

SECOND DIVISION

[94736, June 26, 1998]

**MELECIO MACASIRAY, VIRGILIO GONZALES, AND
BENEDICTOGONZALES, PETITIONERS, VS. PEOPLE OF THE
PHILIPPINES, HON. COURT OF APPEALS, AND ROSALINA
RIVERA VDA. DE VILLANUEVA, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

Petitioners seek a review of the decision of the Court of Appeals in C.A. G.R. SP No. 16106,^[1] reversing the ruling of the Regional Trial Court and ordering the admission in evidence of petitioner Benedicto Gonzales' extrajudicial confession and the transcript of the proceedings of the preliminary investigation of the case, during which Benedicto allegedly made statements affirming the contents of his extrajudicial confession.

The facts are as follows:

Petitioners Melecio Macasiray, Virgilio Gonzales, and Benedicto Gonzales are the accused in Criminal Case No. 33(86) of the Regional Trial Court of San Jose City, presided over by Judge Pedro C. Ladignon. The case is for the murder of Johnny Villanueva, husband of private respondent Rosalina Rivera Villanueva, on February 9, 1986.

It appears that in the course of the trial of the case, the prosecution introduced in evidence, as Exhibit B, an extrajudicial confession executed by petitioner Benedicto Gonzales on March 27, 1986, in which he admitted participation in the crime and implicated petitioners Melecio Macasiray and Virgilio Gonzales, his co-accused. Also presented in evidence, as Exhibit D, was the transcript of stenographic notes taken during the preliminary investigation of the case on April 8, 1986 before the fiscal's office. This transcript contained statements allegedly given by Benedicto in answer to questions of the fiscal, in which he affirmed the contents of his extrajudicial confession.

When the extrajudicial confession was offered at the conclusion of the presentation of evidence for the prosecution, petitioners objected to its admissibility on the ground that it was given without the assistance of counsel. The transcript of the preliminary investigation proceeding was similarly objected to on the same ground. In its order dated April 14, 1988, the trial court sustained the objections and declared the two documents to be inadmissible.

It appears that when it was the turn of the defense to present evidence, Gonzales was asked about his extrajudicial confession (Exh. B). On cross-examination, he was questioned not only about his extrajudicial confession but also about answers allegedly given by him during the preliminary investigation and recorded in the transcript of the proceeding. As he denied the contents of both documents, the

prosecution presented them as rebuttal evidence, allegedly to impeach the credibility of Gonzales. Petitioners once more objected and the trial court again denied admission to the documents. (Order, dated Oct. 17, 1988)

Private respondent then sought the nullification of the trial court's orders and succeeded. The Court of Appeals declared the two documents admissible in evidence and ordered the trial court to admit them. Hence, this petition for review of the appellate court's decision.

There is no dispute that the extrajudicial confession and the statements recorded in the transcript in question were taken without the assistance of counsel. Petitioner Benedicto Gonzales was informed of his constitutional rights in a very perfunctory manner. No effort was made to drive home to him the seriousness of the situation he was facing.^[2] He waived the assistance of counsel, but did so without counsel's advice and assistance.^[3] Both his confession and his statement before the fiscal were thus inadmissible under Art. IV, §20 of the 1973 Constitution. The question is whether petitioners waived objection to the admissibility of the documents, either by failing to object to their introduction during the trial or by using them in evidence. In declaring them to be admissible, the Court of Appeals said:

The documents in question (Annexes A and B to Petition), which were denied admission by respondent Judge, were marked for identification as "Exh. B" with sub-markings and "Exh. D" with sub-markings on "10-11-86" (or October 22, 1986) as appear on their face. Those markings show that the documents were introduced during the prosecution's evidence-in-chief; and, necessarily, they were testified on by a prosecution witness (not clear from the record who). The fact that the prosecution proposed to formally offer them in evidence at the close of trial implies that when the documents were first introduced through the prosecution witness at the trial, the defense did not object to their introduction. To prevent the introduction of such kind of evidence, the practice is for the defense to move for its exclusion at any time before commencement of trial. Such failure of the defense may therefore be taken as a waiver of their objection -- and the waiver was made at the trial by said accused who was in fact assisted by counsel.

Thus, because of such failure to object, the prosecution succeeded to introduce the subject documents and cause them to be marked for identification as Exhibits B and D. . .

. . . During the defense turn to present their evidence-in-chief, they called said accused to the witness stand, then through him introduced the question-and-answer statement (Exh. B) that had previously been denied admission by respondent Judge, and on direct examination asked him to testify on said statement; of course, accused denied the contents in that statement. In other words, not only did the defense waive their objection to the introduction of this statement when first introduced during the prosecution's evidence-in-chief as well as when introduced through the testimony of Cpl. Renato Bautista given during the prosecution evidence-in-rebuttal, the defense themselves -- including the counsel for accused -- introduced such statement as part of their evidence-in-chief. Hence, respondent Judge committed a grave abuse of discretion in denying admission of this statement (Exh. B) when the