



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 239480
Plaintiff-Appellee,

Present:

- versus -

GESMUNDO, C.J., Chairperson,
 HERNANDO,
 ZALAMEDA,
 ROSARIO, and
 MARQUEZ, JJ.

MARIO ESPERIDION,
ALBECIO NADURA, JR.,
GIDEON SEÑAROSA, ET AL.
Accused,

Promulgated:

GIDEON SEÑAROSA,
Accused-appellant.

SEP 28 2022

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DECISION

ZALAMEDA, J.:

Under final review is the Decision¹ dated 09 November 2017 of the Court of Appeals (CA) in CA G.R. CEB-CR-HC No. 01271. The CA affirmed, with modifications, the Judgment² dated 26 April 2004 rendered by Branch 9, Regional Trial Court (RTC) of Kalibo, Aklan, in Criminal Case Nos. 4496 and 4497 finding Mario Esperidion (Esperidion), accused-appellant Gideon Señarosa (Señarosa), and their co-accused Albecio Nadura, Jr. (Nadura) and Percival Relimbo (Relimbo) guilty beyond reasonable doubt of Murder for the death of Phil Feliciano (Phil), and Frustrated Murder for the injuries suffered by Gualberto Codesta (Codesta). The CA upheld the conviction for Murder of the remaining accused, Señarosa and Esperidion, but downgraded their conviction for Frustrated Murder to Attempted Murder.

¹ *Rollo*, pp. 5-35; penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Edward B. Contreras and Edgardo L. Delos Santos (now a retired Member of this Court).

² *CA rollo*, pp. 66-75; penned by Presiding Judge Dean R. Telan.

Antecedents

In two separate Amended Informations, Señarosa and his co-accused were charged with Murder and Frustrated Murder.³ The accusations read:

*Criminal Case No. 4496
(Murder)*

“That on or about the 3rd day of May, 1995, in the evening in Barangay Fulgencio, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery, evident premeditation and abuse of superior strength, without just motive, while armed with deadly weapons, consisting of M16 rifle and other unidentified firearms, did then and there willfully, unlawfully and feloniously attack, assault, shoot and wound one PHIL FELICIANO, thereby inflicting upon the latter mortal wounds, to wit:

EXTERNAL FINDINGS:

The cadaver is in state of rigor mortis, measuring 182 cm.

HEAD - Traumatic wound fronto-parietal area, left, avulsed scalp and brain with several pieces of fractured skull 11 cm-diameter width 6 cm. Hairs on the anterior portion of the area is burned.

SHOULDER - Superficial, lineal abrasion, 1 cm above the right clavicle along anterior axillary line.

INTERNAL FINDINGS:

HEAD - There is an open skull fracture, contaminated, with missing fragment, of bones, skin of the (L) fronto-temporal area. On opening of the scalp from the forehead to the occiput, fracture lines involving the frontal and temporal bones with missing fragments. The frontal and temporal lobes of the brain was avulsed with some brain tissues missing, clotted and unclotted blood amounting to 10-15 cc at the left side of the cranial cavity.

as per Autopsy Report on the Cadaver of PHIL FELICIANO, DOA, 5/03/95 of Edmundo Y. Reloj. M.D., M.A.A., Provincial Health Officer II, Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and forming an integral part hereof.

³ Rollo, p. 6.

That as a result of the criminal acts of the accused, the heirs of the victim suffered actual and compensatory damages in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00).

CONTRARY TO LAW.”

*Criminal Case No. 4497
(Frustrated Murder)*

“That on or about the 3rd of May, 1995, in the evening, in Barangay Fulgencio, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery, evident premeditation and abuse of superior strength, without just motive, while armed with deadly weapons, consisting of M16 rifle and other unidentified firearms, did then and there willfully, unlawfully and feloniously attack, assault, shoot and wound one GUALBERTO CODESTA, thereby inflicting upon the latter physical injuries, to wit:

- (1) GSW Leg right Sutured with drain
POE – Anterior distal third
POX – Posterior distal third
- (2) Sutured wound ring finger left and hand dorsal area.

as per Certification of Landelino B. Meñez, M.D. of Saint Jude’s Hospital, Inc., Kalibo, Aklan, hereto attached and forming an integral part hereof, which wounds would have ordinarily caused the death of said GUALBERTO CODESTA, the accused having thus performed all the acts of execution which should have produced the crime of Murder, as a consequence, but which nevertheless, did not produce it by reason of causes independent of their will, that is, the timely and able medical attendance rendered to said GUALBERTO CODESTA, which prevented his death.

