

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO LUVENDINO Y COTAS, ACCUSED-APPELLANT.*G.R. No. 69971. July 03, 1992*

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-69971/>**FELICIANO, J.:**

On the morning of 17 January 1983, 18-year old Rowena Capcap left her home at Deva Village, Tambak, Taguig, Metro Manila to attend classes at the University of Manila where she was a sophomore commerce student. She would usually be home by 7:30 to 8:00 on school evenings,[1] but on that tragic day, she would not reach home alive. On that particular evening, her father Panfilo Capcap arriving home from work at around 7:30 p.m., noted her absence and was told by his wife and other children that Rowena was not yet home from school. Later, a younger brother of Rowena, sent on an errand, arrived home carrying Rowena's bag which he had found dropped in the middle of a street in the village.[2]

Panfilo Capcap lost no time in seeking the help of the barangay captain of Hagonoy, Taguig. Not being satisfied with the latter's promise to send for a "tanod" to help locate his missing daughter, Panfilo went to the Taguig Police Station to report his daughter as missing. The desk officer there advised him that a search party would be mounted presently.[3]

Panfilo returned home and, with the help of some neighbors, launched a search party for the missing Rowena. The search ended in a grassy vacant lot within the Deva Village Subdivision, only about 70 to 80 meters from the Capcap residence, where lay the apparently lifeless body of Rowena, her pants pulled down to her knees and her blouse rolled up to her breasts. Her underwear was blood-stained and there were bloody fingerprint marks on her neck. Rowena, her body still warm, was rushed to a hospital in Taguig, where on arrival she was pronounced dead.[4]

An autopsy was conducted on the following day by the National Bureau of Investigation and the autopsy report disclosed the following:

"Cyanosis, lips and fingernail beds with pupils dilated and bloody froths coming out of nostrils.

Abrasions, 1.0 x 3.0 cm., area of the buttocks, left side; 1.5 x 3.0 cm., area of right elbow.

Contused-abrasions, 3.0 x 8.0 cm., area of the lateral aspect of the right chest; 4.0 x 5.0 cm., area of the antero-lateral aspect, middle third, left arm.

Contusion, 7.0 x 13.0 cm., area of the anterior aspect of the neck from left to right in varying sizes and shapes.

Interstitial hemorrhages among the muscles and soft tissues in the anterior aspect of the neck with petechial hemorrhages noted and severe congestion of the pharynx with subpleural, subpericardial puntiform hemorrhages.

Fracture, laryngeal cartilage.

Lungs, presence of multiple petechial hemorrhages along the surface of both lungs; cut sections showed severe congestion.

Heart, covered with moderate amount of adipose tissues with right chamber distended with dark fluid blood.

Brain and other visceral organs are congested.

Stomach, one-third filled with digested food materials.

CAUSE OF DEATH:

Asphyxia by manual strangulation (throttling).

REMARKS:

Genital examination revealed the presence of an old healed hymenal laceration at 6:00 o'clock position corresponding to the face of the watch, edges rounded, base retracted and non-coaptable. Smears taken for presence of spermatozoa yield a positive result.”[5]

The autopsy report also stated that the multiple injuries indicated the victim had struggled vigorously with her attacker(s); that the presence of spermatozoa showed that the victim had sexual intercourse prior to death; and that death was due to asphyxia by manual strangulation.[6]

By 5 March 1984, an information had been filed in the trial court charging Ernesto C. Luvendino, Cesar Borca alias "Cesar Putol" and Ricardo de Guzman alias "Ric" with the crime of rape with murder committed as follows:

"That on or about the 17th day of January, 1983, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Rowena Capcap y Talana, against her will and consent; that by reason or on the occasion thereof, the said accused in pursuance of their conspiracy, with intent to kill and treachery and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit and strangle the said Rowena Capcap y Talana which directly caused her death.

Contrary to law.”[7]

Warrants of arrest were issued against all the above accused but only accused-appellant Ernesto Luvendino was actually apprehended; the other two (2) have remained at large. At arraignment, Luvendino assisted by his counsel, Atty. Luisito Sardillo, pleaded not guilty and then proceeded to trial.

