

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE RUBEN AYSON, PRESIDING OVER BRANCH 6, REGIONAL TRIAL COURT, FIRST JUDICIAL REGION, BAGUIO CITY, AND FELIPE RAMOS, RESPO...

G.R. No. 85215. July 07, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

What has given rise to the controversy at bar is the equation by the respondent Judge of the right of an individual not to "be compelled to be a witness against himself" accorded by Section 20, Article III of the Constitution, with the right of any person "under investigation for the commission of an offense * * to remain silent and to counsel, and to be informed of such right," granted by the same provision. The relevant facts are not disputed.

Private respondent Felipe Ramos was a ticket freight clerk of the Philippine Airlines (PAL), assigned at its Baguio City station. It having allegedly come to light that he was involved in irregularities in the sales of plane tickets,[1] the PAL management notified him of an investigation to be conducted into the matter on February 9, 1986. That investigation was scheduled in accordance with PAL's Code of Conduct and Discipline, and the Collective Bargaining Agreement signed by it with the Philippine Airlines Employees' Association (PALEA) to which Ramos pertained.[2]

On the day before the investigation, February 8, 1986, Ramos gave to his superiors a handwritten note[3] reading as follows:

TO WHOM IT MAY CONCERN;

THE UNDERSIGNED WOULD LIKE TO STATE THAT HE IS WILLING TO SETTLE IRREGULARITIES ALLEGEDLY CHARGED VS. HIM IN THE AMT. OF P76,000 (APPROX.) SUBJECT TO CONDITIONS AS MAY BE IMPOSED BY PAL ON OR BEFORE 1700/9 FEB 86.

(S) Felipe Ramos

(Printed) F. Ramos"

At the investigation on February 9, 1986, conducted by the PAL Branch Manager in Baguio City, Edgardo R. Cruz, in the presence of Station Agent Antonio Ocampo, Ticket Freight Clerk Rodolfo Quitasol, and PALEA Shop Steward Cristeta Domingo, Felipe Ramos was informed "of the finding of the Audit Team." Thereafter, his answers in response to questions by Cruz, were taken down in writing. Ramos' answers were to the effect inter alia that he had not indeed made disclosure of the tickets mentioned in the Audit Team's findings, that the proceeds had been "misused" by him, that although he had planned on paying back the money, he had been prevented from doing so, "perhaps (by) shame;" that he was still willing to settle his obligation, and proffered a "compromise ** to pay on staggered basis, (and) the amount would be known in the next investigation;" that he desired the next investigation to be at the same place, "Baguio CTO," and that he should be represented therein by

"Shop stewardess ITR Nieves Blanco;" and that he was willing to sign his statement (as he in fact afterwards did).¹ How the investigation turned out is not dealt with by the parties at all; but it would seem that no compromise agreement was reached, much less consummated.

About two (2) months later, an information was filed against Felipe Ramos charging him with the crime of estafa allegedly committed in Baguio City during the period from March 12, 1986 to January 29, 1986. In that place and during that time, according to the indictment,² he (Ramos) -

" * * with unfaithfulness and/or abuse of confidence, did then and there willfully * * defraud the Philippine Airlines, Inc., Baguio Branch, * * in the following manner, to wit: said accused * * having been entrusted with and received in trust fare tickets of passengers for one-way-trip and round-trip in the total amount of P76,700.65, with the express obligation to remit all the proceeds of the sale, account for it and/or to return those unsold, ** once in possession thereof and instead of complying with his obligation, with intent to defraud, did then and there * * misappropriate, misapply and convert the value of the tickets in the sum of P76,700.65 and in spite of repeated demands, ** failed and refused to make good his obligation, to the damage and prejudice of the offended party * *."

On arraignment on this charge, Felipe Ramos entered a plea of "Not Guilty," and trial thereafter ensued. The prosecution of the case was undertaken by lawyers of PAL under the direction and supervision of the Fiscal.

At the close of the people's case, the private prosecutors made a written offer of evidence dated June 21, 1988,¹ which included "the (above mentioned) statement of accused Felipe J. Ramos taken on February 9, 1986 at PAL Baguio City Ticket Office," which had been marked as Exhibit A, as well as his "handwritten admission ** given on February 8, 1986," also above referred to, which had been marked as Exhibit K.