That as a result of the criminal acts of the accused, the heirs of the victim GUALBERTO CODESTA suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.”⁴

When arraigned, all the accused pleaded “not guilty.”⁵ Thus, joint trial on the merits followed. The prosecution presented the following witnesses: Senior Police Officer (SPO) 1 Jerry Custodio (SPO1 Custodio), Dr. Landelino Meñez (Dr. Meñez), Dr. Edmundo Y. Reloj (Dr. Reloj), Codesta, Ex Feliciano (Ex), Melbeth Feliciano (Melbeth), SPO3 Antonio Subong (SPO3 Subong), and Chief Inspector Angela Baldevieso (C/Insp. Baldevieso).

⁴ Id. at 6-9.

⁵ Id. at 9.

Version of the Prosecution

Codesta testified that on 03 May 1995, he went to the fishpond of Bernardo Rodriguez, Jr. in *Barangay* Calizo, Balete, Aklan with Phil, Melbeth, and Ex. They left the fishpond at around 9:20 p.m. on board Rodriguez's pick-up truck to deliver prawns to Kalibo, Aklan. While traversing an uphill road in *Barangay* Fulgencio, Phil suddenly stopped the vehicle. Suddenly, gunshots rang out and Codesta saw that it had fatally hit Phil. He moved to the driver's seat, pushed Phil aside, and attempted to restart the vehicle's engine. As he was doing so, a bullet hit his right leg and left hand. Injured, Codesta hid under the vehicle's steering wheel.⁶

Next, Ex recounted that when the series of gunfire stopped, he jumped outside the vehicle and found himself hiding in a ravine. Since the headlights were still on, he was able to see two individuals approach the vehicle. He identified these persons to be Esperidion and Nadura.⁷

Finally, Melbeth, wife of Phil, testified that before reaching the place where they were ambushed, they passed by two men standing near a parked motorcycle, one of whom was talking through a handset. After the volley of gunshots, two men wearing camouflage uniform approached their vehicle and told her to alight. One of the men asked her where her companions were, and she answered that they are all dead. Afterwards, the man shot the headlights and the rear tire of the truck, and then left with his companion. Moments later, the two men she had seen by the roadside, whom she later identified as Nadura and Relimbo, passed by on board a motorcycle. Melbeth sought their help, but they ignored her.⁸

SPO1 Custodio testified that he was part of the team that responded to the crime scene. He narrated that to intercept potential suspects to the shooting incident, he and other police officers set up a checkpoint at the junction of the national highway and the road leading to *Barangay* Fulgencio and *Barangay* Camaligan. While manning the checkpoint, they stopped a jeep coming from the direction of *Barangay* Camaligan. They ordered the male passengers to alight. SPO1 Custodio noticed a familiar face among them. The man, who turned out to be Señarosa, was pale and was wearing wet pants. When SPO1 Custodio asked Señarosa to open his bags, he found a wet military uniform, fatigue and camouflage attires, and one rifle grenade. Señarosa was then invited to the police station where the contents of his other bags were examined, photographed, and turned over to the Criminal

⁶ Id. at 9.

⁷ Id. at 10.

⁸ Id. at 9-10.



Investigation Command (CIC) in Iloilo. Some of items recovered from Señarosa's bags were a brown wallet containing Mission Order No. R1129Z, a black wallet with official statement of earnings, and personal papers and receipts, all in the name of accused Esperidion, and over-all fatigue and camouflage uniforms bearing the name "Sgt. Flores Relimbo."⁹

SPO3 Subong, meanwhile, narrated that he took the extrajudicial confession of Señarosa, detailing the latter's participation in the crime and other details relating to the ambush. He testified that Señarosa's *Sworn Statement* was taken in the presence of his counsel, Atty. Federico Llasus (Atty. Llasus).¹⁰

The prosecution also presented the following witnesses: (1) C/Insp. Baldevieso of the PNP Crime Laboratory, who testified that she conducted a paraffin test on Señarosa's hands which proved them positive for gunpowder nitrates; (2) Dr. Meñez, who described the wounds sustained by Codesta and the severity thereof; and (3) Dr. Reloj, who explained the results of the autopsy he conducted on Phil's body.¹¹

Version of the Defense

Señarosa testified that on 03 May 1995, he went to Poblacion, Balete; Aklan to borrow money from his elder brother and spent the night there. The following day, he rode a jeepney on his way to Kalibo to borrow money from his younger brother. When the jeepney suffered a flat tire, he had to transfer to another jeepney coming from *Barangay* Camaligan. Since it was raining, his pants got wet. When they reached a checkpoint, policemen stopped the vehicle and ordered the passengers to bring down their bags from the top of the jeep. The policemen asked him to help them open the bags. One of the bags he opened contained a hand grenade. Señarosa recounted that he was then brought to the police station where he was made to sign a document without first explaining its content to him.¹²

Ruling of the RTC

After trial, the RTC rendered a judgment finding all the accused guilty of Murder for the death of Phil, and Frustrated Murder for the injuries suffered by Codesta. The dispositive portion of the Decision reads:

⁹ Id. at 10-11.