On 12 December 1984, the trial court rendered a decision finding Luvendino guilty, sentencing him to death, and requiring him to indemnify the heirs of the victim Rowena in the amount of P50,000.00 for the damages suffered as a result of her death.

Appellant Luvendino contends that the trial court committed grievous error in --

"I

x x x having required Atty. Luisito Sardillo to continue as counsel of the accused-appellant notwithstanding his [Sardillo's] express mental reservations.

II

x x x believing the insidious machinations of third persons and witness Salvador B. Cemitara surrounding the alleged threats [against] Cemitara, including Exhibit 'D.'

III

x x x admitting and giving credence to the evidence of re-enactment and admission of guilt, both of which were uncounseled.

IV

x x x giving credence and weight to the identification of appellant Ernesto Luvendino by witness Cemitara.

V

x x x finding appellant Luvendino guilty of rape with murder."[8]

The above assignments of error may be condensed to three (3), that is, whether or not the trial court erred in: (1) not holding that his "demonstration" or re--enactment of the crime as well as his subsequent written admission of guilt as inadmissible for having been made without the benefit of counsel; (2) according credence to the identification and other statements made by prosecution witness Cemitara; and (3) allowing Luvendino's counsel before the trial court to continue as such notwithstanding such counsel's express mental reservations.

Under his first assignment of error, appellant Luvendino contends that the "demonstration" or re-enactment and his extrajudicial confession were effected and secured in the absence of a valid waiver by him of his constitutional rights and that the re-enactment and the confession should be held inadmissible in evidence because they had been involuntarily made.

We turn first to the admissibility of the testimony (of Panfilo Capcap) relating to the contents of the demonstration or re-enactment of the crime. The decision of the trial court had the following to say about the re--enactment:

"For sometime, the suspects had not been known. As a matter of fact, in the January 22 and 23, 1983 issues of TEMPO, a newspaper of general circulation in Metro Manila, it was reported that the group of men who waylaid her were still unidentified, (Exhs. C & R). However, Panfilo Capcap stated that at about midnight of February 10, 1983, he was awakened by the police at their residence. They went to the vacant lot where they found the dead body of Rowena. A police officer, whom he later knew to be Sgt. Birxo, told him they had arrested Ernesto Luvendino, alias 'Joey.' The accused was then demonstrating how they brought the girl to the vacant lot. While Luvendino was re-enacting the events that transpired in the evening of January 17, pictures were taken by a photographer brought by the police officers. As the re-enactment was going on, Capcap said he heard the accused said that he and his companion boxed her in the stomach, dragged her to the lot and raped her there. The accused allegedly admitted he and Cesar Borca had strangled Rowena and he likewise admitted he had abused her. Capcap stressed that in the course of the demonstration Luvendino remarked: 'Inaamin ko po na kasama ko si Cesar Borca sa pag re-rape kay Rowena.' Luvendino allegedly demonstrated how she was boxed, dragged and abused and pointed to the place where they had left her remains. Capcap drew a sketch of the scene (Exh. I). He also narrated that after the re-enactment, he and Luvendino were taken to the Eastern Police District in Pasig and were investigated separately. He likewise testified that sometime before the apprehension of Luvendino he was informed by Ernesto Uy that a certain Bayani Cemitara had seen Rowena with several men by the entrance of Deva Village in the early evening of January 17, 1983.

x x x x x x x x

x x x. The records indicate that immediately after his apprehension, the police officers brought him to the Deva

Subdivision where he demonstrated how the victim was boxed, dragged and taken to the vacant lot where she was raped and throttled to death. According to the evidence for the prosecution, Luvendino in the re-enactment, had not only admitted his presence in the commission of the crime but had likewise admitted he was with Borca in abusing Rowena. Significantly, the evidence for the prosecution in this regard was not rebutted nor denied by the accused.

x x x x x x x x"[9]

(Underscoring supplied)

