

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL NAVOA Y MARTINEZ AND BERNARDO LIM Y RAMIREZ ALIAS “JACK ROBERTSON”; ALIAS “LIM MING TAK”; ALIAS “CHRISTOPHER KELLY”; DE...

G.R. No. 59551. August 19, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an automatic review of the decision of the then Court of First Instance of Manila, Sixth Judicial District, Branch XXX convicting defendants-appellants Manuel Navoa and Bernardo Lim of the crime of Arson. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds both accused Manuel Navoa y Martinez and Bernardo Lim y Ramirez, also known as Jack Robertson, Lim Ming Tak and Christopher Kelly, guilty beyond reasonable doubt of arson, as charged in the information, and hereby sentences them to suffer the penalty of death, to indemnify, jointly and severally, the building and theater owners, N. de la Merced & Sons, Inc. and Universal Management Corporation, in the total amount of P774,550.29, and to pay the costs."

In an information dated June 29, 1979, defendants-appellants Manuel Navoa and Bernardo Lim were charged with the crime of arson as follows:

"The undersigned accused MANUEL NAVOA y MARTINEZ and BERNARDO LIM y RAMIREZ, alias 'Jack Robertson' alias 'Lim Ming Tak', alias 'Christopher Kelly' of the offense of Violation of Article 320, paragraph 4, in relation to Article 326-A, of the Revised Penal Code, as amended, (ARSON) committed as follows:

"That on or about July 9, 1978, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown, and helping one another, did then and there wilfully, unlawfully, feloniously and deliberately, with the use of gasoline, set fire to and burn the MANILA CINEMA BUILDING, a commercial building where commodities of value were kept and which housed the Manila Cinema 1 and 2 Theatres, among others, located at the corner of Claro M. Recto Avenue and N. Reyes, Sr., St., this City, owned by the N. de la MERCED & SONS, INC., and which build-ing was near and adjacent to other commercial buildings thereat, and therefore was a populated place, thereby causing as a consequence the said MANILA CINEMA BUILDING to be totally destroyed and burned, thus inflicting damage and destructions to the said building and its contents amounting to six (6) million pesos, to the damage and prejudice of the said owner thereof in the same sum of six (6) million pesos, Philippine currency; that as a further result thereof, the hereunder named persons sustained fatal injuries which were the direct cause of their death immediately thereafter:

"1. Elmer Red Rebadavia, Lot 15, Blk. 86 Velvet St., SSS Village, Marikina, Rizal.

"2. Remedios C. Gayo, 204 Manila Times Village, Pamplona, Rizal.

"3. Gina Estela Montiel, 1709-B M. Hizon St., Sta. Cruz, Manila.

- "4. Ricardo Acordon, 142 Binangonan St., Maypajo, Caloocan City
- "5. Alex Ibasco y Saldivar, 1659 Kundiman St., Sampaloc, Manila
- "6. Elmer Guidilla, 19 Examiner St., Bo. West Triangle, Quezon City
- "7. Magdalena Aparis Beñares, 1444 4th St., Fabie Estate, Paco, Manila
- "8. Nenita Cuyugan, 255-E dela Paz Sto. Niño, Marikina, Metro-Manila
- "9. Leovegildo D. Vicedo, 1164 E. San Andres, Malate, Manila
- "10. George M. Riego, Buenmar Subdivision, Mangahan, Pasig, Metro-Manila
- "11. one (1) unidentified female of about 20 years old
- "12. and three (3) others unknown/unidentified persons."

On July 9, 1978, at about 2:30 and 3:30 o'clock in the afternoon, the Manila Cinema Building housing the Manila Cinema 1 and 2 theaters located at the corner of Claro M. Recto Avenue and Nicanor Reyes, Sr., Streets, Manila was burned, causing damage and destruction to the said building. In addition, fourteen (14) persons died in the fire, eleven of whom were identified. All died because of asphyxia due to suffocation (Exhs. "B", "B-1", "B-2", "B-3", "C", "C-1", "C-2", "D", "D-1", "D-2", "E", "E-1", "E-2", "F", "F-1", "F-2", "G", "G-1", "G-2", "H", "H-1", "H-2", "I", "I-1", "I-2", "J", "J-1", "J-2", "K", "K-1", "K-2", "L", "L-1", "L-2", "M", "M-1" and "M-2").

N. de la Merced & Sons, the owner of the Manila Cinema Building, and Universal Management Corporation, the owner of Manila Cinema 1 and 2 paid a total of P514, 068.29 as indemnification to heirs of the deceased to defray their funeral and hospitalization expenses and to those who survived the fire, of which P244,541.80 was reimbursed by the insurer, Filipino Merchants Insurance Co. (Exhs. "U-1" to "U-2"). Damage to the building was estimated at P4,160,750.00 of which only P3,109,693.89 was paid by the insurer (Exhs "S", "S-1" and "T").

