

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORO BASAY @ “DORO” AND JAIME RAMIREZ @ “NEBOY”, ACCUSED. JAIME RAMIREZ @ “NEBOY”, ACCUSED-APPELLANT.

G.R. No. 86941. March 03, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Teodoro Basay and Jaime Ramirez were charged with Multiple Murder with Arson in a criminal complaint[1] filed on 24 March 1986 with the Municipal Circuit Trial Court (MCTC) of Pamplona-Amlan-San Jose in the Province of Negros Oriental for having allegedly killed the spouses Zosimo and Beatrice Toting and their six-year old daughter, Bombie, and for having burned the said spouses' house to conceal the crime; as a consequence of such fire, the spouses' other daughter, Manolita, was burned to death.

On 31 March 1986, the MCTC issued a warrant for the arrest of the accused; no bail was recommended.[2] It appears, however, that the accused had earlier been apprehended on 6 March 1986 by elements of the Philippine Constabulary (PC) and Civilian Home Defense Forces (CHDF) and were detained at the Pamplona municipal jail.

On 15 April 1986, the accused filed a Waiver of Preliminary Investigation[3] which prompted the MCTC, the following day, to order the clerk of court to forward the records of the case to the Office of the Provincial Fiscal.[4]

Meanwhile, on 14 August 1986, the Integrated National Police (INP) Station Commander of Pamplona amended the complaint by including therein the name of another victim, Manolo Toting, who suffered second and third degree burns because of the burning of the house.[5]

On 11 December 1986, the Second Assistant Provincial Fiscal of Negros Oriental filed with the Regional Trial Court (RTC) of Negros Oriental an Information for Multiple Murder and Frustrated Murder with Arson[6] against the accused. The accusatory portion of the Information reads:

X X X

"That on or about March 4, 1986, at sitio Tigbao, Barangay Banawe, Pamplona, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and acting in common accord, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously assault, attack, stab and hack with the use of a bolo and sickle, with which the accused were then respectively armed and provided, one ZOSIMO TOTING, SR., thereby inflicting upon the victim hack wound, neck posterior area 5" long, 3" depth, hack wounds, left upper back 3" long, 4" depth, stab wound, thru and thru, lower abdomen, 4" width, exit lower back 1" width, 90% 2nd and 3rd degree burns of the body, and which wounds caused the death of said Zosimo Toting, Sr., immediately thereafter; one BEATRICE TOTING, thereby inflicting upon the victim hacking (sic) wound, neck posterior area, 5" long, 6" depth, incised wound, epigastric area 11" long, 4" depth, exposing vital organs, lower abdomen, 11" long, 4"

depth exposing intestines, 90% 2nd and 3rd degree burns of the body, and which wounds caused the death of said Beatrice Toting immediately thereafter; one BOMBIE TOTING, thereby inflicting upon the victim infected hack wound from the right anterior lumbar area transecting mid-abdomen, inguinal area left to the medial thigh left, through and through, with necrotic transected muscle, and which wounds caused the death of said Bombie Toting shortly thereafter; and in order to cover-up the heinous crime committed, the above-named accused, conspiring and confederating together and acting in common accord, did then and there willfully, unlawfully and feloniously set to fire the house of the aforesaid victim (sic) spouses Zosimo Toting, Sr. and Beatrice Toting, thereby razing it to the ground, and as a consequence thereto MANOLITA TOTING suffered Third degree burns, all burn (sic) body, head, extremities or 100% burns, and which wounds caused the death of said Manolita Toting immediately thereafter and also causing injuries to MANOLO TOTING, to wit: 20% 2nd and 3rd degree burns on the upper extremity bilateral, posterior shoulder, left and back, and which wounds would have caused the death of victim Manolo Toting, thus performing all the overt acts of execution which would have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is, the timely medical assistance extended to said Manolo Toting which prevented his death.

Contrary to Article 248 in relation to Articles 6, 48 and 50 of the Revised Penal Code."

The case was docketed as Criminal Case No. 7411 and was raffled off to Branch 40 of the said court.