The defendant's attorneys filed "Objections/Comments to Plaintiff's Evidence."² Particularly as regards the people's Exhibit A, the objection was that "said document, which appears to be a confession, was taken without the accused being represented by a lawyer." Exhibit K was objected to "for the same reasons interposed under Exhibits 'A' and 'J.'"

By Order dated August 9, 1988,³ the respondent Judge admitted all the exhibits "as part of the testimony of the witnesses who testified in connection therewith and for whatever they are worth," except Exhibits A and K, which it rejected. His Honor declared Exhibit A "inadmissible in evidence, it appearing that it is the statement of accused Felipe Ramos taken on February 9, 1986 at PAL Baguio City Ticket Office, in an investigation conducted by the Branch Manager * * since it does not appear that the accused was reminded of his constitutional rights to remain silent and to have counsel, and that when he waived the same and gave his statement, it was with the assistance actually of a counsel." He also declared inadmissible "Exhibit K, the handwritten admission made by accused Felipe J. Ramos, given on February 8, 1986 ** for the same reason stated in the exclusion of Exhibit 'A' since it does not appear that the accused was assisted by counsel when he made said admission."

The private prosecutors filed a motion for reconsideration.⁴ It was denied, by Order dated September 14, 1988.⁵ In justification of said Order, respondent Judge invoked this Court's rulings in *Morales, Jr. v. Juan Ponce Enrile, et al.*, 121 SCRA 538, *Peo. v. Galit*, 135 SCRA 467, *Peo. v. Sison*, 142 SCRA 219, and *Peo. v. Decierdo*, 149 SCRA 496, among others, to the effect that "in custodial investigations the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel," and the explicit precept in the present Constitution that the rights in custodial investigation "cannot be waived except in writing and in the presence of counsel." He pointed out that the investigation of Felipe Ramos at the PAL Baguio Station was one "for the offense of allegedly misappropriating the proceeds of the tickets issued to him" and therefore clearly fell "within the coverage of the constitutional provision;" and the fact that Ramos was not detained at the time, or the investigation was administrative in character could not operate to except the case "from the ambit of the

constitutional provision cited."

These Orders, of August 9, 1988 and September 14, 1988 are now assailed in the petition for certiorari and prohibition at bar, filed in this Court by the private prosecutors in the name of the People of the Philippines. By Resolution dated October 26, 1988, the Court required Judge Ayson and Felipe Ramos to comment on the petition, and directed issuance of a "TEMPORARY RESTRAINING ORDER ** ENJOINING the respondents from proceeding further with the trial and/or hearing of Criminal Case No. 3488-R (People ** vs. Felipe Ramos), including the issuance of any order, decision or judgment in the aforesaid case or on any matter in relation to the same case, now pending before the Regional Trial Court of Baguio City, Br. 6, First Judicial Region." The Court also subsequently required the Solicitor General to comment on the petition. The comments of Judge Ayson, Felipe Ramos, and the Solicitor General have all been filed. The Solicitor General has made common cause with the petitioner and prays "that the petition be given due course and thereafter judgment be rendered setting aside respondent Judge's Orders ** and ordering him to admit Exhibits 'A' and 'K' of the prosecution." The Solicitor General has thereby removed whatever impropriety might have attended the institution of the instant action in the name of the People of the Philippines by lawyers de parte of the offended party in the criminal action in question.

The Court deems that there has been full ventilation of the issue -- of whether or not it was grave abuse of discretion for respondent Judge to have excluded the People's Exhibits A and K. It will now proceed to resolve it.

At the core of the controversy is Section 20, Article IV of the 1973 Constitution,¹ to which respondent Judge has given a construction that is disputed by the People. The section reads 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.

It should at once be apparent that there are two (2) rights, or sets of rights, dealt with in the section, namely:

- 1) the right against self-incrimination -- i.e., the right of a person not to be compelled to be a witness against himself -- set out in the first sentence, which is a verbatim reproduction of Section 18, Article III of the 1935 Constitution, and is similar to that accorded by the Fifth Amendment of the American Constitution;² and
- 2) the rights of a person in custodial interrogation, i.e., the rights of every suspect "under investigation for the commission of an offense."

