

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CHARLIE REPE Y REVECENCIO ALIAS FELICIANO RECAFORTE,  
JOVENCIO RONTALE ALIAS HERNAN RONTALE Y REPE, ROMEO  
RONTALE Y REPE, R...**

*G.R. No. 64935. July 19, 1989*

Ponente: PADILLA, J.

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**PADILLA, J.:**

This case is before the Court on automatic review of the decision\* of the Regional Trial Court of Palawan, Fourth Judicial Region, Branch XLVII, in Criminal Case No. 2021, finding all the four (4) accused, namely: Charlie Repe, Alfredo Dagumboy, Jorge Signo and Joel Domingo guilty beyond reasonable doubt of the crime of robbery with homicide and sentencing them to suffer the maximum penalty of death, to indemnify jointly and severally the heirs of Sofronio Parangue and Margarita Parangue in the sum of P5,450.00, the amount stolen, and in the further sum of P24,000.00 for the death of said spouses, and to pay costs.

Under an information dated 10 October 1977,[1] filed with the Court of First Instance of Palawan, the following accused, namely: Charlie Repe y Revencio alias Feliciano Recaforte, Jovencio Rontale alias Hernan Rontale y Repe, Romeo Rontale y Repe, Rogelio Dagumboy y Balicol, Alfredo Dagumboy y Balicol, Jorge Signo y Balicol and Joel Domingo y Silverio were charged with the crime of Robbery in Band with Double Homicide. The Information docketed as Criminal Case No. 2021 alleged:

"That on or about the 9th day of June, 1976, in Sitio Marilao, Barrio of Dipla, Municipality of Taytay, Province of Palawan Philippines, and with-in the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and mutually helping one another, and armed with guns and other deadly weapons and with the use of a motor banca, did then and there willfully, unlawfully and feloniously and by means of force, violence and intimidation on the persons, and with intent of gain and against the consent of the owners thereof SOFRONIO and MARGARITA PARANGUE, took (sic) and carried (sic) away the following pieces of personal property, to wit: two (2) sacks of rice, one (1) fish net and cash money amounting to THIRTY THOUSAND PESOS (P30,000.00) Philippine Currency to the damage and prejudice of the owner thereof in the total sum of THIRTY FIVE THOUSAND PESOS (P35,000.00) that on the occasion of the said robbery and for the purpose of enabling them to take steal and carry away the articles above-mentioned the above-named accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior number and strength and with intent to kill, treacherously attack, assault, stab and use personal violence upon Margarita and Sofronio Parangue thereby inflicting upon them multiple wounds on different vital parts of their bodies which caused their instantaneous death.

"CONTRARY TO LAW and with the aggravating circumstances of alevosia, evident premeditation, night-time, use of motorized water craft, use of superior number and strength and penalized under Article 294 in relation with (sic) Article 296 of the Revised Penal Code."

Upon arraignment on 11 November 1977, the four (4) accused who were arrested, namely: Charlie Repe, Alfredo Dagumboy, Jorge Signo and Joel Domingo pleaded not guilty to the crime charged. The trial proceeded against said four (4) accused, while the other three (3) accused, namely: Jovencio Rontale, Romeo Rontale and Rogelio Dagumboy have remained at large to this day.

The evidence for the prosecution, as seen by the court a quo, is as follows:

"In the evening of June 8, 1976, the accused Charlie Repe y Revecencio alias Feliciano Recaforte, Alfredo Dagumboy y Balicol, Jorge Signo y Balicol, Joel Domingo y Silverio, Jovencio Rontale alias Herman Rontale y Repe, Romeo Rontale y Repe, Rogelio Dagumboy y Balicol, had a drinking spree ("inuman") in the house of Jovencio (alias Herman) Rontale in Barrio Sandoval, Taytay, Palawan, where they planned the robbery in question, that is to rob the spouses Sofronio and Margarita Parangue of Barrio Diplá, same municipality of Taytay, Palawan, Alfredo Dagumboy was to operate (makinista) the motorized banca (pumpboat) they will use in going to the house of the aforesaid spouses, which Jovencio borrowed from its owner, Pablo Repe.