After both accused entered a not guilty plea during their arraignment on 23 February 1987,[7] trial on the merits ensued. The prosecution presented Dr. Edgardo Barredo, MCTC Judge Teopisto Calumpang, Jaime Saguban, Sgt. Reynaldo Tabanao, Dr. Edgar Gantalao and Dr. Lucio Togonon as its witnesses for the evidence in chief, and Judge Calumpang and Elpedio Catacutan in rebuttal; for its surrebuttal, Pfc. Urbano Cavallida was presented. On the other hand, the accused testified for the defense together with witnesses Joven Lopez and Maxima Basay. Accused Ramirez took the witness stand again in surrebuttal.

On 15 December 1988, the trial court promulgated its Decision, dated 14 December 1988, acquitting accused Teodoro Basay but convicting accused Jaime Ramirez.[8] Its dispositive portion reads:

"WHEREFORE, the prosecution having failed to prove the guilt of the accused beyond reasonable doubt for the crime of Multiple Murder, Frustrated Murder With Arson against the accused Teodoro Basay, this Court hereby finds said accused Teodoro Basay NOT GUILTY and orders his immediate release from detention.

The prosecution has proven the guilt of the accused beyond reasonable doubt for the crime of Multiple Murder, Frustrated Murder With Arson against accused Jaime Ramirez (sic), this Court finds him GUILTY to (sic) said crime and hereby sentences him to suffer the penalty of life imprisonment and to indemnify the heirs of the victims in the sum of Thirty Thousand (P30,000.00) Pesos as his civil indemnity.

SO ORDERED."[9]

The evidence for the prosecution upon which the decision is based is summarized in detail in the trial court's decision and is further condensed in the Appellees Brief[10] as follows:

"On March 6, 1986, Zosimo Toting Jr. reported to the Nabalabag Philippine Constabulary Patrol at Pamplona, Negros Oriental, that his parents had been killed and their house at Tigbaw, [Pamplona] Negros Oriental, burned. This prompted PC Sgt. Reynaldo Tabanao, Sgt. Nestorio Rubia, Jaime Saguban and three members of the Civilian Home Defense Force to go to Tigbaw, [Pamplona] Negros Oriental, to investigate the incident (TSN, January 20, 1988, p. 5).

Upon arriving at Tigbaw, they found a burned house and several dead bodies. The trial court identified the four (4) fatalities and their injuries as follows:

(1) Zosimo Toting, Sr., with hack wound neck, posterior area, ...hack wound, left upper back ... stab wound, through and through, lower abdomen, ... 90% second and third degree burns of the body;

(2) Beatrice Toting, hack wound, neck posterior area ... incised wound, . epigastric area ... exposing vital organs, lower abdomen ... exist (sic) lower back, 90% second and third degree burns of the body;

(3) Bombie Toting, inflicted hack wound from the anterior lumbar area transecting mid-abdomen, inguinal area left to the medial thigh left, through and through, with necrotic transected muscle;

(4) Manolita Toting, third degree burns, all burned body, head, extrimities (sic) or 100% burns;

Manolo Toting did not die but suffered 20% second and third degree burns on the upper extremity bilateral, posterior shoulder, left and back. (Records, p. 213).

Zosimo Toting, Sr, Beatrice Toting, Manolita Toting and Manolo Toting were found near the vicinity of the burned house. About forty (40) meters away, the investigating officers found six year old Bombie Toting suffering from serious hack wounds (TSN, January 20, 1988, p. 18). The young girl said that she had been in this condition for one and a half days already.

Bombie Toting related to Sgt. Tabanao that on March 4, 1986 at 7:00 o'clock in the evening, appellant and Teodoro Basay killed her parents and burned their house (TSN, January 20, 1988, p. 18, Records, p. 9).

On the same day the investigating officers went to the appellant's house. They saw appellant fixing the roof of his house and when appellant saw them, he went down and tried to ran (sic) away (TSN, January 20, 1988, p. 22). Appellant was turned over to the Pamplona Police Station (TSN, January 20, 1988, p.25).

Bombie Toting was brought to the hospital but due to the gravity of her injuries she died on March 7, 1986 at 1:40 P.M. (Records, p. 12, Exhibit I).