Clearly, the trial court took into account the testimony given by Panfilo Capcap on what had occurred during the re-enactment of the crime by Luvendino. We note that the re-enactment was apparently staged promptly upon apprehension of Luvendino and even prior to his formal investigation at the police station.[10] The decision of the trial court found that the accused was informed of his constitutional rights "before he was investigated by Sgt. Galang in the police headquarters" and cited the "Salaysay"[11] of appellant Luvendino.[12] The decision itself, however, states that the re-enactment took place before Luvendino was brought to the police station. Thus, it is not clear from the record that before the re-enactment was staged by Luvendino, he had been informed of his constitutional rights including, specifically, his right to counsel and that he had waived such right before proceeding with the demonstration. Under these circumstances, we must decline to uphold the admissibility of evidence relating to that re-enactment.[13]

We consider next the extrajudicial confession of appellant Luvendino. Luvendino claimed first of all that the extrajudicial confession had been extracted from him by means of a beating administered by many policemen at the police station and that a chain had been wrapped around his neck. The trial court disposed of this claim in the following manner:

"In an extra-judicial confession, the confessant carries the burden of convincing the court that his admissions are involuntary and untrue. (People v. Manabo, 18 SCRA 30). This Luvendino had failed to do. He claimed he was given fist blows by many policemen and his neck was strangled with a chain when he refused to admit guilt at the Eastern Police District and then later given the '7-up treatment' in another place. Although he said he sustained injuries, no proof was submitted to that effect except his bare and uncorroborated testimony. He admitted that his mother and Atty. [Eustacio] Flores were present when he subscribed before the fiscal the next day, but he did not say that he had told them about the torture employed on him. If it were really true that he was abused in the manner he described it, tale-tell signs of the maltreatment could have been visible the following morning and would not escape the notice of his mother and his lawyer and appropriate steps could have been taken so that he may be examined by a competent physician. It is interesting to note that Atty. Flores made no mention of such injuries when he was called as a defense witness." [14]

The trial court disbelieved and rejected Luvendino's claim that he had been beaten into making his confession. Appellant has given us no basis for overturning this conclusion of fact. The presumption of the law is one of spontaneity and voluntariness of an extrajudicial confession of an accused in a criminal case, for no person of normal mind would deliberately and knowingly confess to being the perpetrator of a crime, especially a heinous crime, unless prompted by truth and conscience.[15] Thus the Court has ruled that where the confessant failed to present any evidence of compulsion or duress or violence on his person for purposes of extracting a confession; where he failed to complain to the officers who administered the oaths, such as the Fiscal in this case; where he did not institute any criminal or administrative action against his alleged intimidators for maltreatment; where he did not have himself examined by a reputable physician to buttress his claim of maltreatment; and where the assailed confession is replete with details which could not have been known to the police officers if they merely concocted the confession, since the statements were inculpatory in character, the extrajudicial confession may be admitted, the above circumstances being considered as factors indicating voluntariness.[16]

Luvendino next claimed that he had not been informed of his constitutional rights before his confession was given by him or extracted from him. In the first place, Police Sgt. Galang testified as prosecution witness that he had indeed informed Luvendino of the latter's constitutional rights before he commenced investigating Luvendino at the police headquarters.[17] In the second place, the written extrajudicial confession itself stated that Luvendino was informed of his constitutional rights and that he was waiving those rights.[18] In the third place, according to Luvendino himself, he first signed his extrajudicial statement, which also set out a separately signed waiver of his rights, at the police department and that later, when he was brought to the office of Provincial Fiscal Mateo, he subscribed to or signed once more the same document, this time under oath. As already noted from the trial court's decision, when Luvendino subscribed under oath to his extrajudicial confession in the presence of the Provincial Fiscal, his mother and Atty. Eustacio Flores were also present. Said the trial court:

"But even as he had waived the right to counsel while interrogated by Sgt. Galang, the accused was nevertheless assisted by one before he signed the 'Salaysay', Exhibit 'L.'. From the narration of the accused himself it can be gathered that he was brought to the Fiscal's Office in Pasig in the morning of February 10, 1983. At that office, he was at first aided by a lawyer from the CLAO. He did not sign the statement for he wanted to talk to his mother. He was returned to the police station where his mother saw him in the afternoon. In the headquarters, they requested that they be allowed to engage a lawyer of their choice and their request was granted. The mother called for Atty. Flores who arrived when the accused was already back in the Office of the Fiscal. In the presence of Atty. Flores and his mother, the accused was investigated by the fiscal after which, also in the presence of his mother and assisted by Atty. Flores, the accused signed Exhibit 'L.'[19] (Underscoring supplied)