"As previously planned, they proceeded to the house of the Parangues, boarding the motorized banca (pumpboat) at Binyangan, Alfredo being the makinista. On reaching Barrio Diplá, Taytay, Palawan, Romeo Rontale, Jovencio (alias Herman) Rontale, Jorge Signo, Joel Domingo and Alfredo Dagumboy got down from the pumpboat leaving Charlie Repe and Rogelio Dagumboy behind in the pumpboat. Jovencio had a sack with him. Along the way, Jovencio got from inside of the sack a .22 caliber gun which he gave to Alfredo. Romeo was armed with a .25 caliber gun and Joel with an air gun. When they reached the house of the spouses, Joel stayed below and Alfredo near the door upstairs, both to act as "lookouts", while Jovencio, Jorge, and Romeo entered the house. Romeo held the hair of the old woman Margarita who opened the door and pointed his gun at her with Jovencio and Jorge following behind them. Inside the house, Jovencio held the old man, tied his hands and asked him where their money was. Margarita got their money and gave it to Jovencio who asked where their other money was. Margarita told him that it was with their grandchild. On hearing this, Jovencio told Alfredo and Romeo to bring the old man to their pumpboat and they will proceed to the house of the grandchild of the spouses. Upon reaching the pumpboat, Alfredo who carried the sack containing the money handed the same to Jovencio while Romeo who brought the old man along, turned him over to Rogelio who placed the old man at one end of the pumpboat.

"Alfredo and Romeo returned to the house of the spouses and joined their companions who all proceeded to the house of the mentioned grandchild of the spouses about half a kilometer away, the same barrio of Diplá. It turned out that the spouses had no money there. This enraged Romeo, who right then and there, stabbed the old woman who died as a result thereof. They went back to the house of the spouses and ransacked the place and were able to get a bambo piggy bank full with loose change and two (2) sacks of rice which Jovencio and Romeo carried (a sack each) to the pumpboat.

"When they reached the pumpboat, Rogelio who learned that the old woman was already dead, stabbed the old man Sofronio several times and then he threw him overboard." [2]

On the other hand, the version of the defense, as summarized by the appellants, reads:

"x x x the evidence for the accused-appellants, Domingo and Signo showed that on 9 June 1976, the day the alleged crime was committed, Domingo and Signo were not at Sto. Marilao, Barrio Diplá, Taytay, Palawan the place where the crime was committed, but were at Sitio Topacao. Barrio Silangga, Taytay, Palawan making charcoal together with Anecito de la Cruz and Placido Gregorio. This was testified to by Anecito de la Cruz and Placido Gregorio and corroborated by the testimonies of accused appellants Domingo and Signo. Subsequently, the two accused were later arrested and jailed. While in jail, accused-appellants Domingo and Signo were repeatedly mauled by one Patrolman Adolfo Jaymis who, against their will, forced them to sign separate extra-judicial confessions which they later swore to before Municipal Trial Court Judge Cosme Martinez.

"As to accused-appellant Alfredo Dagumboy, evidence shows that he was not at Barrio Dipla when the alleged crime took place, as he was then residing at the house of Prudencio Bering at Barrio Topacao, where he was working as a fisherman. The latter place was several hours away by boat from the former. Furthermore, the records show that when Alfredo Dagumboy was arrested and jailed, he was also mauled repeatedly by Patrolman Adolfo Jaymis who, against his will, forced him to sign an extra-judicial confession which was subsequently sworn to by him before Municipal Trial Court Judge Cosme Martinez." [3]

After trial, a decision was rendered on 27 May 1983 by the court a quo, convicting the herein four (4) accused-appellants, the dispositive portion of which reads:

"WHEREFORE, finding all the four (4) accused guilty beyond reasonable doubt of the crime of robbery with homicide as charged in the information and taking into consideration the aggravating circumstances stated above, the Court sentences said accused Charlie Repe y Revecencio, Alfredo Dagumboy y Balicol, Jorge Signo y Balicol and Joel Domingo y Silverio to suffer the maximum penalty of death, to indemnify jointly and severally the heirs of Sofronio Parangue and Margarita Parangue in the sum of P5,450.00 the amount stolen, and the sum of P24,000.00 for the death of Sofronio and Margarita Parangue and to pay cost." [4]

Subsequently, on motion of accused-appellant Charlie Repe, this Court resolved to grant said Charlie Repe's withdrawal of appeal.[5] Consequently, the judgment of conviction as to Charlie Repe became final and executory.[6] Hence, this review only as to the remaining three (3) accused-appellants, namely: Alfredo Dagumboy, Jorge Signo and Joel Domingo.

The main argument of the appellants is that their extrajudicial confessions are inadmissible in evidence for they were taken without the appellants having been properly informed of their constitutional rights during their custodial investigation. They principally contend that the waiver of their constitutional rights was inadequate and ineffective for it was made without the assistance of counsel. It is noted that, during the trial, they already assailed the admissibility of the said confessions on the ground that they were extracted through force, intimidation and maltreatment. Their assault against said extrajudicial confessions has persisted in this appeal.

We find merit in the appellants' contention that the assailed extrajudicial confessions are inadmissible in evidence.

As to appellant Alfredo Dagumboy, his extrajudicial confession starts in this manner -

"PASUBALI: Ginoong Alfredo Dagumboy, ipinagbibigay alam naming sa inyo na kayo'y inuusig tungkol sa isang kasalanan. Pinaaalala namin sa inyo ang magsawalang kibo at magkaroon ng patnubay ng manananggol na sarili ninyong pili. Ito ba ay nauunawaan ninyo?

SAGOT: Opo.

TANONG: Pagkatapos na maipabatid sa inyo ang inyong karapatan sa ilalim ng ating bagong Saligang Batas na magsawalang kibo, nais ba ninyong ipagpatuloy ang imbistigasyong ito?

SAGOT: Opo, hindi ko po kailangan ang manananggol sa imbistigasyong ito.

TANONG: Ipinaaalala rin namin sa inyo na anumang salaysay and inyong sasabihin sa imbistigasyong ito ay maaaring gamiting ebidensya laban o panig sa inyo sa alinmang Hukuman dito sa Pilipinas, ito ba ay mauunawaan ninyo?

SAGOT: Opo.

TANONG: Matapos na maipaalam sa inyo ang inyong karapatan sa ilalim ng ating Bagong Saligang Batas, Artikulo 4, Seksyon 20, na magsawalang kibo at magkaroon ng sariling manananggol, handa ka na bang magbigay ng isang kusangloob na salaysay?

SAGOT: Opo."[7]

As to the extrajudicial confessions of the other two (2) appellants, Joel Domingo and Jorge Signo, the questions and answers appearing therein in regard to appraisal of their constitutional rights, and waiver of such rights, are in the same tenor as that contained in Alfredo Dagomboy's aforequoted confession.[8] Each of the appellants signed and subscribed his extrajudicial confession before the municipal judge at Taytay, Palawan in May 1977.

Looking at said, extrajudicial confessions, it appears that the appellants were informed of their right to remain silent and right to counsel, and that they understood such rights. They further affirmed in said confessions that, although they have been informed of such rights, they would voluntarily proceed with the custodial investigation even without the assistance of counsel. Moreover, they affirmed that they were aware that any statement taken from them could be used against them.

However, after a careful examination of the entire records of the case at bar, the Court regrets to say that the appellants were not properly apprised of their constitutional rights before their custodial investigation took place, such that their extrajudicial confessions are inadmissible in evidence.