On June 29, 1979, defendant-appellant Bernardo Lim alias "Jack Robertson", alias Christopher Kelly", alias "Lim Ming Tak", acting as an alleged informer of Police Corporal Vicente Palmon and his fellow arson operatives, informed the latter that it was Manuel Navoa who was responsible for the fire that destroyed Manila Cinema 1 and 2.

Relying solely on the credibility of Bernardo Lim and without first securing a warrant of arrest, Corporals Palmon and Harrison Tolosa arrested appellant Manuel Navoa. At the police headquarters, appellant Navoa allegedly executed statements waiving his constitutional rights to silence and to counsel (Exh. "O") and giving an extra-judicial confession (Exhs. "A", "A-1" to "A-9"). Both waiver and extra-judicial confession were subscribed and sworn to before Inquest Fiscal Zeus Abrogar.

Earlier, on that same day, appellant Bernardo Lim likewise executed a waiver of his constitutional rights to silence and to counsel (Exhs. "P" and "Q") and also gave an extra-judicial confession (Exhs. "R", "R-1" to "R-10").

On June 24, 1979, appellant Manuel Navoa made a re-enactment of how the theaters were set on fire during which, pictures were taken at various stages (Exhs. "N", "N-1" to "N-14").

Both defendants-appellants pleaded not guilty upon arraignment.

The testimony of appellant Bernardo Lim was sum-marized by the trial court as follows:

"x x x It was at 8:45 o'clock in the morning of June 22, 1979, that he was arrested by Corporal Palmon and

brought to the police headquarters where upon instruction by a police investigator whom he only knew as Lito, he wrote in his own hand what purports to be a waiver of his constitutional rights (Exhibit P) and affixed his signature to what appears to be his statement naming and identifying his co-accused Navoa as the one who had set ablaze the two theaters in question and made the corrections therein (Exhibits R, R-1 to R-10) after being maltreated, dealt countless fist blows on the chest, tortured and threatened by said police investigator, which statement (Exhibits R, R-1 to R-10) was but prepared by Corporal Palmon without his participation. Told earlier that it was his right to be assisted by counsel, he said he needed none because anyway he was going to give his statement voluntarily."

On the other hand, appellant Manuel Navoa's testimony is summarized as follows:

"x x x Between 7:00 and 7:15 o'clock in the morning of June 22, 1979, at the junction of Jose Abad Santos and Rizal Avenue Extension, as he was walking to take a ride to go to school, he was accosted by three police officers. Corporal Palmon poking a gun at him and Corporal Tolosa twisting his arm and handcuffing his two hands, they shoved him into a waiting jeep where a Chinese looking man was riding in. Taken to the police headquarters at United Nations Avenue in Manila, upon arrival he was first brought to the fingerprint section where after his handcuffs were removed he was made to fill up a form containing his personal data. After being fingerprinted, Corporal Palmon brought him to his office at the second floor of the building where upon being met by Corporal Tolosa he was divested of his bag containing books, notebooks, pencils, ball pens, school identification card and driver's license with P200 in cash kept inside his jacket. Except for the cash money, all were returned to him. Told by Corporal Palmon that he was responsible for the burning of the two theaters, he denied having anything to do with it, whereupon Corporal Tolosa told Corporal Palmon, 'Just leave it to me.' It is not true that he was informed of his constitutional rights to silence and to counsel. In fact they did not even allow him to get in touch with his relatives. For, when he tried to reach the telephone, Corporal Tolosa told him, 'Just try holding the phone and I will shoot you,' as he pointed a gun at him. Frightened, he did not attempt again to use the telephone. About the waiver, Exhibit O, Corporal Tolosa's companion wrote it on a piece of paper. After giving to Corporal Tolosa, it was given to him. With a ball pen handed to him, Corporal Tolosa told him to copy it on a typewriting paper, a gun being pointed by Corporal Tolosa on his right cheek. Frightened, he did as ordered. After that, Corporal Tolosa and his companion typed the statement (Exhibits A, A-1 to A-9). Except the portion beginning from his name on the first page (Exhibit A) until question and answer No. 17 on the third page (Exhibit A-2) everything on it is not true. After typing the statement, Corporal Tolosa disapproved of some words used and ordered him to make the corrections. When he told him that he needed the assistance of a lawyer, Corporal Tolosa ordered him to follow what he was told to do, otherwise he would get hurt or killed. Because of that he obeyed and made the corrections appearing on the fourth, seventh and tenth pages (Exhibits A-1, A-7 and A-9). Afterwards Corporal Tolosa ordered him to sign the statement, otherwise he would be tortured. Frightened, he did as he was told. Nothing was given him for lunch. And it was only in the morning of the next day, June 23, 1979, that he was given food while at the Theft and Robbery Section. When told by him that it was Kelly (accused Lim) alone who was responsible for having him arrested upon a false complaint, Corporal Tolosa boxed him twice on the chest. He never admitted anything to Corporal Palmon. But aside from what Corporal Tolosa did to him, Patrolman Julito Andales struck twice with his open palms his two ears, boxed him thrice on the chest and several times on the stomach and tied a piece of wire around his neck that he tightened and loosened slowly while he was at the Arson Section, being forced to give answers to the questions that would tally with his police report, such as the fact that it was not gasoline but a chemical that was used to burn the theaters, and that he was the one responsible for the burning of Delta Theater and Roman Cinerama and the fire in Tambunting and other places in Metro Manila. When first brought to the police headquarters, Corporal Palmon threatened to kill him, asking Corporal Tolosa if they should kill him. Then Corporal Palmon warned him that if he would not admit guilt to Corporal Tolosa he would return to kill him. Before being brought to the inquest fiscal, Corporal Tolosa told him to answer that what appears in his statement is his signature and that he was not tortured at all, if asked by the fiscal. About the alleged re-enactment in the pictures, Exhibits N, N-1 to N-14, he was but ordered by Corporal Tolosa and Patrolman Andales to pose for them while they were being taken. It was only in the morning of June 23, 1979,