¹⁰ Id. at 11.

¹¹ Id.

¹² Id. at 12-13.

“WHEREFORE, judgment is rendered as follows:

(a) In Criminal Case No. 4496 – Finding the accused MARIO ESPERIDION, ALBECIO NADURA, JR., GIDEON SEÑAROSA and PERCIVAL RELIMBO, all guilty beyond reasonable doubt of the crime of MURDER, qualified by treachery and taking into consideration evident premeditation as aggravating circumstance, sentencing them to suffer the supreme penalty of DEATH.

The accused are further ordered to pay jointly and severally the heirs of the deceased Phil Feliciano PhP75,000.00 as civil indemnity and PhP75,000.00 as moral damages, plus cost of suit.

(b) In Criminal Case No. 4497 – Finding the accused MARIO ESPERIDION, ALBECIO NADURA, JR., GIDEON SEÑAROSA and PERCIVAL RELIMBO, all guilty beyond reasonable doubt of the crime of Frustrated Murder and taking into consideration evident premeditation as aggravating circumstance but applying the benefits of the Indeterminate Sentence Law, sentencing them to suffer imprisonment of ten (10) years of Prision Mayor as minimum to seventeen (17) years, four (4) months and one (1) day of Reclusion Temporal as maximum, plus cost of suit.

SO ORDERED.”¹³

However, on Motion for Reconsideration, the charge against Relimbo was dismissed. Meanwhile, the case against Nadura was also dismissed by reason of his death.¹⁴ Aggrieved, Señarosa and Esperidion appealed their conviction to the CA.

Decision of the CA

The CA affirmed Señarosa and Esperidion’s conviction for Murder, but downgraded their liability for Codesta’s injury from Frustrated Murder to Attempted Murder. The dispositive portion of the CA’s Decision reads:

WHEREFORE, the appeal is DENIED. The *Judgment* dated April 26, 2004 of the Regional Trial Court, 6th Judicial Region, Branch 9, Kalibo, Aklan, is AFFIRMED with the following MODIFICATIONS:

In Criminal Case No. 4496 –

1. Accused-appellants Mario Esperidion and Gideon Señarosa are sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole; and

¹³ Id. at 13-14.

¹⁴ Id. at 12.

2. Accused-appellants are ordered to pay the heirs of Phil Feliciano civil indemnity of Php75,000.00, moral damages of Php75,000.00, exemplary damages of Php75,000.00, and temperate damages of Php50,000.00.

In Criminal Case No. 4497 –

1. Accused-appellants are guilty of *Attempted Murder* only;
2. Accordingly, accused-appellants are sentenced to suffer an indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum; and
3. Accused-appellants are ordered to pay Gualberto Codesta civil indemnity of Php25,000.00, moral damages of Php25,000.00, exemplary damages of Php25,000.00, and temperate damages of Php50,000.00.

All awards for damages shall earn interest at the rate of 6% *per annum* computed from the date of finality of this judgment until fully paid.

SO ORDERED.¹⁵

The CA found that the prosecution had proven all the elements of Murder beyond reasonable doubt. In particular, the testimony of Ex, who witnessed the ordeal himself, sufficiently established Esperidion's participation in the crime. Meanwhile, Señarosa admitted to his complicity in the ambush through his *Sworn Statement* taken by SPO3 Subong. The CA observed that Señarosa's extrajudicial confession was voluntarily given, and that he was duly assisted by a counsel of his choice while he executed the same. The appellate court also noted that his admission was replete with details that only a participant to the ambush can supply.¹⁶

As to qualifying circumstance, the CA ruled that the commission of the crime was attended by treachery. Evidence showed that the accused strategically positioned themselves prior to the attack, then without warning, came out and fired upon the victims' vehicle. The manner in which the attack was carried out also showed conspiracy on the part of the assailants. Further, the CA upheld the RTC's assessment of the witnesses' credibility, giving more credence to those of the prosecution as against Señarosa's and Esperidion's defense. Finally, the CA upheld the validity of the warrantless search on Señarosa's belongings.¹⁷

¹⁵ Id. at 33-34.