Appellant was brought into the chamber of Judge Teopisto Calumpang, the municipal circuit trial judge of Pamplona, Amlan, and San Jose, on March 14, 1986. He was accompanied by Mr. Elpedio Catacutan who acted as appellant's counsel (TSN, June 6, 1988, p. 6). They brought with them an affidavit previously typed by a police investigating officer. The Judge then made the court interpreter translate the allegations of the sworn statement into the local dialect for appellant (TSN, June 6, 1988). Thereafter, in the presence of the Judge, appellant and Mr. Catacutan signed the affidavit. (TSN, January 20, 1988, p. 14). Appellant and counsel also signed the vernacular translation of Exhibit F (Records, p. 12)."

Upon the other hand, the evidence for accused Jaime Ramirez is substantially summarized in the Appellant's Brief[11] in this wise:

"Evidence for the Defense:

x x x

Accused Jaime Ramirez testified that he was cooking food for the pig when the armed uniformed men arrested him on March 5, 1986 and was brought (sic) to the Nabalabag PC Detachment where he was maltreated. Later, he was brought to Municipal (sic) Jail where he stayed for one month and 23 days.

Queried on the 'Joint Waiver', this witness said he did not read it because he did not know how to read. When it was read to him, he did not understand it because it was read in English. Elpedio Catacutan was not his lawyer and he did not know him (TSN, March 5, pp. 3, 5-6, 9-10).

On cross-examination, this witness said he reached Grade II and knows how to write his name. He was alone at the time he was arrested. He was arrested ahead of Teodoro Basay and those who arrested him where (sic) not the same persons who arrested Teodoro Basay.

He first saw Elpedio Catacutan in the Pamplona Municipal Hall when Elpedio was going upstairs. When he signed Exhibit "F", Catacutan was in front of him. They did not converse with each others (sic). He did not engage Catacutan to assist him, nor solicit his services. He does know (sic) any one who solicited Catacutan's services for him. He did not ask the Judge (Calumpang) that a lawyer be designated to help him in connection with the affidavit. The Pamplona Judge did not offer to give him a lawyer to assist him in the execution of the affidavit (TSN, October 4, 1988, p. 4)."[12]

Jaime Ramirez is a farmer and at the time he testified on 8 March 1988, was nineteen (19) years old and single.[13] The prosecution did not rebut his claim that he had only finished Grade II and that he does not know how to read. He, however, understands the Cebuano dialect.[14]

The Exhibit "F" referred to above is the Sworn Statement,[15] in English, of accused Jaime Ramirez taken in the Pamplona police station on 7 March 1986 and subscribed and sworn to only on 14 March 1986 before Judge Teopisto L. Calumpang of the MCTC of Pamplona-Amlan-San Jose. The trial court described this document as the Extra-Judicial Confession[16] of Ramirez.

The Joint Waiver (Exhibit "G") mentioned in the testimony of Jaime Ramirez is in the Cebuano dialect and was signed by accused Basay and Ramirez on 7 March 1986. Both accused state therein that for their safety and security, they voluntarily decided to be detained and that they killed the spouses Zosimo Toting and Betty Toting and thereafter burned the spouses' house; this fire resulted in the death of one and the hospitalization of two Toting children.[17]

The trial court disregarded this Joint Waiver insofar as it tended to incriminate the accused "because when they signed said Joint Waiver, they were not represented by counsel;" thus, the same was prepared in violation of "Section 12, Article 3 of the Bill of Rights of the 1987 Constitution." [18] There being no other evidence against Basay, the trial court acquitted him. However, it admitted in evidence the so-called extra-judicial confession of Jaime Ramirez, considered as part of the *res gestae* the alleged statement given by Bombie Toting to PC Sgt. Reynaldo Tabanao and Jaime Saguban identifying Ramirez and Basay as the perpetrators of the crime and considered as flight -- which is indicative of guilt -- Ramirez's running away when he saw the law enforcers on 6 March 1986. It further ruled that the latter signed the extra-judicial confession voluntarily and in the presence of Elpedio Catacutan, the COMELEC registrar of Pamplona -- "a barister (sic) who appeared as counsel for accused Jaime Ramirez;" hence it is admissible against the latter.[19]

