

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE JANUARIO Y ROLDAN, EFREN CANAPE Y BAYOT, ELISEO SARITA @ TOTO, EDUARDO SARINOS AND SANTIAGO CID, ACCUSED. RENE JANUARIO Y...

G.R. No. 98252. February 07, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The 1987 Constitution was crafted and ordained at a historic time when our nation was reeling from ghastly memories of atrocities, excesses and outright violations of our people's rights to life, liberty and property. Hence, our bill of rights was worded to emphasize the sanctity of human liberty and specifically to protect persons undergoing custodial investigations from ignorant, overzealous and/or incompetent peace officers. The Constitution so dearly values freedom and voluntariness that, inter alia, it unequivocally guarantees a person undergoing investigation for the commission of an offense not only the services of counsel, but a lawyer who is not merely (a) "competent" but also (b) "independent" and (c) "preferably of his own choice" as well.

In the case before us, the main evidence relied upon for the conviction of appellants were their own extrajudicial confessions which admittedly were extracted and signed in the presence and with the assistance of a lawyer who was applying for work in the NBI. Such counsel cannot in any wise be considered "independent" because he cannot be expected to work against the interest of a police agency he was hoping to join, as a few months later, he in fact was admitted into its work force. For this violation of their constitutional right to independent counsel, appellants deserve acquittal. After the exclusion of their tainted confessions, no sufficient and credible evidence remains in the Court's records to overturn another constitutional right: the right to be presumed innocent of any crime until the contrary is proved beyond reasonable doubt.

This is an appeal from the Decision[1] of the Regional Trial Court of Cavite, Branch XVIII in Tagaytay City, disposing of Criminal Case No. TG-1392-89, viz.:

"WHEREFORE, and premises considered, judgment is hereby rendered finding accused:

(1) RENE JANUARIO Y ROLDAN

and -

(2) EFREN CANAPE Y BAYOT

GUILTY beyond reasonable doubt of the crime of Violation of Sec. 14 last sentence of R.A. No. 6539, otherwise known as the Anti-Carnapping Law and as charged against them in the Information and pursuant to the said law, this Court hereby imposes upon the said accused, the supreme penalty of Reclusion Perpetua or life imprisonment.

Further, they are ordered to pay jointly and severally, but separately, the heirs of their victims, namely, Geronimo

Malibago and Andrew Patriarca, Jr., the sums of:

- (a) P50,000.00 for moral damages;
- (b) P50,000.00 for exemplary damages;
- (c) P25,000.00 for actual damages,

and to pay the costs of this proceeding.

There being no evidence to warrant a finding of conviction beyond reasonable doubt, judgment is hereby rendered ACQUITTING Accused SANTIAGO CID of the crime charged. Being a detention prisoner, the City Warden of Tagaytay City is hereby ordered to immediately release said person from his prison cell, unless he is therein detained for any other cause.

SO ORDERED."

The Antecedents

On November 7, 1988, an Information signed by Assistant Provincial Fiscal Jose M. Velasco, Jr., was filed against accused-appellants Rene Januario and Efren Canape, and their co-accused Santiago Cid, Eliseo Sarita @ Toto and Eduardo Sarinos @ Digo charging them with violation of Republic Act No. 6539 (Anti-Carnapping Law)[2] allegedly committed as follows:

"That on or about September 4, 1987, at Barangay Bulihan, Municipality of Silang, Province of Cavite, the above-named accused, together with Eliseo Sarita @ Toto and Eduardo Sarinos who (sic) still at-large, conspiring and confederating together and mutually helping one another, with intent to gain, by means of force, violence and intimidation, did, then and there, willfully (sic), unlawfully and feloniously, after stabbing to death the driver Gernonimo (sic) Malibago and conductor Andrew Patriarca, take, steal and carry away and carnap, one Isuzu passenger type jeepney, with plate No. DFB-550, owned by Doris and Victor Wolf, to their damage and prejudice in the total amount of P124,000.00.

CONTRARY TO LAW."[3]

Arraigned on February 7, 1989, appellants Januario and Canape, assisted by counsel de oficio, pleaded not guilty.[4] On May 30, 1989, Cid, assisted by counsel de parte, likewise entered a plea of not guilty.[5] Sarita and Sarinos remained at large. At the trial, the prosecution presented the following witnesses: Myrna Temporas, NBI Agent Arlis S. Vela, Vicente Dilanco Pons, Andrew Patriarca, Sr., Juliana Malibago, Atty. Magno Toribio, and Atty. Carlos Saunar, documentary and other evidence tending to prove the following:

Sometime in March 1988, Santiago Cid went to the house of prosecution witness Vicente Dilanco Pons, a farmer engaged in the buy and sell business, in Camarines Sur. Cid, Pons' cousin, asked Pons if he wanted to buy a jeepney. Pons replied that he had no money but that he could help him find a buyer for the jeepney for the price of P50,000.00. With Amador Alayan, one of the drivers of his son who was around, Pons offered to look for a buyer of the jeepney provided that Cid would entrust the vehicle to them. Cid agreed to the proposal. At that time, Pons did not know who owned the jeepney, but he eventually offered it for sale to Myrna Temporas who agreed to the purchase price of P65,000.00. However, Temporas paid Pons only the amount of P48,500.00.[6]

Myrna Temporas had a slightly different story. According to her, Pons said that the jeepney was owned by his niece, Doris Wolf. Pons, purportedly acting upon the instructions of Doris Wolf, borrowed from Myrna Temporas the amount of P48,500.00 and used the jeepney as a collateral. The amount was given to Pons in P10,000.00 cash and the balance in a check payable to Doris Wolf. The check was encashed as it was cleared from Myrna Temporas' account. It bore a signature supposedly of Doris Wolf at its back portion and a second endorsement by

Pons who subsequently deposited it in his account.

On September 11, Temporas asked Pons to secure a special power of attorney from Doris Wolf. Pons promised to comply in one or two weeks. But Pons failed to pay the indebtedness. So, Myrna Temporas repeatedly went to his house in Digmaan, Camarines Sur to collect the amount borrowed but Pons always promised that he himself would go to her house to pay.[7]

Inasmuch as Pons also failed to produce a deed of sale covering the jeepney, Temporas lodged a complaint against him for estafa before the NBI.[8] Acting on the complaint, the NBI contacted the relatives of the owner of the jeepney who went to Camarines Sur, identified the jeepney and informed the NBI that its driver (deceased Geronimo Malibago) and conductor (deceased Andrew Patriarca, Jr.) had been killed by carnappers.[9]

Patriarca's widow also filed a complaint with the NBI. Upon investigation, an NBI team led by Supervising Agent Magno Toribio found out that the carnapping of the jeepney and the killing of Patriarca and Malibago were the "handiwork" of a group of four (4) persons named Rene Januario, Efren Canape, Eliseo Sarita alias Toto, and Eduardo Sarinos alias Digo. The team also discovered that the jeepney was disposed of through Cid.[10]

Appellants Januario and Canape, as well as Cid, were arrested in Camarines Sur. The NBI then invited Pons and Temporas to shed light on the carnapping incident. The jeepney was recovered in an auto shop with its engine partly dismantled. Upon being informed by the NBI that the jeepney had been found, an insurance company brought it back to Manila.

