

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO DACOYCOY Y IGAR @ DANNY, ANGELES LATOGA Y LAGCO
@ ELY AND ANGEL, AND JOHN DOE @ SONNY,
ACCUSED-APPELLANTS.**

G.R. No. 71662. May 08, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Angeles Latoga y Lagco, Danilo Dacoycoy, and an individual identified only as "John Doe @ Sonny" -- who to date has not been apprehended, were indicted in July, 1982 for the special complex crime of robbery with homicide, their alleged victim being Edilberto Lisondra y Benitez, and the cash and property (a watch) taken from the latter being in the aggregate amount of P600.00.[1] After trial, Latoga and Dacoycoy were found guilty of the felony beyond reasonable doubt by the Regional Trial Court at Quezon City,[2] and were each sentenced to the "penalty of RECLUSION PERPETUA, and to indemnify the heirs of the victim the amount of P12,000.00, the damage to Floresta Tomoso, actual P200.00, and loss of earning for one month and funeral expenses amounting to P13,000, and also the value of the Seiko watch to the heirs of the victim fixed at P600.00, jointly and severally." They both appealed.

Subsequently, Danilo Dacoycoy filed an "Urgent Motion to Withdraw Appeal," which this Court granted by Resolution dated September 23, 1987, leaving the appeal proceedings pending only as regards Angeles Latoga.

The record discloses that there were no eyewitnesses to the crime imputed to the accused, and that the only evidence linking them thereto are their extrajudicial confessions, marked Exhibits A and B in the proceedings in the Court a quo, which were executed by them without the assistance of counsel of their choice, and which they both subsequently repudiated at the trial. The Trial Court nevertheless accepted the confessions, justifying acceptance in the following manner, to wit:

"The Court finds that the accused's repudiation of their statements was not sufficient to overcome the presumption of regularity of the performance by the police officers of their duties. Admittedly, the relatives of the two accused had visited them while they were under custody of the police, and had opportunity to complain to higher authority or to get a lawyer to protect their rights in case the latter were violated. The police officers had been known to be accused themselves upon complaint of detainees of maltreatment and torture. The intelligence and educational attainment of the accused being adequate, as can be gleaned from their work background (Latoga, security guard, factory worker, Dacoycoy, first year College) this court does not believe that they did not know what they were signing. It is noted by the Court that Dacoycoy appears to have signed twice, once before the police and the other before the Fiscal. Latoga admits that the Fiscal did not threaten him.

When it appears to the Court that the accused has signed statements admitting to the regular performance of the police of their duty to inform those in custodial investigation of their Constitutional rights to remain silent and to assistance of a lawyer, and that responsible officials have participated in the execution of the said statements, such as the Fiscal, and the statements contain details that are woven into a consistent fabric (of

events, then mere avowals by the accused of torture, without proof they tried to complain or filed charges against their tormentors, for that would be natural and spontaneous action of citizens in our New Society, must be disregarded by the court as desperate efforts to avoid conviction of the accused."

In the present appeal, Latoga contends that -

"THE TRIAL COURT GRIEVOUSLY ERRED IN ADMITTING AND BASING THE DECISION OF CONVICTION OF THE ACCUSED SOLELY ON HIS EXTRA-JUDICIAL 'CONFESSION,' EXHIBIT 'A.'"

That Latoga's confession, Exhibit A, was given and signed without assistance of counsel of his choice is not disputed. The question is whether or not the circumstances specified by the Trial Court nevertheless make the confession admissible. Latoga argues that the doctrine laid down in this Court's decision in the twin cases of *Morales v. Ponce Enrile*, et al. (G.R. No. 61016) and *Moncupa v. Enrile*, et al. (G.R. No. 61107), promulgated on April 26, 1983[3] -- i.e., that during custodial investigation, the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel -- should apply to him, and thus bring about rejection of his extrajudicial confession. The Solicitor General disagrees, contending that said doctrine may not be made to operate on extrajudicial confessions given prior to April 26, 1983 (the date the doctrine was laid down as above stated) in accordance with the pronouncement in *People v. Nabaluna*,[4], viz.:

"The Court is mindful of the strictures and pronouncements found in the case of *Morales vs. Ponce Enrile*, G.R. Nos. 61106 and 61107, promulgated on April 26, 1983, 121 SCRA 538, quoted and reiterated in the case of *People vs. Galit*, L--51770, March 20, 1985 and in the case of *People vs. 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 appellant's point is well taken. His extrajudicial confession must be disallowed and his conviction set aside. The doctrine in *Morales v. Enrile*, et al. has since been reiterated in several subsequent cases, among them: *Peo. v. Galit*, 135 SCRA 465, 472 (1985); *Peo. v. Sison*, 135 SCRA 219, 221-222 (1986); *Peo. v. Pecardal*, 145 SCRA 647, 651 (1986). In *Pecardal*, the Court made the following cogent observation:

"It is true that the original requirement laid down in *Morales v. Enrile* (121 SCRA 538) was not supported by the majority of eight required by the Constitution. Nonetheless, the doctrine announced therein was later affirmed in *People v. Galit* (135 SCRA 465) with fourteen members of the Court voting in favor and only one not taking part. The same rule was only recently reiterated in the case of *People v. Sison* (G.R. No. 70906) decided last May.

In *Galit* and *Pecardal*, it must be stressed, the principle was made to apply to confessions given by suspects during custodial investigations prior to April 26, 1983. In *Galit*, the extrajudicial confession was executed sometime in 1977; in *Pecardal*, 1982. The Court then saw no impediment, constitutional or otherwise, to the application of the doctrine to confessions made before April 26, 1983.[5] The Court sees none at this time.

All said cases, *Morales*, *Galit*, *Sison*, *Pecardal*, were resolved in light of the provisions of Section 20 of the Bill of Rights of the 1973 Constitution reading as follows:

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

This Court has construed the provision as allowing a waiver by a suspect of his rights while under custodial investigation. While initially, this Court's holding was that such a waiver was valid and could properly be given effect merely upon some adequate showing that it had been made voluntarily, knowingly and intelligently,[6] its subsequent rulings imposed the requirement, as just pointed out, that the waiver of those rights be made in the presence and with the assistance of the suspect's counsel.

Of course, the 1987 Constitution -- in Section 12 (1) of its Article III -- now clearly and explicitly requires that the waiver be in writing and in the presence of counsel.

"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."

But as just intimated, even before the effectivity of the 1987 Charter, the need of assistance of counsel as a pre-requisite for according validity and effect to a waiver of rights in custodial investigation laid down by the 1973 Constitution, was already existent. Since appellant Latoga's extrajudicial confession was admittedly given by him without the assistance of counsel, it should not have been admitted in evidence against him; and since that confession constitutes his only link to the felony of robbery with homicide with which he is charged, no finding of guilt thereof may be made against him.

WHEREFORE, the judgment of the Trial Court is REVERSED AND SET ASIDE, and the appellant, Angeles Latoga y Lagco @ Ely and @ Angel, is ACQUITTED, with costs de officio.

SO ORDERED.

Cruz, Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] The action against them was docketed as Criminal Case No. Q-20839

[2] Branch 97, the decision being dated September 1, 1983

[3] 121 SCRA 538

[4] 142 SCRA 446, 455-456 (1986)

[5] In at least eleven (11) other decisions, this Court applied the Morales and Galit doctrines to confessions and waivers of counsel made prior to April 26, 1983, namely: *Peo. v. Lasac*, 148 SCRA 624, 630-631; *Peo. v. Decierdo*, 149 SCRA 496, 502; *Peo. v. Albofera*, 152 SCRA 123, 134; *Peo. v. Olvis*, 154 SCRA 513, 522--525; *Peo. v. Newman*, 163 SCRA 496, 506; *Peo. v. Nolasco*, 163 SCRA 623, 628; *Peo. v. Capitin*, 165 SCRA 47, 54-55; *Peo. v. Repe*, 175 SCRA 422, 430-431; *Peo. v. Aballe*, 183 SCRA 196, 202; *Peo. v. Ampoan*, 187 SCRA 173, 188; *Peo. v. Olaes*, 188 SCRA 91, 95

[6] SEE, e.g., *Peo. v. Royo*, 114 SCRA 304, 310

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