

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LYDIA RAMA Y TAMOD, ACCUSED-APPELLANT.*G.R. No. 80738. February 26, 1990*

Ponente: SARMIENTO, J.

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The Court acquits the accused-appellant herein for failure of the authorities to inform her of her constitutional right, specifically, her right to counsel. The facts, as found by the court a quo,[*] are as follows:

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From the evidence adduced in this case, it appeared that: on March 12, 1986, at about 4:00 o'clock in the afternoon, Mrs. Macabecha Africa and her five young children including her 3-year old child, Yveeh, were at the Don Bosco Youth Center in Tondo, Manila. While there, the child Yveeh asked her permission to jingle or urinate at a distance several meters away. However, the child, did not come back anymore so that her mother, Mrs. Macabecha Africa, started looking for her but to no avail. The mother went back to that place at about 7:00 P.M., but still she was not able to locate her said child, despite the help of her neighbors and barangay officials and a police cousin, Ernie Lacson. About three weeks later after the disappearance of the child, Yveeh, on about April 1, 1986, the accused Lydia Rama was arrested by Corporal Buenaventura and brought to Police Station No. 2, WPD, in Tondo, Manila upon a confidential information given by a police informer that Lydia Rama was often seen carrying young children at the Islamic Center in Quiapo, Manila. After one hour of questioning at Police Station No. 2, the accused, Lydia Rama, verbally admitted to Police Investigator Pat. Fernando Marcelo, and Sgt. Rodolfo Perez that she kidnapped about twenty (20) young children in Tondo alone and that she sold those young children to certain people in the Muslim or Islamic Center Compound located at Quiapo, Manila; that immediately thereafter she accompanied the police team which was organized by Sgt. Rodolfo Perez to the Islamic Center Compound in Quiapo, Manila where the police recovered seven (7) young children including the child Yveeh Africa in seven (7) different houses which were pointed to by the said accused; those children were 2 to 6 years of age and the said police raiding team immediately brought them to Police Station No. 2 where the child, Yveeh Africa, was later claimed by her mother, Mrs. Macabecha Africa.

The accused, Lydia Rama, was apprised by Pat. Fernando Marcelo and Sgt. Rodolfo Perez of her constitutional rights to remain silent and to counsel during the police custodial investigation. The accused, Lydia Rama voluntarily and verbally admitted to Police Sgt. Rodolfo Perez and Pat. Fernando Marcelo that she kidnapped the child, Yveeh Africa, and she sold her to a certain person staying at the Islamic Center Compound in Quiapo, Manila. When the said police officers informed her of her Said constitutional rights, she replied: "Magsasabi na lang ako ng totoo dahil ang batang ito (referring to Yveeh Africa) ay aking kinidnap sa Zaragosa Street" and that she was also responsible for the kidnapping of about twenty (20) other children in Tondo. When reminded that she could be furnished with a lawyer during the police custodial investigation if she wanted to, she replied to Pat. Fernando Marcelo and Sgt. Rodolfo Perez: "Never mind sir, let us go right away because the children might be brought to Lanao del Sur"; and she in fact accompanied the police raiding team to the Islamic Center Compound in Quiapo where they recovered seven (7) children, including Yveeh

Africa on April 1, 1986 in seven (7) different houses there and brought them to Police Station No. 2 where the child, Yveeh Africa, was later claimed by her mother, Mrs. Macabecha Africa.[1]

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On September 10, 1987, the lower court rendered judgment, the dispositive part of which states, as follows:

WHEREFORE, judgment is hereby rendered finding the accused Lydia Rama guilty beyond reasonable doubt of the crime of kidnapping as charged in the Information. This Court hereby sentences the said accused, Lydia Rama, to suffer imprisonment for a term of thirty (30) years or reclusion perpetua; and to pay the costs.[2]

On December 2, 1987, the case was elevated to this Court on appeal.

As we said, the accused-appellant is entitled to an acquittal.

The records show that the accused-appellant supposedly admitted kidnapping little Yveeh Africa without the presence of counsel. It has been held that an uncounselled confession renders that confession void and inadmissible in evidence. Thus:

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There is no doubt that the accused's alleged extrajudicial confession is in the nature of an uncounselled confession and hence, inadmissible in evidence. Section 20 of Article IV of the 1973 Constitution applies. It provides:

Section 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.

That the aforequoted provision applies has been affirmed in a long line of decisions, the confession in question having been obtained during the effectivity of the 1973 Constitution, although the incumbent Chief Justice of this Court insists that coerced confessions obtained either prior to or after the effectivity of the 1973 Charter are equally inadmissible in evidence.

While the right to counsel is a right that may be waived, such waiver must be voluntary, knowing, and intelligent. The waiver must furthermore be in the presence of the accused's lawyer.[3]

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And in *Morales, Jr. v. Enrile*, a decision we affirmed in *People v. Galit*, we ruled:

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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.

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It is not enough that the accused be informed of his constitutional rights. That is but the first step. It is necessary, in addition, that he be convinced that notwithstanding the fact that he is in “enemy” territory, he is not a doomed man. That is the essence of Section 20 of the 1973 Bill of Rights.

Indeed, the hostile environment of police headquarters (the “police-dominated atmosphere” referred to in *Duero*, supra) or similar venues are enough to overwhelm one, who, out of resignation, may execute a “confession” not truly his own. In *People v. Navoa* we said that “coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional confession.”[4]

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It is of no moment that the accused-appellant had been supposedly “apprised by Pat. Fernando Marcelo and Sgt. Rodolfo Perez of her constitutional rights to remain silent and to counsel during the police custodial investigation,”[5] and that she purportedly said: “Magsasabi na lang ako ng totoo dahil ang batang ito (referring to Yveeh Africa) ay aking kinidnap sa Zaragosa Street.”[6] The point is that, as we have held, her alleged waiver (of her right to counsel) should have been made in the presence of counsel. Otherwise, her waiver must be considered void as if it had not been made.

We can not agree with the trial court’s holding that under Article IV, Section 20, of the 1973 Constitution (as well as the Freedom Constitution), the accused’s waiver of her right, among other things, to counsel, “need not be in writing and in the presence of counsel.”[7] It is true that under the former Charter, the waiver need not be put to writing, nevertheless, it must be made, and so we have held,[8] with the assistance of counsel.

The accused-appellant was convicted on the sole strength of her alleged confession. There is no other evidence inculcating her of the charge of kidnapping and serious illegal detention. Her “confession” being inadmissible in evidence, she deserves an acquittal from this Court.

WHEREFORE, the accused-appellant is ACQUITTED. Her immediate release from detention is hereby ORDERED, unless she is being held for another lawful cause. With costs de oficio.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Paras, J., no part.

[*] Regional Trial Court, Branch 28, Manila; Hon. de Leon, Sabino, presiding judge.

[1] Rollo, 28-30.

[2] *Id.*, 34.

[3] *People v. Decierdo*, No. L-46956, May 7, 1987, 149 SCRA 496, 501-502.

[4] *Supra*, 507-508.

[5] Rollo, *id.*, 29.

[6] *Id.*

[7] *Id.*, 33; emphasis in the original.

[8] Morales v. Ponce Enrile, Nos. L-61016 and 61107, April 26, 1983, 121 SCRA 538.

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