

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVITO TUJON Y TAPEL, ERNESTO PAROLA Y CORTINA, AND CESAR PAREDES @ CESAR (AT LARGE), ACCUSED, JOVITO TUJON Y TAPEL, ACCUSED-A...

G.R. No. 66034. November 13, 1992

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BIDIN, J.;

This is an appeal interposed by the accused-appellant Jovito Tujon from the decision of the Court of First Instance of Rizal, Seventh Judicial District, Quezon City, Branch XVII, in Criminal Case No. Q-8808 finding him and Ernesto Parola guilty of the crime of Robbery with Homicide, defined and penalized under Article 294, paragraph 1 of the Revised Penal Code as amended and sentencing them to suffer the penalty of reclusion perpetua, with the accessory penalties prescribed by law.

The dispositive portion of the said decision reads:

"WHEREFORE, judgment is hereby rendered, finding Jovito Tujon and Ernesto Parola guilty beyond reasonable doubt of the crime of Robbery with Homicide, described and penalized under Article 294, par. 1 of the Revised Penal Code as amended. There being no modifying circumstance attending the commission of the crime, the said accused are sentenced to the penalty of reclusion perpetua, with the accessory penalties prescribed by law, to pay jointly and severally, the heirs of the deceased Rolando Abellana the amounts of P18,000.00 representing indemnification for death and P180.00 representing the money stolen, without subsidiary imprisonment in case of insolvency, and to pay the proportionate cost.

IT IS SO ORDERED." (Rollo, p. 9).

The aforesaid judgment as to accused Ernesto Parola has not yet been promulgated by the court a quo since the said accused escaped after arraignment and has not been rearrested to date. Accused Cesar Paredes, on the other hand, remains at large and does not appear to have been arraigned before the trial court.

The antecedent facts of the case are as follows:

On November 3, 1977, the dead body of Rolando Abellana, a taxi driver, was found at Doña Faustina Village, Quezon City, with stab wounds. Dr. Rolando Madrid, Medico-Legal Officer of the NBI, conducted an autopsy on the corpse and found that the cause of death is hemorrhage, acute, profuse, secondary to multiple stab wounds on the chest and neck.

On November 23, 1977, accused Jovito Tujon and Ernesto Parola were arrested by the police and turned over to the Criminal Investigation Division, Quezon City Police Department, where they allegedly confessed to the commission of the crime.

On December 1, 1977, an information was filed by Assistant Fiscal Jesus T. Baldonado before the Court of First Instance of Rizal, Seventh Judicial District, Quezon City, charging the accused of robbery with homicide having

been committed as follows:

"That on or about the 3[rd] day of November, 1977, in Quezon City, Philippines, the above-named accused, with intent of gain, by the use of violence and intimidation, conspiring with, confederating together and mutually helping one another, with co-accused, ANTONIO MENA Y BALDESIMO, a minor who is also charged with the same offense in the Juvenile and Domestic Relations Court, Quezon City, did, then and there wilfully, unlawfully and feloniously rob one ROLANDO ABELLANA Y FABROA, a taxi driver of EH taxi in the following manner, to wit: on the date and in the place aforementioned, said accused pursuant to their conspiracy boarded the taxicab and thereafter, the above-named accused, armed with a (sic) knives and pointed their knives to the said victim, who struggled and in the course of struggle was stabbed at the chest and neck, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death; that after the said attack upon said Rolando Abellana y Fabroa, said accused, did then and there take, rob and carry away his day's earning in the amount of P180.00, Philippine Currency, to the damage and prejudice of the heirs of the said Rolando Abellana y Fabroa and in such amount as may be awarded to them under the provisions of the Civil Code.

"CONTRARY TO LAW." (Rollo, p. 2).

Upon arraignment, accused-appellant and Ernesto Parola entered a plea of not guilty. Thereafter trial on the merits ensued.

There is no eyewitness for the prosecution. To establish the case against the accused, the prosecution relied mainly on the extra-judicial confessions of the former taken down by Det. Armando Estrada.

The extra-judicial confession of Ernesto Parola y Cortina (Exhibit "A", Original Records) reads:

"MALAYA AT KUSANG LOOB NA SALAYSAY NI ERNESTO PAROLA Y CORTINA NA KINUHA NI DET. ARMANDO B. ESTRADA DITO SA CRIMINAL INVESTIGATION DIVISION, STATION 1, NPD, MPF NGAYONG ALAS 10:15 NG UMAGA, 23 NG NOVEMBER, 1977 SA HARAP NG MGA SAKSI . . .

xxx xxx xxx

01 Tanong:

Bago kita siyasatin ay gusto kong malaman mo ang iyong mga karapatan at gusto kong malaman mo na ikaw ay sinisiyasat sa salang pagpatay ng tao na may kasamang pagnanakaw. Gusto kong maunawaan mo na ang iyong mga karapatan ay ang mga sumusunod:

1.

Na ikaw ay may karapatang manatiling tahimik sa pagsisiyasat na ito.

2.

Na ikaw ay may karapatang kumuha ng iyong sariling abogado para tulungan ka sa pagsisiyasat na ito.

3.