that his parents and relatives came. To them he revealed the threat he received and the torture he suffered from the police officers. A request was made by his mother to General James Barbers to have him undergo psychiatric examination so that he could also be physically examined by a doctor (Exhibit 3). It was in August 1976 at the Jai Alai that he came to know the accused Lim for the first time. Since then he used to extort money from him, P20, P30, P50, while in the company of people carrying guns. In March 1979, the accused Lim asked for P50,000 from him. Told that he could not give him that much, the accused Lim threatened to kidnap his younger sister and report him to the Philippine Constabulary as the one responsible for the murders, rapes, hold-ups and burnings in Metro Manila. But because of the threat that his parents and the members of his family would be killed one by one, his parents did not report it to the police authorities when he told them about it.

"Teresita Gutierrez, Edgardo Silva, Cristina de la Cruz and Glory Rabbon, accused Navoa's teachers at Gregorio Araneta University in Malabon, Metro Manila, swore to his presence in his classes on June 15, 16, 17 and 19 and July 8 and 10, 1978, as evidenced by their class records (Exhibits 1 & 2-Navoa)."

Solely on the basis of the extra-judicial confessions of both defendants-appellants (Exhibits "A", "A-1" to "A--10", "R", "R-1" to "R-10"), the trial court rendered the appealed judgment of conviction.

Appellant Bernardo Lim now assigns the following errors:

The lower court erred in:

I

CONVICTING APPELLANT BERNARDO LIM y RAMIREZ ON THE BASIS MERELY OF THE ALLEGED EXTRA-JUDICIAL CONFESSION (EXHIBITS "R" TO "R-10") OF THE SAME IN VIOLATION OF SECTION 20 ARTICLE IV OF THE 1973 CONSTITUTION.

II

CONVICTING APPELLANT BERNARDO LIM y RAMIREZ WITH THE CAPITAL PUNISHMENT OF DEATH WITHOUT PROOF BEYOND REASONABLE DOUBT.

III

NOT TAKING INTO ACCOUNT THE ARREST OF APPELLANT BERNARDO LIM y RAMIREZ WITHOUT ANY WARRANT AFTER ONE YEAR FROM THE OCCURRENCE OF THE INCIDENT SUBJECT MATTER OF THIS APPEAL.

IV

DISREGARDING THE ALIBI OF APPELLANT BERNARDO LIM y RAMIREZ EVEN IF THERE WAS NO POSITIVE AND PROPER IDENTIFICATION OF THE ACCUSED BY WITNESSES OF THE PROSECUTION.

V

FAILING TO DETERMINE WHETHER OR NOT THE FIRE WAS THE RESULT OF AN ARSON OR AN ACCIDENT.

On the other hand, appellant Manuel Navoa faults the trial court with the following errors:

FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT FINDING THAT ACCUSED-APPELLANT MANUEL NAVOA WAS ILLEGALLY AND ARBITRARILY ARRESTED ON JUNE 22, 1979.

SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN ADMITTING THE ALLEGED WAIVER (EXH. "O") OF

ACCUSED-APPELLANT MANUEL NAVOA WHICH WAS TAKEN BY MEANS OF VIOLENCE, FORCE, THREAT AND INTIMIDATION.