From the "oral investigation" they conducted at the Naga City NBI office on March 27, 1988, the team learned that Sarita and Sarinos took Patriarca and Malibago inside a sugar plantation where presumably they were killed. Because appellants volunteered that their companions were their neighbors in Paliparan, Dasmariñas, Cavite who could be in Manila already, the NBI team decided to take down their statements at the NBI head office in Manila. The team traveled with appellants to Manila, arriving there at around 1:00 o'clock in the afternoon of March 28, 1988.

At the Taft Avenue head office of the NBI, the team took the statements of appellants one at a time. They asked Atty. Carlos Saunar, who was "just around somewhere," to assist appellants during the investigation. Agent Arlis Vela took the statement of appellant Januario while Supervising Agent Toribio took that of Canape. The first portion of the statement, Exhibit C, taken from appellant Januario reads:

"SINUMPAANG SALAYSAY NA IBINIGAY NI RENE JANUARIO Y ROLDAN SA HARAP NI NBI AGENT ARLIS E. VELA NGAYONG IKA-28 NG MARSO 1988 SA NBI, NCR, MANILA.

X-----X

1. TANONG

Mr. RENE JANUARIO ipina-aalam namin sa iyo na ikaw ay aming inuusig sa salang pagnakaw ng isang jeepney at pagkapatay sa driver at conductor nito. Gusto naming malaman mo na ikaw ay hindi maaring pilitin na magbigay ng salaysay at kong (sic) sakaling magbibigay ka ng salaysay, ano mang sasabihin mo rito ay pueding (sic) gamitin laban sa iyo sa ano mang caso. Nauunawaan mo ba ito?

SAGOT Naiintendihan (sic) ko.

2. T Kailangan mo ba ang tulong ng abogado sa pagtatanong na ito?

S Magsalaysay (sic) lang ako pag-may abogado ako.

3. T May abogado ka ba sa ngayon?

S Mayroon po si Atty. CARLOS SAUNAR ay nandito para tulungan (sic) ako.

4. T Nanunumpa ka na magsasabi ng katotohanan, buong katotohanan at wala ng iba kungdi katotohanan lamang sa pagtatanong na ito?

S Opo.

5. T Sabihin mo ang iyong pangalan at iba-ibang bagay tungkol sa iyong pagkatao?

S RENE JANUARIO Y ROLDAN, 26 taong gulang, binata, isang (sic) buy and sell hanapbuhay at naninirahan sa Puro Batya, Libmanan, Camarines Sur.

xxx xxx xxx."[11]

According to appellant Januario, two weeks before September 1987, he was already in the house of appellant Canape in Bgy. Palapala, Dasmariñas, Cavite to procure chicken and "kalawit" for his business. He also went there because his new friends named Toto Sarita and Digo Samera (sic), as well as appellant Canape, wanted him to look for a buyer of a jeep. Appellant Januario asked for a photograph of the jeep to assist him in making a canvass of buyers in Bicol but he was told that he would have it later at night because they were then having drinks in the house of Toto.

After that drinking spree, the group agreed to fetch appellants Januario and Canape at 4:00 o'clock the following morning. It was Digo Samera who fetched appellants before they went to the house of Toto Sarita. Together, they went to GMA town in Cavite. It was around 5:00 o'clock in the morning when they hailed a jeep from the "looban." Thereafter, the following allegedly transpired:

"18. T Ano na ang nangyari noong kayo ay sumakay sa jeep?

S

Ako ang naunang sumakay pagtigil noong jeep. Bago maka-alis ang jeep nagsalita si TOTO SARITA na nasa baba pa kasama sina EFREN CANAPE at DIGO na 'HINTAY ka muna may naiwanan pa ako.' Sumakay si Digo sa tapat ng conductor na nasa loob ng jeep samantalang si TOTO ay pumuesto sa bandang kanan sa unahan ng jeep at si EFREN ay sa bandang kaliwa rin ng jeep tapat ng driver at sabay si EFREN at TOTO na sumakay sa unahan ng jeep at mabilis na tinulak ni EFREN ang driver patungo kay TOTO na siyang tumutok, (sic) sa driver ng isang sandata balisong 29. Habang nangyayari iyon ay tinutukan naman ni DIGO na nasa loob ng jeep ang conductor na pinasubsub ang ulo habang tinutukan ng 29. Ang sabi sa akin ni DIGO ay 'REN igapos mo ito' at inabutan niya ako ng isang panyong panali. Sa aking kabiglaanan ako ay napasunod at tinali ko iyong conductor.

19. T Ano na ang sumunod na nangyari matapos matalian mo ang conductor?

S

Napansin ko na lang na maneho na ni TOTO Sarita ang jeep na kanyang pinasibad habang ang driver ay nakatali na rin at ako naman ay sinabihan ni DIGO na hawakan iyong conductor sa balikat habang tinutukan ng patalim ni DIGO. Ang conductor ay nagsasalita na siya ay nasasaktan dahil nakatusok na ang patalim sa kanyang leeg o batok.

20. T Ano ang nangyari matapos na matutukan ang conductor at driver at habang nagmamaneho si TOTO?

S

S Mula sa lugar na iyon pagkaraan ng ilang minuto ay biglang iniliko sa isang maliit na lupang kalsada na napapaligiran ng tubo at talahib at doon ay hininto ang sasakyan.

21. T Ano na ang sumonod (sic) na nangyari sa lugar na iyon matapos na maihinto ang jeep?

S

Unang bumaba po ay si TOTO na hawak ang driver pababa at itinulak ang driver sa may tobohan (sic). Si EFREN ay sumonod (sic)hanggang sa may gilid ng karsada habang si TOTO ay tuloy sa tobohan (sic) na dala ang driver.

Si DIGO naman ay tinulak ang conductor hawak-hawak sa buhok at ang sabi naman sa akin ay hawakan ko ang balikat. Kinuha sa akin ang conductor ni DIGO at dinala sa may tubuhan (sic) at akin na lang narinig na ang pag-ungol ng conductor dahil malapit lang iyon sa sasakyan.

22. T Nakikita mo ba sila DIGO at ang conductor habang siya ay umuungol?

S Hindi ko na po nakita kasi nasa tubohan na.

23. T Sila TOTO at ang driver nasaan sila habang naririnig mong umuungol ang conductor?

S Pumasok po sa tubohan hindi ko na sila makita.