Na ikaw ay may karapatang pagkalooban ng abogado kung ikaw ay walang ikakayang kumuha ng iyong sariling abogado.

4.

Na ang lahat ng sasabihin mo rito ay maaring gamitin laban o panig sa yo sa alin mang hukuman sa Pilipinas. Naunawaan mo ba ang iyong mga karapatan at handa ka pa rin bang magbigay ng isang malaya at kusang loob na salaysay na hindi ka tinakot, sinaktan o pinangakuan ng ano mang pabuya?

SAGOT:

Opo. (SGD) ERNESTO PAROLA Y CORTINA.

02 T:

Ikaw ba ay marunong bumasa at umintindi ng wikang tagalog?

S:

Opo.

03 T:

Ano ang pinakamataas na inabot mo sa iyong pagaaral?

S:

Grade six lang po.

04 T:

Ano ang iyong pangalan at iba pang bagay na may kinalaman sa iyong pagkatao?

S:

ERNESTO PAROLA Y CORTINA, 18 na taong gulang, binata, pahinante sa PIER 8, tubo sa Macrohon, Southern Leyte at naninirahan sa No. 3377 Mithi St., Tondo, Manila.

05 T:

Ano ang dahilan kung bakit ka naririto sa aming tanggapan at nagbibigay ng isang malaya at kusang loob na salaysay?

S:

Dahil sa hinuli po kami ng mga pulis na hindi ko kilala na sila raw taga YOUTH AID BUREAU at kami po ay ibinigay dito sa Criminal Investigation Division, Station 1, NPD, MPF dahil sa salang pagpatay at pagholdup.

06 T:

Kailan ba kayo nahuli ng mga pulis?

S:

Noon pong mga alas 3:00 ng hapon, Linggo, 20 ng November, 1977 doon po sa Mithi St., Tondo, Manila.

07 T:

Ipinapakita ko sa iyo ang isang litrato, ano ang masasabi mo sa taong ito at natandaan mo ba ang taong ito? (Affiant being shown the picture of one ROLANDO ALELLANA Y FABROA, 27 years old, married, EH TAXI driver, native of Davao Del Sur and residing at No. 188 Sauyo Road, Novaliches, Quezon City who was killed after having been held up and the body of which (sic) was dumped at Tandang Sora, Quezon City.

S:

Opo. Nakilala ko po yan. Yan po ang taong hinoldup namin at aming pinatay at pagkatapos po ay itinaon namin doon sa Tandang Sora, Quezon City subalit hindi ko po matiyak ang exactong lugar.

08 T:

Kailan at saan ninyo hinoldup itong taong ito?

S:

Hindi ko po matandaan kung kailan subalit natatandaan ko po na sa unang linggo ng November, 1977 doon po sa Moriones, Tondo, Manila subalit dinala namin siya sa Balintawak, Quezon City doon po sa may highway na hindi ko masyadong matiyak ang lugar at doon namin siya sinaksak at kinunan ng pera at nang siya ay patay na ay isinakay namin uli sa taxi at dinala namin sa Tandang Sora, Quezon City at doon namin itinaon.

09T:

Natatandaan mo ba kung ano ang pagkatao ng taong yan sa sinasabi mong pinatay ninyo at itinaon sa Tandang Sora, Quezon City?

S:

Siya po ay driver ng TAXI na hindi ko natatandaan ang pangalan na ang kulay po ng taxi ay kulay pula na may guhit na dilaw sa katawan.

10 T:

Maari bang isalaysay mo sa akin kung papano ninyo hinoldup ang taong yan?

S:

Noon pong mga-alas 10:00 ng gabi, linggo, 20 November, 1977 pinara po namin ang taxing minamaneho nitong taong ito (affiant referring to the picture of ROLANDO ABELLANA) at kami ay sumakay at pagkatapos ay dinala namin sa Balintawak, Quezon City. Pagdating po namin doon ay pinahinto po namin ang taxi at pagkatapos ay kinuha namin ang kanyang pera at pagkatapos ay nakatakbo. Nang tumakbo siya ay hinabul namin at nang inabutan namin ay sinaksak namin. Nang siya ay patay na ay isinakay namin uli sa taxi at pagkatapos ay tinapon namin doon sa Tandang Sora, Quezon City. Pagkatapos naming itapon ay dinala namin ang taxi at ang nagmaneho ng taxi ay si CESAR PAREDES na nakatira sa Mithi St., Tondo, Manila. Pagkatapos po ay ipinagbili po nila ang metro ng taxi. Hindi ko po alam kung magkano nila ibinenta at kung saan nila ibinenta sapagkat hindi na po kasama noon, pero binigyan po ako ng P20.00. Ako po noon ay

nagpaiwan na dito sa may Blumentritt, (palengke) at sila ay dala pa rin nila ang taxi.

11 T:

Hindi mo ba alam kung saan nila dinala yong taxi?

S:

Hindi ko po alam sir.

12 T:

Magkano naman ang nakuha niyong pera doon sa driver na pinatay niyo?

S:

Ang sabi po ni CESAR PAREDES at saka si JUNIOR ay P180.00.

13 T:

Magkano naman ang ibinigay sa yo bilang parte mo doon sa perang naholdup niyo?

