

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DONATO B. CONTINENTE AND JUANITO T. ITAAS, JOHN DOE, PETER DOE, JAMES DOE, PAUL DOE AND SEVERAL OTHER DOES (AT LARGE), ACCUSED...

G.R. Nos. 100801-02. August 25, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal is the Decision[1] dated February 27, 1991 of the Regional Trial Court of Quezon City, Branch 88, in Criminal Cases Nos. 89-4843 and 89-4844 finding herein appellants guilty beyond reasonable doubt of the crimes of murder and frustrated murder, respectively for the killing of U.S. Col. James N. Rowe and for seriously wounding Joaquin Vinuya.

It appears that appellant Donato Continente and several other John Does were initially charged with the crimes of murder and frustrated murder in two (2) separate Informations dated June 20, 1989 in connection with the shooting incident on April 21, 1989 at the corner of Tomas Morato Street and Timog Avenue in Quezon City which caused the death of U.S. Col. James N. Rowe while seriously wounding his driver, Joaquin Vinuya. After the arrest of another suspect, Juanito Itaas, on August 27, 1989 in Davao City, the prosecution, with prior leave of court, filed two (2) separate amended Informations for murder and frustrated murder to include Juanito T. Itaas, among the other accused. The amended Informations in Criminal Cases Nos. 89-4843 and 89-4844 read:

Criminal Case No. Q-89-4843 for Murder:

"That on or about the 21st day of April, 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation and treachery and with the use of armalite rifles and motor vehicles, did then and there wilfully, unlawfully and feloniously attack, assault, and employ personal violence upon the person of COL. JAMES N. ROWE, a U.S. Army Officer, by then and there firing at him while then on board a Toyota car, hitting him on the different parts of his body, thereby inflicting upon him serious and mortal gunshot wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Col. James N. Rowe in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."

Criminal Case No. Q-89-4844 for Frustrated Murder:

"That on or about the 21st day of April 1989, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation and treachery and with the use of armalite rifles and motor vehicles, did, then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of JOAQUIN BINUYA, by then and there firing at him while then on board a Toyota car, hitting him on the scalp and body, thereby inflicting upon him serious and mortal gunshot wounds, thus

performing all the acts of execution which would have produced the crime of murder, but nevertheless did not produce it, by reason of causes independent of their own will, that is the timely intervention of medical assistance, to the damage and prejudice of said Joaquin Binuya in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."

Upon being arraigned on August 31, 1989, appellant Donato B. Continente, assisted by his counsel of choice, pleaded "Not guilty" to each of the amended Informations in both criminal cases. On the scheduled arraignment of appellant Juanito Itaas on October 31, 1989, appellant Itaas, upon the advice of his counsel, refused to enter any plea. Hence, the trial court ordered that a plea of "Not guilty" be entered in each of the amended Informations in both criminal cases for the said appellant.

From the evidence adduced by the prosecution, it appears that on April 21, 1989 at around 7:00 o'clock in the morning, the car of U.S. Col. James N. Rowe, Deputy Commander, Joint U. S. Military Assistance Group (JUSMAG for brevity), was ambushed at the corner of Tomas Morato Street and Timog Avenue in Quezon City. Initial investigation by the Central Intelligence Service (CIS for brevity), National Capital District Command, Camp Crame, Quezon City which was led by Capt. Gil Meneses, Assistant Chief of the Special Investigation Branch, CIS, shows that on the date and time of the ambush, Col. James Rowe, was on board his gray Mitsubishi Galant car which was being driven by Joaquin Vinuya; and that they were at the corner of Tomas Morato Street and Timog Avenue in Quezon City on their way to the JUSMAG Compound along Tomas Morato Street when gunmen who were on board an old model Toyota Corolla car suddenly fired at his car, thereby killing Col. Rowe and seriously wounding his driver, Joaquin Vinuya. The car that was used by the gunmen was followed by a Mitsubishi Lancer car when it sped away from the site of the ambush.[2] The same Toyota Corolla car was later recovered on the same day by a team from the Philippine Constabulary (PC), North Sector Command, led by PC/Sgt. Fermin Garma, at No. 4 Windsor Street, San Francisco Del Monte in Quezon City.[3]

Upon further investigation of the case, the CIS agents established through a confidential intelligence information the involvement of appellant Donato Continente, an employee of the U.P. Collegian in U.P. Diliman, Quezon City, in the ambush of Col. James Rowe and his driver. Accordingly, on June 16, 1989, the CIS investigation team proceeded to the U.P. campus in Diliman, Quezon City to conduct a surveillance on appellant Donato Continente. After accosting appellant Continente inside the said U.P. campus, the CIS team took him to Camp Crame in Quezon City for questioning.[4] During the interrogation which was conducted by CIS Investigator Virgilio Publico in the presence of Atty. Bonifacio Manansala in Camp Crame on June 17, 1989, appellant Continente admitted to his participation in the ambush of Col. James Rowe and his driver as a member of the surveillance unit under the Political Assassination Team of the CPP-NPA.[5] Among the documents confiscated from appellant Continente by the CIS agents, and for which a receipt dated June 16, 1989 was prepared and issued by Sgt. Reynaldo dela Cruz, was a letter addressed to "Sa Kinaukulan". At the dorsal right hand side of the letter appear the acronyms "STR PATRC" which allegedly mean "Sa Tagumpay ng Rebolusyon" and "Political Assassination Team, Regional Command".[6]

Another confidential intelligence information established the participation of appellant Juanito Itaas in the said ambush of Col. James Rowe and his driver on April 21, 1989. Appellant Itaas, who was a known member of the Sparrow Unit of the NPA based in Davao City was arrested in Davao City and was brought to Manila by Capt. Gil Meneses for investigation.[7] CIS Investigator Virgilio Publico investigated and took down the statements of appellant Itaas who disclosed during the investigation that he was an active member of the Sparrow Unit of the NPA based in Davao City and confessed, in the presence of Atty. Filemon Corpuz who apprised and explained to him his constitutional rights, that he was one of those who fired at the gray Mitsubishi Galant car of Col. James

Rowe at the corner of Tomas Morato Street and Timog Avenue on April 21, 1989.[8] The said appellant identified the Toyota Corolla car that the assailants rode on April 21, 1989 and the gray Mitsubishi Galant car of Col. Rowe.[9]

Meanwhile, it appears that the ambush on Col. James Rowe and his driver was witnessed by a certain Meriam Zulueta. The testimony of prosecution eyewitness Meriam R. Zulueta reveals that at around 7:00 o'clock in the morning of April 21, 1989, she was about to cross the Tomas Morato Street on her way to the JUSMAG Compound in Quezon City to attend a practicum in the JUSMAG Mess Hall when she heard several gunshots. Upon looking at the direction where the gunshots emanated, she saw persons on board a maroon car firing at a gray car at a distance of more or less one (1) meter at the corner of Tomas Morato Street and Timog Avenue in Quezon City. Zulueta returned to the side of the street to seek for cover but could not find any so she docked and covered her head with her bag while continuously looking at the persons who were firing at the gray car.[10] She recognized appellant Juanito Itaas when the latter was presented for identification in Camp Crame as the person, directly behind the driver of the maroon car, whose body was half exposed while he was firing at the gray car with the use of a long firearm.[11] The shooting incident lasted for about five (5) seconds only after which the maroon car made a U-turn to Timog Avenue toward the direction of Quezon Boulevard while being followed by a white Mitsubishi Lancer car.[12]

