

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND CAMALOG AND NOVELITO SOTTO,
DEFENDANTS-APPELLANTS.**

G.R. No. 77116. January 31, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

When is a confession legally sufficient in accordance with the system of criminal justice in this country? The present case brought before this Court on appeal from a decision of the Regional Trial Court of Cavite in Criminal Case No. TM-140 entitled *People versus Armando de los Reyes, et al.*, projects this issue.

In an Information that was filed by the Provincial Fiscal of Cavite, Armando de los Reyes, Ferdinand Camalog and Novelito Sotto were charged with the crime of Robbery with Homicide before the Regional Trial Court of Cavite. It reads as follows:

"That on or about June 12, 1985, in the Municipality of Tanza, Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring together, acting jointly and assisting one another, with violence against persons and with intent of gain and without the consent of the owner did, then and there wilfully and feloniously rob, take and carry away cash money amounting to P600.00 and assorted jewelry valued at P30,600.00 Philippine Currency and owned by Jose M. Malabanan, and by reason and on the occasion of the robbery, the said accused with intent to kill, did, then and there wilfully and feloniously strike and stab Jose M. Malabanan, with a pickax and a three-bladed and pointed weapon commonly known as "tres cantos" on the different parts of his body causing the death of Jose M. Malabanan, to the damage and prejudice of his heirs.

"The aggravating circumstances of dwelling, nighttime, treachery and abuse of superior strength, were present at the time of the commission of the aforesaid offense."

"CONTRARY TO LAW."[1]

The accused pleaded not guilty when arraigned. The three accused were earlier arrested and detailed without bail.

The facts of the case as presented by the prosecution are as follows:

In the morning of June 12, 1985, the Integrated National Police (INP) stationed at Tanza, Cavite received a report that a killing was perpetrated inside a house at Barrio Amaya, Tanza, Cavite. Two INP police officers, Patrolmen Ruben Bolante and Augusto de la Cruz responded to the report and conducted an investigation at the scene of the crime. They came upon the lifeless body of Jose M. Malabanan. The deceased was found lying on the floor of the room. They noted that the furniture was in disarray and that the cabinet in the room was forcibly opened with its contents scattered around the victim. The investigators took note of the presence of several bloodstains in many parts of the room. They then found a pick hammer lying near the victim's body. They also came upon a triple bladed knife, popularly called as tres cantos. Upon going outside the house, they discovered human blood spilled

near an artesian well. A third police officer, Sgt. Esmeraldo Romero, interrogated some of the residents of the barrio. He eventually came upon a barrio resident, Bayani Bocalan, who told them that he saw Armando de los Reyes, a resident of Tanza, strolling near the house of the victim in the early morning of June 12, 1985 and was in the company of two other men, all of them acting suspiciously in the vicinity of the house of the victim.

Acting on the information given by Bayani Bocalan, the police authorities invited Armando de los Reyes to their office for questioning. Sgt. Romero informed de los Reyes about his constitutional rights and then began interrogating him. De los Reyes admitted his participation in the commission of the crime and identified his two companions as a certain Mario from Ilocos and one Ben from Manila, both of whom, according to him, could be found in the Luneta Park of Manila. The extra-judicial confession was reduced in writing and was signed by him before Judge Aurelio Icasiano, Municipal Trial Court Judge of Tanza, Cavite.

A team of Tanza policemen accompanied de los Reyes to the Luneta on the evening of June 13, 1985 to look for the said Mario and Ben. At the Luneta, de los Reyes pointed out to the policemen the accused Ferdinand Gamalog and Novelito Sotto whom he identified as his fellow conspirators.

Ferdinand Gamalog and Novelito Sotto were interrogated and made to sign extra-judicial confessions wherein they admitted their alleged participation in the commission of the crime charged. These statements were subscribed and sworn to also before Judge Icasiano.

On the basis of these extra-judicial confessions, the three were charged with the crime of Robbery with Homicide.

The appellants pleaded not guilty to the charge.

Both oral and documentary evidence were presented in court by the prosecution. They established the death of Jose Malabanan, the damage caused to his heirs, and the loss of P30,600.00 worth of cash and jewelries. The extra-judicial statements of the accused were presented, identified and admitted in court as part of the testimony of the police investigators.