On the other hand, the trial court did not admit the statement of Bombie Toting as a dying declaration but merely as part of the *res gestae* because the prosecution failed to prove two (2) of the requisites for the admissibility of a dying declaration, viz., that the statement was given under consciousness of an impending death and that Bombie Toting is a competent witness.[20]

Accused Jaime Ramirez neither filed a notice of appeal nor orally manifested his intention to appeal. However, on 31 January 1989, the trial court handed down an order directing the clerk of court to transmit to this Court the entire records of the case because in view of the penalty imposed -- life imprisonment -- "such Decision is subject for automatic review by the Supreme Court." [21] This of course is erroneous as, pursuant to Section 10, Rule 122 of the Rules of Court, the automatic review of a criminal case is applicable only where the penalty of death has been imposed which, nevertheless, is now banned under Section 19(1), Article III of the 1987 Constitution.

In the interest of justice, however, We accepted the appeal in the Resolution of 8 May 1989.[22]

In his Appellant's Brief,[23] Jaime Ramirez, hereinafter referred to as the Appellant, imputes upon the trial court the commission of this lone error:

"THE TRIAL COURT ERRED IN FINDING THE APPELLANT GUILTY AS CHARGED ON THE BASIS

OF EXHIBIT "F" (AFFIDAVIT) WHICH WAS EXECUTED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS AND ON THE BASIS OF HEARSAY EVIDENCE AND ON THE PRESUMPTION OF GUILT."

Appellant contends that his so-called extra-judicial confession, Exhibit "F", was executed in blatant disregard of his constitutional right to counsel and to remain silent during custodial investigation. It is therefore inadmissible in evidence.[24] Without the said confession, the only piece of evidence which seems to point to his guilt is the alleged statement of Bombie Toting. Appellant asserts, however, that the said statement was "very doubtful and ... no reasonable mind would conclude that she was candidly truthful;" hence, her statement, besides being hearsay as it came from a person who was not presented in court to testify, should not have been taken at "face value against any of the accused, much less against the appellant." [25] Besides, the appellant asserts that the same statement was not used against his co-accused Basay who was, unlike him, acquitted by the trial court. As to his having run away upon seeing the armed law enforcers, appellant claims that he did so out of fear as the latter were armed.[26]

On the other hand, it is maintained by the People, in the Appellee's Brief[27] submitted by the Office of the Solicitor General, that the appellant executed the extra-judicial confession voluntarily and without duress; in signing such confession, he was accompanied by a certain Mr. Catacutan, a non-lawyer, inside the chambers of Judge Calumpang -- "an environment ... other than vindictive and oppressive which the courts desired to guard against in *Miranda vs. Arizona*, 384 US 436." [28] As to Bombie's statement, it is claimed that the same should be considered as a dying declaration.

We find merit in the appeal.

1. Jaime Ramirez's sworn statement or extra-judicial confession was prepared on 7 March 1986 at about 11:00 o'clock in the morning in the Pamplona police station. Pertinent portions thereof read as follows:

x x x

"PRELIMINARY – MR. JAIME RAMIREZ, you are now under investigation in connection with the death of the couple and the burning of their house, ZOSIMO TOTING and BEATRICE TOTING alias BETTY TOTING on March 4, 1986 at about 7:00 o'clock in the evening at sitio Togbao, Barangay Banawe, Pamplona, Negros Oriental. You are also informed that under our new constitution you have the right to remain silent and not to answer questions which will incriminate you and to have a counsel of your own choice to assist you in this investigation, do (sic) you aware of this?

ANSWER - Yes.

Q - You are also informed that whatever statement you may offer in this investigation it (sic) might be used as evidence in your favor or against you in the future, do (sic) you aware of this this (sic)?

A - Yes.

Q - After you have informed (sic) or your rights are you willing to proceed with this investigation of yours even if you have no counsel of your own choice that will assist you in this investigation?

A - Yes. I don't need any counsel in this investigation because I will just tell the truth.

1. Question - If so, please state your name, age and other personal circumstances;

Answer - Jaime Ramirez y Tano, 19 years old, single, Filipino, farmer and a resident of sitio Palale, Barangay San Isidro, Pamplona, Negros Oriental.

x x x

11. Q - What more can you say?

A - No more. I proved that my statement is correct I signed this 7 March 1986 (sic), at Pamplona, Negros Oriental.