Prosecution eyewitness Zulueta likewise recognized the driver of the white Mitsubishi Lancer car as the same person whom she had encountered on two occasions. Zulueta disclosed that in the morning of April 19, 1989, the white Mitsubishi Lancer car was parked along the side of Tomas Morato Street which was near the corner of Scout Madrinan Street. Her attention was caught by the driver of the car, who was then reading a newspaper, when the latter remarked "Hoy pare, ang sexy. She-boom!" as she was walking along the street toward the JUSMAG Compound. On April 20, 1989, she saw the same person inside the white Mitsubishi Lancer car which was then parked along the side of Tomas Morato Street while she was again on her way to attend practicum in the JUSMAG Compound. She learned of the identity of the driver as a certain Raymond Navarro, who is allegedly a member of the NPA, from the pictures shown her by the CIS investigators in Camp Crame.[13]

Prosecution witness Zulueta also recognized appellant Donato Continente whom she had encountered on at least three (3) occasions at a carinderia outside the JUSMAG Compound. Her first encounter with appellant Continente was at around three o'clock in the afternoon on April 17, 1989 when she went out of the JUSMAG Compound to a carinderia nearby. She mistook the said appellant for a tricycle driver who was simply walking around the premises. She saw appellant Continente in the same carinderia again on the following day, April 18, 1989, and she was even teased by her companions that he was her escort. On April 19, 1989, Zulueta saw appellant Continente for the third time inside the same carinderia while the latter was merely standing. She came to know the identity of appellant Continente when Continente was presented to her in Camp Crame for identification. She thought that he was the tricycle driver whom she had seen in the carinderia near the JUSMAG Compound.[14]

Joaquin Vinuya testified that he was employed by the JUSMAG, as driver, and assigned to Col. James Rowe. On April 21, 1989, he fetched Col. Rowe from his house in Potsdam Street, Greenhills, Mandaluyong to report for work in JUSMAG, Quezon City. He drove along EDSA and turned left upon reaching Timog Avenue in Quezon City. While he was making a right turn at the intersection of Timog Avenue toward Tomas Morato Street, he noticed four (4) people on board a red car, two (2) of whom suddenly opened fire at the car that he was driving hitting him in the process. The shooting incident happened very fast and that he had no opportunity to recognize the persons inside the red car. Despite the incident, Vinuya managed to drive the car to the JUSMAG Compound. Upon arrival at the JUSMAG Compound, he found out that Col. James Rowe, who was sitting at the back seat of the car, was also hit during the shooting incident.[15]

Col. James Rowe and Joaquin Vinuya were initially brought to the V. Luna Hospital in Quezon City for treatment. Subsequently, they were transferred to the Clark Air Base Hospital in Pampanga. It was only then that Vinuya learned of Col. James Rowe's death whose body was already wrapped in a blanket. Vinuya was treated in the Clark Air Base Hospital in Pampanga for four (4) days for the injuries he sustained on his head, shoulder, and on the back portion of his left hand. Thereafter, he was taken back to JUSMAG Compound in Quezon City to recuperate.[16]

Prosecution witnesses Dr. Walter Divers and Dr. Jose Santiago testified on their respective medical findings[17] on the victims. Dr. Divers confirmed in court the contents of his medical report dated April 21, 1989 which shows that Col. Rowe sustained a gunshot wound on the left side of his head and abrasions on other parts of his body and that he was pronounced dead upon arrival at the V. Luna Hospital in Quezon City.[18] On the other hand, Dr. Santiago identified the medical report dated April 25, 1989 that he prepared relative to the treatment that he administered on Joaquin Vinuya. The report shows that Vinuya sustained three (3) superficial injuries on the scalp, on the left shoulder, and on the back of the left hand which could have been caused by bullets that came from a gun; and that the wounds could have caused the death of Vinuya without the medical treatment that lasted for four (4) days.[19]

For the defense, appellant Juanito Itaas testified and denied the truth of the contents of his sworn statements which are respectively dated August 29, 1989 and August 30, 1989, insofar as the same establish his participation in the ambush of Col. James Rowe and his driver on April 21, 1989. Appellant Itaas testified that he was allegedly tortured by his captors on August 27 and 28, 1989 in Davao City; that he was blindfolded and a masking tape was placed on his mouth; and that subsequently, he was hit and mauled while a cellophane was placed on his head thus, causing him to loss consciousness.[20]

Appellant Itaas further testified that he affixed his signatures on his sworn statements dated August 29 and 30, 1989 in the presence of the CIS officers and that Atty. Filemon Corpus was not present during those two occasions. The said appellant admitted having sworn to the truth of the contents of his said sworn statements before the administering fiscal, but he disclosed that the CIS officers previously threatened him to admit the contents of the two sworn statements.[21]

Appellant Donato Continente testified that he was working as messenger with the U.P. Collegian, an official monthly publication of the University of the Philippines. He was walking on his way home inside the U.P. campus in Diliman, Quezon City from his workplace in Vinzon's Hall in the late afternoon of June 16, 1989 when four (4) persons blocked his way and simultaneously held his body and covered his mouth. He asked if they had any warrant of arrest but the persons simply boarded him inside a waiting car where he was handcuffed and blindfolded. Thereafter, they took his wallet that contained his NBI clearance, SSS, tax account number (TAN), identification card, two (2) pictures, and a typewritten certification from "SINAG" where he used to work.[22]

Appellant Continente learned that he was taken to Camp Crame in Quezon City only in the following morning when his blindfold was removed so that he could give his statement in connection with the killing of Col. James Rowe before a CIS Investigator whom he later identified during the trial as Virgilio Pablico. Appellant Continente affirmed the truth of his personal circumstances only which appear on his sworn statement dated June 17, 1989 but denied having made the rest of the statements embodied therein. The said appellant claimed that he initially denied any knowledge in the killing of Col. James Rowe but CIS Investigator Pablico maintained that he (Continente) knew something about it; that appellant Continente was alone with Investigator Pablico during the investigation; that he signed his sworn statement in the presence of Pablico and swore to the truth thereof before the administering fiscal for fear that something might happen to him while he was alone; that he signed the last page of his sworn statement first before signing the waiver of his constitutional rights upon arrival of Atty.

