

## THIRD DIVISION

[ G.R. No. 144293, December 04, 2002 ]

**JOSUE R. LADIANA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

The Constitution bars the admission in evidence of any statement extracted by the police from the accused without the assistance of competent and independent counsel during a *custodial* investigation. However, a counter-affidavit voluntarily presented by the accused during the *preliminary* investigation, even if made without the assistance of counsel, may be used as evidence against the affiant.

#### The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the April 10, 2000 Decision<sup>[1]</sup> and August 4, 2000 Resolution<sup>[2]</sup> of the Sandiganbayan (First Division) in Criminal Case No. 16988. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, judgment is hereby rendered finding accused JOSUE R. LADIANA **GUILTY** beyond reasonable doubt of the crime of homicide and, in the absence of any modifying circumstance, sentencing the said accused to: (a) suffer an indeterminate sentence of imprisonment of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum[;] (b) suffer all the appropriate accessory penalties consequent thereto; (c) indemnify the heirs of the victim, Francisco San Juan, in the total amount of Fifty Six Thousand Five Hundred Pesos (P56,500.00); and (d) pay the costs."<sup>[3]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

Petitioner was originally charged with murder before the Sandiganbayan in an Information<sup>[4]</sup> dated August 5, 1991. However, the anti-graft court issued an Order<sup>[5]</sup> dated October 14, 1991, noting that "besides the allegation that the crime was allegedly committed by the accused while he was 'taking advantage of his official position,' nothing else is in the Information to indicate this fact so that, as the Information stands, nothing except a conclusion of fact exists to vest jurisdiction [in] this Court over the accused and over the crime for which he is charged."

Further, the Order gave the government sufficient time to amend the Information to show adequate facts to vest the Sandiganbayan with jurisdiction over the case. Subsequently, an Amended Information,<sup>[6]</sup> still charging petitioner with murder, was filed on April 1, 1992. The accusatory portion reads as follows:

"That on or about the 29th day of December 1989, in the Municipality of Lumban, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a member of the Integrated National Police (INP now PNP) assigned at the Lumban Police Station, Lumban, Laguna, acting in relation to his duty which is primarily to enforce peace and order within his jurisdiction, taking advantage of his official position confronted Francisco San Juan why the latter was removing the steel pipes which were previously placed to serve as barricade to prevent the entry of vehicles along P. Jacinto Street, Barangay Salac, Lumban, Laguna, purposely to insure the safety of persons passing along the said street and when Francisco San Juan told the accused that the latter has no business in stopping him, said accused who was armed with a firearm, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack and sho[o]t Francisco San Juan with the firearm hitting Francisco San Juan at his head and neck inflicting upon him fatal wounds thereby causing the death of Francisco San Juan."<sup>[7]</sup>

During his arraignment on May 8, 1992, petitioner, assisted by his counsel *de parte*,<sup>[8]</sup> pled not guilty.<sup>[9]</sup> After due trial, the Sandiganbayan found him guilty of homicide, not murder.

### **The Facts**

In their Memoranda, both the prosecution and the defense substantially relied upon the Sandiganbayan's narration of the facts as follows:

"The prosecution presented five (5) witnesses, namely: Caridad M. San Juan, PO2 Leopoldo Cacalda, Dr. Rogelio M. Javan, SPO2 Percival A. Gabinete, and Maria T. Cortez. Their respective testimonies, in essence are as follows, to wit:

"1. CARIDAD MARGALLO SAN JUAN (hereinafter, 'Caridad') declared that she is the wife of Francisco San Juan (hereinafter 'Francisco'), the victim in the case at bar. Caridad testified that Francisco was the Barangay Captain of Barangay Salac, Lumban, Laguna, until he was shot and killed by accused Ladiana, who happens to be also a distant relative of the decedent.

