

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ANTHONY KIDAGAN Y PAQUITO, AND ROBERTO TULDIKAN, ACCUSED.
ANTHONY KIDAGAN Y PAQUITO, ACCUSED-APPELLANT.**

G.R. Nos. 88753-54. August 20, 1990

Ponente: PARAS, J.

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PARAS, J.:

In an information dated November 3, 1983 filed with the Regional Trial Court of Bontoc, Mountain Province, Branch 35; docketed as Criminal Case No. 536, Anthony Kidagan y Paquito alias "Agnawa" was charged with the crime of Rape with Homicide defined and penalized under Art. 335 of the Revised Penal Code, and committed as follows:

"That at nighttime on or before December 4, 1982, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and armed with a bolo, did then and there willfully, unlawfully and feloniously attack, assault and have carnal knowledge of one Paula Sagamla, by means of force, violence and intimidation with the use of his said bolo, and immediately after having sexual intercourse with the victim, the said accused, with treachery and with the evident purpose of silencing the victim and concealing the crime, did then and there willfully, unlawfully and feloniously strike and hack said Paula Sagamla with his bolo inflicting upon her, mortal wound at the left neck and infra-aural area, which injury and other injuries inflicted by the accused upon said victim on other parts of her body while raping her, were the direct and proximate cause of her death.

"CONTRARY TO LAW."1

Upon arraignment, accused pleaded not guilty to the charge. After trial on March 28, 1989, the lower court rendered a judgment of conviction in this wise:

"IN THE LIGHT OF ALL THE FOREGOING, accused Anthony Kidagan alias 'Agnawa' is hereby found guilty beyond reasonable doubt of the complex crime of Rape with Homicide and considering the presence of two aggravating circumstances and the indeterminate sentence law not applicable in this case, accused is hereby sentenced to suffer the penalty of Reclusion Perpetua.

"Accused is also ordered to indemnify the heirs of the victim in the sum of P30,000.00, Philippine Currency.

"Accused is further ordered to pay the heirs of the victim Paula Sagamla the sum of P7,987.50 representing burial expenses, and the sum of P20,000.00 as moral damages."2

Thus, the instant appeal.

The facts of the case, as found by the trial court, are undisputed.

In the afternoon of December 4, 1982, Victor Gabaen and his girlfriend Paula Sagamla (victim), both 18 years old, left the sitio of Cagubatan together for sitio Tue to inform Gabaen's parents of their intention to get married as Paula was already two (2) months pregnant. On the way, however, Paula became reluctant and ashamed to meet

the parents of Gabaen so they decided to return to Cagubatan without reaching their destination.¹

On their way back, at around 6:00 o'clock in the afternoon, they stopped at Tompacan and sat down under a santol tree. At this juncture, a man armed with a bolo, surreptitiously and without any warning approached Gabaen and Sagamla from behind and shouted "whoa!" As Gabaen looked behind to see the person the latter hammered his head with the handle of his bolo causing Gabaen to fall to the ground unconscious. While lying on his stomach, Gabaen was able to regain consciousness and as he looked around, he saw the man having sexual intercourse with his girlfriend Paula Sagamla. He could not do anything for he felt weak. After having sexual intercourse with Paula, the man approached Victor Gabaen and struck the latter with his bolo hitting Gabaen's nape. After hitting Gabaen, the man left. Gabaen managed to stand up and found Paula lying on her back with a hack wound on her neck and with her skirt lifted up to her waist and her blouse raised up to her neck exposing her breast and her genital organ. Paula was dead. Her panty was found approximately one-and-a-half meters from where she lay.² Victor Gabaen managed to reach Cagubatan and was brought by his uncles to the hospital.

At about midnight of the same day, December 4, 1982, Paula's father, Lauriano Sagamla, received a report that his daughter was missing and that her companion came home wounded. Upon hearing the report, Lauriano Sagamla went with some companions to the Mankayan Police Station and reported the matter. Thereafter, together with his wife and barrio mates, Lauriano Sagamla proceeded to Cagubatan and reached the place in the early morning. A number of people and Tadian policemen were already there. Lauriano Sagamla found his dead daughter lying on her back with a hack wound on her neck and traces of fingernail scratches on her body. (TSN July 16, 1984, pp. 46-49). After the police officers have seen and taken pictures of the body of the victim and inspected the scene of the crime, Paula's body was carried and brought home to Bedbed, Mankayan, Benguet.

A post-mortem examination conducted on December 6, 1982 by Dr. Mario K. Abuan showed the following:

"EXTERNAL PHYSICAL FINDINGS:

x x x

Deep gaping wound at the left neck and infra-aural area with blood clotted stains around the said wound, generdized contusion with hematomas and pinch marks of the faceleft cheek.

x x x

"HEAD AND NECK:

The forehead and (R) cheek were characterized with plenty of hematomas. There were five (5) pinch marks each corresponding to a finger with contusion/hematomas on the (L) cheek. Mouth was slightly opened with the teeth visible, eyes were closed. On the posterior of the neck starting from the cervical region is a deep hacking wound about 6 inches long in its entire length extending about 4 cm right beyond the cervical vertebral column up to the infra-aural area (L) side. The wound was about 7 cm in its depth completely bisecting the, involved vertebral column with portions of the spinal gray matter and brain tissues clearly visible, the stenoclidomastoid, portions of the trapezius muscles exposing the carotid, subclavian arteris, the parotid glands and some nerves. Hacked portions were greenish in color exceeding odorous smell. There were no other similar wounds on other parts of the neck. On the posterior portion, (L) side, infra-occipital was depression/hematoma about 5 x 8 cm. in its greatest dimensions.

"THORAX AND ABDOMEN:

There were occasional contusions/hemato-mas and bite marks at the breast area and scratch marks at the epigastric area.

"EXTREMITIES:

UPPER EXTREMITIES: There were minor cuts about 2 cm. at the base of the thumb and second finger (L) hand. There were multiple contusions/hematomas at the arm and forearm region, anterior part."1

On July 24, 1983, a certain Roberto Tuldikan was investigated at the Tadian (Mt. Province) Police station in connection with the killing of a certain Fernando Pitlongay. Tuldikan gave an extrajudicial confession wherein he claimed that herein accused Anthony Kidagan told him that he (Anthony Kidagan) killed a girl in Cagubatan and wounded said girl's companion.

On the basis of this revelation, Anthony Kidagan was summoned and investigated on July 25, 1983, wherein he allegedly gave an extrajudicial confession admitting the raping and killing of Paula Sagamla and the wounding of her boyfriend. Based on this alleged extrajudicial confession, Anthony Kidagan was charged with and eventually convicted of the crime of Rape with Homicide.

The accused alleges that he does not know anything about the raping and killing of Paula Sagamla and that he was forced to sign his alleged extrajudicial confession. While admitting having signed the waiver in his extrajudicial confession, the accused claims that his constitutional rights and the waiver he signed were not explained to him. He further contends that even when he was brought before the mayor for the subscription of his alleged confession, the mayor did not explain to him the contents of said confession. The accused also admitted that he never informed the mayor of his maltreatment by the policemen because of his fear that he would receive more maltreatment from the hands of the police officers.

Evidence for the defense also shows that when the lone eyewitness of the prosecution (Victor Gabaen) was asked to identify the accused Anthony Kidagan, Gabaen failed to point to the accused as the person who raped and killed his girlfriend Paula. In the affidavit executed by Gabaen, he pointed to a certain Sario Ladangan as the culprit in the instant case. A criminal complaint was allegedly filed charging said Sario Ladangan with Murder with Frustrated Murder. Furthermore, a certain police officer Melencio Bulaga stated in his affidavit that when he investigated Gabaen at the hospital, the latter pointed to Sario Ladangan, his alleged love rival for the hand of Paula Sagamla, as the perpetrator of the crime at bar.¹

The sole issue in the instant case is whether or not the guilt of accused-appellant Anthony Kidagan has been proven beyond reasonable doubt. Crucial to the resolution of this issue is the determination of the validity of the extrajudicial confession upon which the trial court based its judgment of conviction.

The pertinent provisions of law are found in the Bill of Rights of the 1973 Constitution, which are as follows:

"Section 17. No person shall be held to answer for a criminal offense without due process of law.

xxx xxx xxx

"Section 19. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.

"Section 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel and to be informed of such right. No force violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."
(Emphasis supplied)¹

The extrajudicial confession of accused Anthony Kidagan having been made on July 25, 1983, it must therefore be considered in the light of the aforequoted law.

Patrolman Dionisio Dennen who took the statements of the accused, testified on cross-examination:

Q. My question is, did you personally explain to him in detail the meaning of the constitutional right to remain silent and to counsel?

A. No sir but it was explained by Mr. Depayso, Joaquin.

Q. But Mr. Depayso was not an investigating officer is that correct?

A. Yes sir.

Q. Now, when this Roberto Tuldikan was being investigated, was there any counsel present at the time of his investigation?

A. None sir.

Q. Now, marked as Exhibit "G-5" of the prosecution is the supposed waiver of the accused Roberto Tuldikan; was there a counsel present when the accused was supposed to have waived his right to remain silent and to counsel was there at counsel present?

A. None, sir, but there were two witnesses whom I invited to the police station in the persons of Joaquin Depayso and Ponciano Ma-ing assist in the course of the investigation.

Q. But these two persons Depayso and Maing are not lawyers, is that correct?

A. What I know is Mr. Depayso is a law graduate and Mr. Ma-ing is not a lawyer.

Q. And this Depayso never passed the bar, is that correct?

A. As far as I know he did not pass the bar sir.

Q. Now, it would seem from the sworn statement that Mr. Roberto Tuldikan was being investigated for a crime of murder with robbery at Ipos Dalit, Tadian, Mountain Province, did you inform the accused Roberto Tuldikan that he was being charged of murder with robbery which is punishable with reclusion perpetua to death?

A. No sir.

Q. Now, it appears that there is only a thumbmark of, above the typewritten name of Roberto Tuldikan in Exhibit "G" for the prosecution which is supposed to be the sworn statement of this Roberto Tuldikan, is this Roberto Tuldikan illiterate?

A. What I know sir is that he does not know how to write sir.

Q. He does not also know how to read?

A. Yes sir.

Q. Now, let us go to the other accused, Anthony Kidagan, when was he apprehended?

A. I do not know sir.

Q. But it was you who investigated Anthony Kidagan?

A. Yes sir.

Q. And you are supposed to know the date when he was apprehended?

A. I was only called to the police station to investigate him sir.

Q. Now, where was he investigated, this Anthony Kidagan?

A. Anthony Kidagan was investigated inside the office of the Station Commander.

Q. Were you alone when you investigated him?

A. No sir.

Q. Who were present?

A. Present during the investigation were Police Captain Rafael Delson, Mr. Depayso and Mr. Ma-ing, Ponciano.

Q. When was Anthony Kidagan investigated?

A. I investigated Anthony Kidagan in the afternoon of July 25, 1983 sir.

Q. What time in the afternoon did you investigate Anthony Kidagan?

A. I can recall sir that from 1:00 o'clock to 3:00 o'clock p.m. sir.

Q. Now, you mentioned to this court that among the people present during the investigation was the chief of the INP in Tadian Rafael Delson, did he also investigate the accused when you were investigating, did he also investigate the accused?

A. No sir.

Q. Of course this investigation of Anthony Kidagan was written down also, is that correct?

A. It was written sir.

Q. Who typewrote the statement of Anthony Kidagan?

A. I was the one sir.

Q. He signed his sworn statement, is that correct?

A. Yes, sir,

Q. When did Kidagan sign his sworn statement?

A. On July 25, 1983 in the afternoon.

Q. Immediately after it was taken out from the typewriter is that correct?

A. Just after it was explained sir.

Q. Was there any counsel present when Mr. Kidagan was being investigated by your office, by you personally before the office?

A. None sir, but there were two witnesses during the investigation in the persons of Joaquin Depayso and Ponciano Ma-ing who assisted him in the course of the investigation.

x x x

Q. Now, you will agree with me that there is nothing in this alleged confession of his that he was even informed of the effects of his sworn statement?

A. None sir.

Q. Did you inform him that robbery with murder is punishable with life imprisonment?

A. No, sir.

x x x

COURT

Now, you said that they signed their sworn statements, before whom did they sign?

A. They signed their statements before us with the witnesses.

COURT

Why? Did you have the authority to let affiant sign before you?

A. None your honor.¹

In the same extrajudicial confession, it is clearly stated that the examination was in connection with the murder of a certain Fernando Pitlongay (and not with the rape with murder of Paula Sagamla):

"APPRAISAL:

Mr. Kidagan, you are hereby informed that you are under investigation in connection with the murder of Fernando Pitlongay at sitio Inuman, Kayan, Tadian, Mountain Province in the afternoon of July 19, 1983. You are also informed that under our constitution you have the right to remain silent and to be assisted by a lawyer of your own choice. x x x

Q. Are you therefore so willing to speak or talk about the circumstances surrounding the killing of Fernando Pitlongay along the National Road at sitio Inuman, Kayam, Tadian near Aluling, Cervantes, Ilocos Sur last July 19, 1983 even without the assistance of a lawyer?

A. Yes sir."¹

Patrolman Dennen testified on direct examination:

"Q. Will you tell also your procedure in taking down the written investigation of Anthony Kidagan?

A. I informed him that this is an investigation in connection with killing the Fernando Pitlongay of sitio Inuman, Kayam, Tadian, Mountain Province, x x x "²

In the course of the investigation, however, the investigator suddenly shifted to the subject matter of the instant case. Thus:

"Q. But you knew before hand that it was Miguel Ya-aw who escorted Fernando together with his carabao to Tue, Tadian?

A. Yes, because Bulay-og told me sir.

Q. Let us divert our topic to the Cagubatan murder case wherein Paula Sagamla was killed and that her boyfriend Victor Gabaen was wounded. Are you aware of this incident?

A. Yes sir."¹

It is obvious from the foregoing testimonies that accused Anthony Kidagan was not assisted by counsel before and during the investigation. Neither was his waiver of his right to counsel made with the assistance of counsel. Of equal importance is the fact that the investigation was for the murder of a certain Fernando Pitlongay, and not on the rape and murder of Paula Sagamla. It is evident that the accused was manipulated into giving his extrajudicial statements on the case at bar. The accused was definitely not apprised of his constitutional rights as

the previous appraisal was in connection with the murder of Fernando Pitlongay and not with the subject matter of the present case. Thus, he was not sufficiently informed of his rights during custodial investigation. It is Our considered view, therefore, that the accused's extrajudicial confession should not have been admitted for having been obtained in clear violation of the constitution.

The Court has enunciated in a number of decisions that:

"No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the Court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory in whole or in part, shall be inadmissible in evidence."¹

That principle is now enshrined in the 1987 Constitution, which explicitly mandates that the waiver of the right to counsel must be in writing and made in the presence of counsel, otherwise the extrajudicial confession is inadmissible.²

It is manifest that the trial court's judgment of conviction is based solely on such extrajudicial confession which We find to be inadmissible. It is basically on this ground that the Solicitor General has recommended to Us the acquittal of the accused-appellant. We find no plausible reason to deny the said recommendation as the guilt of the accused has not been proven beyond reasonable doubt.

It may be disputed that apart from the extrajudicial confession of the accused, there is also the testimony of Victor Gabaen who allegedly witnessed the rape and killing of Paula Sagamla.

We likewise find this testimony of no value at all. First, it is clear that the trial court's judgment was not based on said testimony but solely on the accused's alleged extrajudicial confession. Second, it is clear from the records that before the extrajudicial confession was taken and before the instant case was filed, Victor Gabaen made a sworn statement positively identifying a certain Sario Ladangan as the culprit (Exhibit "1--B"). A criminal complaint was in fact filed against said Sario Ladangan docketed as Criminal Case No. 608. Pertinent portions of Victor Gabaen's sworn statement are quoted hereunder:

"Q. What prompted you to this office this day?

A. I came to file complaint sir.

Q. Against whom are you filing your complaint?

A. I am filing my complaint against Sario Ladangan of Cagubatan, Tadian, Mt. Province.

Q. Why are you filing complaint against Sario Ladangan?

A. I am filing my complaint against him because he hacked me and killed my girlfriend Paula Sagamla.

Q. When and where did that incident happen?

A. At about 6:00 o'clock on the evening of December 4, 1982 at Cagubatan, Tadian, Mt, Province." ¹

The above-quoted sworn statement is corroborated by an affidavit executed by a certain Patrolman Melecio Bulaga attesting to the fact that as early as December 5, 1983 (one day after the incident) Victor Gabaen already pointed to Sario Ladangan as the perpetrator of the crime at bar.

As aptly pointed out by the Solicitor General, it was only after the extrajudicial confession of the accused that the earlier criminal complaint (Criminal Case No. 608) was withdrawn, and Victor Gabaen started pointing a finger at

accused Anthony Kidagan. Gabaen was never able to explain his earlier statement that Sario Ladangan was the culprit and his (Gabaen's) sudden change of mind, this time pointing to Anthony Kidagan as the one who hacked him and killed his girlfriend Paula. This issue was raised by the accused-appellant but the trial court did not even bother to pass upon said issue.

Evidently, Victor Gabaen failed to identify beyond doubt the perpetrator of the crime. The prosecution has failed to show that accused-appellant Anthony Kidagan is guilty beyond reasonable doubt of the crime with which he was charged and convicted of. Consequently, the principle that the accused shall be presumed innocent until the contrary is proved must prevail.

ACCORDINGLY, the judgment convicting Anthony Kidagan is hereby REVERSED and he is ACQUITTED of the crime charged, with costs de officio.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

1 p. 237, Rollo

2 ibid.

1 tsn, April 2, 1986, pp. 65-66

2 ibid., pp. 66-70

1 Exhibit A, Post-Mortem Examination Report, pp. 240-241, Rollo

1 Decision, p. 4; Rollo, p. 158

1 Rollo, p. 244

1 tsn, July 23, 1986, pp. 78-90

1 Exhibit H, underscoring supplied

2 tsn, March 19, 1985, p. 39, underscoring supplied

1 Exhibit H-2, underscoring supplied

1 Morales vs. Enrile, 121 SCRA 538; People vs. Galit, 135 SCRA 465; People vs. Burgos, 144 SCRA 1; People vs. Albofera, 152 SCRA 128

2 Section 12 (1), Article III, 1987 Constitution

1 Exhibit 1-B, underscoring supplied

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