Although Atty. Eustacio Flores, a former Mayor of Pateros, did not serve as defense counsel during the trial, it is clear that Luvendino and his mother regarded Atty. Flores as Luvendino's counsel at least in respect of that specific occasion in the Fiscal's office, and that Atty. Flores did so act as counsel of Luvendino.

It is, however, claimed by appellant Luvendino that at the time he had first signed his extrajudicial confession at the police headquarters, he was without counsel. Luvendino thus apparently seeks to distinguish the initial signing of his "Salaysay" (Exhibit "L") at the police headquarters from his subsequent subscribing thereto under oath in the Office of the Provincial Fiscal of Rizal. There is no question that on the latter occasion, Luvendino was questioned or investigated by the Fiscal in the presence of his mother while Luvendino was assisted by Atty. Eustacio Flores.

In *People v. Burgos*,[20] the Court did make the following general statements:

"The trial court validly rejected the extra-judicial confession of the accused as inadmissible in evidence. The court stated that the appellant's having been exhaustively subjected to physical terror, violence, and third degree measures may not have been supported by reliable evidence but the failure to present the investigator who conducted the investigation gives rise to the 'provocative presumption' that indeed torture and physical violence may have been committed as stated.

The accused-appellant was not accorded his constitutional right to be assisted by counsel during the custodial interrogation. The lower court correctly pointed out that the securing of counsel, Atty. Anyog, to help the accused when he subscribed under oath to his statement at the Fiscal's Office was too late. It could have no palliative effect. It cannot cure the absence of counsel at the time of the custodial investigation when the extrajudicial statement was being taken."[21] (Underscoring supplied)

The above statements in *Burgos* were not, however, intended to establish a rigid and automatic rule that the subsequent presence of and assistance by counsel of the accused prior to and during the subscribing under oath of an extrajudicial confession and an accompanying waiver of right to counsel, cannot have any legal effect at all. For one thing, under the factual circumstances of *People v. Burgos* -- where the trial court believed the statements

of the accused that he had been "exhaustively subjected to physical terror, violence and third degree measures" and where the investigating officer was not presented as a witness by the prosecution -- the above statements were clearly appropriate. In the case at bar, Police Sgt. Galang who had interrogated Luvendino at the police station was, as already pointed out, presented as a witness by the prosecution and had testified in extenso, that Luvendino had been informed by him (Police Sgt. Galang) of his constitutional rights, that Luvendino had waived his rights voluntarily and intelligently, being convinced that he did not need the assistance of a lawyer and could, by himself, clarify what had taken place. Moreover, Luvendino in the Office of the Provincial Fiscal in Pasig, had initially been assisted by a Citizens Legal Aid Office (CLAO) lawyer. But he at that time nonetheless declined to swear to Exhibit "L" and later, together with his mother, insisted that he be allowed to retain a lawyer of their own choice, which request was honored. Moreover, and perhaps more importantly, the trial court in the instant case did not accord any credence to Luvendino's claim that he had been physically beaten up by the police officers at the Taguig police station. In the afternoon of the same day, Luvendino had every opportunity in the presence of his mother and his own chosen counsel, Atty. Eustacio Flores, to denounce to the Provincial Fiscal at the latter's office any maltreatment that the police officers might have earlier in the day administered to him, to abjure the extrajudicial confession or the waiver of his right to counsel there incorporated as non-voluntary or non--intelligent and to refuse to sign once more under oath his "Salaysay". He did not do so; Atty. Flores did not do so either then and there or when he testified as a defense witness. Their failure to do so deprives his contention before this Court of any real force. Luvendino may be deemed to have in effect ratified, before the Fiscal and with the aid of counsel, the extrajudicial confession and waiver of the right to counsel which he had earlier signed without the presence of counsel in the police station.