In *People vs. Galit*,<sup>[9]</sup> this Court set forth the requirements for investigating officers to follow before and during custodial investigations. Thus -

"10. This Court, in the case of *Morales vs. Ponce Enrile*, laid down the correct procedure for peace officers to follow when making an arrest and in conducting a custodial investigation, and which We reiterate:

'7. 'At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means - by telephone if possible - or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.'"

The rule, therefore, is that, when an investigation conducted upon an accused did not conform to the requirements set forth in *People vs Galit*, the extrajudicial confession taken therein is inadmissible.<sup>[10]</sup>

Moreover, it is clear from the records of this case that the way the investigating officer apprised the appellants of their constitutional rights, was pro forma and perfunctory. The three (3) extrajudicial statements in issue appear to have contained the same aforequoted prefatory statements, which indicate that the "appraisal" made was a purely mechanical act.

In *People vs. Newman and Tolentino*,<sup>[11]</sup> this Court held -

"It can be gleaned from the record of the case that the advice as to constitutional rights of the accused, given by the investigating officer, was perfunctory and pro-forma, intended obviously to pay lip service to the prescribed norms through a recitation by rote of the sacramental advice. This stereotyped 'advice' appearing in practically all extrajudicial confessions which are later repudiated, has assumed the nature of a 'legal form' or model. Its tired, punctilious, fixed and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing of a spontaneous, free and unconstrained giving

up of a right is missing. In the case at bar, the two (2) extrajudicial statements and waivers carry the same quoted prefatory statement. This, to the mind of the Court, indicates the lack of zeal and initiative on the part of the investigating officers to fully and truly inform the accused of their rights to remain silent and to counsel during the custodial investigation. The 'informing' done by the police in the case at bar was nothing more than a superficial and mechanical act, performed not so much to attain the objectives of the fundamental law, as to give a semblance of compliance therewith. The right of a person under interrogation to be informed of his rights to remain silent and to counsel, implies a correlative obligation on the part of the police investigator to explain and contemplates an effective communication that results in an understanding of what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the accused has been 'informed' of his rights."

While it is true that trial court observed that appellants' extrajudicial confessions are interlocking and replete with many minor details that could have been known only to the appellants, and hence indicate that they were voluntarily given, still, one cannot be unmindful of the equally-settled rule that even if the confession of the accused is "gospel truth", if it was made without the assistance of counsel, it is inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.[12]

The Court, therefore, rules that the conviction of the appellants cannot be based on the extrajudicial confessions in issue.

Excluded such extrajudicial confessions, the next question is, did the prosecution establish nonetheless the guilt of the appellants beyond reasonable doubt?

It did.

The three (3) prosecution witnesses, namely, the spouses Rosalyn and Nemesia Fabrigas and Rosita Jardin, who is Rosalyn's sister, positively identified the herein three (3) appellants as participants in the crime charged. They testified that in that early and fateful morning of 9 June 1976, several men with the struggling Margarita Parangue, who was being held by one of them, came to the said witnesses' nipa hut, asking for the money which the said men believed to be owned by Margarita and safekept in the witnesses' hut. The same witnesses testified that it was appellant Alfredo Dagumboy who was holding Margarita and who lit the lamp that lighted the hut; that they (witnesses) saw the other two (2) appellants outside of the hut, as there was moonlight - Jorge Signo was standing and Joel Domingo was holding an airgun; that thereafter they (the witnesses) jumped out of the hut, left the old woman and the several men behind and sought help; and that later in that same early morning, they saw the dead bloodied body of Margarita Parangue lying on the ground near the hut.[13]

Thus, these three (3) prosecution witnesses were able to recognize and positively identified the three (3) appellants as the ones who came to their nipa hut on 9 June 1976; they declared that the lamp inside the nipa hut was lit by the appellant Alfredo himself: that the moon was then shining bright outside the hut where Jorge Signo and Joel Domingo were seen by them standing; and that coupled with these circumstances was the fact that the surrounding area of the nipa hut was clear, there being no other house nor trees planted or shrubs growing around the place that could have obstructed the light thrown by the moon.[14]