S:

Binigyan po kami ng P20.00. Ang sabi po ni CESAR at saka ni JUNIOR ay tama na raw ang parte naming P20.00.

14 T:

Sino-sino ba ang mga kasama mo sa pagholdup dito sa taxi driver na ito?

S:

Sina CESAR PAREDES na nakatira sa Mithi St., Tondo, Manila, si JUNIOR na taga Mithi din, si JOVITO TUJON na taga Mithi St., Moriones, Tondo, Manila at saka si ANTONIO MENA na taga Mithi St. din at saka ako.

15 T:

Ano ang partisipasyon mo sa pagpatay doon sa taxi driver (ROLANDO ABELLANA)?

S:

Ako po ang humawak sa kamay niya at pagkatapos po ay sinaksak ko rin siya.

16 T:

Ano naman ang partisipasyon noong mga kasama mo?

S:

Si CESAR PAREDES ang humawak sa ulo at pagkatapos ay sinaksak niya, si JUNIOR ay sumaksak din, si JOVITO TUJON ay sumaksak din, at si ANTONIO MENA ay sumaksak din.

17 T:

Ano ang ginamit mo sa pagsaksak doon sa taxi driver?

S:

Isang kutsilyong stainless at ang aking mga kasama ay balisong at ice pick ang kanilang ginamit.

18 T:

Nasaan ngayon ang kutsilyong pinangsaksak mo?

S:

Naki JUNIOR po at ang lahat ng kutsilyong ginamit namin ay sa kanya.

19 T:

Nasaan naman ang mga kasama mong binanggit mo?

S:

Ang dalawa na sina JOVITO TUJON at si ANTONIO MENA ay kasama kong nahuli subalit sila CESAR at si JUNIOR ay nakatakas at sila ngayon ay nagtatago.

20 T:

Maari bang ilarawan mo yong taxi driver na pinatay niyo matapos niyong kunin ang kanyang kita at itinaon niyo sa Tandang Sora, Quezon City?

S:

Siya po ay mahabang buhok, katamtaman lang ang katawan, mga 27 na taong gulang, may kaunting biguti, kayumanggi ang kulay.

21 T:

Natatandaan mo ba kung ilan nang tao ang pinapatay niyo dahil sa holdup?

S:

Isa lang ang napatay na kasama po ako.

22 T:

Alin yong napatay niyo na kasama ka?

S:

Yong pong itinapon namin sa Tandang Sora, Quezon City.

23 T:

Bakit niyo pinatay ang taong ito?

S:

Sapagkat sinabi po ni CESAR at saka ni JUNIOR na patayin daw namin kaya po namin pinatay.

24 T:

Ilang beses ka nakasama sa panghoholdup?

S:

Apat na beses na po ako nakasama sa kanila. Dalawang jeep at saka dalawang taxi. Nakalimutan ko na po ang pangalan nang mga taxi.

25 T:

Sabihin mo kung saan at kung kailan niyo hinoldup ang binanggit mo?

S:

Yon pong dalawang jeep ay doon sa Novaliches, Quezon City at yong isang taxi ay sa Balintawak, Quezon City at yong isa ay sa Novaliches, Quezon City.

26 T:

Ilan bang grupo ang sinasamahan mo?

S:

Ang sinasamahan ko lang ay ang grupo ni CESAR at saka si JUNIOR.

27 T:

Maliban sa pagholdup ng taxi ay umaakyat din ba kayo ng bahay para magnakaw?

S:

Opo. Umaakyat din po kami ng bahay para magnakaw.

28 T:

Ilang beses na kayo umakyat sa bahay?

S:

Dalawang beses po yong nasamahan ko sa kanila na umakyat kami ng bahay.

29 T:

Natatandaan mo ba kung saang bahay yong inakyat ninyo?

S:

Hindi ko po alam sabihin ang lugar subalit alam ko po kung pupuntahan ko.

30 T:

Ano-ano ang mga bagay na nakuha niyo nang kayo'y umakyat sa bahay?

S:

Ang nakuha po namin ay PHONO, RADIO, SAPATOS, DAMIT, CALDERO, KALAN NA BUMBA.

31 T:

Saan ninyo ibinebenta ang mga ninakaw niyo?

S:

Ibinebenta namin doon din sa Mithi St., Moriones, Tondo, Manila.

32 T:

Magkano niyo ibinenta yong PHONO at saka yong RADIO?

S:

Yon pong PHONO ay P150.00 at yong radio ay P125.00.

33 T:

Yong bang grupo niyo nina CESAR, JUNIOR, JOVITO, at si ANTONIO ay mayroon bang baril?

S:

Si CESAR po ay may baril na .22 caliber. Si JUNIOR ay Parolee.

34 T:

Yong mga metro ng taxi na kinuha ninyo, saan ninyo ibinibenta?

S:

Hindi ko po alam kung saan nila ibinibenta. Ang nakakaalam ay si CESAR, si JUNIOR at si JOVITO.

35 T:

Wala na akong itatanong sa yo, mayroon ka bang nais bawasin o idagdag sa salaysay mong ito?

S:

Wala na po.

36 T:

Lalagdaan mo ba ang salaysay mong ito bilang patunay na ang mga sinabi mo rito ay pawang katotohanan?

