

SECOND DIVISION

[G.R. Nos. 118168-70, September 11, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO PAULE Y DONATO, ACCUSED-APPELLANT.**

D E C I S I O N

PUNO, J.:

Appellant REYNALDO PAULE y DONATO was convicted of the crime of MURDER^[1] by the Regional Trial Court of Olongapo City (Branch 74), for the death of one Carlos Tubongbanua.^[2]

The Information^[3] against appellant, a certain alias "Glenn", and Conrado Matawaran, Jr., alias "Jun Matawaran", reads:

"That on or about the eighteenth (18th) day of October, 1990, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with a gun, with intent to kill and with the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation and that the crime was committed in consideration of a price, reward, or promise, did then and there, wilfully, unlawfully, and feloniously assault, attack and shot therewith one Carlos Tubongbanua, and as a result thereof, said Carlos Tubongbanua suffered Cardio Respiratory Arrest, Cerebral Concussion and Hemorrhage due to Multiple Gunshot Wounds which caused the death of said Carlos Tubongbanua, shortly thereafter, to the damage and prejudice of the heirs of the latter.

"CONTRARY TO LAW."

Upon his arraignment on May 14, 1990, appellant pleaded 'not guilty'^[4] and underwent trial. His co-accused have remained at large.

The prosecution evidence reveals that at about 10 a.m. of October 18, 1990, Amos Manalo was with a lady friend in the vicinity of the public market along Brill Street, Bajac-Bajac, Olongapo City. Carlos Tubongbanua passed by and Manalo made a sales pitch to him saying: "Mamimili ka na naman." Tubongbanua did not respond and walked by. Manalo noticed three (3) men following Tubongbanua, one of whom was accused Reynaldo Paule. The three (3) men exchanged signals with each other. They separately positioned themselves a few meters away from Tubongbanua after the latter stopped in front of a store. One of them nodded at Paule who was about three (3) or four (4) meters behind Tubongbanua. Paule then drew a .38 caliber revolver and fired at Tubongbanua. The bullet hit the back of Tubongbanua's head. As Tubongbanua turned holding his nape, Paule shot him a second time near the

right temple of his head. Tubongbanua slumped on the ground. Paule approached him, held his wrist and took his gold necklace. The dastardly deed done, Paule ran towards the nearby tricycle parking lot while his companions fled towards the 23rd Street.^[5]

The Olongapo City police, led by Lieutenant Leonardo Esteban, repaired to the *locus criminis* a few minutes after the shooting. They found the victim sprawled on the ground, blood oozing from his left eye.^[6] They gathered that the assailant wore a black gray checkered polo shirt and headed towards the station of buses bound for Bataan. The group of Lt. Miguel Corpuz immediately established a check point at the Los Viajeros Canteen, located along the national highway, to watch vehicles leaving the Olongapo city proper. Another team of policemen checked on the Bataan-bound buses at the Victory Liner and Saulog Transit terminals in Olongapo.

Between 11:00 a.m. and 11:30 a.m., of the same day, the police spotted a passenger jeepney at the check point near the Los Viajeros Canteen. Among the three (3) male passengers in the jeepney was Paule who was wearing a light cream yellow T-shirt. A witness^[7] identified Paule as the assailant of Tubongbanua.^[8] Lt. Corpuz frisked Paule and found a fragmentation hand grenade in his possession. Paule was arrested and brought to Olongapo City Police Station A for investigation.

Paule was again bodily searched at the police station. The police recovered a gold necklace with rectangular pendant hidden in the folded lower portion of Paule's maong pants.^[9] Paule broke down and admitted his complicity in the crime. He disclosed that he hid his black gray checkered polo shirt and the murder weapon in a house rented by his uncle at No. 63-A Elicano Street, East Bajac-Bajac. The police fetched Paule's uncle from the market and they proceeded to his residence. They found there a .38 caliber revolver, with serial number 1096046, two (2) empty shells of the .38 caliber revolver, nine (9) live ammunitions, and Paule's black gray checkered polo shirt.^[10] The items were hidden between the beddings and the mat of a wooden bed ("papag").

Paule was brought back to Police Station A. He was informed of his constitutional rights to remain silent and to be assisted by counsel. When he said he could not afford a lawyer, the investigator, Pfc. Leo Batinga, fetched Atty. Norberto Dela Cruz. Paule was assisted by Atty. Dela Cruz, when he executed an extrajudicial confession,^[11] dated October 18, 1990, admitting that he and a certain "Glenn" were hired by Conrado Matawaran, Jr. to kill Tubongbanua for a fee of P5,000.00 each. He pointed to "Glenn" as the triggerman. The confession was taken and signed in the presence of Lieutenant Leonardo Esteban, Chief of the Investigation Division of Olongapo City Police Station A and Atty. Norberto Dela Cruz.^[12] It was duly acknowledged by Assistant City Prosecutor Carmelita Gutierrez Fruelda.

Dr. Richard Patilano, Medico-Legal Officer of Olongapo City, conducted the postmortem examination of Tubongbanua. The result showed that the victim died due to "Cerebral Concussion and Hemorrhage due to multiple gunshot wounds."^[13] The point of entry of gunshot wound no. 1 was on the "right parietal area of the head." The point of entry of gunshot wound no. 2 was along the "right ear canal," and its point of exit was on the left eye.^[14] Dr. Patilano opined that the victim was shot at close range due to the presence of smudge around the points of entry of the

gunshot wounds. Based on the locations of the gunshot wounds, he added that the assailant (assuming he is right handed) was standing behind or at the right side of the victim during the shooting incident.^[15]

Paule denied the charge. He revealed that he was a former commander of the New People's Army in Pampanga who quit in 1989 to start a new life.

He alleged that he visited his uncle, Marcos Paule, in Bajac-Bajac, Olongapo City, a week before the incident. His uncle sells cooked food at the public market in Bajac-Bajac. He stayed in his uncle's rented house along Elicano Street.

On October 18, 1990, at about 11:00 a.m., he was in a minibus on his way to his hometown in Dinalupihan, Bataan. Their vehicle was stopped and someone pointed to him. The police then arrested him and took him to the city hall where he was mauled. They asked for his residence in Olongapo and he led them to his uncle's house in Elicano Street. They ransacked the place but did not find anything. He was brought back to the police station.^[16]

Paule disowned his written extrajudicial confession. He averred that it was obtained under duress and without the assistance of counsel. He denied ownership of the polo shirt, the .38 caliber gun and the hand grenade. He also submitted the paraffin test result showing that his left and right hands were negative for nitrates.^[17]

Yolanda Ocampo, a sidewalk vendor in Bajac-Bajac public market, testified in favor of Paule. She declared that shortly after the incident, the authorities arrived at the scene of the crime and took the personal belongings of Tubongbanua, including the latter's gold necklace.

The trial court found Paule guilty beyond reasonable doubt of murder and sentenced him to suffer the penalty of reclusion perpetua and to pay the legal heirs of Carlos Tubongbanua the amount of P50,000.00 as indemnity for his death, twenty thousand pesos (P20,000.00) for moral damages, plus the costs of suit.^[18]

Hence, the appeal.

Appellant contends that the trial court erred: (1) in admitting his extrajudicial confession which was taken without the assistance of counsel; (2) in giving credence to the testimony of eyewitness Amos Manalo; (3) in not considering the result of the paraffin test in his favor; and (4) in not taking into consideration the weakness of the prosecution evidence in view of the non-presentation of the alleged witness (Susi) who assisted the policemen in arresting him.

We affirm the judgment of conviction.

Section 12 (1), Article III of the Constitution provides:

"Any person under investigation for the commission of an offense shall have the right to be informed of his rights 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 purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting confession by coercion.^[19] Any form of coercion, whether physical, mental or emotional, in extracting confession, stamps the confession with the taint of inadmissibility.^[20] We have stressed that in giving a person under custodial investigation the right to counsel, the Constitution did not mean **any kind** of counsel but **effective and vigilant counsel**.^[21] In the case of **People vs. Bacamante**,^[22] we elucidated:

"The term 'effective and vigilant counsel' necessarily and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent."

In this case, we have no doubt that Atty. Dela Cruz was called to assist the appellant during his custodial investigation. Lieutenant Leonardo Esteban, Chief of the Investigation Division of Olongapo City Police Station, testified that appellant was assisted by Atty. Dela Cruz. He identified the signature on the left bottom portion of appellant's extrajudicial confession as that of Atty. Dela Cruz.

The **more important question**, however, is whether Atty. Dela Cruz extended **effective and vigilant counsel** to the appellant before the latter signed his extrajudicial confession. On this factual issue, the only evidence given by the prosecutor is the testimony of Lt. Esteban who declared under cross-examination:
^[23]

"(ATTY. MENDOZA):

"Q: I would show you Exhibits "G" to "G-6", is this the written admission of Paule having committed the charge of murder x x x?

"A: Yes, sir.

"Q: Were you present when this alleged admission was taken by a certain Pfc. Leo Batinga?

"A: I was there, sir.

"x x x x x x x x

"Q: And in all the investigation conducted resulting to the execution of this document Exhibit G, you were present?

"A: Sometimes I am going out of my office for personal necessity.

"x x x x x x x x

"(COURT):