"Caridad recounted that, on December 29, 1989, she was in her house when an unidentified woman came and told her that her husband was killed by accused Ladiana. She immediately called up her sister-in-law before rushing to Jacinto Street where the gruesome incident allegedly transpired. Thereat, many people were milling around, and Caridad saw the lifeless body of Francisco lying in the middle of the road and being examined by [SPO2] Percival A. Gabinete.

"Caridad recalled that it was around 11:00 o'clock a.m. when she reached the place of the subject incident. At that point in time, she was not even allowed by the police to touch, much less get near to, the cadaver of Francisco. Caridad, expectedly, was crying and one of her aunts advised her to go home.

"Caridad maintained that she was aware that her husband was killed by accused Ladiana because this was what the woman actually told her. Moreover, accused Ladiana had given himself up to the police authorities.

"Caridad went on to narrate that, on December 30, 1989, she was at the police station, where she gave her written statement before police investigator PFC Virgilio Halili (hereinafter, 'Halili').

"Additionally, Caridad presented the Death Certificate of her husband and testified that he was eventually buried at the Lumban Cemetery. She declared that she had incurred about Twenty Thousand Pesos (P20,000.00) for the funeral, burial and other incidental expenses by reason of the death of Francisco.

"On cross-examination, Caridad testified that, on December 29, 1989, she was in her house and that she did not hear any gunshot between 10:30 and 11:00 o'clock a.m. Caridad also admitted she did not witness the killing of her husband.

"On questions propounded by the Court, Caridad narrated that her husband suffered two gunshot wounds - one on the upper right temple and the other on the left cheek. However, Caridad stated that she was told that the wounds were the entry and the exit points. She also told the Court that her husband was wearing short pants at the time of his death and that she found some bruises on his knees.

"Finally, Caridad recalled that, on the date of the incident, her husband was with his close friend, a certain Rodolfo Cabrera, and some other persons, and that they went to Jacinto Street to repair the steel humps which were used to block the street during school days for the protection and safety of the school children.

"2. PO2 LEOPOLDO DE RAMOS CACALDA, JR. (hereinafter, 'CACALDA') declared that he is a policeman assigned at the Lumban Police Station in Lumban, Laguna. He has been designated as the radio operator of the station since 1989.

"Cacalda recounted that, on December 29, 1989, at around 11:00 o'clock a.m., somebody, whose name he could no longer recall, reported to him about an existing trouble along Jacinto Street in Barangay Salac. Cacalda responded by going to the scene, where he was accompanied by Alberto Mercado, a member of the CAGFIL. Thereat, Cacalda saw the lifeless body of Francisco lying face up on the road. Cacalda did not examine the body of Francisco. He left the place of the incident when [SPO2] Percival A. Gabinete and other policemen subsequently arrived.

"Cacalda had gathered from the people milling around the body of Francisco that it was accused Ladiana who shot and killed Francisco. Cacalda immediately left to look for accused Ladiana. However, he eventually saw accused Ladiana already inside the jail of the police station and thereafter learned that said accused had surrendered to the police authority.

"Cacalda recalled that he was later on investigated by Halili because he was the responding policeman who went to the scene of the incident. Consequently, Cacalda executed a written statement in relation to the subject incident.

"On cross-examination, Cacalda testified that he was a radio operator and not an investigator of the police station. He also testified that he did not witness the incident subject matter of the case at bar.

"Cacalda went on to testify that the people milling around the place of the incident told him that accused Ladiana had already left. Because of this development, Cacalda proceeded to accused Ladiana's house but was told that he had already gone to the police station. Cacalda accordingly went to the police station where he saw accused Ladiana already locked inside the jail. He also saw a stab wound on accused Ladiana's right bicep but he did not anymore ask him how he sustained the said injury.

"3. DR. ROGELIO JAVAN y MAGRACIA (hereinafter, 'Javan') declared that he is a physician and the Municipal Health Officer of Lumban, Laguna.