But even if appellant Luvendino's contention were to be accepted at face value (and we do not so accept it), the same result must be reached. The doctrine that an uncounseled waiver of the right to counsel is not to be given legal effect was initially a judge-made one and was first announced on 26 April 1983 in *Morales v. Enrile*[22] and reiterated on 20 March 1985 in *People v. Galit*. [23] In *Morales*, the Court explained that Section 20, Article IV of the 1973 Constitution required that:

"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." (Underscoring supplied).

While the *Morales-Galit* doctrine eventually became part of Section 12 (1) of the 1987 Constitution, that doctrine affords no comfort to appellant Luvendino for the requirements and restrictions outlined in *Morales* and *Galit* have no retroactive effect and do not reach waivers made prior to 26 April 1983, the date of promulgation of *Morales*.

In *People v. Nabaluna*, [24] the Court upheld the validity of the waiver of the right to counsel which had been made on 5 December 1977, that is, prior to 26 April 1983, which waiver had been made without the assistance of counsel, for the reason that at the time such waiver was made, there was no rule or doctrine or guideline requiring that waiver of the right to counsel should itself be made only in the presence and with the assistance of counsel.

The trial court admitted in evidence the extrajudicial statements made by appellant Nabaluna and found the accused guilty of robbery with homicide in a decision rendered on 26 September 1981. In affirming the decision of the trial court, the Court said:

"The Court is mindful of the strictures and pronouncements found in the case of *Morales v. Ponce Enrile*, G.R. Nos. 61106 and 61107, promulgated on April 26, 1983, 121 SCRA 538, quoted and reiterated in the case of *People v. Galit*, L-51770, March 20, 1985 and in the case of *People v. Pascual*, 109 SCRA 197, promulgated on November 12, 1981, particularly as to the requisite steps before a person under custodial investigation may be deemed to have properly waived his right to counsel, such as a counsel being present to assist him when the accused manifests such waiver. However, the stated requirements were laid down in the said cases, to serve as governing guidelines, only after the judgment in this case had already been rendered by the trial court. Consequently, no error should attach to the admission by the trial court of the extra-judicial statements given by the accused as evidence in this case. The trial court was then sufficiently convinced that the accused had waived assistance of counsel and there was at that time no pronounced guidelines requiring that the waiver of counsel by accused can be properly made only with the presence and assistance of a counsel. x x x." [25] (Underscoring supplied)

It may be recalled that even before Nabaluna, the Court had already determined that Section 20, Article IV of the 1973 Constitution, was to be given prospective effect only. In *Magtoto v. Manguera*, [26] the Court sustained the admission in evidence of an extrajudicial confession which had incorporated an uncounseled waiver by the confessant of his constitutional rights during custodial investigation established in Section 20, Article IV of the 1973 Constitution, upon the ground that such confession and waiver had been executed before the effectivity of the 1973 Constitution. [27] The decision in *Magtoto v. Manguera* was not unanimous, but the majority decision has been reiterated many times [28] and it is much too late in the day to consider re-examining the doctrine there laid down.

Applying Nabaluna to the case at bar, we believe and so hold that appellant Luvendino validly waived his right to counsel so far as his extrajudicial confession was concerned, although he was not assisted by counsel when he initially signed his confession at the police headquarters (disregarding for present purposes only, the subsequent events in the office of the Provincial Fiscal). At the time the extrajudicial confession and waiver were first executed (i.e., 10 February 1983), there was no rule or doctrine prescribing that waiver of the right to counsel may be validly made only with the assistance of counsel. It is scarcely necessary to add that we are here referring only to extrajudicial confessions and waivers which were made voluntarily and intelligently.