S:

Opo.

37 T:

Ang paglagda mong ito ay hindi kita tinakot, sinaktan at pinangakuan ng ano mang pabuya o kaluwagan sa buhay?

S:

Opo.

(SGD) ERNESTO PAROLA Y CORTINA

Nagsalaysay

"Statement taken by:

Det. ARMANDO B. ESTRADA
Investigator, H & A Sec.

MGA SAKSI SA PAGLAGDA:

1. (SGD)
Det. Enrico Larga 2. (SGD)
Augusto Perlada"

On the other hand, the extra-judicial confession of appellant Jovito Tujon y Tapel, likewise taken by Det. Armando B. Estrada on November 23, 1977 (Exhibit "B", Original Records), reads:

"MALAYA AT KUSANG LOOB NA SALAYSAY NI JOVITO TUJON Y TAPEL NA KINUHA NI DET. ARMANDO B. ESTRADA DITO SA CRIMINAL INVESTIGATION DIVISION, STATION 1, NPD, MPF NGAYONG ALAS 1:45 NG HAPON, 23 NG NOVEMBER, 1977 SA HARAP NG MGA SAKSI . . .

01 Tanong:

Bago kita tanongin ay gusto kong malaman mo ang iyong mga karapatan sa ilalim ng ating bagong saligang batas na ikaw ay:

1.

May karapatang manatiling tahimik sa pagsisiyasat na ito.

2.

May karapatang kumuha ng iyong sariling abogado para tulungan ka sa pagsisiyasat na ito.

3.

May karapatang pagkalooban ng abogado kung ikaw ay walang ikakayang kumuha ng iyong sariling abogado.

4.

Ang lahat ng sasabihin mo rito ay maaring gamitin laban o panig sa yo sa alin mang hukuman sa Pilipinas.

Gusto ko ring malaman mong ikaw ay sinisiyasat sa kasong pagpatay ng tao na may kasamang pagnanakaw. Ikaw ba ay handa pa ring magbigay ng isang malaya at kusang loob na salaysay na hindi ka tinakot, sinaktan o pinangakuan ng ano mang pabuya o kaluwagan sa katawan?

Sagot:

Opo. (SGD) JOVITO TUJON Y TAPEL.

02 T:

Ikaw ba ay marunong bumasa at umintindi ng wikang tagalog?

S:

Opo.

03 T:

Ano ang pinakamataas na inabot mo sa iyong pagaaral?

S:

Grade six lang po.

04 T:

Ano ang iyong pangalan at iba pang bagay na may kinalaman sa iyong pagkatao?

S:

JOVITO TOJON Y TAPEL, 22 na taong gulang, binata, trabahador, tubo sa Ogbong Biga, Catanduanes at naninirahan sa No. ____ Mithi St., Moriones, Tondo, Manila.

05 T:

Ano ang dahilan kung bakit ka naririto sa aming tanggapan at nagbibigay ng isang malaya at kusang loob na salaysay?

S:

Dahil po sa pagpatay doon po sa taxi driver na hindi ko po nakikilala.

06 T:

Nalalaman mo ba kung anong taxi ang minamaneho noong taong pinatay niyo?

S:

Hindi ko na natandaan yong pangalan ng taxi subalit ang natatandaan ko po ay kulay blue at mayroon pang ibang kulay na hindi ko po natandaan.

07 T:

Kailan at saan niyo pinatay ang driver ng taxi na yan?

S:

Hindi ko po natandaan ang petsa pero unang linggo ng November, 1977 doon po sa papuntang Sta. Maria, Bulacan at nang patay na ay dinala po namin doon po sa may Tandang Sora, Novaliches, Quezon City.

08 T:

Papano niyo pinatay ang taxi driver na ito?

S:

Sinaksak po namin.

09 T:

Anong uri ng patalim ang ginamit niyo sa pagsaksak sa kanya?

S:

Kutsilyo po na pangkusina na stainless na may ganito kahaba po. (Affiant demonstrating a length of about 8-½

inch) yong mga kasama ko po ay talagang dagger at yong iba naman po ay ice pick.

10 T:

Ilang beses mo sinaksak ang taong ito?

S:

Dalawa po.

11 T:

Mayroon ka bang nalalamang dahilan kung bakit niyo sinaksak ang taong ito?

S:

Hinoldup po namin pagkatapos po ay pinatay po namin.

12 T:

Magkano namang pera ang nakuha ninyo sa kanya?

S:

P180.00 na perang cash ang nakuha namin sa kanya.

13 T:

Maari bang isalaysay mo sa akin kung papano ninyo hinoldup at pinatay yong tao na taxi driver?