(Sgd.) JAIME T. RAMIREZ

(TYP) JAIME T. RAMIREZ

Affiant

NOTE: ASSISTED BY:

(Sgd.) ELPEDIO B. CATA CUTAN

(TYP) ELPEDIO B. CATA CUTAN

Counsel of the accused

SUBSCRIBED AND SWORN to before me this 14th day of March 1986, at Pamplona, Negros Oriental, Philippines.

(Sgd.) TEOPISTO L. CALUMPANG

(TYP) TEOPISTO L. CALUMPANG

Mun Trial Circuit Judge

CERTIFICATION

I HEREBY CERTIFY that I have personally examined the affiant and that I am satisfied that he voluntarily executed and understood his affidavit.

(Sgd.) TEOPISTO L. CALUMPANG

(TYP) TEOPISTO L. CALUMPANG

Mun Trial Circuit Judge"[29]

We do not hesitate to rule that this purported extra-judicial confession belonging to appellant Jaime Ramirez and obtained during custodial interrogation was taken in blatant disregard of his right to counsel, to remain silent and to be informed of such rights, guaranteed by Section 20, Article IV of the 1973 Constitution -- the governing law at that time. Said section reads:

"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."

The source of this provision is *Miranda vs. Arizona*;^[30] in connection therewith, this Court stated in *People vs. Caguioa*^[31] that:

"x x x The landmark opinion of *Miranda vs. Arizona*, decided in 1966, as noted above, the source of this constitutional provision, emphasized that statements made during the period of custodial interrogation to be admissible require a clear intelligent waiver of constitutional rights, the suspect being warned prior to questioning that he has a right to remain silent, that any utterance may be used against him, and that he has the right to the presence of a counsel, either retained or appointed. In the language of Chief Justice Warren: 'Our holding will be spelled out with some specificity in the pages which follow, but briefly stated, it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean 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. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it,

the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does not make (sic) may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of those rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.” (citations omitted)

Then, in *Morales vs. Enrile*,^[32] this Court, in the light of the said Section 20, prescribed the procedure to be followed by peace officers when making an arrest and when conducting a custodial investigation. Thus:

"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."

This was reiterated in *People vs. Galit*.^[33]

In *People vs. Nicandro*,^[34] this Court declared that one's right to be informed of the right to remain silent and to counsel contemplates "the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle." Thus, it is not enough for the interrogator to merely repeat to the person under investigation the provisions of Section 20, Article IV of the 1973 Constitution, now Section 12, Article III of the 1987 Constitution; the former must also explain the effects of such provision in practical terms -- e.g., what the person under interrogation may or may not do -- and in a language the subject fairly understands. The right "to be informed" carries with it a correlative obligation on the part of the police investigator to explain, and contemplates effective communication which results in the subject's understanding of what is conveyed. Since it is comprehension that is sought to be attained, the degree of explanation required will necessarily vary and depend on the education, intelligence and other relevant personal circumstances of the person undergoing investigation. In further ensuring the right to counsel, it is not enough that the subject is informed of such right; he should also be asked if he wants to avail of the same and should be told that he could ask for counsel if he so desired or that one could be provided him at his request.^[35] If he decides not to retain counsel of his choice or avail of one to be provided for him and, therefore, chooses to waive his right to counsel, such waiver, to be valid and effective, must still be made with the assistance of counsel.^[36] That counsel must be a lawyer.^[37]

The foregoing pronouncements are now synthesized in paragraphs 1 and 3, Section 12, Article III of the 1987 Constitution, to wit:

"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."

x x x

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."

The adjectives competent and independent, which qualify the kind of counsel an accused is entitled to during investigation, were not found in the previous Constitution. Their incorporation in the 1987 Constitution was thus meant to stress the primacy of this right to counsel.

A close scrutiny of the questioned extra-judicial confession in the case at bar reveals all possible violations of the appellant's right to remain silent, to counsel and to be informed of such rights, and of the safeguards prescribed by this Court for the holding of custodial interrogations:

(a) The interrogation was conducted and the confession was written in English -- a language the appellant, a farmer in a remote barangay of Pamplona, cannot speak and does not understand; he only finished Grade II. There is no evidence to show that the interrogator, who was not even presented as a witness and remains unidentified, translated the questions and the answers into a dialect known and fairly understood by the appellant.