Bonifacio Manansala whose legal services was engaged by the CIS Investigators; and that he had no opportunity to talk with Atty. Manansala who left after he (Atty. Manansala) signed, merely as witness, the first page of his sworn statement, which is the waiver of his constitutional rights.[23]

On rebuttal, prosecution witness Sgt. Reynaldo dela Cruz testified that he prepared and issued the receipt for the documents which he confiscated from appellant Continente on June 16, 1989; and that it is the standard operating procedure in the CIS to put a blindfold on an arrested suspected NPA member in order to withhold from him the view and location of the entrance, the exit and the terrain in the camp.[24]

The testimony of CIS Investigator Virgilio Pablico on rebuttal reveals that during the investigation of appellants Donato Continente and Juanito Itaas, their respective lawyers namely, Atty. Bonifacio Manansala and Atty. Filemon Corpuz, were present; that appellants Continente and Itaas conferred with their lawyers before they gave their statements to the CIS investigator; that the CIS investigator typed only the statements that the appellants had given him in response to his questions during the investigation; that both appellants were accompanied by their respective lawyers when they were brought to the fiscal for inquest; and that said appellants were never tortured nor threatened during the investigations of these cases.[25]

The trial court rendered its decision[26] in Criminal Cases Nos. Q-89-4843 to 44 on February 28, 1991 finding both appellants Juanito Itaas and Donato Continente guilty beyond reasonable doubt of the crimes of murder and frustrated murder. It ruled, thus:

"In assessing the evidence against co-accused Continente, it is undeniable that the yardstick of his culpability hangs in the validity of the extra-judicial confession he had executed. A close scrutiny of the document would reveal that the confession is free from any taint of illegality and thus serves as a basis for his conviction.

The presumption of law that official duty has been regularly performed has not been satisfactorily controverted by the accused.

Circumstances show that Continente's waiver was done with the assistance of a counsel of his choice. The records indicate that Atty. Bonifacio Manansala was accused's counsel during his custodial investigation and his arraignment and that his counsel during the trial was a relative of the aforementioned lawyer. These factors are undeniable evidence of trust reposed upon Atty. Bonifacio Manansala by the accused.

Continente also admitted on cross-examination that he had read his statement which included the PAGPAPATUNAY containing his waiver of constitutional rights (TSN 29 August 1990 p. 29). Accused was raised in Metro Manila and spoke Tagalog, thus would not have any difficulty in comprehending the questions addressed to him and the information relayed to him with respect to his rights. The court can not equate that whenever a suspect is taken into custody and is fearful of his safety, the police authorities had exercised pressure or had threatened if not subjected them to physical abuse. Moreover, the fact that the accused admitted that his answers were typed as he spoke them (TSN August 30 1990 p.4) leaves no room for Pablico to fabricate an answer.

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The prosecution evidence gathered against accused Itaas cradles on two incriminating points. The Zulueta testimony and his extra judicial confession working independently, one without the other, have the force capable of convicting the accused. The interplay of these two valuable evidence solidifies a ruling of guilt against accused Itaas.

The defense raised by the accused is not sufficient to overrule this Court's determination of guilt against Itaas.

The testimony of Zulueta has been candid and straightforward, devoid of any material contradiction. No motive has been imputed to assail the credibility of her testimony. xxx

xxx xxx xxx.

With respect to the extra-judicial confession executed by accused Itaas, the Court finds that such was made pursuant to the Constitution. Although it may be argued that accused resides in Davao, the fact that he could understand Tagalog as admitted by him in his testimony and proven by the proceedings in court where he was answering questions addressed to him in Tagalog militates against his inability to comprehend his right and its subsequent waiver. Counsel for accused contests the independence and competence of Atty. Filemon Corpuz on the ground that said lawyer was a military lawyer. Although the military background of Atty. Corpuz is admitted, this does not automatically disqualify him to act as lawyer for the accused. Proof of the fact that he failed to render his duty to safeguard the rights of the accused must be shown before this court nullifies the weight of Itaas' extra-judicial confession. The allegation of torture similarly rings hollow. No medical certificate had been shown by the accused that he had indeed suffered brutal treatment from his jailers specially since he had alleged to have been treated by a doctor for his injuries."

Thereafter, the trial court meted out the following penalties on the appellants:

"WHEREFORE, in view of all the foregoing, this Court finds accused DONATO CONTINENTE y BUENVENIDA and JUANITO ITAAS y TURA GUILTY beyond reasonable doubt of the crimes of MURDER and FRUSTRATED MURDER, and each is hereby sentenced to suffer an imprisonment of RECLUSION PERPETUA for the killing of Col. James Rowe, to pay P30,000.00 to the heirs; and an imprisonment from Ten (10) Years and One (1) Day of PRISION MAYOR as MINIMUM to Seventeen (17) Years, Four (4) Months and One (1) Day of RECLUSION TEMPORAL as MAXIMUM for the crime committed against Joaquin Vinuya, and to pay the cost.

SO ORDERED."

From the foregoing judgment of the trial court, appellants Donato Continente and Juanito Itaas separately instituted the instant appeal.

On March 15, 1993, appellant Donato Continente filed his Appellant's Brief[27] while appellant Juanito Itaas filed his Appellant's Brief[28] on March 5, 1993. The Office of the Solicitor General filed the Appellee's Brief[29] for the People on October 4, 1993. Appellant Itaas filed a Reply Brief[30] on December 3, 1993.

Appellant Continente raised the following assignments of error by the trial court:

I

THE HONORABLE LOWER COURT ERRED IN ADMITTING AND GIVING PROBATIVE VALUE TO THE EXTRA-JUDICIAL CONFESSION OF ACCUSED-APPELLANT CONTINENTE.

II

THE HONORABLE LOWER COURT ERRED IN GIVING CREDENCE TO THE IDENTIFICATION OF ACCUSED-APPELLANT CONTINENTE BY THE PROSECUTION'S LONE WITNESS.

III

THE HONORABLE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT CONTINENTE GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

On the other hand, appellant Itaas interposed the following assignments of error:

I

THE LOWER COURT COMMITTED REVERSIBLE ERROR IN ADMITTING AND APPRECIATING THE EYEWITNESS TESTIMONY OF MERIAM ZULUETA.

II

THE LOWER COURT COMMITTED REVERSIBLE ERROR IN ADMITTING AND APPRECIATING THE ALLEGED EXTRA-JUDICIAL CONFESSIONS OF ACCUSED-APPELLANT ITAAS.

III

THE LOWER COURT COMMITTED REVERSIBLE ERROR IN ADMITTING TESTIMONIAL AND PHOTOGRAPHIC EVIDENCE SHOWING THE ACCUSED-APPELLANT POSING BESIDE THE AMBUSER'S AND THE VICTIM'S ALLEGED CARS.

IV

THE LOWER COURT COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE PROSECUTION WAS ABLE TO PROVE ALL THE ESSENTIAL ELEMENTS OF THE CRIMES CHARGED.

V

THE EXTENSIVE PUBLICITY BY THE AUTHORITIES DEPICTING ACCUSED-APPELLANT ITAAS AS "THE ROWE KILLER", A "COMMUNIST" AND A MEMBER OF THE CPP/NPA/NDP/ABB INFLUENCED MERIAM ZULUETA'S IDENTIFICATION OF ACCUSED-APPELLANT AND THE LOWER COURT'S JUDGMENT.

The principal issues are:

1. Whether or not the waivers of the constitutional rights during custodial investigation by the appellants were valid; and
2. Whether or not the testimony of prosecution eyewitness Meriam Zulueta was credible.

The rights of the accused during custodial investigation are enshrined in Article III, Section 12 (1) of the 1987 Constitution which provides that:

"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."