24. T Ano na ang nangyari matapos na dalhin ni TOTO ang driver at ni DIGO naman ang conductor sa tobohan (sic)?

S Mga ilang minuto lang po ay bumalik na sila sa sasakyan at kami sumakay na at si TOTO ang nagmaneho ng sasakyan at tuloy-tuloy na kami sa Bikol, sa Libmanan, Camarines Sur.

25. T

Noong kayo ay umalis sa tubohan na iyon, nasaan na noon ang driver at ang conductor?

S

Wala na po.

26. T

May napansin ka ba kina DIGO at TOTO noong sila ay sumakay sa jeep galing sa tubuhan (sic)?

S

Humihingal sila po na parang pagod at napansin ko na may dugo ang kamay ni DIGO at ang damit at pantalon naman ni TOTO ay may tilamsik (sic) ng dugo.

xxx xxx xxx."[12]

Appellant Januario described the driver as more than fifty years old, of medium build, and with gray hair and a fine nose. Upon reaching Libmanan, they went directly to Santiago Cid with whom appellant Januario had earlier conferred regarding the sale of the jeep. Appellant Januario did not know to whom the jeep was sold but he knew that Cid approached Vicente Pons. The latter gave appellant Januario P1,000 cash and rice and eggs worth around P600. A second jeep was brought by Toto and Digo to Roger Abajero. Cid brought both appellants to the house of Roger. Later, the jeep was impounded at the NBI Naga City office.

Appellant Januario signed and thumbmarked his statement which was sworn before NBI Executive Director Salvador R. Ranin. It was also signed by Atty. Carlos Saunar "as counsel."

Appellant Canape's sworn statement, Exhibit I, was taken by Atty. Magno V. Toribio, a supervising NBI Agent. Quoted in full, the statement reads:

"SINUMPAANG SALAYSAY NI IBINIGAY NI EFREN CANAPE y BAYOT KAY AGENTS MAGNO V. TORIBIO AND TOMAS C. ENRILE, MGA AHENTE NG NBI DITO SA NCR, NBI, MANILA, NGAYONG IKA 27 NG MARSO 1988.

[illegible]

1. TANONG

Ginoong EFREN CANAPE y BAYOT, ikaw ay aming iniimbistigahan ngayon tungkol sa pagkanakaw ng isang Izuzu (sic) type jitney sa Silang, Cavite at sa pagkamatay ng conductor nito noong buwan ng Septembyre (sic) 1988. Bago ka namin tanungin aming ipinaalam sa iyo ang iyong mga karapatan sa ilalim ng Saligang Batas. Una, ikaw ay may karapatan na huwag magbigay ng salaysay sa imbistigasyon na ito, at manahimik. Ano mang sabihin

mo dito ay puweding gamitin laban sa iyo sa asunto kriminal o civil. Ikalawa, ikaw ay may karapatan na kumuha ng iyong abogado upang tulungan ka sa imbistigasyon na ito. At kung gusto mo pero wala kang pambayad sa sirbesyon (sic) nito, ikaw ay bibigyan ng NBI ng libre. Matapos mong malaman ang iyong mga karapatan, ikaw ba ay nakahandang magbigay ng kusang loob na salaysay?

ANSWER Opo, sir.

2. T

Kung ganoon sabihin mo ang iyong buong pangalan, tirahan at iba pang mga bagay-bagay na pweding pagkakakilalan sa iyong pagkatao?

S

Ako si EFREN CANAPE y BAYOT, 31 anyos ang idad (sic), kasal kay AIDA ROLDAN, isang mag-sasaka (sic), nakatapos ng ika-limang baitang sa elemantarya, at sa kasalukuyan ay naninirahan sa Bgy. Sibuhon, Libmanan, Camarines Sur.

3. T

Ikaw ba ay may nalalaman sa pagkanakaw ng isang Malagueña type jeepney sa Bulihan, Silang, Cavite noong buwan ng Septyembre 1988?

S

Opo, sir.

4. T

Kung ganoon sabihin mo sa mga imbistigador na ito kung paano ang buong pangyayari?

S

S Kasi nuong (sic) minsan ako ay mapasyal sa Bgy. Crossing, sakop ng Dasmariñas, Cavite noong mga buwan ng Agosto 1987, kami ay nagkita ng aking kaibigan na si 'TOTO' SARETA at ang kanyang kasama na si DIGO (complete name unknown) at ako ay kanyang sinabihan na humanap ng buyer ng isang jeep. Kaya, ng (sic) ako ay umuwi na ng Libmanan, Camarines Sur ako ay humanap (sic) ng taong interesado na bumili ng nasabing jeep, katulong si RENE JANUARIO na taga bayan ng Libmanan. Ang aming nakitang interesado sa jeep ay si SANTIAGO CID. Kaya ang aming ginawa ni RENE ay bumalik sa Bgy. Crossing, Dasmariñas, Cavite para ipaalam kina TOTO SARETA na kami ay nakakuha na ng buyer. Ng gabing yaon na kami ay dumating kami ay niyaya nina TOTO na mag inuman at habang kami ay nag-iinuman sinabi ni TOTO na may makukuha na kami na jeep. Mga bandang alas kuwatro ng madaling araw, kami ay niyaya na nina TOTO na kunin na ang jeep. Kami ay lumakad na papuntang Bulihan, Silang, Cavite. Pagdating namin doon, kami ay naghintay ng mga ilang minuto. Ng (sic) dumaan ang isang jeep na wala pnag (sic) pasahero, ito ay pinara ni DIGO at kami ay sumakay. Mga ilang minuto naman ang lumipas, habang ang diyep (sic) ay tumatakbo papuntang Alabang ay naglabas ng patalim sina TOTO at DIGO at tinutukan ang driver at ang kundoktor. Tapos kami ni RENE ay sinabihan (sic) din nila na maglabas ng patalim at tutukan din ang driver at ang kundoktor (sic). Pagdating namin sa Bgy. Maguyam, sakop din ng Silang, sapilitana (sic) ibinaba nina TOTO, DIGO at RENE ang driver at ang kundoktor (sic) at dinala sa loob ng tubuhan. Ako ay naiwan sa loob ng jeep. Hindi naman natagalan ay lumabas na ang tatlo galing sa loob ng tubuhan, hindi na kasama ang driver at and kundoktor (sic). Tapos, narining ko kay TOTO na 'ayos na daw'. Ang sunod naming ginawa ay pinatakbo na namin ang jeep papuntang Libmanan. Pagdating namin sa Libmanan kami ay dumerretso (sic) kay SANTIAGO CID at ibinigay na namin sa kanya ang jeep. Ang sabi naman ni SANTIAGO ay dadalhin niya ang jeep kay VICENTE PONS na taga Libmanan din.

5. T

Alam mo ba ang nangyari sa driver at konduktor (sic) ng jeep na inagaw niyo?

S

Ang pag-kaalam ko ho sa sabi ni TOTO na 'ayos na' ang ibig sabihin ay patay na sila.

6. T

Sino naman ang VICENTE PONS na ito?