Parenthetically, the 1987 Constitution indicates much more clearly the individuality and disparateness of these rights. It has placed the rights in separate sections. The right against self-incrimination, "No person shall be compelled to be a witness against himself," is now embodied in Section 17,

Article III of the 1987 Constitution. The rights of a person in custodial interrogation, which have been made more explicit, are now contained in Section 12 of the same Article III.¹

Right Against Self-Incrimination

The first right, against self-incrimination, mentioned in Section 20, Article IV of the 1973 Constitution, is accorded to every person who gives evidence, whether voluntarily or under compulsion of subpoena, in any civil, criminal, or administrative proceeding.² The right is NOT to "be compelled to be a witness against himself."

The precept set out in that first sentence has a settled meaning.³ It prescribes an "option of refusal to answer incriminating questions and not a prohibition of inquiry."⁴ It simply secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, i.e., one the answer to which has a

tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, to decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to him, the answer to which may incriminate him for some offense, that he may refuse to answer on the strength of the constitutional guaranty.

That first sentence of Section 20, Article IV of the 1973 Constitution does not impose on the judge, or other officer presiding over a trial, hearing or investigation, any affirmative obligation to advise a witness of his right against self-incrimination. It is a right that a witness knows or should know, in accordance with the well known axiom that everyone is presumed to know the law, that ignorance of the law excuses no one. Furthermore, in the very nature of things, neither the judge nor the witness can be expected to know in advance the character or effect of a question to be put to the latter.⁵

The right against self-incrimination is not self-executing or automatically operational. It must be claimed. If not claimed by or in behalf of the witness, the protection does not come into play. It follows that the right may be waived, expressly, or impliedly, as by a failure to claim it at the appropriate time.¹

Rights in Custodial Interrogation

Section 20, Article IV of the 1973 Constitution also treats of a second right, or better said, group of rights. These rights apply to persons "under investigation for the commission of an offense," i.e., "suspects" under investigation by police authorities; and this is what makes these rights different from that embodied in the first sentence, that against self-incrimination which, as aforesaid, indiscriminately applies to any person testifying in any proceeding, civil, criminal, or administrative.

This provision granting explicit rights to persons under investigation for an offense was not in the 1935 Constitution. It is avowedly derived from the decision of the U.S. Supreme Court in *Miranda v. Arizona*,² a decision described as an "earthquake in the world of law enforcement."³

Section 20 states that whenever any person is "under investigation for the commission of an offense" --

- 1) he shall have the right to remain silent and to counsel, and to be informed of such right;⁴
- 2) no force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him;⁵ and
- 3) any confession obtained in violation of ** (these rights) shall be inadmissible in evidence.⁶

In *Miranda*, Chief Justice Warren summarized the procedural safeguards laid down for a person in police custody, "in-custody interrogation" being regarded as the commencement of an adversary proceeding against the suspect.¹

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise those rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer or make a statement. But unless and until such warnings and waivers are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him.

The objective is to prohibit "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights."²

The rights above specified, to repeat, exist only in "custodial interrogations," or "in-custody interrogation of accused persons."³ And, as this Court has already stated, by custodial interrogation is meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."⁴ The situation contemplated has also been more precisely described by this Court.⁵

** After a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and "cross-examined" not only by one but as many investigators as may be necessary to break down his morale. He finds himself in strange and unfamiliar surroundings, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study have taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence. Section 20 of the Bill of Rights seeks to remedy this imbalance."

Not every statement made to the police by a person involved in some crime is within the scope of the constitutional protection. If not made "under custodial interrogation," or "under investigation for the commission of an offense," the statement is not protected. Thus, in one case,¹ where a person went to a police precinct and before any sort of investigation could be initiated, declared that he was giving himself up for the killing of an old woman because she was threatening to kill him by barang, or witchcraft, this Court ruled that such a statement was admissible, compliance with the constitutional procedure on custodial interrogation not being exigible under the circumstances.

Rights of Defendant in Criminal Case

As Regards Giving of Testimony

It is pertinent at this point to inquire whether the rights just discussed, i.e., (1) that against self-incrimination and (2) those during custodial interrogation apply to persons under preliminary investigation or already charged in court for a crime.