The defense presented witnesses who testified on the good moral character of Gamalog and Sotto and their whereabouts in the early morning of June 12, 1985.

On the witness stand, De los Reyes admitted his participation in the commission of the crime charged but retracted his statement made in the extra-judicial confession regarding the participation of his co-accused Gamalog and Sotto. He testified that he had been mauled by the police investigators during the interrogation. He also testified that he was threatened with bodily harm if he refused to admit having committed the crime charged. He likewise testified that he was forced to pinpoint the two other accused as his co-conspirators on account of a threat against his life made by the police authorities. He asserted that Gamalog and Sotto were not involved in the commission of the robbery and homicide, that two men named Ben and Mario were his companions then, and that both Ben and Mario are still at large.

The other two accused, Gamalog and Sotto, testified that they were never near the scene of the crime on the date and time it was committed, and that they were in their residences in Manila and Quezon City, respectively. Two witnesses, Concepcion Villasis and Robert Cabanban, employer and brother-in-law, respectively, of Sotto and Gamalog, were presented to corroborate the alibi they gave.

The accused further stressed the fact that they were forced to sign the extra-judicial confessions presented in court. They also testified that the police investigators beat, maltreated and threatened them with death if they refused to sign the confessions. They likewise stated that they were never informed about their constitutional rights and that the police investigators never conducted an investigation as regards their alleged participation in

the crime. The two accused further testified that during the period covering their custodial interrogation, they never had the chance to confer with a lawyer.

On September 30, 1986, the trial court rendered a decision finding all the three accused guilty of the crime charged, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused ARMANDO DE LOS REYES, FERDINAND GAMALOG, AND NOVELITO SOTTO guilty beyond reasonable doubt of the crime of Robbery with Homicide punishable under Article 294 par. (1) of the Revised Penal Code and there being no mitigating or aggravating circumstances present in the commission of the crime hereby sentences said accused to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim jointly and severally (1) in the amount of P30,000.00 for the death of Jose Malabanan; (2) P30,600.00 for the items taken from the victim's house; and (3) actual damages of P70,000.00; (4) moral damages of P5,000.00 and to pay the proportionate costs.

"SO ORDERED."[2]

Taking exception to the finding that their guilt has been proved beyond reasonable doubt, the accused Ferdinand Camalog and Novelito Sotto appealed their case to this Court on the ground that the trial court erred as follows:

"I.

THE TRIAL COURT ERRED IN ADMITTING THE EXTRA-JUDICIAL CONFESSIONS OF THE APPELLANTS BECAUSE THEY WERE OBTAINED THROUGH FORCE, THREAT AND INTIMIDATION AND THAT THEY WERE OBTAINED IN VIOLATION OF SECTION 20, ARTICLE IV OF THE (1973) PHILIPPINE CONSTITUTION.

II.

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JOHN LEO ALABADO.

III.

THE TRIAL COURT ERRED IN DISREGARDING THE DEFENSE OF ALIBI.

IV.

THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONY OF ACCUSED ARMANDO DE LOS REYES.

V.

THE TRIAL COURT ERRED IN FINDING THE APPELLANTS GUILTY BEYOND REASONABLE DOUBT."

In considering these interrelated errors assigned by appellants. We find merit in their contention that there is no moral certainty to find them guilty beyond reasonable doubt of the crime charged.

The records show that their confessions were not regularly obtained. There were enough indications that the statements were not given voluntarily.

The trial court gave credence to the claim of the prosecution that the subject confessions were signed voluntarily on the basis of the failure of appellants to complain to the Municipal Trial Judge that they were forced to sign the same. The trial court failed to take note of the fact that when said confessions were presented to Judge Icasiano, their tormentors were present to hear and know what the appellants would say and do. They remained in the

custody of their tormentors and not with Judge Icasiano. Appellants must have been reasonably apprehensive of further maltreatment if they manifested to Judge Icasiano that they were forced to sign the said confessions.[3]

An observation was also made by the court a quo that it was not shown that the police investigators had ill motive in order to implicate the accused to such a heinous crime. The police investigators were from Tanza, Cavite, just like the victim and his heirs. Appellant Ferdinand Camalog is from Ilocos Sur while appellant Novelito Sotto hails from Oriental Mindoro and both resided in Metro Manila. De los Reyes pointed them out to the police investigators to be the "Ben" and "Mario" who were his confederates. None of said nicknames jibed with the true names of appellants. The police investigators did not care. They brought the two to their headquarters in Tanza. They investigated them under circumstances that place into serious doubt their impartiality and motive.

The presence of details in the confessions of appellants were considered by the trial court as evidence that the confessions were voluntarily made. An examination of the confession earlier executed by De los Reyes shows that the details in the questioned confessions of appellants were culled from the said confession of De los Reyes.

The high point in deciding this case is the respect which must be accorded the constitutional rights of custodial prisoners at the time they are subjected to interrogation and their subsequent execution of an extra-judicial confession, was there really a confession or admission during the custodial investigation? were they informed of their rights? we find no affirmative answers to these questions. It appears that the appellants were not informed of their constitutional rights and, even assuming that they were so informed, there is no indication that they understood those rights.

We gave emphasis to these points in recent cases, to wit:

"When the Constitution requires a person under investigation 'to be informed' of his rights 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, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands." [4]

In Reyes vs. Quizon[5] We took time to elucidate on this point, viz - -

"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 the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered."

The trial court relied on the testimony of the police investigators that the appellants have been informed of their fundamental rights but failed to take note of the conspicuous absence of any lawyer to assist the accused during the custodial investigation. Even assuming that the accused waived their constitutional right to counsel, there is no indication that they did so with the assistance of counsel. The testimony of the accused during the trial of this case supports Our observation, to wit - -

"Atty. Abaya:

"Q. Do you know who conducted the investigation?

"A. The police.

"Q. When you were investigated by the police were you assisted by counsel of your choice?

"A. No, sir.

"Q. Did they inform you that you have the right to counsel?

"A. No, sir.

"Q. And did they manifest to you that they will give you a lawyer to assist you in your investigation?

"A. No, sir.

"Q. Despite the absence of a lawyer, did you give a statement to the police investigator?

"A. No, sir. I did not give (a) statement.[6]

"Atty. Abaya:

"Q.

You did not give a statement to the police investigator?

"A.

I was just asked to sign the document.

"Q.

Why did you sign the document?

"A.

I signed it because I was being threatened by the police.

"Q. What kind of threat did the police exert on your person?

"A.

They told me that if I will not sign the document, they are going to salvage me.”[7]

The prosecution witness, Sgt. Esmeraldo G. Romero, testified:

"Atty. Bince:

"Q.

In short, when you told him of his right to counsel, there was no lawyer present, is that correct?

"A. Yes, sir.

"Q.

When you told him that the statement that he will give might be used against him, you told that without the presence of the lawyer, is that correct?

"A. Yes, sir.

"Q. When he refused allegedly the assistance of counsel there was no counsel around. Is that also correct?

"A. Yes, sir.”[8]

"Atty. Bince:

"Q. You said you investigated also Novelito Sotto. During your investigation of him there was no lawyer present. Is that correct?

"A. Yes, sir.

x x x

"Q.

When you told him he can avail (of) the services of a lawyer, there was no lawyer present. Is that correct?

"A.

Yes, sir.

"Q. In short in both the custodial investigation of Armando de los Reyes and Novelito Sotto there was no lawyer present to assist them?

x x x

"A. Yes, sir." [9]

Very relevant to this case is the pronouncement of this Court in *Morales vs. Ponce Enrile*,^[10] reiterated in *People vs. Galit*^[11] and *People vs. Lumayok*,^[12] where this Court categorically stated that the waiver by the accused of his right to counsel must be made in the presence and with the assistance of counsel.

We stressed the inadmissibility of extra-judicial confessions obtained in violation of this principle:

"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, whether exculpatory or inculpatory in whole or in part, shall be inadmissible in evidence." (Emphasis supplied.)^[13]

In *People vs. Lumayok*,^[14] this Court made the following observation --

"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."(Emphasis supplied.)

The second error submitted by the appellants is that the extra-judicial confessions offered in evidence were obtained in violation of Section 20, Article IV of the 1973* Constitution, the fundamental law in force and effect at the time of their arrest. Even assuming that the accused were informed of their right to remain silent, there is no showing that the appellants fully understood the same.

The assertion made by the police investigators to the effect that the appellants were informed of their fundamental rights will not overthrow the fact that appellants were not assisted by counsel during the custodial investigation even if they had waived the right. The fact that the appellants were never assisted by counsel during the custodial investigation is confirmed in the testimony of prosecution witness Sgt. Esmeraldo Romero.

From the foregoing, it clearly appears that the Tanza, Cavite police investigators informed the accused-appellants Ferdinand Camalog and Novelito Sotto about their constitutional rights in a rather sloppy manner. The type of questions and answers recited in their extra-judicial confessions is identical to that of their co-accused Armando de los Reyes. There was not even a semblance of conformity with the fundamental law.

Of course, the trial court put emphasis on the testimony of prosecution rebuttal witness John Leo Alabado that at about 5:00 o'clock in the morning of June 17, 1985 on his way to the residence of Bayani Bocalan, he saw the three (3) persons coming out of the victim's house. He identified the appellants to be among the three.[15]

This witness was presented by the prosecution when its witness Bayani Bocalan failed to appear and accused De los Reyes denied the participation of the appellants in the commission of the offense. It took this witness over a year to report what he saw. And instead of reporting the same to the police authorities he conveniently allegedly reported what he supposedly saw to the victim's father who was then looking for witnesses. He appeared in court without a subpoena. The sudden emergence of this witness at the closing stages of the case is, to say the least, suspicious. A reading of the transcript of his testimony, shows now incredible it can be. He remembers the exact day he saw appellants. He did not notice any startling occurrence to remember said date and the identities of appellants so vividly. He met Francisco Malabanan, the father of the victim, for the first time in April 1986 when he revealed what he knew allegedly because his conscience bothered him. It was Malabanan who brought him to court to testify.

Bayani Bocalan, who was the witness who identified De los Reyes and saw his two companions, was never presented by the prosecution. Such wilful suppression of evidence gives rise to the presumption that if presented the same would prove to be adverse to the prosecution.[16]

Moreover as argued by appellants, the testimony of Alabado was improper for rebuttal. It should have been presented at the time the prosecution was presenting its evidence on direct examination.

The Solicitor General does not share the enthusiasm of the trial court in accepting the testimony of this witness. He argues, however that the extra-judicial confessions of appellants are sufficient to establish their guilt beyond reasonable doubt. The Court finds otherwise.

With the inadmissibility of the extra-judicial confessions of appellants, their conviction becomes baseless. They are entitled to an acquittal.

WHEREFORE, the decision of the Regional Trial Court of Cavite in Criminal Case No. TM-140 dated September 30, 1986 is hereby REVERSED and SET ASIDE as to the defendants-appellants and another judgment is hereby rendered ACQUITTING defendants-appellants FERDINAND CAMALOG and NOVELITO SOTTO, with costs de oficio. This Decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 17, Rollo.

[2] Page 58, Rollo.

[3] People vs. Gande, 31 SCRA 347 (1970); People vs. Etrina, 23 SCRA 40 (1968).

[4] People vs. Ramos, 122 SCRA 312 (1983) and People vs. Caguioa, 95 SCRA 2 (1980).

[5] 142 SCRA 362 (1986).

[6] TSN, May 24, 1986, pages 10 and 11.

[7] Ibid, at 11.

[8] TSN, December 4, 1985, pages 85 and 86.

[9] TSN, November 4, 1985, pages 87 and 89.

[10] 121 SCRA 538 (1983).

[11] 135 SCRA 465 (1985).

[12] 139 SCRA 1 (1985).

[13] See Morales vs. Ponce Enrile, supra.

[14] Supra.

[15] TSN, May 24, 1986, pages 471 to 493.

[16] Section 5(e), Rule 131, Rules of Court.

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