(b) Appellant was not told that he could retain a counsel of choice and that if he cannot afford to do so, he could be provided with one.

(c) He did not sign any waiver of his right to remain silent and to counsel.

(d) He was not assisted by any counsel during the investigation. Instead, a certain Elpedio Catacutan, who claimed to have appeared for him as a "friend-counsel,"[38] was present only at the time that appellant was brought to the office of Judge Catacutan for the preparation of the jurat. It was precisely for this reason that the following notations were inserted above the jurat of the so-called extra-judicial confession:

"NOTE: ASSISTED BY:

(Sgd.) ELPEDIO B. CATA CUTAN

(TYP) ELPEDIO B. CATA CUTAN"

In reality, Catacutan signed not as counsel, but only as a witness. Thus:

"Q Do you recall having signed as a witness of an affidavit of one Jiame (sic) T. Ramirez which affidavit is now marked as Exhibit "F"?

A Yes,

Q Can you tell the court where did you sign that Exhibit "F"?

A I signed this affidavit in the office of the Municipal Judge of Pamplona."[39]

Moreover, it is to be observed that the appellant does not even know the said Elpedio Catacutan.[40]

(e) Assuming *arguendo* that Elpedio Catacutan may have been summoned to act as appellant's counsel, he was, nevertheless, not present during the custodial interrogation which, by the way, was conducted exactly a week before he appeared -- or more correctly, was made to appear -- before Judge Calumpang. His presence before the latter did not change the situation. As this Court stated in *People vs. Burgos*,[41] the securing of counsel to help the accused when the latter subscribed under oath to his statement at the Fiscal's Office was too late and had no palliative effect; it did not cure the absence of counsel at the time of the custodial investigation when the extra-judicial statement was being taken.

(f) Furthermore, Elpedio Calumpang is not a lawyer; according to the trial court, he is "a barister (sic)." In fact, he candidly admitted that he is not a lawyer but that he obtained a law degree from the Siliman University in

1959. Unfortunately, however, he failed in three Bar Examinations.[42]

(g) There is no showing that the so-called extra-judicial confession, which is in English, was correctly explained and translated to the appellant by Judge Calumpang. Although the latter claimed in his testimony on direct examination that he translated the same in the local dialect to the appellant before the latter affixed his signature thereto,[43] Elpedio Catacutan categorically declared that it was the interpreter, one Pedro Rodriguez, who translated it to the appellant. Thus:

"Q Who is the interpreter who made the translation?

A Pedro Rodriguez.

Q Were you there when the translation was made?

A Sure.

Q So it was not the Judge who made the translation, is that what you mean?

A The translation was course (sic) through the interpreter."[44]

(h) Finally, the kind of "advice" proffered by the unidentified interrogator belongs to that stereotyped class -- a long question by the investigator informing the appellant of his right followed by a monosyllabic answer -- which this Court has condemned for being unsatisfactory.[45] The investigator gave his advice perfunctorily or in a pro-forma manner, obviously to pay mere lip service to the prescribed norms. As this Court observed in *People vs. Newman*,[46] this stereotyped "advice":

"x x x has assumed the nature of a 'legal form' or model. Its tired, punctilious, fixed and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing of a spontaneous, free and unconstrained giving up of a right is missing."

Consequently, Exhibit "F", which is indisputably an uncounselled confession or admission, is inadmissible in evidence. The trial court, therefore, committed a fatal error in admitting it.