¹⁶ Id. at 15-24.

¹⁷ Id. at 15-29.

Nevertheless, the CA downgraded Señarosa's and Esperidion's liability in Criminal Case No. 4497 from Frustrated Murder to Attempted Murder. The appellate court was not convinced that the wounds sustained by Codesta were fatal.¹⁸

Señarosa is now before Us assailing the CA's Decision. When asked by the Court to file their supplemental briefs, both parties manifested that they no longer desire to do so.¹⁹

Issues

The issue for Our resolution is whether Señarosa was correctly convicted of Murder and Attempted Murder.

In the brief which he filed before the CA, Señarosa raised the following arguments:

(1) The RTC erred in sustaining the validity of his warrantless arrest in view of the clear violations against his right to unreasonable searches and seizure;²⁰ and

(2) Señarosa's *Sworn Statement* could not be considered a valid extrajudicial confession as he was not assisted by a lawyer of his own choosing.²¹

Ruling of the Court

We acquit.

Señarosa's right to unreasonable searches and seizure was violated.

The foundation of every constitutional government is the existence of a Bill of Rights affording its citizens a set of rights, which if taken away, spells death to democracy and renders the supposed democratic government

¹⁸ Id. at 29-31.

¹⁹ Id. at 46-50; 51-54.

²⁰ CA *rollo*, p. 58-60.

²¹ Id. at 60-64.

inutile. Further, among those included in the Bill of Rights, the right against unreasonable searches and seizure occupies a much higher position than any other right, except maybe the right to life, liberty, and property.²²

Under Section 2, Article III of the 1987 Constitution, the right against reasonable searches and seizure, as a rule, may only be disturbed with a valid search warrant. Thus:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Any deviation from this rule is heavily construed against the government.²³

Nonetheless, search and seizure even without a warrant is allowed in certain exceptional circumstances. One such exception is the “warrantless search and seizure of moving vehicles,” which is an acknowledgment of the obvious facts that a search warrant cannot be effectively enforced against an object that is so easy to spirit away from the jurisdiction of the court issuing the warrant. To be valid, the search should be limited to a visual inspection of the vehicle.²⁴

In *People v. Manago*,²⁵ We stated that a recognized variant of the search of moving vehicles is the setting up of military or police checkpoints, which are not violative of the right against unreasonable searches when limited to non-incursive searches. A more extensive search, however, requires that the police authorities have probable cause to believe that a more thorough search would lead to the discovery of items or effects involved in a crime. Thus:

A variant of searching moving vehicles without a warrant may entail the setup of military or police checkpoints — as in this case — which, based on jurisprudence, are not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists. Case law further states that routine inspections in checkpoints are not regarded as violative of an individual’s right against unreasonable searches, and thus, permissible, if limited to the following: **(a) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (b) simply looks into a**

²² *People v. Tudtud*, 458 Phil. 752, 788 (2003).

²³ *People v. Sapla*, G.R. No. 244045, 16 June 2020.

²⁴ 829 Phil. 229, 245 (2018).

²⁵ 793 Phil. 505, 519-520 (2016).

vehicle; (c) flashes a light therein without opening the car's doors; (d) where the occupants are not subjected to a physical or body search; (e) where the inspection of the vehicles is limited to a visual search or visual inspection; and (f) where the routine check is conducted in a fixed area.

It is well to clarify, however, that routine inspections do not give police officers *carte blanche* discretion to conduct warrantless searches in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search — as opposed to a mere routine inspection — such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched. (Emphasis supplied)

Probable cause is the existence of such facts and circumstances that could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles, or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.²⁶ To satisfy the probable cause requirement in a checkpoint search scenario, **the accused must be performing an overtly physical act that would create strong suspicion in the minds of the arresting officers that the accused had just committed, was committing, or was about to commit a crime.**²⁷

In the present case, the prosecution claims that probable cause was created by the perceived paleness of Señarosa when he was confronted by the police and by the fact that his pants were wet. This could be gathered from the following testimony of SPO1 Custodio:

- Q After your having responded to the crime scene in the evening of the incident, did your police station conduct a further investigation of the incident?
- A At 6:00 o'clock the following morning, we returned and went around the area and our Chief of Police proceeded to Kalibo and four of us were left at the crossing to put up a checkpoint.
- Q And where was that particular area where you put up a checkpoint?
- A Junction of the national highway and feeder road going towards Barangay Fulgencio and Barangay Camaligan.
- Q Aside from you, who were the member of the group who conducted the checkpoint?
- A SPO3 William Cuatriz, SPO1 Ruben Cipriano, PO3 Isagani Nadura and myself.