S:

Noon pong mga alas 9:00 ng gabi, hindi ko na po matandaan ang petsa subalit natatandaan ko po na unang linggo ng November, 1977 kami po ay sumakay sa taxi na hindi ko po matandaan ang pangalan at pagkatapos po ay dinala po namin siya sa Sta. Maria, Bulacan. Pagdating po namin doon ay tinutukan po namin ng kutsilyo at tinutukan naman ni CESAR ng baril at pagkatapos ay ibinalik namin doon sa may tulay doon din sa Sta. Maria, Bulacan at pagkatapos po ay pinahinto po namin doon sa may tulay at pagkatapos po ay kinuha namin ang kanyang pera. Pagkatapos po niyang iyabot yong pera ay parang natakot yong driver at biglang tumakbo at pagkatapos po ay hinabul namin. Ngayon po ay inabutan ng aking mga kasama at pagkatapos po ay ibinalik po namin doon sa may taxi at pagkatapos po ay nagtaas ng kamay yong driver at pagkatapos po ay sinaksak na ni CESAR. Pagkatapos po ay sinaksak ni NESTOR (Real name is ERNESTO PAROLA). Pagkatapos po ay itinulak po ni CESAR sa akin at sinabing saksakin mo rin kaya ko po sinaksak din. Pagkatapos po ay naghihingalo na po yong driver ay isinakay po namin siya sa taxi niya at pagkatapos po ay dinala namin doon sa may Tandang Sora, Novaliches, Quezon City at doon namin itinapon. Ang lugar na pinagtaponan po namin ay canal. Pagkatapos po noon ay sumakay na naman po kami doon sa kanyang taxi at kami po ay nagtuloy sa may MORIONES, Tondo, Manila. Kami po ni ANTONIO MENA at si ERNESTO PAROLA ay nagpaiwan na po doon sa Moriones, Tondo, Manila. Kami pong tatlo ay umuwi na subalit sina CESAR at si JUNIOR ay dinala nila yong taxi at hindi ko po alam kung saan nila dinala yong taxi.

14 T:

Magkano naman ang parte mo doon sa perang hinoldup ninyo doon sa taxi driver?

S:

P30.00 po ang ibinigay sa akin ni CESAR.

15 T:

Maari bang ilarawan mo sa akin ang itsura noon taong taxi driver na hinoldup ninyo?

S:

Ang edad po noong driver ay mga 27 o 28 na taong gulang, mga 5'1" ang taas, payat po, kayumanggi po na may biguti, hindi po masyadong mahaba ang buhok, medyo maliit ang mukha na mabuto at kung makikita ko ang litrato po niya ay makikilala ko po.

16 T:

Ipinapakita ko sa yo ngayon ang isang litrato, natatandaan mo ba kung naririto yong taxi driver na hinoldup ninyo?

S:

Ito po yong taong hinoldup po namin at aming pinatay doon po sa Sta. Maria, Bulacan. (Affiant pointing to the picture of one ROLANDO ABELLANA Y FABROA, an EH TAXI driver who was discovered lifeless along Charles Conrad St. near Alan Beam St., Dona Faustina Subdivision, Bo. Culiat, Tandang Sora, Quezon City as he was shown by this investigator).

17 T:

Natatandaan mo ba kung ano ang suot noong driver na pinatay niyo doon sa Sta. Maria, Bulacan?

S:

Hindi ko na po natandaan ang kulay ng kanyang pantalon subalit natandaan ko po na ang kanyang polo shirt ay kulay abo (gray).

18 T:

Isa-isahin mo nga kung sino-sino yong mga kasama mo doon sa holdup at pagpatay doon sa taxi driver na yon?

S:

Si CESAR PAREDES, si JUNIOR, ERNESTO PAROLA (NESTOR-alias), at si ANTONIO MENA na lahat ay taga Mithi St., Moriones, Tondo, Manila (Squatter's Area).

19 T:

Ano-ano ang mga armas na dala ninyo noon nang hinoldup ninyo itong taxi driver na ito?

S:

Ang may baril po ay si CESAR (.45 caliber), si JUNIOR ay may .22 caliber revolver, at lahat na kami ay puro kutsilyo na. Pero maliban doon sa baril ni CESAR at ni JUNIOR ay mayroon pa po silang panaksak.

20 T:

Nasaan ngayon yong mga panaksak na ginamit niyo sa pagpatay doon sa taxi driver?

S:

Dala po ni JUNIOR at saka si CESAR pati yong baril po ay nasa kanila.

21 T:

Ilang beses ka na pumatay ng tao?

S:

Dalawa na po na kasama po ako.

22 T:

Liwanagin mo nga kung saang lugar at kung kailan?

S:

Ang una po ay October, 1977, hindi ko na po matandaan ang petsa pero pinatay po namin doon sa Novaliches, Quezon City at iniwan lang po namin doon. Yong pangalawa po ay yong taxi driver po na hinoldup po namin ay pinatay namin sa Sta. Maria, Bulacan.

23 T:

Sigurado ka bang patay din yong unang sinaksak niyong iniwan ninyo sa Novaliches, Quezon City?

S:

Hindi po namin alam kung namatay yon o hindi.

24 T:

Maari bang ilarawan mo sa akin kung ano ang itsura ni CESAR at saka si JUNIOR?