"Javan recounted that he was the one who performed the necropsy on the cadaver of Francisco and that he had prepared the corresponding reports and/or documents relating thereto. Javan made a sketch representing the anterior and posterior views of the body of Francisco, and labeled and placed red markings on the gunshot wounds found on the said cadaver. The marking 'Gunshot wound A' is the point of entry, which is one (1) centimeter in diameter and situated two (2) inches behind the left ear. The marking 'Gunshot wound B' is the point of exit of 'Gunshot wound A', which is two (2) centimeters in diameter and found above the right cheekbone and one (1) inch below the right eye. Javan also testified that there is another gunshot wound and the point of entry and exit are labeled as 'Gunshot wound C' and 'Gunshot wound D', respectively. 'Gunshot wound D' is one and one-half (1-1/2) centimeters in diameter and located at the left cheek, three and one-half (3-1/2) centimeters below the left eye, while 'Gunshot wound C' is one (1) centimeter in diameter and found at the right lateral aspect of the neck, at the level of the adam's apple.

"According to Javan, the assailant must be behind the victim when he inflicted 'Gunshot wound A'. As regards 'Gunshot wound C', the assailant likewise must be behind the victim, at a distance of more than twenty-four (24) inches away.

"Lastly, Javan testified that he was not able to retrieve any bullet during the examination. However, judging from the size of the wound and the point of entry, Javan opined that the firearm used was probably a caliber 38.

"On questions propounded by the Court, Javan testified that 'Gunshot wound A' could have been fired first because the trajectory is on the same level so much so that the assailant and the victim could have been both standing. Javan inferred that 'Gunshot wound C' could have been

inflicted while the victim was already falling down. Javan then stressed that both wounds are fatal in nature.

"4. SPO2 PERCIVAL AMBROSIO GABINETE (hereinafter, 'Gabinete') declared that he is a police officer and a resident of No. 4055 Villa Josefina Subdivision, Sta. Cruz, Laguna.

"The testimony of Gabinete was subsequently dispensed with, upon the admission of the defense that he was part of the group of policemen who proceeded to the place of the subject incident and that he found the body of Francisco lying along the road. Additionally, the defense admitted the existence of the receipt issued by Funeraria de Mesa dated January 3, 1990 in the sum of Six Thousand Five Hundred Pesos (P6,500.00).

"5. MARIO TALAVERA CORTEZ (hereinafter, 'Cortez') declared that he is a retired Assistant Prosecutor of Laguna.

"Prior to the conduct of the examination-in-chief on Cortez, the defense counsel made an admission as to the authorship, authenticity, and voluntariness of the execution of the counter-affidavit of accused Ladiana, which was subscribed and sworn to before Cortez. In said counter-affidavit, accused Ladiana allegedly admitted to making the fatal shots on Francisco. However, accused Ladiana allegedly did so in self-defense as Francisco was then purportedly attacking accused Ladiana and had, in fact, already inflicted a stab wound on the arm of accused Ladiana.

"However, Cortez emphasized that he was not the one who conducted the preliminary investigation of the complaint which led to the filing of the subject case. Additionally, Cortez testified that he would not be able to anymore recognize the face of the affiant in the said counter-affidavit, but maintained that there was a person who appeared and identified himself as Josue Ladiana before he affixed his signature on the counter-affidavit.

"After the presentation of Cortez, the prosecution filed its formal offer of evidence and rested its case.

"On May 31, 1995, this Court issued a resolution admitting all the documentary evidence submitted by the prosecution.

"On August 20, 1996, accused Ladiana filed a Motion for Leave of Court to File Demurrer to Evidence dated August 16, 1995, claiming that: (i) a review of the documentary and testimonial evidence adduced by the prosecution allegedly failed to show that the accused is guilty of the offense charged; (ii) at best, the evidence submitted by the prosecution are allegedly hearsay in character, considering that the supposed eyewitness in the person of Rodolfo Cabrera was never presented in court; and (iii) the prosecution was allegedly merely able to prove the fact of death of the victim, but not the identity of the person who caused said death.

"On August 23, 1996, this Court issued an Order of even date holding that the filing of a demurrer to evidence is no longer appropriate