It seems quite evident that a defendant on trial or under preliminary investigation is not under custodial interrogation. His interrogation by the police, if any there had been, would already have been ended at the time of the filing of the criminal case in court (or the public prosecutors' office). Hence, with respect to a defendant in a criminal case already pending in court (or the public prosecutor's office), there is no occasion to speak of his rights while under "custodial interrogation" laid down by the second and subsequent sentences of Section 20, Article IV of the 1973 Constitution, for the obvious reason that he is no longer under "custodial interrogation."

But unquestionably, the accused in court (or undergoing preliminary investigation before the public prosecutor), in common with all other persons, possesses the right against self-incrimination set out in the first sentence of Section 20 Article IV of the 1973 Constitution, i.e., the right to refuse to answer a specific incriminatory question at the time that it is put to him.²

Additionally, the accused in a criminal case in court has other rights in the matter of giving testimony or refusing to do so. An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled, among others-

- 1) to be exempt from being a witness against himself,¹ and
- 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any

other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.²

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself.³ In other words -- unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him -- the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question.⁴ And, as the law categorically states, "his neglect or refusal to be a witness shall not in any manner prejudice or be used against him."⁵

If he should wish to testify in his own behalf, however, he may do so. This is his right. But if he does testify, then he "may be cross-examined as any other witness." He may be cross-examined as to any matters stated in his direct examination, or connected therewith.⁶ He may not on cross-examination refuse to answer any question on the ground that the answer that he will give, or the evidence he will produce, would have a tendency to incriminate him for the crime with which he is charged.

It must however be made clear that if the defendant in a criminal action be asked a question which might incriminate him, not for the crime with which he is charged, but for some other crime, distinct from that of which he is accused, he may decline to answer that specific question, on the strength of the right against self-incrimination granted by the first sentence of Section 20, Article IV of the 1973 Constitution (now Section 17 of the 1987 Constitution). Thus, assuming that in a prosecution for murder, the accused should testify in his behalf, he may not on cross-examination refuse to answer any question on the ground that he might be implicated in that crime of murder; but he may decline to answer any particular question which might implicate him for a different and distinct offense, say, estafa.

In fine, a person suspected of having committed a crime and subsequently charged with its commission in court, has the following rights in the matter of his testifying or producing evidence, to wit:

1) BEFORE THE CASE IS FILED IN COURT (or with the public prosecutor, for preliminary investigation), but after having been taken into custody or otherwise deprived of his liberty in some significant way, and on being interrogated by the police: the continuing right to remain silent and to counsel, and to be informed thereof, not to be subjected to force, violence, threat, intimidation or any other means which vitiates the free will; and to have evidence obtained in violation of these rights rejected; and

2) AFTER THE CASE IS FILED IN COURT --1

- a) to refuse to be a witness;
- b) not to have any prejudice whatsoever result to him by such refusal;
- c) to testify in his own behalf, subject to cross-examination by the prosecution;
- d) WHILE TESTIFYING, to refuse to answer a specific question which tends to incriminate him for some crime other than that for which he is then prosecuted.

It should by now be abundantly apparent that respondent Judge has misapprehended the nature and import of the disparate rights set forth in Section 20, Article IV of the 1973 Constitution. He has taken them as applying to the same juridical situation, equating one with the other. In so doing, he has grossly erred. To be sure, His Honor

sought to substantiate his thesis by arguments he took to be cogent and logical. The thesis was however so far divorced from the actual and correct state of the constitutional and legal principles involved as to make application of said thesis to the case before him tantamount to totally unfounded, whimsical or capricious exercise of power. His Orders were thus rendered with grave abuse of discretion. They should be as they are hereby, annulled and set aside.

It is clear from the undisputed facts of this case that Felipe Ramos was not in any sense under custodial interrogation, as the term should be properly understood, prior to and during the administrative inquiry into the discovered irregularities in ticket sales in which he appeared to have had a hand. The constitutional rights of a person under custodial interrogation under Section 20, Article IV of the 1973 Constitution did not therefore come into play, were of no relevance to the inquiry. It is also clear, too, that Ramos had voluntarily answered questions posed to him on the first day of the administrative investigation, February 9, 1986 and agreed that the proceedings should be recorded, the record having thereafter been marked during the trial of the criminal action subsequently filed against him as Exhibit A, just as it is obvious that the note (later marked as Exhibit K) that he sent to his superiors on February 8, 1986, the day before the investigation, offering to compromise his liability in the alleged irregularities, was a free and even spontaneous act on his part. They may not be excluded on the ground that the so-called "Miranda rights" had not been accorded to Ramos.