S:

Siya po ay mga 19 na taong gulang, mga 5'3" ang taas, malaki ang katawan, maputi, hindi masyadong mahaba ang buhok, medyo bilog ang mukha at matangos ang ilong, medyo guapo, ang buhok ay may hati sa kanan, medyo kuba kung lumakad, mayroong kaunting biguti at ang hinlalaki ng kaliwang paa ay parang pataas. Si

CESAR ay may tatlong SPUTNIK sa kanang likod. Si JUNIOR naman ay mga 25 taong gulang, mga 5'1" ang taas, medyo maliit ang katawan, maputi, maiksi po ang buhok dahil sa siya ay nagpakalbo, may pagkaguapo na medyo matangos ang kanyang ilong, may manipis na biguti, may tattoo sa tiyan.

25 T:

Maliban sa pangholdup, kayo ba ay umaakyat din ng bahay?

S:

Opo, Umaakyat din po kami ng bahay doon po sa Novaliches, Quezon City.

26 T:

Ilang beses na kayo umakyat ng bahay?

S:

Sa Novaliches ay dalawang beses na po umakyat ng bahay at diyan lang po kami umakyat ng bahay.

27 T:

Ano-anong mga bagay ang mga nakuha ninyo nang kayo umakyat ng bahay?

S:

Isang RADIO PHONO, pantalon, damit, kalan na di bumba, guitarra. Ito ay isang bahay lang sa Novaliches, Quezon City. Doon sa isang bahay ay mayroon po kaming kinuhang pantalon, damit, television (dalawa) kaserola, alak, Shellane na kalan, caldero, wala na po.

28 T:

Ilang lahat ang bahay na inakyat ninyo?

S:

Lima pong bahay. Hindi ko po alam ang address subalit alam po naming puntahan.

29 T:

Saan ninyo ibinibenta ang mga ninanakaw ninyo?

S:

Doon po sa Mithi St., Moriones, St., Tondo, Manila. Yong television ay ibenenta namin sa Pasay City sa Tia ni CESAR. Naibenta po namin ng P400.00.

30 T:

Magkano ang parte mo rito sa lahat ng nanakaw ninyong ito?

S:

P400.00 ang parte ko po.

31 T:

Ang mga metro ng taxi na ninanakaw niyo, saan niyo ibinibenta?

S:

Sa Moriones po namin ibinibenta yong iba at yong iba naman ay sa Marikina. Ang kasama po naming nagbenta nito ay si JUNIOR.

32 T:

Ilang metro na ang naibenta niyo?

S:

Mga walong (8) metro na po. Tatlo (3) ang naibenta sa Marikina at lima naman sa Moriones.

33 T :

Ilang taxi at ilang jeep ang inyong naholdup?

S:

Dalawang jeep at tatlong taxi ang tinutukan namin.

34 T:

Saang lugar ninyo ninakaw ang mga taxi meter na ito?

S:

Sa PIER 12 ay dalawa, sa Pier 10, tatlo, sa Moriones tatlo po.

35 T:

Saan natin makukuha itong si CESAR at saka si JUNIOR?

S:

Si JUNIOR ay maaring sa PIER 8 si CESAR ay hindi ko po alam.

36 T:

Pansamantala ay wala na akong itatanong sa yo, mayroon ka bang nais bawasin o idagdag sa salaysay mong

ito?

S:

Wala na po.

37 T:

Lalagdaan mo ba ang salaysay mong ito bilang patunay na ang mga sinabi mo rito ay pawang katotohanan na hindi ka tinakot, sinaktan o pinangakuan ng ano mang pabuya o kaluwagan sa katawan?

S:

Opo.

(SGD) JOVITO TOJON Y TAPEL

STATEMENT TAKEN BY:

Det. ARMANDO B. ESTRADA

NILAGDAAN SA HARAP NI

1. (SGD)

Det. Enrico Larga 2. (SGD)

Cpl. Augusto Peralta

SUBSCRIBED AND SWORN TO BEFORE ME THIS 30[TH] DAY OF NOV. 1977 HERE IN QUEZON CITY, PHILIPPINES.

(SGD) ADMINISTERING OFFICER"

In addition, the prosecution presented the following witnesses, whose testimonies are as follows:

Det. Armando B. Estrada, a police detective of the Northern Police District, Criminal Investigation Division, Station I, Quezon City, identified the extra-judicial confessions and testified that he was the officer who received custody of the accused from the members of the Youth Aid Bureau for investigation on November 23, 1977 (TSN, June 21, 1978, pp. 1-2), and declared that before he took the extra-judicial confessions of the accused-appellants, he advised them of their constitutional rights to remain silent, to secure the services of counsel to assist them and if they cannot afford to secure the services of counsel, they will be provided with one, and that everything they will say may be used for or against them in any court of the Philippines (TSN, June 21, 1978, pp. 2-3). Immediately thereafter, he asked them if after knowing their rights, they were still willing to give their statements freely and voluntarily. Both accused-appellants answered in the affirmative (TSN, June 21, 1978, pp. 3-4). Appellants allegedly further declared that they will give their statements even without the assistance of counsel, considering that what they will state therein would only be the truth. Accordingly, he took the statements

of the accused without a lawyer, and both signed their confessions in his presence (TSN, June 21, 1978, pp. 4-7).