²⁶ *People v. Breis*, 766 Phil. 785, 806-807 (2015).

²⁷ *Evardo v. People*, G.R. No. 234317, 10 May 2021; citing *People v. Sapla*, supra note 16.

- Q And did anything happen while you were conducting that checkpoint?
A Yes, sir.
- Q What happened?
A While we were conducting our checkpoint, a jeep arrived coming from Camaligan.
- Q And when that jeep arrived, what did you do?
A We stopped the jeep and went near the jeep with Isagani Nadura.
- Q And what did you do when you and Isagani Nadura approached the jeep?
A We ordered the conductor to let the male passengers go down from the jeep.
- Q And after the male passengers have gone down the jeep, what did you do?
A When they all went down, we saw Gideon Señarosa being one of the passengers.
- Q And what did you do with him?
A When I saw him, I ask [sic] him where he came from.

COURT:

- Q Why do you previously know this Gideon Señarosa?
A Yes, your Honor.
- Q You personally know him?
A Yes, your Honor.

ATTORNEY TIROL:

- Q You stated that you personally know this Gideon Señarosa. Do you know where is this Gideon Señarosa living?
A He lives in Barangay Oquendo.
- Q Barangay Oquendo, Balete, Aklan?
A Yes, sir.
- Q And what prompted you to ask him where he comes [sic] from?**
A Because when I looked at him, he was pale and I noticed that the lower portion of his pants was wet.
- Q And when you asked him where he came from, did he answer you?
A He answered that he came from Barangay Camaligan.
- Q And after that, what did you do?
A I asked him where his things were.



Q And what did he tell you?

A And he said that his baggage was placed at the top of the jeep.

Q And afterwards after he told you that, what did you do?

A I told the conductor to get the baggage from the top of the jeep to bring it down.

Q And after it was brought down, what did you do?

A When that baggage was given to him by the conductor and then he placed it on the ground, I told him to open the bag.

x x x x

(Emphasis supplied)²⁸.

We are not convinced that these circumstances relied upon by the prosecution sufficiently established probable cause. Evidently, there was no overt act that could be attributed to Señarosa. Instead, these statements reveal that SPO1 Custodio already had a preconceived suspicion of Señarosa because the former personally knew the latter. On cross-examination, SPO1 Custodio further testified:

Q And after that, what did you do?

A **When the jeep stopped, we looked at the passengers and I noticed Gideon Señarosa as one of the passengers. I was surprised why Señarosa was there for I know that he is not from Camaligan and the clothes he was wearing was dirty.**

COURT: (To Witness)
Excuse me.

Q Do you know Señarosa before May 4, 1995?

A Yes, your honor.

Q **How did you happen to know him?**

A **Señarosa was once a rebel returnee. I know him very well because when he surrendered, we made him a CVO and he lived near my place.**

Q Where is his place of residence?

A In Poblacion, Balete, your Honor.

x x x x

Q Do I get it right from you that it was only Señarosa whose baggages [sic] were inspected by you?

A Yes, Sir.

Q But there were many other baggages [sic] on the top of the jeep, is that correct?

A There were several baggages [sic].

²⁸ TSN dated 13 October 1995, pp. 12-14.

- Q You did not order that those other baggages be brought down from the jeep?
- A I did not.
- Q So it was only the baggages [sic] of Señarosa which you specifically ordered the conductor to be brought down from the jeep?
- A Yes, sir.
- Q Why were you so particular about these baggages [sic] of Señarosa when there were many other baggages [sic] on top of the jeep?
- A **At that moment, there was suspicion already on our part because of the previous incident and I was wondering why he came from Camaligan when he is not from Camaligan and his clothes were wet.**

(Emphasis supplied)²⁹

We ruled in *Evardo v. People*³⁰ that preconceived suspicion on the part of the police authorities renders the search nothing more than just an ensnaring trap for an already targeted individual, thus:

First, petitioner's and Algozo's being known as drug suspects included in a watch list and objects of prior surveillance does not bolster the prosecution's case. Quite the contrary, it damages its position. It reveals the police officers' preconceived notion that petitioner and Algozo are drug dealers, demonstrates how they were specifically targeted, and betrays the police officers' predilection to read any of their actions as suspicious.