THIRD ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN ADMITTING THE ALLEGED EXTRAJUDICIAL CONFESSION (EXHS. "A", "A-1" TO "A-9") OF ACCUSED-APPELLANT MANUEL NAVOA WHICH WAS TAKEN IN VIOLATION OF THE 1973 CONSTITUTION.

FOURTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN ADMITTING THE ALLEGED EXTRAJUDICIAL CONFESSION (EXHS. "A", "A-1" TO "A-9") OF ACCUSED-APPELLANT MANUEL NAVOA WHICH WAS TAKEN BY MEANS OF VIOLENCE, FORCE, THREAT AND INTIMIDATION.

FIFTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN FINDING THAT THE ALIBI SET BY ACCUSED-APPELLANT MANUEL NAVOA CANNOT STAND ON THE WAY OF CONVICTION FOR THE OFFENSE CHARGED.

SIXTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN IGNORING THE TESTIMONIES OF THE WITNESSES FOR ACCUSED-APPELLANT MANUEL NAVOA WHICH CONTRADICTED CERTAIN INCRIMINATORY STATEMENTS IN THE ALLEGED EXTRA-JUDICIAL CONFESSION (EXHS. "A", "A-1" TO "A-9").

SEVENTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE POLICE INVESTIGATORS DESPITE THEIR INHERENT INCREDIBILITIES, IRRECONCILABLE INCONSISTENCIES AND PATENT PARTIALITY.

EIGHTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN CONSIDERING THE ALLEGED EXTRAJUDICIAL CONFESSION (EXHS. "R", "R-1" TO "R-10") OF CO-ACCUSED BERNARDO LIM AS EVIDENCE AGAINST ACCUSED-APPELLANT MANUEL NAVOA.

NINTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT MANUEL NAVOA ON THE GROUND OF REASONABLE DOUBT.

The main thrust of the defendants-appellants' arguments on appeal is that they were not afforded the opportunity to avail of their rights under Section 20, Article IV of the 1973 Constitution; that there was no intelligent waiver of their rights, and as such, their extra-judicial confessions are inadmissible against them.

The records show that the extra-judicial confessions of the accused formed the only basis for the judgment of conviction. The confessions were taken without the assistance of any counsel for the accused. The confessions were preceded by waivers of the right to counsel. Manuel Navoa stated that he did not need the assistance of a lawyer or anybody else because he wanted to tell the truth about his participation in the crime. To augment the waiver which formed the first part of his typewritten confession, he also executed a short waiver in his own handwriting. Accused Bernardo Lim did likewise.

During the trial, accused Navoa repudiated the waivers and the confessions. He testified that the police investigators employed force and intimidation, including outright torture to secure his confession. However, the trial court did not believe that the accused were "forced, threatened, intimidated, and tortured into executing their

respective extrajudicial statements." It found no reason why the police officers should resort to torture "if only to have them (the accused) falsely charged and unjustly convicted of the serious crime of arson for which the penalty is death, fourteen people having perished in the fire that had been set ablaze." The court found the confessions replete with details; no complaints were filed against the police officers; and no doctors examined the accused for the alleged injuries.

On the basis of the above findings, accused Navoa and Lim were each sentenced to DEATH and ordered to pay P774,550.29 in indemnifications.

We first pass upon the question of whether or not the extrajudicial confessions were voluntary.

Even before the adoption of the "right to counsel" rule for custodial interrogations in Article IV, Section 20 of the 1973 Constitution, this Court had already ruled that to be valid, a confession must be shown to have proceeded from the free will of the person confessing.

Thus, in *People v. Bagasala* (39 SCRA 236), we stated that "where the confession is involuntary, being due to maltreatment, or induced by fear or intimidation, there is a violation of this constitutional provision. Any form of coercion, whether physical, mental or emotional thus stamps it with inadmissibility. What is essential for its validity is that it proceeds from the free will of the person confessing."

The test of free will does not require a showing of force or intimidation. On November 23, 1976, this Court ruled:

"The constitutional inquiry is not whether the conduct of the police officers in obtaining the confession was shocking, but whether the confession was free and voluntary; that is, it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, nor by the exertion of improper influence. (*People v. Alto*, 26 SCRA 364) It has been recognized that 'coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.' (*Blackburn v. Alabama*, 361 U.S. 199, 206, 4 L. Ed. 2d. 242)."

In the light of the trial court's factual findings, it is difficult for this Court to make a categorical finding from the records that the police investigators resorted to cruel and reprehensible tactics to extort the confessions. However, we can glean enough to rule that, under the standard of proof beyond reasonable doubt, Navoa's confession was far from being the product of his free will. Assuming there was no torture, there was, at the very least, improper pressure and intimidation.

Appellant Navoa's testimony during trial alleges that he was intimidated into signing the confession (Exhibits "A", "A-1" to "A-9"). He states:

"Q.