His Honor adverts to what he perceives to be the "greater danger ** (of) the violation of the right of any person against self-incrimination when the investigation is conducted by the complaining parties, complaining companies, or complaining employers because being interested parties, unlike the police agencies who have no proprietary or pecuniary interest to protect, they may in their overeagerness or zealousness bear heavily on their hapless suspects, whether employees or not, to give statements under an atmosphere of moral coercion, undue ascendancy, and undue influence." It suffices to draw attention to the specific and peremptory requirement of the law that disciplinary sanctions may not be imposed on any employee by his employer until and unless the employee has been accorded due process, by which is meant that the latter must be informed of the offenses ascribed to him and afforded adequate time and opportunity to explain his side. The requirement entails the making of statements, oral or written, by the employee under such administrative investigation in his defense, with opportunity to solicit the assistance of counsel, or his colleagues and friends. The employee may, of course, refuse to submit any statement at the investigation, that is his privilege. But if he should opt to do so, in his defense to the accusation against him, it would be absurd to reject his statements, whether at the administrative investigation, or at a subsequent criminal action brought against him, because he had not been accorded, prior to his making and presenting them, his "Miranda rights" (to silence and to counsel and to be informed thereof, etc.) which, to repeat, are relevant only in custodial investigations. Indeed, it is self-evident that the employee's statements, whether called "position paper," "answer," etc., are submitted by him precisely so that they may be admitted and duly considered by the investigating officer or committee, in negation or mitigation of his liability.

Of course the possibility cannot be discounted that in certain instances the judge's expressed apprehensions may be realized, that violence or intimidation, undue pressure or influence be brought to bear on an employee under investigation -- or for that matter, on a person being interrogated by another whom he has supposedly offended. In such an event, any admission or confession wrung from the person under interrogation would be inadmissible in evidence, on proof of the vice or defect vitiating consent, not because of a violation of Section 20, Article IV of the 1973 Constitution, but simply on the general, incontestable proposition that involuntary or coerced statements may not in justice be received against the makers thereof, and really should not be accorded any evidentiary value at all.

WHEREFORE, the writ of certiorari is granted annulling and setting aside the Orders of the respondent Judge in

Criminal Case No. 3488-R, dated August 9, 1988 and September 14, 1988, and he is hereby ordered to admit in evidence Exhibits "A" and "K" of the prosecution in said Criminal Case No. 3488-R, and thereafter proceed with the trial and adjudgment thereof. The temporary restraining order of October 26, 1988 having become functus officio is now declared of no further force and effect.

SO ORDERED.

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

[1] Rollo, p. 21, 34

[2] Id., p. 13

[3] Id., p. 29

1 Rollo, pp. 6, 28

2 Id., p. 19

1 Rollo, pp. 8, 21-27

2 Id., pp. 30-32

3 Id., pp. 8-9, 33

4 Id., pp. 34-44

5 Id., pp. 48-55

1 The admissions were allegedly made on February 8 and 9, 1986, at which time the 1987 Constitution was not yet in effect, indeed had not yet been conceived or drafted.

2 SEE, e.g., Tañada & Fernando; Constitution of the Phil. Anno., 2d ed., pp. 378-379

1 The provision reads as follows:

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.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

2 Bermudez v. Castillo, 64 Phil. 483; Gonzales v. Secretary of Labor, 94 Phil. 325; Suarez v. Tengco, 2 SCRA 71; Pascual v. Board of Medical Examiners, 28 SCRA 344

3 SEE Chavez v. C.A., 24 SCRA 663; Suarez v. Tengco, supra, 2 SCRA 71; Gonzales v. Secretary of Labor, supra, 94 Phil. 325, citing Jones on Evidence, Vol. 6, pp. 4926-7