Referencing this Court's 2018 Decision in *People v. Comprado, Sapla* explained that for there to be a properly exceptional search of a moving vehicle, **law enforcers should not have proceeded from a preconceived notion of any specific individual's liability such that the search is nothing more than a device to ensnare an already targeted individual.** (Emphasis supplied)

Also, even if it is true that Señarosa turned pale when questioned by police, this fact alone is not so extraordinary as to arouse suspicion instantly. It is not uncommon for any person to feel fear and discomfort when confronted by the police or people in authority. Such a reaction is not contrary to human experience. More importantly, to accept that Señarosa's deportment is indicative of guilt gives a dangerous amount of premium to the police officer's subjective perception of individuals whom they already believed are involved in the crime. Thus, in *Evardo v. People*,³¹ We explained:

²⁹ TSN dated 21 September 1998, pp. 9-12.

³⁰ G.R. No. 234317, 10 May 2021.

³¹ *Id.*

Second, the Court of Appeals referenced how petitioner and Algozo supposedly looked pale and trembling, as well as how Algozo allegedly tried to hide something in the tricycle's rain cover.

The flaw in relying on this is self-evident. It places far too much trust in the police officers' subjective perception of individuals whom they already believed were guilty. Again, SPO3 Auza declared that as soon as the tricycle was flagged down, they knew they had their targets. It is not difficult to see how, from that point on, they would be inclined to view petitioner's and Algozo's actions as suspicious.

Thus, it was entirely possible that, in the police officers' perception, what was merely their targets' ludicrous — but ultimately innocent — befuddlement at having to face a host of firearm-wielding police officers, was guilty nervousness. So too, what could have very well been meaningless reaching to the tricycle's periphery could be construed as an effort at concealment.

Likewise, there appears to be no clear connection between the state of Señarosa's clothing at that time and the crime being attributed to him. Nor has the prosecution tried to establish how the fact he was wearing wet pants provided probable cause to the police officers conducting the search.

All these things considered, We hold that the search made on Señarosa's person and belongings is illegal for violating his right against unreasonable searches and seizure.

Consequently, the evidence obtained during the illegal search is inadmissible in evidence and could not be used against Señarosa. The Bill of Rights is clear that any evidence obtained in violation of the right against unreasonable searches and seizure shall be inadmissible for any purpose in any proceeding.³² These pieces of evidence so obtained illegally are "deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree."³³

Señarosa's extrajudicial confession is also inadmissible in evidence.

We now examine Señarosa's extrajudicial confession and determine whether it is sufficient to sustain his guilt. In *People v. Agustin*,³⁴ We discussed in length the requirements before an extrajudicial confession, which was taken during custodial investigation, could be admissible in evidence. Thus:

³² CONSTITUTION, Article III, Sec. 3, par. (2).

³³ *People v. Acosta*, G.R. No. 238865, 28 January 2019.

³⁴ G.R. No. 247718, 03 March 2021.

Section 12 of Article III of the 1987 Constitution embodies the mandatory protection afforded a person under investigation for the commission of a crime and the correlative duty of the State and its agencies to enforce such mandate. It states:

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado or other similar forms of detention are prohibited.

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

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Republic Act No. 7438 (*R.A. No. 7438*) has reinforced the constitutional mandate protecting the rights of persons under custodial investigation. The pertinent provisions read:


Section 2. Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers. —

(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

XXX XXX XXX

To be acceptable, extrajudicial confession must conform to the constitutional requirements. **An extrajudicial confession is not valid and inadmissible in evidence when the same is obtained in violation of any of the following rights of an accused during custodial investigation: (1) to remain silent, (2) to have an independent and competent counsel preferably of his choice, (3) to be provided with such counsel, if unable to secure one, (4) to be assisted by one in case of waiver, which should be in writing, of the foregoing, and (5) to be informed of all such rights and of the fact that anything he says can and will be used against him.** (Emphasis supplied)



Further, in *People v. Muleta*,³⁵ it was held that the accused's right to be informed of his constitutional rights is preserved if the police authorities demonstrate effective and meaningful communication of these rights and ensure that they were thoroughly explained to, and understood by, the accused. We expounded:

The right to be informed of one's constitutional rights during custodial investigation refers to an effective communication between the investigating officer and the suspected individual, with the purpose of making the latter understand these rights. Understanding would mean that the information transmitted was effectively received and comprehended. Hence, the Constitution does not merely require the investigating officers to "inform" the person under investigation; rather, it requires that the latter be "informed".