After these personal items of yours were taken, what happened?

"A.

Corporal Tolosa told that I was the one responsible for the burning of Cinema 1 and 2.

"Q.

What did you answer?

"A.

I told him I don't know anything about it.

"Q.

What did he do afterwards?

"A.

Corporal Palmon told Corporal Tolosa, 'Shall we kill him?'

(t.s.n., December 9, 1980, p. 5)

XXX XXX XXX

"Q.

At that time, did they allow you to get in touch with any of your relatives?

"A.

They did not.

"Q.

Did you attempt to inform them you wanted to get in touch with your relatives?

"A.

Yes.

"Q.

To whom did you make this request?

"A.

To Tolosa.

"Q.

What was his answer?

"A.

When I tried to reach the tele-phone at the table of Tolosa, Tolosa suddenly pointed his gun at me and told me, 'Just try holding the telephone and I will shoot you.'

"Q.

What was your reaction?

"A. I became frightened after that." (t.s.n., December 9, 1980, p. 6)

More important than the intimidation is the mal-treatment that appellant Manuel Navoa allegedly suffered at the hands of the police investigators. He testified:

"Q.

In what manner did he torture you?

"A.

First, he tapped my ears two times very slowly.

"Q.

With what hands?

"A.

Two hands.

"Q.

Afterwards?

"A.

I became very dizzy after that. I did not say anything, some words, and suddenly he boxed me three times in the chest and several times in the stomach and because of that I became weak and frightened and after that I did not say again anything some words because if I will say something, it will be against me. He suddenly tied with a wire again my neck. And slowly he untied and tied it again and untied again." (t.s.n., December 9, 1980, p. 9)

xxx xxx xxx

"Q.

Besides pointing his gun at you, what did Tolosa do to you?

"A.

He boxed me two times in the chest and once in the stomach. When I told him that Kelly was the one responsible for having jailed me when he complained to the police falsely." (t.s.n., December 9, 1980, p. 8)

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"Q.

What did Andales do to you?

"A.

He tapped my two ears and because of what he had done, I became dizzy, and after that, he boxed me three times in the chest, several times in the stomach and also he tied a wire around my neck and tightened it slowly and very slowly he loosened and tightened again.

"Q.

Where did this take place?

"A.

In the room of the Arson Division." (t.s.n., December 9, 1980, p. 9)

Navoa stood firm in his testimony during the grueling cross-examination. Thus:

"Q.

How were you harmed by Cpl. Tolosa?

"A.

I was already at the headquarters, your Honor.

"Q.

How were you harmed?

"A.

He boxed me two times on the chest and once in the stomach, your Honor." (t.s.n., December 9, 1980, p. 30)

xxx xxx xxx

"Q.

Now, after Cpl. Tolosa subjected you to bodily harm, do I get you correctly that Pat. Andales subjected you also to bodily harm?

"A.

Yes, sir.

"Q.

And this was tapping your ears two times, boxing you on your stomach three times?

"**WITNESS:**

"Yes, sir.

ATTY. BODEGON:

"Q.

And not only that, Pat. Andales also tied a wire around your neck?

"A.

Yes, sir.

"Q.

And do I understand correctly that he would tighten this wire and then let it loose again and then tighten it again?

"A.

Yes, sir.

"Q.

In such that you were subjected to excruciating pain?

"A.

(witness nodding his head)." (t.s.n., March 3, 1981, pp. 34-35)

The trial court stated that no results of medical examinations indicating torture were presented in evidence by the accused. Noteworthy is our pronouncement in *People v. Cabrera* (134 SCRA 362) with respect to the taking of extrajudicial confessions:

"x x x [W]e reiterate the reminder to Judges and Fiscals before whom declarants, are brought for swearing to the truth of their statements to adopt the practice of having the confessants physically and thoroughly examined by independent and qualified doctors before administering the oath, even if it is not requested by the accused. If physicians are not available then they should themselves examine the bodies of the declarants for signs of possible violence. This would not only deter attempts to secure confessions through violence but would also preclude future contro-versies on whether the statements were obtained through torture or not, which only delay criminal trials. (*People v. Castro*, 11 SCRA 699 [1964]; *People v. Francisco*, 74 SCRA 159 [1976])." (Emphasis Supplied)

The written waiver (Exh. "O") of appellant Navoa purportedly waiving his constitutional rights to silence and to counsel should have been excluded by the trial court.

In a case decided last May 31, 1982, we stated that a defendant may waive effectuation of his right to remain silent and to be assisted by counsel at a Custodial police interrogation provided the waiver is made voluntarily, knowingly, and intelligently (*People v. Royo*, 114 SCRA 304).

