

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO TUNDAY Y CANOMAY, JAROLAN LAWRE Y DATARTO,
ACCUSED,**

G.R. No. 67813. January 29, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The appellant in this case is Jarolan Lawre, who was convicted of qualified theft and sentenced to reclusion perpetua[1] on the basis mainly of his extrajudicial confession.

As alleged by the prosecution and found by the trial court, the accused-appellant, with two other companions, illegally took an Isuzu truck loaded with 14 rolls of iron rod while it was parked in the corner of Patria and Rodriguez streets in Balut, Tondo, in the early evening of November 3, 1983. In the corner of Rodriguez and Honorio Lopez streets, however, the truck collided with a jeep and Lawre's companions fled, leaving him alone at the wheel. Cesar Sulit, a barangay aide who was directing traffic, approached Lawre and asked him why he did not stop at the timely traffic signal but all the latter did was scratch his head. Then he suddenly ran away.[2] Eduardo Abad, the owner of the truck, reported the incident to the police which, on the basis of the identification furnished by Sulit, arrested Lawre and his co-accused Alfredo Tunday.[3] Lawre gave a statement in which he admitted stealing the truck with its contents,[4] but Tunday refused to submit to any interrogation.

Tunday was eventually acquitted for insufficient evidence, but Lawre was found guilty despite his defense of alibi and is allegation that the extrajudicial confession was illegally obtained.

Examination of the extrajudicial confession shows it is indeed replete with details that according to the trial court bespeak the guilt of the accused-appellant as no one but the actual perpetrator of the offense could have described it with such particularity.[5] As convincing as it appears to be, however, it must still be rejected for violation of the Constitution.

In his testimony, Lawre declared he was subjected to manhandling by as many as six policemen during the time he was under investigation. He claims he was hit in the head with handcuffs, his private organ was electrified, and he was forced to sign the confession which he had not even been allowed to read.[6]

There is no physical evidence of the accused-appellant's charges, and there is no showing either that he complained later of the violence and intimidation imposed upon him. Moreover, the allegation of third-degree methods was denied under oath by the investigator who conducted the interrogation.[7] Even so, the supposed confession must fail under our ruling in the Galit case and the provisions of the new Bill of Rights.

In Galit,[8] we held that a confession must be made with the assistance of counsel unless the right to counsel is waived with the assistance of counsel. Under Article III, Section 12 of the new Constitution, it is not only provided that the right to the assistance of counsel, to be validly waived, must be made in writing but that it must also be done in the presence of counsel. These requirements have not been met by Exhibit "A".

Apart from this, it is clear from the said sworn statement that the accused-appellant was not properly informed of his constitutional rights. Typically, the interrogation began with the standard sacramental recital of such rights, but without any effort to explain them, and ended with the mechanical question of whether he understood the notification, followed by the usual docile "Opo" from the suspect. There is now a long list of cases that have outlawed this unfeeling procedure as not sufficient to satisfy the imperative requisites laid down by the Bill of Rights for the protection of the person under custodial investigation.[9]

The confession having been obtained in violation of the Bill of Rights, it is not admissible in evidence against the accused-appellant.[10]

Still and all, the conviction can be sustained, but on another basis. The evidence shows conclusively that the authorized driver of the subject truck was Julieto Cabilto, who parked the same in the corner of Rodriguez and Patria streets when the period of the truck ban began. When the truck collided with the jeep, it was already in the corner of Lopez and Rodriguez streets, and the person at the wheel was the accused-appellant.[11] He was caught red-handed. When questioned, he simply scratched his head, and the next instant he had already bolted.

The accused-appellant was positively identified as the person in possession of - and actually driving - the stolen truck. But all he pleaded in his defense was his feeble alibi. No effort was made to explain why the truck which he was not authorized to drive, was being driven by him when it collided with the jeep. The truck was stolen property. It was worth P100,000.00 and contained articles valued at P70,000.00. It was found in his hands and he gave no reason for its possession.

In *United States v. Espia*, [12] decided in 1910, it was held:

"An examination of the evidence establishes the fact, beyond peradventure of doubt, that the animal described in the complaint was stolen from its owner, Liberto Ortizo, on or about the 24th of December 1908; that the said carabao, in the month of August, 1909, was found in the possession of the defendant; that the defendant was unable to make any satisfactory explanation showing how he became the possessor of said carabao. It being proven that the carabao was stolen, and being found in the possession of the defendant without his being able to give a satisfactory explanation as to how he came into possession of the same, is sufficient proof to justify his conviction of the crime of larceny of the said carabao. (*U.S. v. Soriano*, 9 Phil. Rep., 441; *U.S. v. Santillan*, 9 Phil. Rep. 445; *U.S. v. Soriano*, 12 Phil. Rep. 512.) Men who come honestly into the possession of property have no difficulty in explaining the method by which they obtained such possession."

The above is still sound doctrine and like a voice from the past echoes through the years to condemn the accused-appellant.

WHEREFORE, for the reason above discussed, the sentence of reclusion perpetua is **AFFIRMED**, with costs against the accused-appellant. It is so ordered.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Decision, p. 10.

[2] *Ibid.*, pp. 2-3.

[3] *Id.*, p. 3.

[4] *Id.*, pp. 3-7; Exhibit "A".

[5] *Id.*, p. 8.

[6] TSN, pp. 38-39.

[7] Ibid., p. 61.

[8] 135 SCRA 465.

[9] People v. Natripavat, 145 scra 483; People v. Duhan, 142 SCRA 100; People v. Nicandro, 141 SCRA 289; People v. Ramos, 122 SCRA 312; People v. Caguioa, 95 SCRA 2; People v. Galit, supra; People v. Poyos, 143 SCRA 542.

[10] Article III, Sec. 12(3), Constitution.

[11] Decision, p. 2.

[12] 16 Phil. 506.

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