S

Ang sabi sa amin ni SANTIAGO si VICENTE PONS ay ang kanyang nakuhang buyer ng jeep.

7. T

Sa pagkaalam mo ba ay talagang binili ni VICENTE PONS and jeep?

A

Opo, sir.

8. T

Magkano naman ang pagkabili ni VICENTE PONS?

A

Hindi ko po alam kung magkano ang iksaktong halaga, pero ang presyo sa amin ni SANTIAGO ay P25,000.00.

9. T

Nang dalhin ba ninyo ang jeep kay SANTIAGO ay agad ninyong dinala at pinagbili rin kay VICENTE PONS?

S

Opo, ng araw din na iyon.

10. T Magkano ba ang paunang bayad, kung mayroon man, na ibinigay ni VICENTE PONS sa inyo?

A Ang alam ko ho ay P4,000.00 ang ibinigay ni VICENTE PONS kay SANTIAGO dahil siya ang kausap nito.

11. T Magkano naman ang halagang naparte mo?

S Ako ho ay binigyan ni SANTIAGO ng P1,000.00?

12. T Ito bang pag-pabili ninyo ng jeep kay VICENTE PONS ay may kasulatan?

S Wala po.

13. T

Kailan pa ang mga sumunod na bayad na ibinigay sa inyo ni VICENTE PONS?

S

Hindi ko na ho masyadong matandaan ang mga iksaktong oras na kanyang pagbayad at kung magkano, basta ang pag-kaalam ko ay mga tatlong beses lang siyang nag-hulog at iyon ay kanyang ibinibigay kay SANTIAGO. Si SANTIAGO naman ang siyang nag-bibigay (sic) sa amin.

14. T Ito bang si SANTIAGO CID at si VICENTE PONS ay alam kung saan at paano ninyo nakuha ang jeep?

S Opo, sir.

15. T Nasaan na ngayon sina TOTO SARETA at DIGO?

S Sa Dasmariñas, Cavite ho.

16. T Hindi na ba sila napupuntang Libmanan?

S Bihira na ho sir. Pumupunta lang ho sila kung kukuha ng pera.

17. T Sa pagkaalam mo, mayroon pa ba silang ibang jeep na dinala sa Libmanan?

S

Mayroon pa ho akong nalaman kay SANTIAGO CID na may isa pang jeep na dinala daw sina TOTO at DIGO sa kanya at kanya namang ibenenta kay Mr. ROGELIO ABAJERO, na taga Libmanan din.

18. T

Ano pa ang ibang alam mo tungkul (sic) dito sa pangalawang jeep na ibenenta (sic) nila kay Mr. ABAJERO?

S

Wala na ho sir.

19. T

Iyung tungkol sa unang jeep na ibenenta kay Mr. VICENTE PONS, alam mo ba kung nasaan na iyon ngayon?

S

Hindi ko rin po alam kung saan dinala ni Mr. PONS.

20. T Ito bang sina TOTO SARETA at DIGO ay matagal mo nang kakilala?

S

Matagal na ho sir, dahil sa ako ay ipinanganak din sa Dasmariñas, Cavite at doon din lumaki. Sila ho ay aking mga kababayan at matalik kung mga kaibigan.

21. T Nung ikaw ba ay sabihan nina TOTO na humanap ng buyer ng jeep alam mo ba na ang jeep na iyon ay nanakawin lamang?

S Opo, sir.

22. T Pansamantala ay wala na muna akong itatanong sa iyo, ikaw ba ay mayroon pa ibig sabihin?

S Wala na po, sir. KATAPUSAN NG SALAYSAY.

(Signed and thumbmarked)

EFREN B. CANAPE

Nagsasalaysay

SIGNED IN THE PRESENCE OF:

(Illegible signature) (Illegible signature)

SUBSCRIBED AND SWORN TO BEFORE ME this 27th day of March 1988 at NBI, National Capital Region, Manila. I likewise certify that I have carefully examined the herein affiant and that I am satisfied that he voluntarily executed his statement and understood the same.

(Signed)

Atty. ARLIS E. VELA

(By Authority of Rep. Act 157)"[13]

After the investigation, appellants went with the NBI agents in searching for their companions.[14]

Meanwhile, Andrew Patriarca, Sr. reported the disappearance of his son, Andrew, Jr., the jeepney and its driver to the police detachment in Bulihan, Silang, Cavite and the police stations in Silang and Imus, Cavite. Two weeks after September 4, 1987, the body of 23-year-old Andrew Patriarca, Jr. was found in a sugarcane plantation in Maguyam. His head was severed from his body.[15] The body of the driver, Geronimo Malibago, stepfather of Doris Wolf, the owner of the jeepney,[16] was recovered after the harvest of sugarcane in the plantation[17] in Maguyam.[18] Malibago's widow identified his body from its clothing.[19]

On September 12, 1989, the prosecution formally offered its evidence,[20] which the court duly admitted.[21] For its part, the defense, through counsel, manifested its intention to file a demurrer to evidence. However, because the defense had not yet presented accused Cid, the court on November 21, 1989, ordered the cancellation of his

bailbond and gave his surety thirty days within which to show cause why judgment against the bond should not be rendered. The defense counsel, Atty. Jose Claro, was likewise required to explain why he should not be held in contempt of court for his failure to file a demurrer to evidence.[22]

For failure of the defense counsel to appear at the scheduled hearing dates and to file the promised demurrer to evidence, the court on December 22, 1989, issued an order stating that the "accused may no longer at this time be allowed to present their Demurrer to Evidence." It scheduled dates for the presentation of defense evidence and appointed Atty. Oscar Zaldivar as counsel de oficio for the defendants.[23]

Nevertheless, on December 26, 1989, counsel for the defense Claro mailed a "demurrer to evidence or motion to dismiss on (sic) insufficiency of evidence." [24] On January 10, 1990, the trial court denied the motion finding that the demurrer did not "contain any reason compelling enough to recall the previous order," disallowing the filing of said pleading.[25]

On February 8, 1990, upon the manifestation of Atty. Claro that appellants would no longer present evidence, the trial court issued an order considering the case terminated as far as appellants were concerned. However, it granted a "reservation" to present evidence as regards Cid. The trial court further directed Atty. Claro to present Cid before the court on March 9, 1990. It ordered the filing of memoranda "as the case of accused Januario and Canope (sic) is now considered closed." It set the "partial promulgation of judgment" on March 9, 1990 "insofar as the two (2) accused are concerned." [26]

On March 1, 1990, appellants' counsel filed their memorandum.[27]

On March 9, 1990, the trial court did not make a "partial promulgation of judgment." Instead, it ordered the "continuation of proceedings for purposes of rebuttal evidence." [28]

On the same day, the defense presented Santiago Cid as a witness. He testified that a certain Raul Repe, Toto Sarita and Digo Sarreal approached him about the sale of the jeepney. He referred them to Vicente Pons who he thought would buy the vehicle. He knew appellants were also from Libmanan but did not see them during the transaction for the sale of the jeepney.[29]

On March 27, 1990, the Court denied defense counsel Claro's motion to cancel the hearing scheduled for that day. Noting the presence of Atty. Carlos Saunar, a prosecution witness whose attendance during scheduled trial dates had been delayed, and citing the "imperatives of justice," the trial court issued an order directing that the testimony of said witness should be heard that day.[30] In the absence of the counsel of record for the defense, the trial court reiterated the appointment of Atty. Oscar Zaldivar as counsel de oficio.

Atty. Saunar testified that he joined the NBI sometime in May or June 1988. On March 1988, while still in private practice, he was at the NBI head office handling a client case when Atty. Vela, an NBI agent, approached him. The latter and Atty. Toribio introduced him to appellants and Cid. Vela and Toribio told him that the three had verbally confessed to participation in a crime and that they needed his assistance as they were about to execute their sworn statements.[31] Saunar agreed to assist the three suspects and allegedly explained to them the consequences of their confession. He also supposedly told them individually and in Tagalog, their constitutional rights, like their rights to be silent and to counsel and that whatever they would say could be used against them.[32]

Saunar identified his signature in the sworn statement of appellant Januario. However, he could no longer recall which of the three accused was appellant Canape although he admitted that the latter's face was "familiar." [33] He was certain, however, that he participated in the taking of appellant Canape's sworn statement on March 28, 1988. He admitted that his signature does not appear on appellant Canape's sworn statement but he could "only surmise"

that he did not sign the same sworn statement because either it was not presented to him immediately after the statement was taken or that it could have been misplaced.[34]

After receiving Saunar's testimony, the trial court asked the prosecution whether it was presented as rebuttal testimony. Answering in the positive, the prosecutor reminded the court that when Saunar could not be presented as a witness, he had made a reservation to call him as "additional evidence for the prosecution and/or rebuttal" testimony. Clarifying, the court said that as against Cid, the testimony was a principal one but a rebuttal as far as the appellants were concerned.[35]

On May 11, 1990, the defense manifested that it was closing its case. The prosecution having waived its right to present "any rebuttal evidence," the trial court issued an order requiring the filing of the parties' respective memoranda.[36] On June 27, 1990, the trial court rendered the herein questioned Decision.[37]

The Issues

In their separate briefs filed by their respective counsel (Atty. Jose C. Claro for Januario and Atty. Florendo C. Medina for Canape), appellants ascribe basically two errors against the trial court:

- (1) The trial procedure, particularly the presentation and admission of the testimony of Atty. Carlos Saunar, was irregular and prejudicial to the appellants; and
- (2) The extra-judicial confessions of the appellants are inadmissible in evidence for having been extracted in violation of their constitutional right to counsel.

Insisting that his guilt had not been proven beyond reasonable doubt, appellant Januario contends that the trial court erred in admitting in evidence his sworn statement before the NBI and the testimony of Atty. Saunar as rebuttal or additional witness after the prosecution had rested its case, he (appellant Januario) had filed his memorandum, and the decision had been scheduled for promulgation.[38]

For his part, appellant Canape also claims that his guilt had not been proven beyond reasonable doubt. He questions the trial court's having given "weight and sufficiency" to his extra-judicial confession.[39]

Appellant Januario contends that the trial court erred in allowing the presentation of Saunar as a witness after the prosecution had closed its case and offered its documentary evidence. Saunar could not in any guise be considered as a rebuttal witness simply because there was no defense evidence to rebut.

The Court's Ruling

The First Issue: Order of Trial

The pertinent provisions of Rule 119 of the Rules of Court state:

"Sec. 3. Order of trial.- The trial shall proceed in the following order:

- (a) The prosecution shall present evidence to prove the charge, and in the proper case, the civil liability.
- (b) The accused may present evidence to prove his defense, and damages, if any, arising from the issuance of any provisional remedy in the case.
- (c) The parties may then respectively present rebutting evidence only, unless the court, in the furtherance of justice, permits them to present additional evidence bearing upon the main issue.
- (d) Upon admission of the evidence, the cases shall be deemed submitted unless the court directs the parties to argue orally or to submit memoranda.

(e) However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly." (Emphasis supplied.)

The trial procedure as outlined in this rule is ordinarily followed to insure the orderly conduct of litigations to attain the magisterial objective of the Rules of Court to protect the parties' substantive rights.[40] However, strict observance of the Rules depend upon the circumstances obtaining in each case at the discretion of the trial judge. Thus, as early as 1917, this Court explained:

"x x x. The orderly course of proceedings requires, however, that the prosecution shall go forward and should present all of its proof in the first instance; but it is competent for the judge, according to the nature of the case, to allow a party who has closed his case to introduce further evidence in rebuttal. This rule, however, depends upon the particular circumstances of each particular case, and falls within the sound discretion of the judge, to be exercised or not as he may think proper."[41]

Hence, the court may allow the prosecutor, even after he has rested his case or even after the defense has moved for dismissal, to present involuntarily omitted evidence.[42] The primary consideration is whether the trial court still has jurisdiction over the case. Thus

"The claim that the lower court erred in allowing the prosecuting attorney to introduce new evidence is devoid of any merit, for while the prosecution had rested, the trial was not yet terminated and the cause was still under the control and jurisdiction of the court and the latter, in the exercise of its discretion, may receive additional evidence. Sec. 3(c), Rule 119 of the Rules of Court clearly provides that, in the furtherance of justice, the court may grant either of the parties the right and opportunity to adduce new additional evidence bearing upon the main issue in question."[43]

Saunar's testimony was admitted in evidence before the trial court rendered its Decision. Undoubtedly then, the court a quo retained its jurisdiction even though the prosecution had rested its case. As to appellants, Saunar was an additional prosecution witness, not a rebuttal witness, because the defense waived presentation of evidence after the prosecution had rested its case.[44] Saunar was, therefore, a rebuttal witness with respect to accused Cid.[45]

The Second Issue: Appellants' Right to Counsel

Proof of Saunar's presence during the custodial investigation of appellants is, however, not a guarantee that appellants' respective confessions had been taken in accordance with Article III, Section 12 (1) of the Constitution. This constitutional provision requires that a person under investigation for the commission of an offense shall have no less than "competent and independent counsel preferably of his own choice." Elucidating on this particular constitutional requirement, this Court has taught:

"It is noteworthy that the modifiers competent and independent were terms absent in all organic laws previous to the 1987 Constitution. Their addition in the fundamental law of 1987 was meant to stress the primacy accorded to the voluntariness of the choice, under the uniquely stressful conditions of a custodial investigation, by according the accused, deprived of normal conditions guaranteeing individual autonomy, an informed judgment based on the choices given to him by a competent and independent lawyer.

Thus, the lawyer called to be present during such investigation should be as far as reasonably possible, the choice of the individual undergoing questioning. If the lawyer were one furnished in the accused's behalf, it is important that he should be competent and independent, i.e., that he is willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. In *People v. Basay*, this Court stressed that an accused'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.'

Ideally, therefore, a lawyer engaged for an individual facing custodial investigation (if the latter could not afford one) 'should be engaged by the accused (himself), or by the latter's relative or person authorized by him to engage an attorney or by the court, upon proper petition of the accused or person authorized by the accused to file such petition. Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.'[46]

We find that Saunar was not the choice of appellant Januario as his custodial investigation counsel. Thus, NBI Agent Arlis Vela testified:

Q

Now, considering that they were then under your custody, and under investigation, were they represented by counsel during the time that you took their statements?

A

Yes, sir. They were.

Q

Do you recall who was that counsel who represented them?

A

Atty. Carlos Saunar, sir.

Q

Was he the counsel of their own choice, or was the counsel furnished by your office?

A

Because they were not represented by counsel of their own choice, we got the service of Atty. Carlos Saunar who helped them.[47]

Q

And Atty. Saunar is connected with the NBI?

A

At that time, he was at the NBI Office. He was just somewhere around.

Q

And it was the NBI who requested Saunar to assist Mr. Rene Januario in the investigation?

A

We requested him, because he was just around, sir."[48] (Emphasis supplied.)

As regards Saunar's assistance as counsel for appellant Canape, investigating NBI Agent Magno Toribio testified as follows:

Q

Now, with regards to your advice that he has a right to counsel, and to seek assistance of a counsel of his own choice if he does not have one, and to remain silent, and if he does not have a lawyer, you will furnish one for him, now what was his answer?

WITNESS:

According to him, he does not need a lawyer, but despite that refusal to have a lawyer . . .

COURT:

That is not refusal. That is manifestation that he does not need a lawyer. He did not refuse. He said, he does not need a lawyer.

WITNESS: (con't.)

Although, he does not need a lawyer, we provided him a lawyer by the name of Atty. Carlos Saunar, who was present during the investigation, and who advised him of the consequences of the statements that he will give, and he did not refuse.

FISCAL VELAZCO:

Now, how did you know that Atty. Saunar gave him advice, gave accused Canape advice?.

A

Because we were present

Q

Now, when did Atty. Saunar give that advice to accused Canape, was it before, during, or after the taking of this statement?

A

Before, during, and after the taking of the statement.

Q

Now, may we know from you why Atty. Saunar was present there?

A

He was present there because he was then applying for the position of NBI agent.

FISCAL VELAZCO:

Was he the only lawyer who was present there?

A

I remember, Atty. Claro, sometimes is there, representing another client.[style="color: rgb(255, 0, 0);">[49]]

Q

Now, Atty. Saunar is employed with the NBI office, am I right?

A

Yes, sir.

Q

When was he employed at the NBI office? Tell us the exact date?

COURT:

If you can.

WITNESS:

Maybe in September.

ATTY. CLARO:

19?

A

1988

Q

But he was always frequent in the NBI office because he was to be employed, is that what you mean?

A

He was applying.

Q

And from where is he?

A

I think he is from Bicol.

Q

Now, how many times have you requested Atty. Saunar to assist a person under your investigation in the NBI office, other than this?

A

I cannot remember anymore.

Q

You always ask him to assist if there is no lawyer available, or the person to be investigated has no lawyer?

A

If he is around."[style="color: rgb(255, 0, 0);">[50]] (Emphasis supplied.)

Let us for the moment grant arguendo that Saunar's competence as a lawyer is beyond question. Under the circumstances described by the prosecution however, he could not have been the independent counsel solemnly spoken of by our Constitution. He was an applicant for a position in the NBI and therefore it can never be said that his loyalty was to the confessants. In fact, he was actually employed by the NBI a few months after. As regards appellant Januario, Saunar might have really been around to properly apprise appellant of his

constitutional right as reflected in the written sworn statement itself.

However, the same cannot be said about appellant Canape. Clearly, he was not properly informed of his constitutional rights. Perfunctorily informing a confessant of his constitutional rights, asking him if he wants to avail of the services of counsel and telling him that he could ask for counsel if he so desires or that one could be provided him at his request, are simply not in compliance with the constitutional mandate.[51] In this case, appellant Canape was merely told of his constitutional rights and posthaste, asked whether he was willing to confess. His affirmative answer may not, by any means, be interpreted as a waiver of his right to counsel of his own choice.

Furthermore, the right of a person under custodial investigation to be informed of his rights to remain silent and to counsel implies a correlative obligation on the part of the police investigator to explain and to contemplate an effective communication that results in an understanding of what is conveyed.[52] Appellant Canape's sworn statement, which reads and sounds so lifeless on paper, fails to reflect compliance with this requirement. Neither does the aforementioned testimony of NBI Agent Toribio. Bearing in mind that appellant Canape reached only the fifth grade, the NBI agents should have exerted more effort in explaining to him his constitutional rights.

Moreover, there is enough reason to doubt whether appellant Canape was in fact and in truth assisted by counsel. Atty. Saunar affirmed on the witness stand that he assisted appellants on March 28, 1988.[53] However, the sworn statement itself reveals that it was taken on March 27, 1988. No satisfactory explanation was made by the prosecution on this discrepancy. All that Agent Vela stated was that they conducted an oral investigation in Naga City on March 27, 1988 and that investigation at the NBI Manila head office was made in the afternoon of March 28, 1988.[54]

The law enforcement agents' cavalier disregard of appellants' constitutional rights is shown not only by their failure to observe Section 12 (1) of Article III of the Constitution. They have likewise forgotten the third paragraph of Section 12 of the same article which mandates that an admission of facts related to a crime must be obtained with the assistance of counsel otherwise it would be inadmissible in evidence against the person so admitting.[55]

An admission, which, under Section 26 of Rule 130 of the Rules of Court, is an "act, declaration or omission of a party as to a relevant fact" is different from a confession which, in turn, is defined in Section 33 of the same Rule as the "declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein." Both may be given in evidence against the person admitting or confessing. In *People vs. Lorenzo*,[56] the Court explained that in a confession there is an acknowledgment of guilt while in an admission the statements of fact by the accused do not directly involve an acknowledgment of guilt or of the criminal intent to commit the offense with which the accused is charged.

Appellants verbally intimated facts relevant to the commission of the crime to the NBI agents in Naga City. This is shown by the testimony of NBI Agent Vela that, based on the facts gathered from interviews of people in that city, they "invited" and questioned appellants, thus:

Q

Now, tell us, what was your purpose in inviting these two (2) people?

A

That was in connection with the vehicle I mentioned earlier, in connection with the carnapping incident mentioned earlier.

Q

You invited them in connection with the carnapping because you want to know from them actually what they know about the carnapping, am I correct?

A

Precisely, that is right."[57]

Apparently attempting to avoid the questions on whether appellants admitted complicity in the crime, Agent Toribio testified:

ATTY. CLARO:

When you were conducting an investigation, and you saw me at the NBI building, Naga City, you were referring to the investigation of Mr. Canape, am I right?

A

Yes, sir.

Q

And that investigation you were conducting was reduced to writing, and that is now Exhibit 'G', am I right?

A

That is not.

Q

But you investigated Mr. Canape in Naga City at the NBI building, am I right, tell the Court?

A

At that time, we were taking the statement of the woman, the complainant, in the estafa case, and the other witnesses.

COURT:

You mean, at the time you investigated that estafa complaint, that was the time when you also investigated Canape, is that what you mean?

FISCAL VELAZCO:

No, your Honor

COURT:

But there is a question of counsel. You better clarify that.

WITNESS:

He was asking me if I had already taken the statement of Canape.

COURT:

That is it, sir, Naga City. That is the question.

WITNESS:

Not yet. We were only asking him.

ATTY. CLARO:

By him, whom are you referring to:

A

A The complainants and the witnesses, sir.

Q

All right. You were with Atty. Vela when you conducted an investigation to (sic) Mr. Canape, am I right? In Naga City?

WITNESS:

Yes, sir.

Q

And Mr. Vela at that time, was also conducting an investigation to (sic) a certain Rene Januario in Naga City, is that right?

A

No. We took the statement in Manila.

COURT:

You took the statement in Manila. How about in Naga, that is the question of counsel?

A

Naga, no statement yet.

ATTY. CLARO:

Mr. Toribio, because you were with Mr. Vela, Mr. Vela did not conduct any investigation to (sic) Mr. Januario, one of the accused in this case, in Naga City? Tell the Court?

A

Not yet at that time, because it was useless. The crime was committed in Silang, Cavite. They will have to be brought to Manila for the appropriate Judge or Fiscal.

COURT:

So, you are claiming that you did not conduct any investigation of Canape?

A

We conducted an investigation. When we took the statement of the other witnesses, complainant and witnesses.

COURT:

Does that satisfy you?

ATTY. CLARO:

No.

COURT;

Please clarify the question.

WITNESS:

(con't.)

It is true that we were sometimes talking with those people, but not investigating them yet."[58] (Emphasis supplied.)

Note should also be taken of the fact that according to Atty. Saunar, when he acceded to be the custodial investigation counsel of appellants, the latter had already confessed. Thus:

COURT:

There is one thing that he would like to add, 'that I talked to the accused one by one,' you want to add something?

A

And I confirmed with them whether they are confessing to their crime, and they said yes. In fact, from what I observed, they have already confessed to the NBI agents.

COURT:

All of them confessed?

A

Yes, your Honor, because they also told me what happened.

FISCAL VELAZCO:

Now, when they informed you that they intend to confess, now, did you explain to them, to the accused or to the persons under investigation the consequences of confessing?

A

Yes, that is basic. I informed them of their rights to remain silent and to counsel, and whatever they will confess there will be used against them during the trial of this case.

Q

How about that ultimate consequence of admission?

A

Yes. I told them that if they confess, they will have to go to prison.

Q

And what were their answers?

A

Actually, they have already confessed to their crime before I talked to them.

ATTY. ZALDIVAR:

Your Honor, the witness has just answered during the preliminary question of the Fiscal that at the time his assistance was sought by the NBI, the accused had in fact already confessed.

COURT:

I am now asking him, have you said that?

A

They have already confessed.

ATTY. ZALDIVAR:

We can review the transcript of stenographic notes.

COURT:

What do you mean by that?

A

They were still confessing at that time, your Honor.

ATTY. ZALDIVAR:

I just want to manifest into the record that they have already confessed; that the witness has just repeated the word.

COURT:

But there is an explanation by him. Put that on record, all of them.

FISCAL VELAZCO:

Now, did you verify whether that confession was only verbal or in writing

A

That was only verbal that is why there is a need for the sworn statement to be taken. That was the time that I was telling them that they can be put to jail."[59] (Emphasis supplied.)

It is therefore clear that prior to the execution of the sworn statements at the NBI head office, appellants had already made verbal admissions of complicity in the crime. Verbal admissions, however, should also be made with the assistance of counsel. Thus:

"The verbal admissions allegedly made by both appellants of their participation in the crime, at the time of their arrest and even before their formal investigation, are inadmissible, both as violative of their constitutional rights and as hearsay evidence. These oral admissions, assuming they were in fact made, constitute uncounselled extrajudicial confessions within the meaning of Article III, Section 12 of the Constitution."[60]

That appellants indeed admitted participation in the commission of the crime in Naga City is shown by the fact that the NBI agents brought them to Manila to facilitate apprehension of the other culprits who could be either in Cavite or Manila. Because their uncounselled oral admissions in Naga City resulted in the execution of their written confessions in Manila, the latter had become as constitutionally infirm as the former. In *People vs. Alicando*,[61] this Court explained the ramifications of an irregularly counselled confession or admission:

"We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rules known as the 'fruit of the poisonous tree,' a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States*. According to this rule, once the primary source (the 'tree') is shown to have been unlawfully obtained, any secondary or derivative evidence (the 'fruit') derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the 'fruit of the poisonous tree' is the indirect result of the same illegal act. The 'fruit of the poisonous tree' is at least once removed from the illegally seized evidence, but is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained."

Appellants might have indeed committed the crime in concert with Eliseo Sarita and Eduardo Sarinos. However, what could have been their valuable admissions and confessions as far as the prosecution was concerned were sullied and rendered inadmissible by the irregular manner by which the law enforcement agents extracted such admissions and confessions from appellants. Without such statements, the remaining prosecution evidence -- consisting mostly of hearsay testimony and investigation reports -- is sorely inadequate to prove appellants' participation in the crime.

Notably, these law enforcers did not only defy the mandate of Section 12 of the Bill of Rights but, after making "inquiries" from appellants about the crime, they likewise illegally detained appellants as shown by the admission of one of the NBI agents that appellants were deprived of their liberty while in their custody.[62] Appellants were even made to travel for ten (10) hours[63] from Naga City to Manila just so their formal confessions could be executed in the latter city. According to NBI Agent Vela, they "actually arrested" the appellants when the court issued the warrant for their arrest.[64] The records show however that the NBI turned appellants over to the Municipal Circuit Trial Court of Silang-Amadeo in Cavite only on March 30, 1989. On the same day, the same court turned them back to the NBI for "detention during pendency of the case." [65]

Epilogue

The Court understands the difficulties faced by law enforcement agencies in apprehending violators of the law especially those involving syndicates. It sympathizes with the public clamor for the bringing of criminals before the altar of justice. However, quick solution of crimes and the consequent apprehension of malefactors are not the end-all and be-all of law enforcement. Enforcers of the law must follow the procedure mandated by the Constitution and the law. Otherwise, their efforts would be meaningless. And their expenses in trying to solve crimes would constitute needless expenditures of taxpayers' money.

This Court values liberty and will always insist on the observance of basic constitutional rights as a condition sine qua non against the awesome investigative and prosecutory powers of government. The admonition given by this Court to government officers, particularly those involved in law enforcement and the administration of justice, in the case of *People vs. Cuizon*, [66] where NBI agents mishandled a drug bust operation and in so doing violated the constitutional guarantees against unlawful arrests and illegal searches and seizures, is again called for and thus reiterated in the case at bench, to wit:

"x x x In the final analysis, we in the administration of justice would have no right to expect ordinary people to be law-abiding if we do not insist on the full protection of their rights. Some lawmen, prosecutors and judges may still tend to gloss over an illegal search and seizure as long as the law enforcers show the alleged evidence of the crime regardless of the methods by which they were obtained. This kind of attitude condones law-breaking in the name of law enforcement. Ironically, it only fosters the more rapid breakdown of our system of justice, and the eventual denigration of society. While this Court appreciates and encourages the efforts of law enforcers to

uphold the law and to preserve the peace and security of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law. Truly, the end never justifies the means."[67]

WHEREFORE, the questioned Decision of the Regional Trial Court of Cavite, Branch 18 in Tagaytay City, is hereby REVERSED and SET ASIDE. Appellants Rene Januario and Efren Canape are ACQUITTED. Let a copy of this Decision be furnished the Director General, Philippine National Police and the Director, National Bureau of Investigation in order that Eliseo Sarita and Eduardo Sarinos, who are still at large, may be apprehended and this time properly investigated and prosecuted.

The accused-appellants are hereby ORDERED RELEASED immediately unless they are being detained for some other legal cause.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo and Francisco, JJ., concur.

[1] Penned by Judge Julieto P. Tabiolo.

[2] The particular provision of the law for which appellants were found guilty by the trial court reads:

"SEC. 14. Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment of not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on occasion thereof."

[3] Rollo, p.11; Record, p.199.

[4] Record, pp. 204-205.

[5] Ibid, pp. 257-259.

[6] TSN, April 11, 1989, pp. 53-56.

[7] TSN, March 16, 1989, pp. 6-11.

[8] Ibid., August 11, 1989, p. 17.

[9] Ibid., p. 18.

[10] Ibid., April 11, 1989, pp. 7-9.

[11] Record, p. 14.

[12] Ibid., pp. 15-16.

[13] Ibid., pp. 18-20.

[14] TSN, April 11, 1989, p. 51.

[15] Ibid., April 11, 1989, pp. 63-64; Exh. H; Xerox copies of pictures on page 27 of Record.

[16] Record, p. 77.

[17] TSN, April 11, 1989, p. 30.

[18] Ibid., p. 70.

[19] Ibid., p. 71.

[20] Record, p. 280.

[21] Ibid., p. 284.

[22] Ibid., pp. 313-314.

[23] Ibid., pp. 320-321.

[24] Ibid., p. 327.

[25] Ibid., p. 336.

[26] Ibid., p. 337.

[27] Ibid., p. 338.

[28] Ibid., p. 344.

[29] TSN, May 9, 1990, pp. 4-9.

[30] Record, p. 358.

[31] TSN, March 27, 1990, pp. 11-14, 29.

[32] Ibid., pp. 14-15, 30-31.

[33] Ibid., pp. 16-17.

[34] Ibid., p. 19-21.

[35] Ibid., p. 32.

[36] Record, p. 363.

[37] The trial court erroneously imposed the penalty of "reclusion perpetua or life imprisonment." The two penalties are not synonymous. Reclusion perpetua entails at least 30 years of imprisonment and carries with it accessory penalties whereas "life imprisonment" has no definite duration and does not carry any accessory penalty (People v. Dolar, 231 SCRA 414, 425, March 24, 1994.).

[38] Rollo, p. 71.

[39] Ibid., p. 130.

[40] Ligon vs. Court of Appeals, 244 SCRA 693, 701, June 1, 1995.

[41] U.S. vs. Alviar, 36 Phil. 804, 806 (1917).

[42] FRANCISCO, CRIMINAL PROCEDURE, 1994 ed., p. 411 citing 23 C.J.S. 464-467.

[43] Vega vs. Panis, 117 SCRA 269, 277-278, September 30, 1982.

[44] In their supplemental memorandum and additional arguments to the demurrer to evidence filed before the

trial court, appellants stated that they "choose not to present evidence nor allow the two accused (Efren Canapi and Rene Januario) to testify on the ground that the inadmissibility of the alleged confession or admission, no prima facie case was established by the prosecution against the two accused. This point was stressed in the demurrer to evidence which is made part of the original memorandum and this supplemental memorandum; x x x." (Record, pp. 368-369.)

[44] The trial court appears to have been in a quandary on how to treat Saunar: was he a rebuttal or an additional witness?

"FISCAL VELAZCO:

No more for the prosecution.

COURT:

This is rebuttal as far as the two other accused I think are concerned?

FISCAL VELAZCO:

Yes, your Honor, and I have made reservations even before, your Honor, at the time when Atty. Saunar cannot be produced here, and I made reservation that I be allowed to call him as additional evidence for the prosecution and/or rebuttal.

COURT:

Additional evidence in the case of Cid?

FISCAL VELAZCO:

Yes, your Honor, as against the three.

COURT:

As against Cid, principal testimony; as against the two accused, it is rebuttal?

FISCAL VELAZCO:

Yes, your Honor." (TSN, March 27, 1990, p. 32.)

[46] People vs. Deniega, 251 SCRA 626, 637-638, December 29, 1995.

[47] TSN, April 11, 1989, p. 13.

[48] Ibid., p. 41.

[49] Ibid., August 11, 1989, pp. 12-14.

[50] Ibid., pp. 27-28.

[51] People vs. De la Cruz, 224 SCRA 506, 526-527, July 6, 1993.

[52] People vs. Tujon, 215 SCRA 559, 576, November 13, 1992.

[53] TSN, March 27, 1990, pp. 9-10.

[54] Ibid., April 11, 1989, pp. 37 & 40.

[55] "Section 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.

xxx xxx xxx.

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

[56] 240 SCRA 624, 638-639, January 26, 1995, citing U.S. vs. Corrales, 28 Phil. 362 (1914).

[57] TSN, April 11, 1989.

[58] Ibid., August 11, 1989, pp. 21-23. [59] Ibid., March 27, 1990, pp. 12-14.

[60] People vs. Cabintoy, 247 SCRA 442, 452, August 21, 1995.

[61] 251 SCRA 293, 314-315, December 12, 1995.

[62] TSN, August 11, 1989, pp. 25, 26 and 30.

[63] Ibid., p. 25.

[64] Ibid., p. 43.

[65] Record, pp. 22-23.

[66] G.R. No. 109287, April 18, 1996.

[67] Ibid., p. 34.

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