2. We harbor very serious doubts about the alleged statement given by Bombie Toting to Sgt. Tabanao and Jaime Saguban identifying the appellant and Teodoro Basay as the perpetrators of the heinous crime. In the first place, the trial court itself ruled that Bombie was not a competent witness. We agree with such a conclusion, not necessarily because she was only six (6) years old, but because her condition at the time she supposedly gave her statement made it impossible for her to have communicated effectively. She suffered the following injuries:

"Infected hack wound from the right anterior lumbar area transecting mid abdomen, inguinal area left to the medial thigh left through and through, with necrotic transacted muscle."[47]

She was taken from the crime scene only on 6 March 1986, or two (2) days after the commission of the crime, and died in the hospital on 7 March 1986. The doctor who first attended to her when she arrived at the Provincial Hospital, a certain Dr. Sy, was not presented as a witness. On the other hand, the doctor who attended to her before she died, Dr. Edgar Cantalao, testified that when he last saw Bombie alive, she could not talk.[48] It was this inability to talk which led the trial court to express its doubts on the veracity of the latter's supposed statement:

"x x x Although persons of tender age are prone to tell the truth, however, the Court must be cautious in appreciating said testimony where the person had a serious wound and had not eaten for one day and one night. There is no evidence to show that Bombie Toting told the doctor as to who were the perpetrators of the crime; neither did she tell her own brother, Zosimo Toting, Jr. that it was the accused, Teodoro Basay and Jaime Ramirez who killed her parents and her brother and sisters and burned their house. x x x The Court cannot understand why P.C. Sgt. Tabano did not ask Bombie Toting questions concerning the commission of the

crime by the accused. Neither did the P.C. or (sic) the police take any statement from her on her way to the hospital or at the hospital. Surprisingly, Bombie Toting did not even tell her own brother, Zosimo Toting, Jr. that it was the accused who committed the crime. Had the statement of Bombie Toting been made to the doctor or to the barangay captain or to any reputable member of the community where the incident happened, the Court will have to put weight and consider her statement as a dying declaration. Our experience has shown that persons in authority are prone to fabricate or misrepresent the facts to serve their own purpose. Innocent people had been charged in Court simply by the false statements of peace officers. The Court therefore has to be cautious when these peace officers testify in Court.”[49]

In the second place, as a result of the foregoing observations, the trial court completely disregarded Bombie Toting's so-called statement as against Teodoro Basay. We therefore see neither rhyme nor reason for the trial court's admission of the same as against the appellant.

3. While it may be true that the appellant ran away when he first saw the armed law officers, he did so merely out of fear of them. This act should not be considered as the flight which is indicative of guilt. The appellant had not left his house or barangay since 4 March 1986, the day the crime was committed. If he were indeed one of the perpetrators and had the intention to flee in order to avoid arrest, he should have vanished sooner and should not have remained in his house. Besides, if indeed his running away could be construed as flight, it could only be considered as circumstantial evidence. Such evidence would still be insufficient for a conviction. Under Section 4, Rule 133 of the Rules of Court, in order that circumstantial evidence may sustain a conviction, there must, *inter alia*, be more than one (1) circumstance. No other circumstance was established in this case.

Hence, the appellant's guilt was not established with moral certainty. He should be acquitted.

We cannot, however, close this case without making some observations about the legal conclusions of the trial court anent the crimes committed and the penalty imposed. The facts indisputably establish that Zosimo Toting, Sr., Beatrice Toting and Bombie Toting were stabbed and hacked before their house was burned. Zosimo and Beatrice died immediately while Bombie lived for a few days. As a matter of fact, the thesis of the prosecution is that the house was burned to conceal the stabbing and hacking. As a result of this fire, Manolita Toting and Manolo Toting suffered burns which caused the death of the former; the latter, however, survived due to timely medical attention. Four (4) crimes were therefore committed, viz.: three (3) separate murders under Article 248 of the Revised Penal Code[50] for the deaths of Zosimo, Beatrice and Bombie, and arson as punished under Section 5 of P.D. No. 1613[51] for the death of Manolita and the injuries sustained by Manolo as a consequence of the burning of the house. The aforementioned Section 5 reads:

"SEC. 5. Where Death Results from Arson. -- If by reason of or on the occasion of the arson death results, the penalty of Reclusion Perpetua to death shall be imposed."

Also, the information that was filed is clearly duplicitous and thus vulnerable to a motion to quash under Section 3(e), Rule 117 of the Rules of Court. No such motion having been filed, appellant is deemed to have waived the defect.

Finally, We have time and again said that life imprisonment is not a penalty provided for in the Revised Penal Code and is not the same as reclusion perpetua.[52] Unfortunately, the trial court still disregarded this pronouncement. It is hoped that it will not happen again.