In the case at bar, there was no such voluntary, knowing, and intelligent waiver. Exhibit "O" is so pat and aptly worded, so contrived as to be exactly suited to meet legal objections that it could have been prepared only by a veteran police investigator and not by an ordinary layman like appellant Manuel Navoa. Exhibit "O" reads:

"Ako Manuel Navoa y Martinez, 23 taon gulang, binata at kasalukuyang naninirahan sa 2975 Jose Abad Santos, Tondo, Manila, pagkatapos kong malaman ang aking mga karapatan sang-ayon sa ating Bagong Saligang Batas ay malaya at kusang loob na nagsasaad nitong mga sumusunod:

"1) Na ako ay pina-alala naman ng mga pulis ay aking kara-patan sa ilalim ng ating Bagong Saligang Batas tulad ng karapatan kong manatiling tahimik at huwag sumagot sa anumang itatanong sa akin, karapatan ko ring magkaroon ng sariling abogado habang ako ay tinatanong ng pulis.

"2. Pagkatapos kong malaman ang aking mga karapatan na nabang-git sa itaas nito ako ay magbibigay ng isang malaya at kusang loob na salaysay na ako ay hindi pinilit o kaya ay pinangakuan ng anumang pabuya sa

pagsisiyasat na ito.

"3. Na hindi ko na kailangan ang tulong ng isang abogado sapagkat pawang katotohanan lamang ang sasabihin ko.

"4) Na ako ay pansamantalang nagpapadetine sa pulisya ng aking kagustuhan na ako ay hindi tinakot, pinilit o kaya ay pinangakuan ng anumang pabuya.

"5) Na bilang patunay sa sinabi kong ito ay kusang loob kong inilagda ang aking pangalan ngayong ika-22 ng Hunyo, 1979, ganap na ika-12:20 ng hapon dito sa Lungsod ng Maynila."

Manuel Navoa is not well versed in the niceties of the law and is without any experience whatsoever in criminal investigations. Indeed there is persuasive merit in his submission that he only copied the waiver under threat of a gun from a prepared text written by one of the police investigators. Thus:

"Q.

Will you inform the Honorable Court how you signed, under what circumstances you signed Exh. "O"?

"A.

The police companion of Tolosa wrote in a piece of paper a waiver and gave it to Tolosa who then gave me a piece of typewriting paper and ball pen and told me to copy the waiver with his gun pointed at my right cheek.

"Q.

What did you do when he told you to copy the waiver?

"A.

I became frightened and I copied it." (t.s.n., December 9, 1980, p. 6)

When Navoa waived his right to counsel and executed the extra-judicial confession, he was alone in the company of the police interrogators, deprived of outside support. This Court is far from satisfied that the waiver of counsel and the subsequent confession were indeed products of Navoa's free will.

Moreover, the following material allegations in defendant-appellant Navoa's alleged extra-judicial confession, to wit: (1) That at about 5:00 o'clock in the afternoon of June 15, 1978 at Mehan Garden, a certain Jack Robertson asked defendant-appellant Navoa if he wanted to earn some fast money; (2) That on June 16, 1978, defendant-appellant Navoa again met Jack Robertson, this time, Robertson requested him to recruit several persons who also wanted to earn fast money; (3) That on June 17 and 18, 1978, Jack Robertson requested defendant-appellant Navoa and his recruits to watch a movie at the Manila Cinema 1 at the Manila Cinema Building along Claro M. Recto Avenue; (4) That on July 8, 1978, defendant-appellant Manuel Navoa bought some gasoline; and (5) That on July 9, 1978, defendant-appellant Manuel Navoa and his recruits again watched a movie at the Manila Cinema 1 where they discreetly placed bags of gasoline at designated places --- are all belied by the collective testimonies of the teachers of defendant-appellant Navoa who categorically testified that on those dates, he was present in their classes based on their recollections and evidenced by their class records.

Cristina de la Cruz, a teacher of Animal Husbandry at the Gregorio Araneta University Foundation testified:

"ATTY. FERNANDEZ:

"Q.

There has been presented in this court an alleged statement of Manuel Navoa which the prosecution claimed to have been executed voluntarily. In that statement marked as Exhs. "A", "A-1" to "A-9" inclusive, it was stated that at around 10:00 o'clock of June 16, 1978 which is a Friday, Manuel Navoa was with a certain Jack Robertson at Mehan Garden. Now do you know where Manuel Navoa was at around 10:00 o'clock in June 16, 1978 which was a Friday?

"A.

Yes, he was in my class.

ATTY. FERNANDEZ:

"Q.

Also in the same statement, Manuel Navoa was claimed to have voluntarily stated that on June 19, 1978 which is a Monday he was at Cinema 1 watching a movie with a certain Jack Robertson and six recruits. Would you know where Manuel Navoa was in the morning of June 19, 1978?

"A.

He was in my class also.

"Q.

Likewise in the said statement, Manuel Navoa was alleged to have stated that on July 10, 1978 which is a Monday in the morning, he went to Mehan Garden for a meeting with Jack Robertson. Do you know where Manuel Navoa was on July 10, 1978 in the morning?

"A.

He was attending my class, sir.

"Q.

Do you have the records of your class to show that on those particular dates and time, you mentioned, Manuel Navoa attended your class?

"A.

Yes, I have my record. It is here." (t.s.n., October 2, 1980, pp. 3-4)

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ATTY. FERNANDEZ:

"Q.

According to your record of attendance, how many times was Navoa absent during the first semester of 1978?

"A.

He was a regular student and he attended class. There was no absences at all." (t.s.n., October 2, 1980, p. 5)

Teresita Gutierrez, appellant Manuel Navoa's teacher in Land Reform gave similar to testimony. To the same effect is the testimony of Edgardo Silva, defendant?appellant Manuel Navoa's teacher in Logic:

"Q.

Well on your record, was Navoa present on June 15, and 17?

"A.

Yes, sir.

"Q.

All right, will you check your record and inform us whether the said accused Manuel Navoa was present in your office during this date?

"A.

He was present, sir." (t.s.n., November 7, 1980, p. 38)

The testimonies of the teachers are supported by the class records of attendance which were submitted in evidence.

Apart from the extra-judicial confessions, the trial court also relied on the pictures (Exhs. "N", "N-1" to "N-10") taken during the re-enactment of the crime by appellant Navoa.

In *People v. Buscato* (74 SCRA 30) this Court sustained the submission of the Acting Solicitor General that for a re-enactment to be given evidentiary weight, the validity and efficacy of the confession must first be shown. Such a showing is absent in this case.

These pictures, therefore, should have been likewise excluded by the trial court because they were based on the inadmissible extra-judicial confession of defendant-appellant Navoa (*People v. Alcaraz*, 136 SCRA 74).

In addition, the prosecution's claim that the re-enactment was voluntarily done at the initiative of appellant Navoa is belied by the direct testimony of the police photographer who took the pictures during the alleged re-enactment. The police photographer categorically testified that it was indeed Patrolman Palmon who directed the positioning of the people who took part in the re-enactment. Thus,

"Q.

And who instructed the positioning of these people in the pictures marked Exhibits "N-6" to "N-10"?

"A.

Corporal Palmon, sir.

"Q.

In all these pictures marked Exhs. "N-6" to "N-10", it was Corporal Palmon who directed the positioning of these persons?

WITNESS"

"A.

Yes, sir." (t.s.n., November 9, 1979, pp. 53-54)

To the same effect is the testimony of appellant Navoa. He testified that it was Patrolman Andales who instructed him what to do in the preparation of the materials to be used in the re-enactment and that it was Patrolman Tolosa who directed the movements depicted in the pictures:

"Q.

Now, pictures marked Exhs. "N", "N-1" to "N-14" inclusive presented before this court and pursuant to the testimony of Patrolman Palmon, said pictures were taken when you voluntarily executed the preparation for the burning of Cinema 1 and 2 as depicted in the pictures, Exhs. "N", "N-1" to "N-14". What can you say?

"A.

In the making of the preparation to be used in the re-enactment, Andales told me what to do." (t.s.n., December 9, 1980, p. 11)

xxx xxx xxx

"Q.

Who directed the movements depicted in the pictures, Exhs. "N", "N-1" to "N-14"?

"A.

Tolosa supervised Andales who told me what to do." (t.s.n., December 9, 1980, p. 11)

The foregoing circumstances show that the re-enactment of the crime and the pictures taken during such re-enactment were pursuant to a script made by police officers and directed by them. With more reason, the pictures taken during the re-enactment should have been excluded.

With the exclusion of appellant Navoa's written waiver of his constitutional rights (Exh. "O"), his extra-judicial confession (Exhs. "A", "A-1" to "A-9") and the pictures taken during the re-enactment of the crime (Exhs. "N", "N-1" to "N-14"), the record is bereft of any other evidence which could support a judgment of conviction. No eyewitness who saw Navoa at the vicinity of the scene of the crime was ever presented. The prosecution failed to prove the guilt of Navoa beyond reason-able doubt.

While it is true that appellant Navoa put up only the defense of denial, this defense went far enough to give rise to a reasonable doubt of his guilt. Consequently, Navoa has to be acquitted if only to give meaning to the time

honored principle that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense.

Like Manuel Navoa, appellant Bernardo Lim was convicted on the basis of his extra-judicial confession. (Exhs. "R", "R-1" to "R-10") alone. But unlike Navoa, Bernardo Lim's later contention that his extra-judicial confession was extorted in violation of Section 20, Article IV of the 1973 Constitution appears to be without merit. On the contrary, appellant Lim, who was a police informer, testified during trial that he indeed voluntarily gave his statement to the police investigators. Thus,

"Q.

Were you informed of your right under our Constitution to remain silent or to call for an attorney, to provide you with a lawyer in that investigation. Were you informed of that matter?

"A.

No. I voluntarily gave statement to the police." (t.s.n., August 22, 1980, p. 5)

xxx xxx xxx

"Q.

Were you told that you have the right to get a counsel?

"A.

Yes.

"Q.

What did you say?

"A.

I said I don't have to get counsel because I am going to give voluntary statement." (t.s.n., August 22, 1980, p. 7)

However, Lim's extra-judicial confession upon which the judgment was based is not adequate to support conviction for the crime of arson warranting the extreme penalty of DEATH. Lim's statement limits his participation solely to the giving of information as to the exact location of the comfort rooms of the theater and their distances to the screen.

The reliability of Lim's confession is doubtful. He testified that his participation in the plotting took place in December, 1977 and January 3, 1978. The building housing Cinemas 1 and 2 was burned on July 9, 1978. The two appellants never saw each other again until January 26, 1979.

This fact was emphasized during the trial, to wit:

"Q.

(89) Do I understand that you never met again from January 3, 1978 up to January 26, 1979, a period of more than a year?

"A

Yes."

Being the police informer who fingered Manuel Navoa as the principal culprit, Lim appears to know more about the crime than what appears in the records. In his confession and testimony, he limits himself to the giving of information such as the layout of the movie houses which facilitated the commission of the crime. Actually such information was unnecessary as Navoa's alleged confession shows he and six other men went to the theaters more than once to acquire full familiarity with the place they were supposed to burn down. The culpability of appellant Lim is intimately tied up with the truth of Navoa's confession and the community of criminal design between the two. Since we find a lack of proof beyond reasonable doubt to convict Navoa, we are constrained to acquit Lim for the same reason.

The intentional burning of two moviehouses which resulted in the death of fourteen (14) victims is shocking in the perversity of the minds which conceived it, in their senseless lack of concern for the sanctity of human life. By its very nature, the crime of arson is difficult to investigate. The crime itself usually destroys the evidence which would incriminate the perpetrators. For that very reason, however, the development of more sophisticated police techniques is imperative.

In this particular case, the police should have been more aware of the protections afforded by Article IV, Section 20 of the Bill of Rights to persons undergoing custodial interrogation. In the belief that the extra-judicial confession and the re-enactment, taken without the required constitutional safeguards, were enough to sustain conviction, determined efforts to apprehend the six other arsonists or to get admissible and more convincing evidence were no longer taken.

Section 20 of the Bill of Rights which provides:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

governs the permissible procedures which the government may use in applying its power against individuals suspected of complicity in the commission of a crime. Without in any way minimizing the importance of giving police agencies ample latitude in the legitimate exercise of their duties, this Court is bound to give full and effective meaning to the public policy enunciated in Section 20, towards the creation of more effective safeguards against oppressive and arbitrary, albeit at times, well-meaning state power.

Not even the most conservative elements of society can deny that accused persons suffer an enormous disadvantage when confronted by the overwhelming interests of the State in public order, public safety, or its own self-preservation. The accused is at a disadvantage when government power and resources, coupled with the private motives of government officials are used against him.

The old argument that society's need for efficient law enforcement outweighs and, therefore, condones small encroachments on individual liberties has no place in a democratic form of government.

The continued acceptance of hitherto "valid" confessions to sustain judgments of conviction may lead to sloppy police investigations, to a lack of initiative, industry and resourcefulness on the part of the investigators, and to gross miscarriages of justice in many cases which must forever remain unknown.**

In any balancing of interests, the scales will even out vis-a-vis government action only when there is an

improvement of police procedures, the development of anti-crime techniques, and the perfection of law enforcement systems. And very often, such development of methods is possible only when the traditional, authoritarian, and easier procedures are proscribed and no longer available.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE. Appellants Manuel Navoa and Bernardo Lim are ACQUITTED of the crime charged on grounds of reasonable doubt.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Cruz, and Paras, JJ., concur.

** The rollo of this automatic review on appeal consists of four (4) thick volumes in addition to the original records of the trial court. Apparently, appellant Manuel Navoa spends considerable time inside the national penitentiary writing lengthy handwritten letters asseverating his innocence. Not all convicted persons inside Muntinlupa are as persistent in professing their cause. Undoubtedly, many of them do not have the necessary intelligence or education to overcome or even comprehend subjugation of the will, the coercion, and the psychological ploys inherent in custodial interrogations taken without constitutional safeguards.

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