The rights to remain silent and to counsel may be waived by the accused provided that the constitutional requirements are complied with. It must appear clear that the accused was initially accorded his right to be informed of his right to remain silent and to have a competent and independent counsel preferably of his own choice. In addition, the waiver must be in writing and in the presence of counsel. If the waiver complies with the constitutional requirements, then the extrajudicial confession will be tested for voluntariness,[31] i. e., if it was given freely-without coercion, intimidation, inducement, or false promises; and credibility,[32] i.e., if it was consistent with the normal experience of mankind.

In assailing the validity of their written statements, appellants Donato Continente and Juanito Itaas contend that they were not properly informed of their custodial rights under the constitution as to enable them to make a valid waiver. The pertinent portion of appellant Donato Continente's written statement dated June 17, 1989 is quoted hereunder, to wit:

PALIWANAG: G. Donato Continente, ang pagsisiyasat na ito ay may kinalaman sa pagkaka-ambush at pagpatay kay U.S. Army Colonel James Rowe ng JUSMAG.

Bago kita simulang tanungin ay nais ko munang ipabatid sa iyo ang iyong mga karapatan alinsunod sa ating umiiral na Saligang Batas. Ito ay ang mga sumusunod:

Una, ikaw ay may karapatang manahimik o huwag magbigay ng salaysay. Kung ikaw ay magbibigay ng salaysay, ipinaalala ko sa iyo na anumang sasabihin mo sa salaysay mong ito ay maaaring gamiting ebidensiya pabor o laban sa iyo sa anumang hukuman dito sa Pilipinas.

Ikalawa, karapatan mong magkaroon ng abogado ayon sa iyong sariling pili habang ikaw ay aking tinatanong. Kung ikaw ay walang kakayanang umupa ng abogado, ikaw ay bibigyan namin ng isang abogado ng gobyerno bilang tumayo na iyong tagapayo at ng sa gayon ay maprotektahan ang iyong mga karapatan.

Ikatlo, karapatan mong malaman at mapagpaliwanagan ng mga karapatan mong ito.

TANONG: Nauunawaan mo ba ang mga karapatan mong ito?

SAGOT: Opo. Nauunawaan ko po.

TANONG: Mayroon ka bang abogado na naririto sa ngayon upang siya mong maging tagapayo?

SAGOT: Wala po pero nakapagdesisyon na po ako na ako ay magbibigay ng salaysay kahit na wala akong nakaharap na abogado.

TANONG: G. Continente, ang pagsusuko ng mga karapatan, ayon narin sa batas, ay kinakailangang gawin sa harap ng isang abogado. Payag ka bang magsuko ng iyong mga karapatan sa harap ng isang abogado ng gobyerno?

SAGOT: Pumapayag po ako.

TANONG: Nakahanda ka rin bang lumagda sa isang pagpapatunay na ikaw ay napagpaliwanagan ng iyong mga karapatan, at nauunawaan mo ang mga karapatan mong ito?

SAGOT: Opo.[33]

On the other hand, the pertinent portion of appellant Itaas' written statement dated August 29, 1989 is quoted, to wit:

01. PALIWANAG: G. Juanito Itaas, ang pagsisiyasat na ito ay may kinalaman sa pagkakaambush at pagpatay kay Colonel James Rowe ng JUSMAG at pagkasugat ng kanyang driver. Bago kita simulang tanungin ay nais ko munang ipabatid sa iyo ang iyong mga karapatan alinsunod sa ating Bagong Saligang Batas. Ito ay mga sumusunod. Una, ikaw ay may karapatang manahimik o huwag magbigay ng salaysay. Kung ikaw ay magbibigay ng salaysay, ipinaalala ko sa iyo na anumang sabihin mo sa salaysay mong ito ay maaaring gamiting ebidensiya pabor o laban sa iyo sa anumang hukuman dito sa Pilipinas. Ikalawa, karapatan mong magkaroon ng pili at sarili mong abogado habang ikaw ay aking tinatanong. Kung ikaw ay walang pambayad ng abogado, ikaw ay bibigyan ng gobyerno ng abogado na wala kang aalalahaning anumang kabayaran. Ikatlo, karapatan mong malaman at mapagpaliwanagan ng mga karapatan mong ito.

TANONG: Nauunawaan mo ba ang mga karapatan mong ito?

SAGOT: Opo.

TANONG: Mayroon ka bang abogado na naririto sa ngayon upang ikaw ay patnubayan?

SAGOT: Wala po pero ako ay nakahandang magbigay ng salaysay kahit na wala akong nakaharap na abogado.

TANONG: G. Itaas, ayon din sa batas, ang pagsusuko ng mga karapatan ay kailangan ding pagtibayin sa harap ng isang abogado, nakahanda ka bang magsuko ng iyong mga karapatan sa harap ng isang abogado na bigay sa iyo ng gobyerno?

SAGOT: Opo. Nakahanda po ako.

TANONG: Nakahanda ka rin bang lumagda sa isang pagpapatunay na ikaw ay napagpaliwanagan ng iyong mga karapatan at nauunawaan mo naman ang mga karapatan mong ito?

SAGOT: Opo.[34]

Also, the pertinent portion of his (Itaas) supplemental written statement dated August 30, 1989 is quoted hereunder, to wit:

PALIWANAG: G. Itaas, ang pagsisiyasat na ito ay may kinalaman pa rin sa pagkaka-ambush at pagpatay kay U.S. Colonel James Rowe. Tulad sa nauna mong pagbibigay ng salaysay, ipinaalala ko sa iyo na muli ang iyong mga karapatang manahimik, magkaroon ng pili at sariling abogado at karapatang mapagpaliwanagan ng mga karapatan mong ito. Nauunawaan mo ba ang mga karapatan mong ito?

SAGOT: Opo.

TANONG: Nakahanda ka pa rin bang magbigay ng salaysay at ipapatuloy ang pagbibigay mo ng salaysay?

SAGOT: Opo.

TANONG: Nakahanda ka bang lumagdag muli ng isang pagpapatunay na ikaw ay napagpaliwanagan ng iyong mga karapatan at handa ka ring isuko ang mga karapatan mo?

SAGOT: Opo.[35]

We have consistently declared in a string of cases that the advice or “Paliwanag” found at the beginning of extrajudicial confessions that merely enumerate to the accused his custodial rights do not meet the standard provided by law. They are terse and perfunctory statements that do not evince a clear and sufficient effort to inform and explain to the appellant his constitutional rights.[36] We emphasized that when the constitution requires a person under investigation “to be informed” of his rights to remain silent and to have an independent and competent counsel preferably of his own choice, it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.[37] In other words, the right of a person under investigation “to be informed” implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding of what is conveyed. Short of this, there is a denial of the right.[38]

In the case of *People vs. Jara*,[39] we declared that:

“This stereotyped “advice” appearing in practically all extrajudicial confessions which are later repudiated has assumed the nature of a “legal form” or model. Police investigators either automatically type it together with the curt “Opo” as the answer or ask the accused to sign it or even copy it in their own handwriting. 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.”

It must be noted however, that far from being a mere enumeration of the custodial rights of an accused, the aforequoted portions (“Paliwanag”) of the written statements contain an explanation as to the nature of the investigation that is, regarding the respective participations of the appellants in the ambush on April 21, 1989 that resulted in the killing of U.S. Col. James Rowe while seriously wounding his driver, Joaquin Vinuya. They also

include an advice that the appellants may choose not to give any statement to the investigator and a warning that any statement obtained from the appellants may be used in favor or against them in court. In addition, they contain an advice that the appellants may engage the services of a lawyer of their own choice. If they cannot afford the services of a lawyer, they will be provided with one by the government for free. Thereafter, both appellants manifested to CIS Investigator Virgilio Pablico their intentions to give their statements even in the absence of counsel.

Despite the manifestations of the appellants, Investigator Pablico requested for the legal services of Atty. Bonifacio Manansala to act as counsel for appellant Continente and Atty. Felimon Corpuz for appellant Itaas. Significantly, Investigator Pablico disclosed that appellant Continente conferred with Atty. Manansala in his presence for about half an hour before the investigation started.[40] Nevertheless, the appellant (Continente) maintained his decision to give a statement even in the absence of counsel. As proof thereof, the appellant signed[41] the "Pagpapatunay" that contains an express waiver of his constitutional rights in the presence of Atty. Manansala who also signed the same as counsel of the appellant.

With respect to appellant Itaas, Atty. Felimon Corpuz testified that his legal services were requested on two (2) occasions to act as counsel for appellant Itaas after the latter purportedly manifested his intention to waive his rights to remain silent and to counsel during the investigation. Atty. Corpuz stated that he conferred with the appellant before the investigations and explained to him his rights under the constitution and the consequences of waiving said rights. After the explanation, appellant Itaas decided to sign the "Pagpapatunay", which are entirely written in Tagalog, a dialect which he understands, in his written confessions respectively dated August 29, 1989 and August 30, 1989 stating that his constitutional rights to remain silent and to counsel were explained to him; that he fully understood the same; and that he was willing to give a written confession even without the assistance of counsel.[42]

Appellants Donato Continente and Juanito Itaas likewise impugn their respective written statements. They allege that the statements appearing therein were supplied by the CIS investigator. CIS Investigator Pablico however, categorically denied on rebuttal the allegations of the appellants. Pablico disclosed that during his investigations of the appellants on separate occasions he simultaneously typewrote his questions to the appellants including their answers thereto which are done entirely in Tagalog, thus leaving no room for Pablico to fabricate an answer. After the investigation, he allowed the appellants to read their respective confessions,[43] a fact that was admitted by appellant Continente.[44] Thereafter, the appellants voluntarily affixed their signatures on every page of their written confessions.

On July 18, 1989 appellant Continente appeared before City Prosecutor Galicano of Quezon City and affirmed under oath the truth of his statements by affixing his signature on the left hand portion of every page of his written confession.[45] Likewise, appellant Itaas, accompanied by Atty. Corpuz, affirmed under oath the truth of his statements in his written confessions by affixing his signature on every page thereof before the administering officer.[46]

In a desperate attempt to cast doubt on the voluntariness of his confessions, appellant Continente claims that he was under pressure to read entirely his written confession before he affixed his signature thereon. The unsubstantiated claim of the appellant is belied by his own admission that he was treated fairly during the investigation, thus:

Court: Proceed.

Q: Now, Mr. Witness, since the time you were arrested on June 16, 1989 until this time, you said you were staying in Camp Crame, am I correct?

A: Yes, sir.

Q: And from the time you were arrested up to this time, you were never harmed by anybody in Camp Crame, that is also correct?

A: No, sir.

Q: In fact, from the time you were arrested when that blindfold was removed, you were treated fairly, am I correct?

A: Yes, sir.[47]

There is also no basis to support the claim of appellant Itaas that he was tortured into giving a confession and was threatened by the CIS agents to admit the truth of the same before the administering officer. This Court held that where the appellants did not present evidence of compulsion or duress or violence on their persons; where they failed to complain to the officers who administered the oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies and where they did not have themselves examined by a reputable physician to buttress their claim, all these should be considered as factors indicating voluntariness of confessions.[48]

It has been established by the evidence that Atty. Filemon Corpuz was present during both occasions that appellant Itaas was being investigated by Investigator Virgilio Pablico in Camp Crame and even accompanied the said appellant before the administering officer. Appellant Itaas did not present any evidence in court to buttress his bare claim despite the fact that a doctor was summoned for his check up immediately upon his arrival in Manila after he was previously arrested in Davao City.[49] He did not complain to the administering officer about the threats and torture he allegedly suffered in the hands of the CIS agents. Neither did he file any criminal nor administrative complaint against said agents for maltreatment. The failure of the appellant to complain to the swearing officer or to file charges against the persons who allegedly maltreated him, although he had all the chances to do so, manifests voluntariness in the execution of his confessions.[50] To hold otherwise is to facilitate the retraction of his solemnly made statements at the mere allegation of torture, without any proof whatsoever.[51]

The Court also notes that the respective written confessions of appellants are replete with details which could be supplied only by someone in the know so to speak.[52] They reflect spontaneity and coherence which psychologically cannot be associated with a mind to which violence and torture have been applied.[53]

In particular, appellant Juanito Itaas admitted in his written confession[54] dated August 29, 1989 that he was an active member of the New People's Army (NPA) and performed different functions mainly in the province of Davao; that he was one of the two other members of the NPA who were sent to Manila sometime in March 1989; that appellant stayed in Merville, Paranaque before moving to an apartment in Santolan, Pasig together with certain Vicky and her husband Ronnie, Onie, Bosyo and Bernie; that one day before the ambush on Col. Rowe he (Itaas) was told by Ronnie to take part in a major operation by the NPA; that he (Itaas) was not informed by Ronnie about the identity of their supposed target; that on the following day, Ronnie and the appellant boarded a dark brown Toyota car together with certain Edgar and James; that he (Itaas) was seated directly behind the driver beside Edgar and James while Ronnie sat beside the driver; that they were armed with M-16 rifles while Ronnie was armed with an ultimax; that after several minutes their car reached a junction (circle) and was running alongside a dark gray car; that he fired automatic shots toward the dark gray car only after his companions started firing at the said car; and that after the ambush they drove back to their apartment in Santolan, Pasig while they were being followed by a back up car allegedly being occupied by certain Liway, Fred and Eddie. Appellant Itaas also identified in his written confession[55] dated August 30, 1989 the gray Mitsubishi car that they ambushed on April 21, 1989 and the car that they used on the same date of ambush.

On the other hand, the written statement^[56] dated June 17, 1989 of appellant Donato Continente reveals that he had been a member of several revolutionary groups before becoming a full fledged member of the Communist Party of the Philippines (CPP) under the Political Assassination Team (PAT) headed by a certain Kit; that the objective of their team was primarily to conduct surveillance on foreigners and diplomats; that he did not know Col. James Rowe prior to the shooting incident on April 21, 1989; that his participation in the ambush was merely for having conducted a surveillance of the vicinity of the JUSMAG in Tomas Morato Avenue in Quezon City; that he gathered certain data, specifically: the number of people and volume of vehicles around the area, the measurement of the streets, as well as the distance of the JUSMAG Compound from Tomas Morato Avenue; that his surveillance activity was continued by certain Freddie Abella and Taddy who are also members of the PAT; and that he came to know the identity of the victim of the ambush on April 21, 1989, through Freddie Abella who informed him two days after the incident.

Appellants Continente and Itaas may not validly repudiate the counsels who rendered them legal assistance during their respective investigations as biased and incompetent. It must be emphasized that both appellants never signified their desire to have lawyers of their own choice. In any case, it has been ruled that while the initial choice of the lawyer in cases where a person under custodial investigation cannot afford the services of the lawyer is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the former's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer.^[57]

If Atty. Manansala and Atty. Corpuz decided against advising the appellants not to give their statements involving the ambush, the said lawyers were merely complying with their oaths to abide by the truth. The counsel should never prevent an accused from freely and voluntarily telling the truth.^[58] Whether it is an extrajudicial statement or testimony in open court, the purpose is always the ascertainment of truth.^[59] What is sought to be protected with the constitutional right to counsel is the compulsory disclosure of incriminating facts. The right is guaranteed merely to preclude the slightest coercion as would lead the accused to admit something false, not to provide him with the best defense.^[60]

We agree with the trial court's observation that the retention by appellant Continente of Atty. Bonifacio Manansala as his counsel until the early stages of his case in the lower court and his subsequent decision to engage the legal services of Atty. Manansala's relative, Atty. Ceferino Manansala, who represented the said appellant throughout the proceedings in the absence of the former bespeaks of the trust he had for the said lawyer. On the other hand, while it is admitted that Atty. Felimon Corpuz served in the military as prosecutor in the Efficiency and Separation Board of the armed forces, such fact is not sufficient to adjudge the said lawyer as biased against the appellant (Itaas) in the absence of any concrete evidence to that effect. The defense also failed to adduce substantial evidence to support a finding that Atty. Corpuz was short of being a vigilant and effective counsel for the said appellant.

Moreover, the testimony of prosecution eyewitness Meriam Zulueta confirms to a large extent the statements made by the appellants in their written confessions. Zulueta positively identified appellant Juanito Itaas as among the persons on board a car, directly behind the driver, whose body was half exposed, while firing at the car of Col. James Rowe at the corner of Tomas Morato Street and Timog Avenue in Quezon City. She also testified that she had seen appellant Donato Continente on at least three (3) occasions at the carinderia outside the JUSMAG compound. She mistook appellant Continente for a tricycle driver on April 17, 1989 while the latter was simply walking around the premises. The second and third encounters with the appellant (Continente) took place on April 18 and 19, 1989 while the said appellant was standing inside the same carinderia.

The defense assails the propriety of the pre-trial identification by Meriam Zulueta of appellants Donato Continente and Juanito Itaas as pointedly suggestive. However, there is no sufficient evidence on record to show that the appellants were previously indicated by the CIS investigators to Zulueta that they were the perpetrators of the crime.[61] Besides, a police line-up is not essential to a proper identification of the appellants.[62]

The defense for appellant Itaas further argues that the so-called "positive identification" of appellant Itaas by Meriam Zulueta cannot be considered reliable inasmuch as the same was based on a fleeting glimpse of a stranger. To support its argument, the defense cited cases[63] where the Court rejected the testimonies of prosecution eyewitnesses for not being credible, such as: where the identification of a stranger is based upon a single brief observation made during a startling occurrence; where the testimony of the witness defies human nature and reason; where there are serious inconsistencies and glaring omissions in the testimony of the eyewitness; and where the witness only identified the suspect after he was arrested and the witness was informed by the police that the suspect was one of the killers.

It should be pointed out that the above rulings of the Court are based on the circumstances peculiar to each of the abovesited cases that do not exactly obtain in the cases at bench. It is accepted legal precept that persons react differently to a given situation.[64] In the same way, certain witnesses to an unfolding crime may run or scamper to safety while others would remain transfixed and strive to identify the perpetrators thereof. As found by the trial court, Zulueta testified in an honest and straightforward manner that she was about to cross the Tomas Morato Street on her way to the JUSMAG Compound in Quezon City to attend a practicum in the JUSMAG Mess Hall when she heard several gunshots. Upon looking at the direction where the gunshots emanated, she saw persons on board a maroon car firing at a gray car. Zulueta returned to the sidewalk to seek for cover but could not find any so she ducked and covered her head with her bag while continuously looking at the persons who were firing at the gray car. In acting the way she did, Meriam Zulueta was merely reacting naturally to the crime that was unfolding before her. And while the shooting incident lasted for only about five (5) seconds, that was all that Zulueta needed under the situation to recognize appellant Itaas whose body was incidentally half exposed.

The testimony of Meriam Zulueta does not suffer from any serious and material contradictions that can detract from her credibility. The trial court accorded full faith and credence to her said testimony. The defense failed to adduce any evidence to establish any improper motive that may have impelled the same witness to falsely testify against the appellants. It is well-settled rule that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.[65]

Article 248 of the Revised Penal Code, as amended, provides:

“ART. 248. Murder.- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

The trial court erroneously found that the appellants allegedly conspired in the commission of the crimes charged in the instant criminal cases. While it is clear that the appellants did not even know each other, the lower court opined that the Alex Boncayao Brigade is such a large organization that there is great likelihood that the participants of the various stages of the crime are unknown to each other. To justify its position, it cited the ruling in the case of *People vs. Geronimo*[66], thus:

"When the defendants by their acts aimed at the same object, one performing one part and the other performing another part as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal associations, concerted action and concurrence of sentiments, the Court will be justified in concluding that said defendants were engaged in a conspiracy."

We disagree. Article 8 of the Revised Penal Code provides that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three (3) requisites: (1) that two or more persons come to an agreement; (2) that the agreement concerned the commission of a crime; and (3) that the execution of the felony was decided upon.[67] While conspiracy must be proven just like any criminal accusation, that is, independently and beyond reasonable doubt,[68] the same need not be proved by direct evidence and may be inferred from the conduct of the accused before, during, and after the commission of the crime.[69]

The case against appellant Donato Continente is primarily anchored on the written statement[70] that he gave during the investigation of these cases. The pertinent portions of his written statements are quoted hereunder, to wit:

T: Ikaw ba'y naging full fledged member ng Partido?

S: Nito pong Oktubre 1988.

T: Sino naman ang iyong kinikilalang puno sa inyong Partido?

S: Ganito po iyon. Mayroon kaming sariling grupo na kung tawagin ay PAT. Ang ibig sabihin nito ay POLITICAL ASSASSINATION TEAM. Ang aming puno ay tinatawag naming PO o Political Officer. Ang susunod sa kanya ay ang TL o Team Leader; tapos po ay ang Vice Team Leader; at mga miembro na nagsasagawa ng activities tulad ng gawaing edukasyon, surveillance at intelligence.

x x x

T: Ano ang mga alam mong objectives ng inyong team?

S: , Ang mga objectives po namin ay magsagawa ng surveillance sa mga foreigner o diplomat. Kinukuha namin ang plate number ng kanilang mga sasakyan, make, model at kulay nito at ito ay aming tinitipon.

x x x

T: Nakikilala mo ba itong si Col. James Rowe ng U.S. Army na nagtrabaho sa JUSMAG?

S: Nakilala ko po lamang siya ng mapabalitang patay siya sa ambush sa may malapit sa JUSMAG noong buwan ng Abril 1989.

x x x

T: Ano ang iyong naging partisipasyon sa pagkakapatay nitong si Col. Rowe?

S: Surveillance po lamang ang aking naging papel dito.

T: Paano mo naman isinagawa itong pag-surveillance kay Colonel Rowe?

S: Nagpunta po ako sa area ng JUSMAG doon sa Tomas Morato Avenue, Q. C. at nagmanman doon tungkol sa dami ng tao at sasakyang dumadaan tuwing tanghali. Inalaman ko din ang lawak ng kalsada at layo ng Timog Avenue sa gate ng JUSMAG. Sa report ko ay sinabi ko na mga anim (6) na hakbang ang luwag ng Tomas Morato Avenue, madalang ang daan ng tao at sasakyan at ang layo ng Timog Avenue sa gate ng JUSMAG ay may tatlong poste o apat na poste lamang.

T: Ang pagrereport mo bang ito ay ginawa mo ng verbal lamang?

S: Verbal lamang po.

T: Kanino ka naman nagreport?

S: Kay Ka Freddie Abella po.

x x x

T: Bakit mo natiyak na ang ABB ang nagsagawa ng pag-ambush kay Colonel Rowe?

S: Dalawang (2) araw po matapos ang pag-ambush kay Col. Rowe ay nagkita kaming dalawa ni Freddie sa aming bahay. Sa pagkikita naming iyon ay ikinuwento niya sa akin ang mga pangyayari. xxx

It should be emphasized that conspirators are the authors of the crime, being the ones who decide that a crime should be committed. Strictly speaking, a person may not be considered a conspirator by his mere subsequent assent or cooperation in the commission of a crime absent a clear showing, either directly or by circumstantial evidence, that he participated in the decision to commit the same;^[71] in which case, his culpability will be judged based on the extent of his participation in the commission of the crime.

In the case at bench, appellant Donato Continente is liable for the crimes charged in these criminal cases only as an accomplice under Article 18 of the Revised Penal Code. In order that a person may be considered an accomplice in the commission of a criminal offense, the following requisites must concur: (a) community of design, i.e., knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) he cooperates in the execution of the offense by previous or simultaneous acts; and (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.^[72]

The prosecution failed to establish, either directly or by circumstantial evidence, that appellant Donato Continente was privy to any conspiracy to carry out the ambush on Col. James Rowe and his driver on that fateful morning of April 21, 1989. The evidence adduced disclose that the participation of appellant Continente was made only after the plan or decision to ambush Col. Rowe was already a *fait accompli*. Continente was merely assigned to the vicinity of the JUSMAG Compound in Tomas Morato Street, Quezon City, before the shooting incident to gather certain data, specifically the number of people and volume of vehicles in the area, the measurement of the streets, and the distance of the JUSMAG Compound from Tomas Morato Street. Subsequently, Continente reported his findings to Freddie Abella and that thereafter the latter had taken over the activity. Significantly, appellant Continente was not even present at the scene of the crime on April 21, 1989.

The error of the trial court in its appreciation of appellant Continente's participation in the crimes charged lies in its apparent confusion regarding the distinction between a conspirator and an accomplice. In view of its effect on the liability of appellant Continente, the distinction between the two concepts as laid down by this Court in the

case of *People vs. de Vera, et al.*[73] needs to be reiterated, thus:

Conspirators and accomplices have one thing in common: they know and agree with the criminal design. Conspirators, however, know the criminal intention because they themselves have decided upon such course of action. Accomplices come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution. Conspirators decide that a crime should be committed; accomplices merely concur in it. Accomplices do not decide whether the crime should be committed; they merely assent to the plan and cooperate in its accomplishment. Conspirators are the authors of the crime; accomplices are merely their instruments who perform acts not essential to the perpetration of the offense.

With respect to appellant Juanito Itaas, however, the trial court correctly found that the evidence against him which consist of his written confession and the straightforward and credible testimony of prosecution eyewitness Meriam Zulueta, even if taken independently, are sufficient to convict him. Appellant Itaas categorically admitted in his written confession that he and his companions fired at the gray Mitsubishi car of Col. James Rowe at the corner of Timog Avenue and Tomas Morato Street in Quezon City. Moreover, prosecution witness Meriam Zulueta positively identified appellant Itaas as one of the persons she saw on board a car who fired at a gray car at the same time and place where Col. Rowe and his driver were ambushed.

The shooting of Col. James Rowe and his driver, Joaquin Vinuya, was attended by treachery. There is treachery when the offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[74] The evidence clearly shows that the mode of execution was deliberately adopted by the perpetrators to ensure the commission of the crime without the least danger unto themselves arising from the possible resistance of their victims. Appellant Itaas and his companions, who were all armed with powerful firearms, waited for the car of Col. Rowe which was being driven by Joaquin Vinuya at the corner of Timog Avenue and Tomas Morato Street in Quezon City. Without any warning, appellant Itaas and his companions suddenly fired at the said car upon reaching the said place. Hence, the crime committed for the killing of Col. James Rowe during the said ambush is murder.

With respect to the liability of appellant Itaas for the wounding of Joaquin Vinuya, it appears that the said victim sustained injuries on his scalp, on the left shoulder and on the back portion of the left hand from the ambush. Under Article 6 of the Revised Penal Code, as amended, a felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator. The evidence adduced by the prosecution, particularly the opinion of Dr. Jose Santiago in his testimony, is not sufficient to establish the crime of frustrated murder. This Court notes that the wounds sustained by the victim are not fatal wounds but merely superficial wounds.[75] The records disclose that Joaquin Vinuya managed to drive the car of Col. Rowe toward the JUSMAG Compound which is 200 meters away from the site of the ambush.[76] It also appears that Vinuya was treated for his wounds for only four (4) days at the Clark Air Base Hospital in Pampanga after which he was brought back to the JUSMAG Compound in Quezon City to recuperate. Hence, the crime committed as against him is only attempted murder.

In view of the foregoing, appellant Juanito Itaas should be held liable for the crimes of murder and attempted murder for his direct participation in the killing of Col. James Rowe and in the wounding of his driver Joaquin Vinuya, respectively. Due to the absence of any mitigating nor aggravating circumstance in both cases, the penalty to be imposed on appellant Itaas is reclusion perpetua for the murder of Col. James Rowe and the medium period of prision mayor for the attempt on the life of Joaquin Vinuya. Applying the Indeterminate Sentence Law in the latter case, the maximum of the penalty to be imposed on appellant Itaas is the medium period of prision

mayor and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, that is, prision correccional.

On the other hand, being an accomplice to the crimes of murder and attempted murder, the penalty to be imposed on appellant Donato Continente shall be the medium periods of reclusion temporal and prision correccional, respectively. Applying the Indeterminate Sentence Law in both cases, the maximum of the penalty to be imposed on appellant Continente as an accomplice to the crime of murder is the medium period of reclusion temporal and the minimum shall be prision mayor, while the maximum of the penalty to be imposed on the said appellant as an accomplice to the crime of attempted murder is the medium period of prision correccional and the minimum shall be arresto mayor.