Coming now to the second error assigned by appellant Luvendino -- that the trial court had erred grievously in believing the testimony of prosecution witness Cemitara -- the Court finds no reason to depart from the well-settled rule that the assessments by a trial court of the credibility and sincerity of the witnesses who testified before it, are to be accorded great respect by appellate courts. The trial court gave full faith and credence to the testimony of prosecution witness Salvador Cemitara in view of the straightforward character of his testimony. We need only to note that appellant Luvendino presented no evidence to show any personal grudge on the part of Cemitara against Luvendino, nor any evidence of any ill motive weighty enough to have moved Cemitara falsely to testify for the prosecution. Indeed, there was nothing to show that Cemitara was in the least bit acquainted with appellant Luvendino before the events which culminated in the slaying of Rowena Capcap.

Luvendino asserts, as his third principal assignment of error, that he had been deprived of due process because he was represented, or continued to be represented, by a lawyer who had manifested mental reservations. Neither Luvendino nor his counsel -- Atty. Sardillo -- had indicated what precisely the latter's mental reservations were. We assume that those mental reservations consisted of private doubts as to the innocence of Luvendino of the crime with which he was charged. Atty. Sardillo was Luvendino's choice as defense counsel. Atty. Sardillo had

appeared in at least two (2) previous hearings and had cross-examined prosecution witness Cemitara before he (Sardillo) offered in open court to withdraw as defense counsel on 14 November 1983. The trial court could scarcely be faulted for declining Atty. Sardillo's offer to withdraw, considering that such offer had been made without the conformity or permission of Luvendino. Atty. Sardillo himself did not insist on withdrawing as defense counsel. If appellant Luvendino in truth had entertained substantial doubts as to the sincerity or capability or impartiality of his lawyer, he could have easily terminated the services of that counsel and retained a new one or sought from the trial court the appointment of counsel de officio. Instead, Luvendino continued to retain the services of Atty. Sardillo until the trial court rendered its decision. In any event, an examination of the record will show that Atty. Sardillo continued to represent appellant Luvendino as defense counsel with reasonable competence.

We would note, finally, that doubts on the part of a lawyer as to the ultimate innocence of a client accused of a serious felony do not, in themselves, constitute bases for claiming miscarriage of justice or failure of due process assailing the professional work done by the lawyer. Of course, complete confidence in the innocence of one's client may lend added sincerity and even passion to the lawyer's pleading and argumentation. It is, however, precisely one of the demanding requirements of the legal profession that the lawyer must present all the defenses and arguments allowed by the law to a person accused of crime, without regard to the lawyer's private beliefs or suspicions as to his client's guilt.

Appellant Luvendino's principal defense on the merits was that of alibi. It is too well-settled to require documentation that, for the defense of alibi to prosper, the accused must not only prove that he was somewhere else during the approximate time of the commission of the crime; he must further prove that it was physically impossible for him to have been at the scene of the crime during its commission. Luvendino testified that on or about the time the rape with homicide was committed, he was at his house in Pateros, recuperating from a wound allegedly sustained from a beating inflicted upon him by one Romy Boy. Except for his own uncorroborated testimony, however, Luvendino failed to present any evidence showing that he was medically incapacitated to be at the scene of the crime during its commission. He filed no complaint against his alleged assailant "Romy Boy." Besides, Pateros and Taguig are neighboring municipalities with public transport readily and quickly available between the two (2) locales; there was simply no showing that Luvendino could not have been in Taguig during the time the crime was committed.

Finally, in respect of the civil liability aspects of the crime, the Court considers that the amount of P4,500.00 representing funeral expenses actually incurred by the family of Rowena Capcap, should be awarded to them as actual damages.[29] Further, given the circumstances obtaining in the instant case, especially the ruthless and mindless slaying of Rowena after she had been raped, the Court believes that the amount of P30,000.00 should be awarded to Rowena's heirs as moral damages, over and above the civil indemnity of P50,000.00 which was awarded by the trial court.

WHEREFORE, the decision of the trial court in Criminal Case No. 54537 is hereby MODIFIED by changing the enforceable penalty from death to reclusion perpetua and by requiring appellant Ernesto C. Luvendino to pay the heirs of Rowena Capcap the amount of P4,500.00 as actual damages and P30,000.00 as moral damages, in addition to the civil indemnity of P50,000.00 awarded by the trial court. In all other respects, the decision of the trial court is AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Gutierrez Jr., Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide Jr., Nocon, and Bellosillo, JJ., concur.