WHEREFORE, the challenged Decision in Criminal Case No. 7411 of Branch 40 of the Regional Trial Court of Negros Oriental is REVERSED and appellant JAIME RAMIREZ alias "NEBOY" is hereby ACQUITTED with costs de oficio. His immediate release from detention is hereby ordered.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Romero, and Melo, JJ., concur.

[*] Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave.

[1] Original Records, 1.

[2] Id., 18.

[3] Original Records, 21.

[4] Id., 22.

[5] Id., 5-E.

[6] Id., 1-A to 2-B.

[7] Original Records, 30-A.

[8] Id., 204-217; Rollo, 23-36. Per Judge Luis R. Ruiz, Jr.

[9] Id., 216-217; Id., 35-36.

[10] Brief for Appellee, 1-5; unpaginated in rollo.

[11] Brief for Appellant, 5-8; Rollo, 55-58.

[12] Brief for Appellant, 7-8; Rollo, 57-58.

[13] TSN, 8 March 1988, 2.

[14] Id., 11.

[15] Original Records, 11.

[16] Id., 214.

[17] Id., 14.

[18] Id., 214.

[19] Original Records, 214.

[20] Id., 216.

[21] Id., 219.

[22] Rollo, 40.

[23] Id., 49, et seq.

[24] Section 20, Article IV, 1973 Constitution; Section 12 (1) and (3), Article III, 1987 Constitution.

[25] Brief for Appellant, 11; Rollo, 61.

[26] Id., 12; Id., 62.

[27] Unpaginated in the rollo.

[28] Brief for Appellee, 13.

[29] Original Records, 11.

[30] 384 U.S. 436.

[31] 95 SCRA 2, 9-10 [1980], reiterated in *People vs. Ramos*, 122 SCRA 312 [1983].

[32] 121 SCRA 538, 554 [1983].

[33] 135 SCRA 465 [1985]. See also, *People vs. Lumayok*, 139 SCRA 1 [1985]; *People vs. Sison*, 142 SCRA 219 [1986].

[34] 141 SCRA 289, 298 [1986]; reiterated in *People vs. Dunan*, 142 SCRA 100 [1986]; *People vs. Albofera*, 152 SCRA 123 [1987].

[35] *People vs. Pecardal*, 145 SCRA 647 [1986]; *People vs. Lasac*, 148 SCRA 624 [1987].

[36] *Morales vs. Enrile*, *supra.*; *People vs. Galit*, *supra.*; *People vs. Sison*, *supra.*; *People vs. Lasac*, *supra.*

[37] *People vs. Decierdo*, 149 SCRA 496 [1987].

[38] TSN, 6 June 1988, 10.

[39] TSN, 6 June 1988, 10.

[40] TSN, 8 March 1988, 10.

[41] 144 SCRA 1, 18 [1986].

[42] TSN, 6 June 1988, 15.

[43] TSN, 20 November 1987, 9.

[44] TSN, 6 June 1988, 13-14.

[45] *People vs. Galit*, *supra.*; *People vs. Jara*, 144 SCRA 516 [1986]; *People vs. Taruc*, 157 SCRA 178 [1988].

[46] 163 SCRA 496, 506 [1988], omitting citations. See also, *People vs. Repe*, 175 SCRA 422 [1989].

[47] Exhibit "I"; Original Records, 12-L.

[48] TSN, 4 February 1988, 7.

[49] Original Records, 215-216.

[50] AQUINO, R.C., *The Revised Penal Code*, Vol. II 1967 ed., 549, citing *People vs. Bersabal*, 48 Phil. 439 [1925]; *People vs. Firing*, 63 Phil. 546 [1936]; *People vs. Laolao*, 106 Phil. 1163 [1959].

[51] Entitled "Amending The Law on Arson," enacted on 7 March 1979.

[52] *People vs. Mobe*, 81 Phil. 59 [1948]; *People vs. Abletes*, 58 SCRA 241 [1974]; *People vs. Pilones*, 84 SCRA 167 [1978]; *People vs. Baguio*, 196 SCRA 459 [1991]; *People vs. Penillos*, 205 SCRA 546 [1992].

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