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 88, in Criminal Cases Nos. Q-89-4843 and Q-89-4844 is hereby MODIFIED, as follows:

In Criminal Case No. Q-89-4843, appellants Juanito Itaas and Donato Continente are found GUILTY beyond reasonable doubt of the crime of murder, as principal and as accomplice, respectively. Appellant Itaas, as principal, is hereby sentenced to suffer imprisonment of reclusion perpetua. Appellant Continente as accomplice, is hereby sentenced to suffer imprisonment for twelve (12) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. Both appellants Itaas and Continente are ORDERED to pay jointly and severally the amount of P50,000.00 to the heirs of the victim, Col. James Rowe, by way of civil indemnity.

In Criminal Case No. Q-89-4844, appellants Juanito Itaas and Donato Continente are found GUILTY beyond reasonable doubt of the crime of attempted murder, as principal and as accomplice, respectively. Appellant Itaas, as principal, is hereby sentenced to suffer imprisonment for six (6) years of prision correccional, as minimum, to nine (9) years and six (6) months of prision mayor, as maximum. Appellant Continente, as accomplice, is hereby sentenced to suffer imprisonment of six (6) months of arresto mayor, as minimum, to two (2) years and four (4) months of prision correccional, as maximum.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Tirso D.C. Velasco, Rollo, pp. 11-18.

[2] TSN, dated May 14, 1990, pp. 4-5.

[3] TSN, dated June 6, 1990, p. 4.

[4] TSN, dated May 14, 1990, pp. 6-7.

[5] Exhibit "A".

[6] TSN dated September 4, 1990, pp. 4-5.

[7] TSN, dated May 14, 1990, pp. 8-9.

[8] Exhibits "B" and "B-7".

[9] Exhibits "C" and "C-9".

[10] TSN, dated May 16, 1990, pp.4-5.

- [11] Exhibit “M”.
- [12] TSN, dated May 16, 1990, pp. 7-8.
- [13] TSN, dated May 16, 1990, pp. 8-9.
- [14] TSN, dated May 16, 1990, pp. 12-13.
- [15] TSN, dated May 9, 1990, p. 7.
- [16] TSN, dated May 9, 1990, pp. 7-10.
- [17] Exhibits “N” and “P”.
- [18] TSN, dated June 1, 1990, p. 4.
- [19] TSN, dated June 1, 1990, pp. 9-10.
- [20] TSN, dated September 3, 1990, p. 4.
- [21] TSN, dated September 3, 1990, pp. 4-5.
- [22] TSN, dated August 29, 1990, p. 21.
- [23] TSN, dated August 29, 1990, pp. 21-29.
- [24] TSN, dated September 4, 1990, pp. 4-5.
- [25] TSN, dated September 4, 1990, pp. 11-13.25
- [26] Rollo, pp. 11-18.
- [27] Rollo, pp. 201-303.
- [28] Rollo, pp. 93-173.
- [29] Rollo, pp. 383-496.
- [30] Rollo, pp. 512-548.
- [31] People vs. Fabro, G.R. No. 95089, August 11, 1997, p. 14; People vs. Santos, 283 SCRA 443, 454 (1997).
- [32] People vs. Pascual, 80 SCRA 1, 16 (1977); People vs. Santos, 283 SCRA 443, 454 (1997).
- [33] Exhibit “A”.
- [34] Exhibit “B”.
- [35] Exhibit “C”.
- [36] People vs. Santos, 283 SCRA 443, 455 (1997).
- [37] People vs. Ramos, 122 SCRA 312, 322 (1983).
- [38] People vs. Nicandro, G.R. No. 59378, February 11, 1986; People vs. Duhan, et al., G.R. No. 65189, May 28, 1986.

[39] 144 SCRA 517, 530-31 (1986).

- [40] TSN, dated September 4, 1990, p. 11.
- [41] Exhibit "A-1".
- [42] TSN, dated June 4, 1990, pp. 5-7.
- [43] TSN, dated September 4, 1990, pp. 11-12.
- [44] TSN, dated August 29, 1990, pp. 27 and 29.
- [45] TSN, dated August 29, 1990, p. 27.
- [46] TSN, dated September 3, 1990, p. 16.
- [47] TSN, dated August 29, 1990, pp. 32-33.
- [48] *People vs. Pia*, 145 SCRA 581, 586 (1986) citing *People vs. Villanueva*, 128 SCRA 488 (1984); *People vs. Urgel*, 134 SCRA 483 (1985); and *People vs. Toledo*, 140 SCRA 259 (1985).
- [49] TSN, dated September 3, 1990, p. 11.
- [50] *People vs. Suarez*, 267 SCRA 119, 136 (1997).
- [51] *People vs. de Vera, et al.*, G.R. No. 128966, August 18, 1999.
- [52] *People vs. Alvarez*, 201 SCRA 364, 376 (1991).
- [53] *People vs. Villanueva*, 266 SCRA 356, 362 (1997).
- [54] Exhibit "B".
- [55] Exhibit "C".
- [56] Exhibit "A".
- [57] *People vs. Suarez*, 267 SCRA 119, 136 (1997) citing *people vs. Parojinog*, 203 SCRA 673 (1991).
- [58] *People vs. Suarez*, 267 SCRA 119, 137 (1997).
- [59] *People vs. Layuso*, 175 SCRA 47, 52-53 (1989).
- [60] *People vs. Alvarez*, 201 SCRA 364, 375-376 (1991).
- [61] *People vs. Domingo*, 165 SCRA 620, 625 (1988).
- [62] *People vs. Padua*, 215 SCRA 266, 275-276 (1992); *People vs. Herbias*, 265 SCRA 571, 577 (1996); *People vs. Timon*, 281 SCRA 577, 592 (1997).
- [63] *People vs. Acosta*, 187 SCRA 39 (1990); *People vs. Pampaluna*, 96 SCRA 787, 810 (1980); *People vs. Baquiran*, 20 SCRA 451; *People vs. Peruelo*, 105 SCRA 226, 236-37 (1981); *People vs. Domingo*, 165 SCRA 620, 624 (1988).
- [64] *People vs. Damiar*, 127 SCRA 499, 507 (1984).
- [65] *People vs. Baccay*, 284 SCRA 296, 304 (1998).

[66] 53 SCRA 246, 254 (1973).

[67] People vs. de Vera, et al., G.R. No. 128966, August 18, 1999.

[68] Dans, Jr. vs. People, 285 SCRA 504, 533 (1998).

[69] People vs. Alcantara, 254 SCRA 384, 394 (1996).

[70] Exhibit “A”.

[71] People vs. de Vera, et al., G.R. No. 128966, August 18, 1999.

[72] People vs. Elijorde, et al., G.R. No. 126531, April 21, 1999.

[73] Supra, at p. 30.

[74] People vs. Elijorde, 306 SCRA 188, 198 (1999).

[75] Exhibit “P-1”.

[76] TSN, dated May 9, 1990, pp. 7 and 10.

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