Dr. Romulo Madrid, resident physician of the Polymedic, Mandaluyong, testified that on November 3, 1977, he was the one who conducted an autopsy on the corpse of one Rolando Abellana at Funeraria Popular, one of the official morgues of the National Bureau of Investigation and issued Necropsy Report No. N-77-1779 (Exhibit "D", Rollo). His findings revealed that the victim died of hemorrhage secondary to multiple stab wounds on the chest and neck and that the probable weapon used in inflicting said stab wounds on the victim was a sharp-pointed bladed instrument (TSN, November 7, 1979, pp. 2-4).

Fiscal Jesus T. Baldonado, of the Quezon City Fiscal's Office, was presented as a rebuttal witness of the prosecution. He testified that on November 23, 1977, the accused Jovito Tujon and Ernesto Parola accompanied by policemen were brought to his office for investigation; that before he proceeded with the said investigation, he apprised first the accused of their constitutional rights, which was his standard operating procedure; that he asked both accused if the statements they executed before the police were freely given, which was answered in the affirmative by the accused; that he let them affix anew their respective signatures on the said statements in his presence. He further stated that during the said investigation, both accused did not in any way complain that they had been maltreated by the policemen nor did he notice any sign of injury on their persons. He declared that it was likewise his standard operating procedure that should he notice any sign of injury on the persons of the accused, he would readily refer them to the City Health Office for medical treatment (TSN, February 26, 1982, pp. 1-5).

After the presentation of the foregoing testimonial and documentary evidence, the prosecution rested its case.

During the pendency of this case, accused Ernesto Parola escaped from the Quezon City Jail; consequently the defense presented only accused Jovito Tujon as its lone witness, who vehemently denied the accusation against him.

Jovito Tujon testified that he arrived in Manila only on November 2, 1977 and that he came from the Province of Catanduanes. He came to Manila to look for a job and while in Manila, he stayed with his uncle named Alberto Ubal in Tondo, Manila. He was in his uncle's house on November 3, 1977, helping him do some odd jobs. Two weeks after his arrival, he was arrested for unknown reasons. He also testified that he did not know his other co-accused, namely: Ernesto Parola, Cesar Paredes and Antonio Mena. He came to know the other accused Ernesto Parola only at the police precinct when they were arrested.

Accused-appellant Tujon further testified that while he was at the police precinct, he was made to face the wall and was kicked from behind for which reason he fell on the floor in a sitting position. He was then brought to a room where he was given fist blows. Then he was asked to lie on a bench with his hands tied behind him. A rag was placed inside his mouth and water was poured in his nose while his stomach was being boxed, causing him to vomit. He further testified that the policemen asked him to admit his participation in the crime and if not, they would box him again. The policemen asked him to sign a paper the contents of which he did not know. He did not have a chance to read the said piece of paper considering that all parts of his body were painful as a result of the said mauling. Neither did he have a chance to receive medical attention (TSN, February 24, 1982, pp. 1-2).

He further declared that he did not know that accused Ernesto Parola implicated him in the alleged robbery holdup of a certain Rolando Abellana. He had nothing to do with the offense charged against him and that he could not remember having been investigated by Det. Armando Estrada regarding this case (TSN, February 24, 1982, pp. 2-3).

The trial court gave more weight to the evidence of the prosecution consisting mainly of the extra-judicial confessions of the accused, and, as earlier stated, found both accused Ernesto Parola and Jovito Tujon, guilty as

charged.

Hence, this appeal.

On March 18, 1987, accused-appellant Jovito Tujon filed an urgent motion to withdraw appeal (Rollo, p. 110) but counsel for appellant in his comment on the motion, prayed that the said urgent motion to withdraw appeal filed by Tujon be disregarded, as it was merely a by-product of misjudgment. The motion to withdraw appeal was then denied by this Court.

Among others, counsel for appellant contends that the court a quo gravely erred in convicting the two accused of the crime charged by relying heavily on their respective extra-judicial confessions, which are clearly not admissible in evidence in the instant case.

The Solicitor General agrees with counsel for appellant that the evidence presented is not sufficient to sustain conviction. He correctly observed that it was not even shown by the evidence how appellant came to be suspected of the robbery and killing and subsequently arrested. The evidence against the accused consists solely of their extra-judicial confessions. There is no eyewitness and not even a single circumstantial evidence pointing to the accused as the perpetrators of the crime (Rollo, pp. 89-90). Compared with the evidence of the prosecution, the claim of Tujon that he has just arrived in Manila to look for a job when he was arrested by the police for unknown reason, is more persuasive.

Furthermore, it was observed that the extra-judicial confessions are not even consistent with each other nor credible. In the extra-judicial confession of Ernesto Parola y Cortina, the victim was killed in Quezon City and his body was dumped at Tandang Sora, Quezon City while in the extra-judicial confession of Jovito Tujon y Tapel, the victim was killed in Sta. Maria, Bulacan. Similarly, in the former, it was stated that the killing occurred on November 20, 1977, while in the latter, the killing was supposed to have taken place in the first week of November, 1977. Notably, the body was found on November 3, 1977. Still further, Parola stated that the color of the taxi is red while according to Tujon, the color is blue (Rollo, pp. 90-96). It is, therefore, evident that the veracity of aforesaid confessions is not acceptable.