Narvasa, C.J., in the result.

Cruz, J., see separate concurring and dissenting opinion.

Romero, J., see concurring opinion.

[1] TSN, 7 December 1983, pp. 15-16.

[2] Id., pp. 3-5.

[3] Id., pp. 6-7.

[4] Id., pp. 8-11.

[5] Folder of Exhibits, p. 8.

[6] TSN, 8 February 1974, pp. 9-14.

[7] Rollo, p. 5.

[8] Brief for the appellant, pp. 1-2; Rollo, p. 47.

[9] Decision of the trial court, pp. 3-4 and 14; Rollo, pp. 11-12 and 14.

[10] Notwithstanding the portions of the trial court's decision quoted above, the brief of the Solicitor General made the following singular statements:

"x x x. The re-enactment was done subsequently at about mid-night of February 10, 1983 after appellant had already given his extrajudicial confession earlier in the same morning of the same day to police investigator as an aid in their criminal investigation to verify certain details of their previous findings and/or declarations of the suspects. This police investigative aid or procedure may or may not be introduced in evidence in court. It is not evidence of the commission of the crime itself. Instead, it is what it really is: a mere re-enactment of the crime by a suspect." (Rollo, p. 78)

[11] Exhibit "L", Folder of Exhibits.

[12] See testimonies of Panfilo Capcap (TSN, 7, 14 & 28 December 1983) and of P/Sgt. Aquino Galang (TSN, 11 January 1984).

[13] See, in this connection, *People v. Novoc*, 143 SCRA 513 (1986) and *People v. Olvis*, 154 SCRA 513 (1987).

[14] Decision of the trial court, p. 13; Rollo, p. 21.

[15] *People v. Ribadajo*, 142 SCRA 637 (1986); *People v. Zea*, 130 SCRA 77 (1984).

[16] *People v. Damaso*, 190 SCRA 595, 609 (1990); *Belvis III v. Court of Appeals*, 167 SCRA 324 (1988); *People v. Villanueva*, 128 SCRA 488, 501 (1984); *People v. Balane*, 123 SCRA 614 (1983); *People v. Mada-I-Santalani*, 93 SCRA 317 (1979); *People v. Feliciano*, 58 SCRA 383, 391 (1974); *People v. Paras*, 56 SCRA 248, 262 (1974).

[17] TSN, 11 January 1984, p. 5.

[18] Exhibit "L," Folder of Exhibits, Criminal Case No. 54537.

[19] Decision of the trial court, p. 15, Rollo, p. 23.

[20] 144 SCRA 1 (1986).

[21] 144 SCRA at 18.

[22] 121 SCRA 538 (1983).

[23] 135 SCRA 465 (1985).

[24] 142 SCRA 446 (1986).

[25] 142 SCRA at 455. Reiterated in *People v. Ponce*, 197 SCRA 746 (1991); *People v. Seranilla*, 161 SCRA 193 (1988). Some cases subsequent to *Nabaluna*, e.g., *People v. Marquez*, 153 SCRA 700 (1987); *People v. Albofera*, 152 SCRA 123 (1987) and *People v. Decierdo*, 149 SCRA 496 (1987) appear to have overlooked *Nabaluna*, but, never examined or re-examined nor expressly overruled *Nabaluna*. In *People v. Dacoycoy* (G.R. No. 71662, 8 May 1992), the Court through Narvasa, C.J., noted the above quoted excerpt from *Nabaluna*, but declined to follow *Nabaluna*.

[26] 63 SCRA 5 (1975).