4 Suarez v. Tengco, supra, at p. 73

5 SEE Cruz, I.A., Constitutional Law, 1987 ed., p. 275

1 U.S. v. Molina, 317, U.S., 424; U.S. v. Binayoh, 35 Phil. 23; SEE also Tañada & Fernando, op. cit., p. 379

2 384 U.S. 436, 16 L. Ed. 694, 10 A.L.R. 3d, 974

3 Peo. v. Duero, 104 SCRA 379

4 The 1987 Constitution (Sec. 12, ART. III) makes clear that the person's right to "counsel" refers to "competent and independent counsel preferably of his own choice," that if "the person cannot afford the services of (such) counsel, he must be provided with one," and, as suggested in Peo. v. Galit, 135 SCRA 465, that the rights to silence and to counsel "cannot be waived except in writing and in the presence of counsel" (SEE Cruz, op. cit., p. 282).

5 The 1987 Constitution adds that "Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited."

6 The proviso, as now found in the 1987 Constitution, makes inadmissible in evidence any confession or admission obtained not only in infringement of the rights mentioned (to silence, to counsel, etc.) but also in violation of Sec. 11, ART. III, to the effect that "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty." The new charter also requires that "The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families."

1 SEE Peo. v. Duero, supra, 104 SCRA 379; Peo. v. Jimenez, 71 SCRA 186; Peo. v. Robles, 104 SCRA 450; Peo. v. Caguioa, 95 SCRA 2

2 Peo. v. Duero, supra, at p. 388

3 Peo. v. Duero, supra, at p. 386.

The Solicitor General's Comment, rollo, pp. 95, 102-103, states that the 1971 Constitutional Convention defined "investigation" as "'investigation conducted by the police authorities which will include investigations conducted by the municipal police, the PC and the NBI and such other police agencies in our government' (Session, November 25, 1972)."

4 Peo. v. Caguioa, 95 SCRA 2, 9, quoting Miranda.

The Solicitor General's Comment (rollo, p. 103) states that according to Escobedo v. Illinois, 378 U.S. 478, which preceded Miranda, 384 U.S. 436, "the right to counsel attaches when 'the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements.'" The Comment (rollo, p. 108) also draws attention to Gamboa v. Cruz, G.R. No. 56292, June 27, 1988 where this Court declared that "The right to counsel attaches only upon the start of an investigation, when the police officer starts to ask questions designed to elicit information and/or confessions or admissions from the accused."

5 Morales v. Enrile, et al; Moncupa, Jr. v. Enrile, et al., 121 SCRA 538, 553

1 Peo. v. Taylaran, 108 SCRA 373.

In this connection, the Solicitor General opines that so-called "on-the-scene questioning" of citizens by police

officers in the fact-finding process are "undoubtedly admissible," for, as "distinguished from all questioning of a suspect, in ** (such a) situation the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." According to him, "when investigating crimes, an officer may inquire of persons not under restraint (Constitutional Law, Klotter/Kanovitz, 4th ed., 1984) * * *and 'such general on-the-scene questions are not thought to be accusatory because they lack the compelling atmosphere inherent in the process of in-custody interrogation' (Civil Rights and Liberties, A.L. Bonnicksen, 1982 ed.)."

2 See footnotes 2 to 5 and related text, at p. 5, *supra*

1 Sec. 1 (e), Rule 115 of the 1964 Rules of Court. The 1985 Rules on Criminal Procedure have amended the provision to read, "to be exempt from being compelled to be a witness against himself."

2 Sec. 1 (d), Rule 115. The 1985 Rules on Criminal Procedure amended the provision to read: "To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence -- instead of merely his "neglect or refusal to be a witness -- shall not in any manner prejudice him."

3 *Chavez v. C.A.*, *supra*, 24 SCRA 663

4 *Id.*, at pp. 677-678, citing: *Cabal v. Kapunan*, L-19052, Dec. 29, 1962; 21 Am. Jur. 2d., p. 383; 98 C.J.S., p. 265; Wigmore, *Evidence*, 1961 ed., p. 406; 3 Wharton's *Criminal Evidence*, 11th ed., pp. 1959-1960, all cited in *Gupit, Jr., Rules of Criminal Procedure*, 1986 ed., p. 240

5 See *Peo. v. Gargoles*, 83 SCRA 282

6 However, as already pointed out, the rule now limits cross-examination of an accused only to "matters covered by direct examination."

1 Or during preliminary investigation before a Judge or public prosecutor

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