To demonstrate compliance with this constitutional requirement, Señarosa's extrajudicial confession states:

PRELIMINARY:

MR. GIDEON SE[N]AROSA, you are being informed that you are under investigation in connection with the incident that happened last May 3, 1995 more or less 9:45 o'clock in the evening at Bgy. Fulgencio, Balete, Aklan wherein one Engineer Phil Feleciano was killed and the wounding of his wife and Gualberto Codesta. You are further informed that under our New Constitution you have the right to remain silent and be entitled (*sic*) of a counsel of your own choice. Is this clearly understood by you?

ANSWER - Yes, Sir.

QUESTION - After being informed of your rights under the New Constitution[,] do you wish to proceed with this investigation?

ANSWER - Yes, sir.

QUESTION - Do you wish to be assisted by a counsel of your choice?

ANSWER - Yes, sir.

QUESTION - Who will be then [*sic*] your lawyer, if any?

ANSWER - Atty. Federico Llasus.

QUESTION - After being informed of your rights under the New Constitution and assisted by a counsel of your own choice, do you wish to proceed with this investigation?

ANSWER - Yes, sir.³⁶

³⁵ 368 Phil. 451, 464 (1999).

³⁶ *Rollo*, pp. 19-20.

We rejected the sufficiency of a similarly worded preamble in an extrajudicial confession in *People v. Agustin*.³⁷ In that case, We explained that an appraisal of these rights through a kilometric sentence punctuated by a terse answer of "Yes, sir" initiated by the investigator is not sufficient compliance with the strict requirements mandated by the Constitution. There should be meaningful communication and not a mere perfunctory, superficial, and ceremonial reading of the accused's rights without considering his or her ability to comprehend. Comprehension, in turn, is dictated by the accused's education, intelligence, and other relevant personal circumstances.³⁸

In the present case, it was established that Señarosa only finished the first grade. Notably, during the cross-examination of SPO3 Subong, who had taken Señarosa's extrajudicial confession, he testified:

Q Mr. Witness, at the time that you took the statement of the accused Gideon Señarosa, did you have any idea of his educational attainment?

A I asked him.

Q And what was his answer?

A He finished up to Grade I.

Q Mr. Subong, considering the answer of the said accused Gideon Señarosa and the questions propounded to him at that time were in English, were the statements made clear to him?

A It was translated to him by his counsel?

Q It was translated by his counsel?

A Yes, madam, I asked him in local dialect and then translated to him by his counsel.

Q Are you also from Aklan?

A No, from San Jose, Antique.

Q So you are assigned in Iloilo and you are residing in Antique?

A Yes, madam.

Q So how were you able to translate to the accused the questions asked of him?

A With the help of his counsel.

Q From where is his counsel?

A From Balete.

³⁷ Supra note 30.

³⁸ *People v. Rapera*, 549 Phil. 378, 398 (2007).

- Q Was he able to translate properly the said questions to Gideon Señarosa considering that he finished only Grade I?
- A Yes, madam.

x x x³⁹

Señarosa's degree of education should have led SPO3 Subong to proceed with caution and prudence while taking down the former's statements. SPO3 Subong should have ascertained whether Señarosa genuinely and clearly understood his rights as communicated to him.

There were also notable lapses on the part of SPO3 Subong that leads Us to conclude that Señarosa was not fully informed of his rights. First, Señarosa was not advised that he had the option to reject the assistance of Atty. Llasus, the counsel who was provided for him by the police authorities. Second, the police officers failed to inform Señarosa that he may waive his constitutional rights only in writing and in the presence of counsel.

These lapses are detrimental to the admissibility of Señarosa's alleged extrajudicial confession. Similar to Our observations in *People v. Agustin*,⁴⁰ the punctilious and artificially stately style of the subject extrajudicial confession do not create an impression of voluntariness or even understanding on the part of Señarosa. The statements do not evince a clear and sufficient effort to inform and explain to Señarosa his constitutional rights, much less satisfy the constitutional prerequisites. Indeed, the showing of a spontaneous, free, and unconstrained surrender of a right is wanting. This lack of understanding on the part of Señarosa also belies his voluntary waiver of his right to remain silent, among others.

Likewise, We find that Atty. Llasus was remiss in his duty to act as a competent and independent counsel for Señarosa during the latter's custodial investigation. To become a competent and independent counsel during a custodial investigation, the lawyer representing the accused must be present at all stages of the interview and should be actively counseling or advising caution reasonably at every turn of the investigation and stopping the interrogation occasionally either to give advice to the accused that he or she may either continue, choose to remain silent, or terminate the interview. Most importantly, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his or her extrajudicial confession in relation to his or her constitutional rights.⁴¹

³⁹ TSN dated 30 March 1999, pp. 36-38.