The defense of the three (3) appellants is alibi. Alfredo Dagumboy testified that prior to 9 June 1976, he, as a fisherman, was at Maruyog-ruyog, Linapacan, Palawan intending to go fishing; that he arrived at Tapacao from Maruyog-ruyog only on 20 June 1976.[15] On the other hand, Joel Domingo and Jorge Signo, in their testimony, stated that the whole day of 9 June 1976, they, as co-workers, were at Tapacao, Silanga, Taytay, Palawan making charcoal.[16] It is noted that, as the records show, Marilao, Dipla, Taytay, Palawan, the place where the crime was committed, is only about seven (7) kilometers from Tapacao.[17]

Alibi is, as a rule, a weak defense. It cannot, in this case, overthrow witnesses Fabrigas' and Jardin's positive identification of the said appellants as the men who came to their nipa hut on that fateful early morning of 9 June 1976.

Moreover, it is material to note that the appellants together with all the other accused in the case at bar are in one way or another related to each other or at least, known and friends to one another.[18] They are also residents of barrios/barangays Tapacao and Sandoval, both of which are in the municipality of Taytay, Palawan.[19] The residence of the appellants, together with that of their co-accused in this case, and the place of the commission of the crime are all found in one municipality, that is Taytay, Province of Palawan.

All told, the Court finds that the participation and the guilt of the appellants in the crime charged were established by the prosecution with moral certainty and convincing proof.

The trial court found conspiracy in the case at bar. We agree that conspiracy among the seven (7) co-accused, including the appellants herein, has been clearly established by the testimony of the prosecution witnesses and that of co-accused Charlie Repe himself. Apart from the testimony of the spouses Fabrigas and Rosita Jardin as to the arrival at their nipa hut in the early morning of 9 June 1976, of the three (3) appellants herein, with victim Margarita being held by the hand by Alfredo, several other prosecution witnesses testified as to the acts of the other persons charged in the instant case, before, during and after the commission of the crime. These witnesses testified as follows:

1. Gregorio Lorena, on separate occasions after the crime occurred, saw Charlie Repe at the "dance" party, with the latter's wallet full of money bills.[20]
2. Apolonio Soriano was invited by Herman Rontale (one of the accused at large) to go to Barrio Dipla to get "fat" pig, which invitation Apolonio rejected as he knew that there was no fat pig in Dipla and that instead, something bad would be done.[21]
3. Pablo Repe, the owner of the pumpboat named "Rosanna", and uncle of Charlie Repe, testified that it was Herman Rontale who borrowed the boat on 8 June 1976 and returned it to him on 9 June 1976 in the morning.[22]
4. Antonio Hontra saw blood in the middle portion of "Rosanna" on 13 June 1976.[23]
5. Ernesto Repe, owner of an airgun testified that Romeo Rontale (another accused at large) borrowed the said gun and returned it on 9 June 1976.[24]

As to Charlie Repe, he admitted in his testimony that before the crime occurred, his three (3) friends, namely, Rogelio Dagumboy, Herman Rontale and Romeo Rontale, who are co-accused with the appellants, came to his house and invited him for a drinking spree: that the said spree lasted until 9:00 o'clock in the evening, during which his three (3) friends invited him to buy pig that night at Dipla.[25]

The totality of the foregoing facts and circumstances establish that conspiracy existed in the case at bar.

However, we note that the trial court ruled that four (4) aggravating circumstances - treachery, abuse of superior strength, evident premeditation and use of motorized water craft - attended the commission of the crime.

On evident premeditation, we do not agree that it should be appreciated in the commission of the crime charged. Although conspiracy existed, it should be observed that this conspiracy was established by circumstantial evidence only. As ruled in one case,[26] when conspiracy is merely inferred from the acts of the accused in the perpetration of the crime, evident premeditation may not be appreciated in the absence of proof as to now and when the plan to kill the victim was hatched, or what period of time elapsed before it was carried out.