[27] The Court said:

"We hold that this specific portion of this constitutional mandate [Section 20, Article IV of the 1973 Constitution] has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."

x x x x x x x x

Section 20, Article IV of the New Constitution granted, for the first time, to a person under investigation for the commission of an offense, the right to counsel and to be informed of such right. And the last sentence thereof which, in effect, means that any confession obtained in violation of this right shall be inadmissible in evidence, can and should be given effect only when the right already existed and had been violated. Consequently, because the confessions of the accused in G.R. Nos. L-37201-01, 37424 and 38929 were taken before the effectivity of the New Constitution in accordance with the rules then in force, no right had been violated as to render them inadmissible in evidence although they were not informed of 'their right to remain silent and to counsel,' 'and to be informed of such right,' because, We repeat, no such right existed at the time." (63 SCRA at 12-13) (Underscoring supplied)

[28] E.g., *People v. Aspili*, 191 SCRA 530 (1990); *Belvis III v. Court of Appeals*, 167 SCRA 324 (1988); *Cortez v. Court of Appeals*, 163 SCRA 139 (1988); *People v. Veloso*, 148 SCRA 60 (1987); *People v. Ribadajo*, 142 SCRA 637 (1986).

[29] Exhibits "H" and "H-1," Folder of Exhibits, pp. 11-12.

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CONCURRING AND DISSENTING OPINION

CRUZ, J.:

I agree with the ponencia except only where it adopts the excerpt from *People v. Nabaluna* making the doctrine announced in *Morales v. Enrile* effective only on April 26, 1983, the date of its promulgation. I concurred only in the result of *Nabaluna* precisely because I could not agree with that observation, which was merely obiter dictum. The ratio decidendi of the case consisted of the telling testimonial evidence against the accused, not the challenged extra-judicial confession. I had (and still have) misgivings about the quoted portion because I believed (and still do) that the right to counsel and the limitations on its waiver existed even before *Morales* and indeed even before *Magtoto v. Manguera*, 63 SCRA 5. That case held that the right to counsel began only when the 1973 Constitution became effective. Three strong dissents were filed by Castro, Fernando, and Teehankee, JJ., who all became Chief Justice. I particularly agreed with Justice Fred Ruiz Castro who pointed out that the right to counsel was even then, and even before, already available under Art. 125 of the Revised Penal Code. He complained against the majority ruling in these stirring words:

I regard as intolerable in a civilized nation, which proclaims equal justice under law as one of its ideals, that any man should be handicapped when he confronts police agencies because of the happenstance that he is poor, underprivileged, unschooled or uninformed. The majority interpretation does violence to the democratic tradition of affording the amplest protection to the individual - any and every individual - against the tyranny of any governmental agency. It should be unthinkable that an innocent man may be condemned to penal servitude or even sent to his death because he is not blessed with familiarity with the intricacies of the law.

The present ponencia says that the *Magtoto* decision "has been reiterated many times and it is much too late in the day to consider re-examining the doctrine laid down." I regret I have to disagree. It is never too late to re-examine any decision of this Court and amend or even reverse it whenever warranted regardless of the number of times it has been reiterated. Rectifying error is better than persisting in it.

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CONCURRING OPINION

ROMERO, J.:

What is writ large in the ponencia is the ambiguity of the validity of the waiver of the right to counsel made an accused who is unassisted by counsel in a written and signed extrajudicial confession. Unable to support his position with a specific legal provision on the matter, the ponente has had to fall back on cases where the facts are not exactly on all fours with the case at bar. The strictures and guidelines laid down in the *Morales v. Enrile* and *People v. Galit* cases for uncounseled waivers to be valid hardly afforded protection for appellant Luvendino, for the doctrines embodied therein could not be applied retroactively.

However, time seems to be on the side of appellant Luvendino now. Republic Act No. 7438 approved on April 27, 1992 which defines "certain rights of persons arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officers" provides explicitly in Sec. 2 (d):

"Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in

writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding."

Can the aforecited provision with its much broader protection for persons who execute extrajudicial confessions while under arrest, detained or under custodial investigation, be invoked by appellant so as to render his confession which was not signed in the presence of counsel or any of the persons enumerated therein invalid?

Although at first blush, it would seem that said provision may be applied retroactively by way of exception to the general rule that laws should only be applied prospectively as it is clearly beneficial to the accused, appellant's conviction, however, stands. Although he was not assisted by counsel when he signed his confession with the waiver of his right to counsel at the police headquarters, it may be deemed to have been ratified when he repeated the same at the Office of the Provincial Fiscal in Pasig with the aid of counsel and in the presence of his mother.

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