⁴⁰ Supra note 30.

⁴¹ *People v. Omilig*, 766 Phil. 484, 501 (2015).

Further, there is no evidence to support the prosecution's claim that Atty. Llasus was indeed Señarosa's counsel of choice. There is no showing that Atty. Llasus was indeed engaged by Señarosa himself or his "relative or person authorized by [him] to engage an attorney[,] or by the court, upon proper petition of the accused or person authorized by the accused to file such petition."⁴² Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.⁴³

We note that Señarosa was consistent in his claim that there was no lawyer present to represent him when he signed the Sworn Statement. In contrast, SPO3 Subong testified that it was, in fact, the victim's family, or one allegedly connected to them, that brought in Atty. Llasus to assist Señarosa during the investigation.⁴⁴

Further, SPO3 Subong also revealed that Atty. Llasus's participation during the custodial investigation had been reduced to translating the questions and answers to Señarosa, witnessing him sign the sworn statement, and signing the same statement himself.⁴⁵ The record is bereft of any allegation that Atty. Llasus conferred with Señarosa or that he explained to the latter the possible consequences of his confession. There is also no indication that Atty. Llasus advised Señarosa not to give any statement if he was in doubt and to think things over. He never advised the accused that he had the right not to sign the extrajudicial confession if he believes that it may incriminate him.

The violation of Señarosa's right during his custodial investigation also triggers the application of the exclusionary rule and his extrajudicial confession should be struck down as inadmissible.⁴⁶

*There is no evidence left to support
Señarosa's conviction.*

The RTC's judgment shows that Señarosa's conviction is tethered on two things: (1) his possession of items and paraphernalia belonging to the other accused, and (2) his extrajudicial confession admitting his participation in the crimes charged.

⁴² See *People v. Alberto*, 436 Phil. 434 (2002), citing *People v. Deniega*, 321 Phil. 1028 (1995).

⁴³ *Id.*

⁴⁴ See TSN dated 13 October 1995, p. 8; TSN dated 09 February 1999, pp. 25-28; TSN dated 16 February 1999, pp. 4-5, 9-10.

⁴⁵ TSN dated 30 March 1999, pp. 17-18, 36-38.

⁴⁶ *People v. Felixminia*, 429 Phil. 309 (2002).

Considering that We have now ruled these pieces of evidence to be inadmissible, the evidence left is insufficient to sustain Señarosa's conviction.

It should be emphasized that none of the witnesses testified that Señarosa was present during the ambush. He was not among those named by Melbeth⁴⁷ and Ex,⁴⁸ who were both present during the attack, as the perpetrators of the crime.

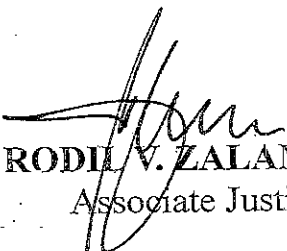
As regards Señarosa's positive paraffin test, the expert witness presented by the prosecution testified that the result is not conclusive since many factors could contribute to the presence of gun powder nitrate in Señarosa's hands.⁴⁹ This is consistent with the Court's ruling in *People v. Pitulan*,⁵⁰ where it was explained that paraffin testing is conclusive only as to the presence of nitrate particles in a person, but not as to its source, such as from firing a gun. By itself, paraffin testing only indicates a possibility, not infallibility, that a person has fired a gun.

All things considered, the prosecution's reliance on tainted evidence meant that it failed to prove Señarosa's guilt beyond reasonable doubt. Thus, his presumed innocence must be upheld, and his acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated 09 November 2017 of the Court of Appeals in CA G.R. CEB-CR-HC No. 01271, is hereby **REVERSED** and **SET ASIDE** as to accused-appellant Gideon Señarosa. Accordingly, accused-appellant is **ACQUITTED** of the crime of Murder and Attempted Murder on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The said Director is ordered to report to this Court the action he has taken within five days from receipt hereof.

SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice


⁴⁷ TSN dated 16 February 1999, pp. 13-15.


⁴⁸ TSN dated 09 February 1999, pp. 38-39.

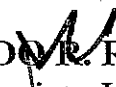
⁴⁹ TSN dated 15 October 1999, p. 20.

⁵⁰ G.R. No. 226486, 22 January 2020.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice



RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice



