declarations could not have been a faithful or accurate translation of what they expressed. No two persons will relate the same experience or impression in exactly the same words and in the same manner. It is apparent that the two affidavits were a composition of one single author. May such a composition be relied upon to doom a man to perpetual incarceration ?

It will be remembered that Exhibit E was accorded no probative value by the trial court because it had been extorted by force and violence and promise of liberty. Upon this point the trial court said:

"* * * Hipolito Ablang alega que ha sido maltratado por el Inspector Pablo Fernandez durante la investigacion, habiendo sufrido contusiones en la frente y labio, superior y una herida en la region intercostal izquierda a consecuencia de dichos malos tratos y fue de este modo obligado por el referido Inspector Fernandez a declarar y suscribir su declaración exhibito E ademas de haberle prometido libertad inmediata despues de que dicha declaración fuera suscrita por el. El haber sufrido este acusado Ablang a consecuencia de los malos tratos, contusiones en la frente y en el labio superior y herida en la region intercostal izquierda esta plenamente corroborado por el Dr. Lagade, actual alcalde del municipio de Gerona, Tarlac, y uno de los testigos del Gobierno, quien manifesto que el día 6 de marzo de 1943 cuando el Inspector Fernandez de la Constabularia presento ante el, en ausencia del Juez de Paz, la querella contra estos acusados, Hipolito Ablang se quejaba de haber sido maltratado, por lo que fue examinado por el Alcalde y encontro que realmente tenia contusiones en la frente y en el labio superior y una herida en la región intercostal izquierda y que estas contusiones pudieran haber sido causadas tres o cuatro días antes de la presentacion de la querella por instrumento romo. Este hecho ha sido negado por el Inspector Pablo Fernandez si Men admitio de una manera indecisa que realmente el acusado Ablang aparentemente tenia ya contusiones en la frente y en el labio superior cuando fue traído en su presencia para la investigacion correspondiente, pero no relato las circunstancias bajo las cuales este acusado

suf rid dichas contusiones y nego haber visto la herida en la region intercostal izquierda no obstante el hecho de que hasta la camisa del acusado tenia manchas de sahgre entonces como asi afirmo el Alcalde Dr. Lagade."

Exhibit C having been repudiated during the trial by the appellant, who swore that he did not comprehend its contents but that he merely affixed his thumbmark to it because he was told that if he did so he would be permitted to go home, it was incumbent upon the prosecution to impeach that repudiation. It having been clearly shown to the satisfaction of the trial court that Inspector Fernandez, in procuring Hipolito Ablan's signature to the affidavit, Exhibit E, resorted not only to the reprehensible and unlawful tactics of promising liberty but to the brutal act of committing physical violence and force upon the person of the accused, we find no sufficient reason to disbelieve the testimony of the appellant Ricardo Tipay to the effect that the said constabulary officer resorted to a similar but less violent method—promise of immunity—in inducing him to affix his thumbmark to the affidavit Exhibit C. It is true that Fernandez denied such testimony; but the moment he stands convicted in the one instance of committing a brutal and criminal act, we can not believe that he acted regularly and lawfully in the other instance upon the same occasion and for the same purpose. We do not find it difficult to believe that one who could torture a fellowman to extract a confession from his lips could also make a false promise of liberty to another to achieve a similar end. If, notwithstanding Inspector Fernandez' denial that he used force and violence upon Hipolito Ablan, the trial court found that he did resort to such a brutal and criminal act, we do not find it difficult to believe that he also resorted to the unlawful promise of liberty to secure the appellant's affidavit, Exhibit C.

In this noonday of the twentieth century, when criminology and the investigation of crimes have developed into a science in all civilized countries abreast with the progress and the ever-increasing enlightenment of the human race, to force or induce a suspect to incriminate himself thru violence, torture, or trickery is a shameful disgrace—a reversion into the barbarism and the inquisitorial practices of the Dark Ages; and the minions of the law who would still resort to such crude and cruel methods are universally regarded as anachronistic blockheads, who should be immediately lopped off as a cancerous excrescence of the body politic.

It is interesting to note that in the affidavit Exhibit C the appellant is represented as being "armed with a caliber .45 revolver," but the only participation in the crime attributed to him was," in the words of the affidavit itself, the following:

"* * * Nicolas Garcia upon seeing me took hold of my both arms and we grappled together. While we were grappling together I saw Joaquin Tipay stabbed him on the left side of his stomach. After Joaquin Tipay slabbed him I was able to put him down. After putting him down Hipolito Ablan stabbed him twice in his breast and Nicolas Garcia was not able to stand any more. Seeing this condition of his, myself and the rest of my companions ran away.* * *"

Whether that statement was made by the supposed declarant or dictated by the investigator as his own harvest, it sounds to us like a crude fabrication. Think of a guerrillero, commissioned to assassinate an unwary victim and armed for that purpose with a .45-caliber revolver, who attempts not to make the slightest use of that powerful weapon but simply allows himself to be held in both arms by his intended victim, who apparently without knowing him or his intention grapples with him immediately upon seeing him! We also note that the affidavits of the three accused disclose the theory that Lt. Vicente Balbin commissioned no less than six persons to assassinate an un-suspecting and defenseless man in the cockpit, as if a squad or an excess of personnel were required to accomplish the dastardly job and at the same time increase the chance of one or more of the participants' being identified, caught, and made to squeal on the instigator. What is still more remarkable is that altho the complaint was based on said affidavits which denounced Vicente Balbin as the principal and instigator of the crime, he was not included as one of the accused, in flagrant disregard of the requirement of the law that "all criminal actions

must be commenced * * * against all persons who appear to be responsible therefor." (Sec. 1, Rule 106.) In the annals of the Court we do not recall having come across such an amateurish investigator as this one whom the trial court has found guilty of employing physical violence to extort a confession from a suspect.

Nevertheless, the trial court gave probative value to the affidavit Exhibit C (a) because the record of the justice of the peace court (folio 17) shows that appellant pleaded guilty upon being arraigned there; (b) because the statement in said affidavit that appellant grappled with the deceased in the cockpit of Gerona is corroborated by the finding of the cadaver in the very same cockpit; and (c) because said affidavit is further corroborated by the affidavit of Joaquin Tipay, Exhibit D. We find such reasons untenable.

The supposed arraignment of the appellant before the justice of the peace was never mentioned during the trial, the record of it was not shown to appellant when he testified as a witness in his own behalf so that he could affirm or deny that he really pleaded guilty, and if he did, to explain the circumstances under which he made the plea, and was not offered and admitted in evidence during the trial. We have held that a preliminary investigation constitutes no part of the final proceedings in a cause unless it is presented in evidence, and that the facts adduced therein are evidence only for the purpose of testing the credibility of witnesses. (U. S. vs. Grant, 18 Phil., 122; U. S. vs. Laban, 21 Phil., 297; and U. S. vs. Lopez Quim Quinco, 33 Phil., 239, 240- 241.) The wisdom and necessity of that doctrine are exemplified in the instant case. It appears here that whereas the record of arraignment of the other two accused, Joaquin Tipay and Hipolito Ablan, was signed by each of them on the dotted line provided for the signature of the accused, that of the appellant Ricardo Tipay does not appear to have been signed or thumbmarked by him. We find the explanation for this in the fact that unlike his two coaccused who were detained in the municipal jail of Gerona after their arrest and, therefore, easily available for arraignment before the justice of the peace, the appellant Ricardo Tipay was at that time a prisoner in the provincial jail at the provincial capital and he, having renounced the preliminary investigation, was not brought before the justice of the peace of Gerona, according to the testimony of the municipal mayor and acting justice of the peace, Pacifico Lagade, who, to the question propounded by the court, responded as follows:

"P.—Este Ricardo Tipay, que le dijo a usted cuando le investigo usted ?—R.—I think Ricardo Tipay was not there, and according to what I know, if my memory does not fail, I think Ricardo Tipay was here in the provincial jail to be taken for investigation."

The very synopsis of the record signed and forwarded by the justice of the peace Patricio T. Rigor (folio 25) contains the following item:

"March 23, 1943—The complaint read to the accused Hipolito Ablang and Joaquin Tipay, and they entered the plea of not guilty."

The supposed arraignment of the appellant, like that of his two coaccused, bears the date March 23, 1943, and yet, altho said arraignment bears the signature of justice of the peace Patricio T. Rigor, it was not mentioned in his certification of the record. This fact, together with the lack of signature or thumbmark of the appellant, tends to show that said justice of the peace must have signed the intended arraignment of the appellant thru oversight. Had that arraignment been shown to the appellant during the trial, he could have declared whether or not he was really arraigned and whether or not he pleaded guilty, and if necessary the justice of the peace could and should have been called as a witness.

As to the supposed corroboration of Exhibit C by the finding of the cadaver in the cockpit, it seems to us patent that it cannot be considered a corroboration at all because at the time the affidavit was prepared¹, the body of the deceased had been found at the scene of the crime, and it would have been the height of carelessness and absurdity to state in said affidavit that the murder was perpetrated somewhere else.

As to the alleged corroboration of Exhibit C by Joaquin Tipay's supposed confession Exhibit D, suffice it to say that the latter was admitted, and could only have been admitted, to rebut the testimony of Joaquin Tipay during the trial that he alone had killed Nicolas Garcia and that Ricardo Tipay had had no participation in the commission of the crime. That extrajudicial confession of Joaquin Tipay was not admissible and could not be considered as evidence in chief against his coaccused, the herein appellant. As a rebuttal evidence, proceeding as it did from the same vicious origin as the affidavits Exhibits C and E, it can be accorded no probatory value. Moreover, we do not need to consider and accept the testimony of Joaquin Tipay in favor of the appellant in the absence of any valid proof against the latter.

It results from all the foregoing considerations that appellant's conviction by the trial court rests upon incompetent and inadmissible evidence consisting solely of extrajudicial affidavits which are shown to have been unlawfully procured by a constabulary investigator thru methods abhorrent to and condemned by all courts of the civilized world.

The judgment appealed from is reversed and the appellant Ricardo Tipay is hereby acquitted and ordered released forthwith from the custody of the law, with costs de oficio.

Yulo, C. J., Moran, Horrilleno, Paras, and Bocobo, JJ., concur.

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