But more importantly, while it is clear from the records that the accused were informed of two (2) constitutional rights, namely: (1) the right to remain silent and (2) the right to be assisted by counsel of their own choice, it is not clear that they were actually offered the services of a lawyer and they refused. In any event, it is undisputed that the waiver of the accused of their right to counsel was made without the assistance of counsel.

This Court has ruled that the right of a person under custodial interrogation to be informed of his right to remain silent and to counsel, implies a correlative obligation on the part of the police investigator to explain and contemplate 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 right (*People v. Newman*, 163 SCRA 496, [1988]). When the Constitution requires a person under investigation to be informed to remain silent and to counsel, it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle (*People v. Flores*, 165 SCRA 71 [1988]). It is the duty of the police officer to explain their practical effects (*People v. Nicandro*, 141 SCRA 289 [1986]). Thus, it would not suffice for a police officer just to report to the person under investigation the provision of Section 20, Article IV of the Constitution (now Art. III, Section 12, 1987 Constitution; *People v. Flores*, *supra*).

As pointed out by this Court in *People vs. Nicandro*, *supra*:

"When the Constitution requires a person under investigation 'to be informed' of his right to remain silent and

to counsel, it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. As a rule, therefore, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Article IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms . . . In other words, the right of a person under interrogation 'to be informed' implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been 'informed' of his rights. Now, since the right 'to be informed' implies comprehension, the degree of explanation required will necessarily vary, depending upon the education, intelligence and other relevant personal circumstances of a person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered."

In the case at bar, and in the testimony of the police officer, it is undeniable that no serious effort was shown to have been exerted by the investigators to explain the consequences of the investigation. On the investigator is reposed the duty to explain the effects of the constitutional rights in practical terms (*People v. Duhan*, 142 SCRA 100 [1986]).

Furthermore, this Court has consistently ruled that waiver of right to counsel to be valid, must be in writing and in the presence of counsel. Extra-judicial confessions taken without the assistance of counsel is inadmissible in evidence (*People v. Albofera*, 152 SCRA 123 [1987]). Hence, while the right to counsel may be waived, such waiver must be done voluntarily, knowingly and intelligently, and made in the presence of the accused's lawyer. If the records do not show that the accused was assisted by counsel in making his waiver, this defect nullifies and renders inadmissible in evidence his confession (*People v. Nolasco*, 163 SCRA 623, [1988]). In the case of *People v. Hizon*, 163 SCRA 760 (1988), this Court, citing the procedure laid down in the case of *People v. Galit*, 135 SCRA 465 [1985]), ruled that the suspect must be informed that he has a right to the assistance of counsel and assured that he will be provided with one for free. While he may choose to waive the right, such waiver must be a knowing and intelligent one and in any case must be made only with the assistance of counsel. Any waiver made without observance of these requirements is null and void. Thus:

"At the time the 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." (*Morales, Jr. v. Ponce Enrile*, 121 SCRA 538 [1983]).

Indeed, the ban against uncounselled confessions is even more pronounced under Sec. 12, Art. III of the 1987 Constitution which states that:

"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.

XXX XXX XXX

3) Any confession or admission obtained in violation of this xxx shall be inadmissible in evidence against him." (See also *People v. Nicolas*, 204 SCRA 191 [1991]).

It is a matter of record that the interrogation was made in the absence of counsel *de parte* or *de officio* and the waiver of counsel, if made at all, was not made with the assistance of counsel as required. Under the circumstances, there is no question that proof of guilt beyond reasonable doubt has not been established. As ruled by this Court, when the evidence for the prosecution and the evidence for the accused are weighed, the scales must be tipped in favor of the latter. This is because of the constitutional presumption of innocence the accused enjoys as a counterfoil to the awesome authority of the State that is prosecuting him. Undoubtedly, if a life is taken, justice demands that the wrong be redressed, but the same justice that calls for retribution cannot convict the prisoner at bar whose guilt has not been proved beyond reasonable doubt. The element of doubt, if reasonable as in this case, must operate against the inference of guilt the prosecution would draw from its evidence (*People v. Pecardal*, 145 SCRA 647-648 [1986]).

As aforesaid, no promulgation of judgment was rendered with respect to Ernesto Parola who managed to escape from jail shortly after arraignment.

Considering, however, that the crime charged had not been proven beyond reasonable doubt and the disposition herein arrived at is favorable to accused Ernesto Parola, he shall benefit from the judgment of this Court which is acquittal despite the fact that he jumped bail. In this regard, apropos is the pronouncement of this Court in *People vs. Fernandez* (186 SCRA 834 [1990]), viz.:

"While, in effect, he committed an act of defiance of the law by escaping, we are not without other prior incidents where such undesirable conduct, which should not be condoned, has sometimes been ascribed to a sense of desperation of those who believe they are guiltless but fear that they cannot prove their innocence. While we castigate and reprove his jumping bail and remaining at large up to now, we have to concede, however, that our disquisition in this case is applicable and favorable to him, hence he is affected by and shall benefit from the acquittal that we hand down in this appeal."

WHEREFORE, the appealed decision is REVERSED and SET ASIDE and both accused are hereby ACQUITTED.

SO ORDERED.

Gutierrez, Jr., Davide, Jr. (Chairman), Romero, and Melo, JJ., concur.

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