As regards treachery, we also do not see any reason for appreciating this aggravating circumstance. It must be noted that, in the instant case, there is no direct evidence pointing to the actual commission of the crime charged. Not one of the prosecution witnesses saw who killed the robbed couple. The settled rule is that treachery must be established by positive evidence in order to be appreciated.[27] No treachery may be said to have attended the commission of the offense, as it was not clearly proved with convincing and positive evidence.

However, as to the aggravating circumstances of abuse of superior strength and use of motorized watercraft, the records of the case clearly show the presence of these aggravating circumstances. Certainly, the seven (7) persons charged in this case, including herein three (3) appellants, being armed with weapons, surely and deliberately used excessive force on the persons of their helpless victims. Further, all the accused, including the three (3) appellants, used a motorized banca/watercraft to facilitate the commission of the crime.

Thus, there being conspiracy and the settled rule being that, in conspiracy, the guilt of one is the guilt of all,[28] we find all the three (3) appellants herein guilty of the crime of robbery with homicide, with the aggravating circumstances of abuse of superior strength and use of motorized vehicle.

Under Article 294 of the Revised Penal Code, the penalty for the crime of robbery with homicide is reclusion perpetua to death. There being two (2) aggravating circumstances present, with no mitigating circumstance, applying Article 63 of the said code, the penalty applicable is death. However, in view of the 1987 Constitution under which the death penalty is not imposable, the appropriate penalty is reclusion perpetua.

WHEREFORE, the appealed judgment is AFFIRMED, with the modification that the appellants are sentenced to suffer the penalty of RECLUSION PERPETUA, and ordered to indemnify jointly and severally the heirs of Sofronio Parangue and Margarita Parangue in the sum of P5,450.00, the amount stolen, and in the further sum of P60,000.00 for the death of said spouses, and to pay the costs.

### **SO ORDERED.**

Melencio-Herrera, J., (Chairman), with the same observation as JJ. Paras and Sarmiento.  
Regalado, J., concur.

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\* Penned by Judge Jose S. Solidum

[1] Original records, pp. 126-127

[2] RTC Decision, Rollo, pp. 36-38

[3] Rollo, Appellants' Brief, p. 224

[4] Original Records, p. 482

[5] Resolution dated 2 February 1988, Rollo, p. 304

[6] Entry of Judgment, 64935, Rollo, p. 318-B

[7] Rollo, p. 40

[8] Ibid, pp. 46 and 57

[9] L-51770, March 20, 1985, 135 SCRA 465

[10] *Olaes v. People*, 78347-49, Nov. 9, 1987, 155 SCRA 486

- [11] L-45354, July 26, 1988
- [12] *People v. Pineda*, 72400, Jan. 15, 1988, 157 SCRA 71
- [13] Rollo, pp. 15-19
- [14] Tsn, December 15, 1977, pp. 9-11
- [15] Tsn, October 31, 1979, pp. 3-9
- [16] Tsn, September 20, 1978, pp. 214-A, 260; September 25, 1978, pp. 274, 308
- [17] Tsn, June 19, 1978, pp. 508-509
- [18] Tsn, October 31, 1979, pp. 11, 12, 16, 18, 19, and 53; Tsn, September 25, 1978, pp. 277-278, 315-316
- [19] Tsn, October 31, 1979, pp. 3-4, and 68
- [20] Rollo, pp. 19-20
- [21] *Ibid.*, p. 20
- [22] *Ibid.*
- [23] *Ibid.*, p. 21
- [24] *Ibid.*
- [25] Tsn, December 5, 1980, pp. 422-424
- [26] *People vs. Custodio*, G.R. No. L-7442, Oct. 24, 1955, 97 Phil. 698
- [27] *People vs. Atienza*, G.R. No. 68481, Feb. 27, 1987, 148 SCRA 147
- [28] *People vs. Veloso*, L-38551-53, Feb. 27, 1987, 148 SCRA 60

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