THE LAW ON EVIDENCE REVISITED*

*Arturo E. Balbastro***

Everything changes except change itself. This truism applies with full force to law and jurisprudence. As one sage aptly said, "law must be stable and yet it cannot stand still."[1]

As a manifestation of the above-mentioned aphorism, many developments and changes have taken place in Remedial Law, especially in the field of evidence. Although judicial legislation is proscribed in this jurisdiction, it should not be overlooked that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system."[2] In this context, therefore, it is significant to discuss some developments in the law on evidence.

Exculpatory Evidence and the Right of the Accused to be Informed Thereof Before Trial

1) *When Evidence is Exculpatory*

When is evidence exculpatory? The root word of term "Exculpatory" is "exculpate", meaning to free from blame or to prove guiltless.[3] Exculpatory evidence may therefore include such evidence

---

*Edited version of the lecture entitled "PROBLEM AREAS AND UPDATE IN THE LAW ON EVIDENCE" delivered at the Malcolm Theater, U.P. College of Law, Diliman, Quezon City, on May 6, 1996, in connection with the Institute on Remedial Law sponsored by the Institute of Judicial Administration, U.P. Law Center.

**A.B., *cum laude*, LL.B., LL.M (UP); LL.M. (Harvard); Professor of Law and Bar Reviewer, UP; First Director, Office of Legal Aid, U.P. College of Law.

[1] CARDOZO, *Growth of Law*, CARDOZO SELECTED WRITINGS 186 (19).

[2] CIVIL CODE, art. 8.

[3] WEBSTER'S NEW WORLD DICTIONARY 262 (1971).

as will prove the accused's innocence or would create such doubt as to prevent the prosecution from establishing the guilt of the accused beyond a reasonable doubt. In either case, the accused will be entitled to an acquittal.

2) *Constitutional Basis*

The Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.[4] In criminal prosecutions, the accused is entitled to meet with the witnesses against him face to face.[5] The concept of "due process" has basis in settled jurisprudence in this country. While admittedly, the Philippine concept of "due process" is traceable to American origin, the development of the principle in American law has advanced far ahead, leaving behind its Philippine counterpart.

3) *Jurisprudence in American Law*

In *Jencks v. United States*[6], the petitioner, as president of Amalgamated Bayard District Union, Local 890, International Union of Mine, Mill & Smelter Workers, filed an "affidavit of non-communist union officer" with the National Labor Relations Board, pursuant to §9(h) of the National Labor Relations Act. He was convicted in a Federal District Court for violation of 18 U.S.C. §1001 by filing, under §9(h) of the National Labor Relations Act, as president of a labor union, an affidavit stating falsely that he was not a member of the Communist Party or affiliated with such party. Crucial testimony against him was given by two paid undercover agents for the Federal Bureau of Investigation (F.B.I.), who stated on cross-examination that they made regular oral or written reports to the F.B.I. on the matters about which they had testified. His motions were denied. When the case reached the Supreme Court, it was held that the denial of the motions was erroneous and the conviction was reversed on the following grounds:

---

[4] CONST. Art. III, sec. 1.
[5] CONST. Art. III, sec. 14, par. (2).
[6] 353 U.S. 657 (1957).

(a) Petitioner was not required to lay a preliminary foundation for his motion, showing inconsistency between the contents of the reports and the testimony of the government agents, because a sufficient foundation was established by their testimony that their reports were of the events and activities as related in their testimony.

(b) Petitioner was entitled to an order directing the Government to produce for inspection all written reports of the F.B.I. agents in its possession, and, when orally made, as recorded by the F.B.I., touching the events and activities as to which they testified at the trial.

(c) Petitioner is entitled to inspect the reports to decide whether to use them in his defense.

(d) The practice of producing government documents to the trial judge for his determination of relevancy and materiality, without hearing the accused, is disapproved.

(e) Only after inspection of the reports by the accused, must the trial judge determine admissibility of the contents and the method to be employed for the elimination of parts immaterial or irrelevant.

In *Palermo v. U.S.*,[7] petitioner was convicted of knowingly and willfully evading the payment of income taxes for the years 1950, 1951 and 1952. A substantial part of the alleged evasion was the failure to report income from dividends. During the trial in a Federal District Court, an important issue was whether his handwritten record of dividends received in 1951 and 1952 had been given to an accounting firm while it was preparing his returns for those years rather than in 1953, after revenue agents had begun investigating his returns. To impeach the testimony of a partner in the accounting firm that they had not received this record in 1953, petitioner called for and obtained the production of certain documents in the possession of the Government; but he was denied production of a six hundred (600)-word memorandum summarizing parts of a three and a half (31/2) - hour interrogation of the witness by a government agent. Affirming the judgment of conviction, the U.S. Supreme Court ruled that such memorandum was not a statement of the kind required to be produced

[7] 360 U.S. 343 (1959).

under the so called Jencks Act, 18 U.S.C. §3500. Its production was therefore properly denied and the conviction was sustained.

In *Brady v. Maryland*,[8] the petitioner and a companion were convicted of first degree murder and sentenced to death by a Maryland Court in separate trials where the jury is the judge of both the law and the facts but the court passes on the admissibility of the evidence. During the trial, petitioner admitted participating in the crime but claimed that his companion did the actual killing. In his summation to the jury, petitioner's counsel conceded that petitioner was guilty of murder in the first degree and asked only that the jury return that verdict "without capital punishment." Prior to the trial, petitioner's counsel requested the prosecution to allow him to examine the companion's extrajudicial statements. Several of these were shown to him, but one in which the companion admitted the actual killing was withheld by the prosecution and did not come to petitioner's notice until after he had been tried, convicted and sentenced and after his conviction had been affirmed by the Maryland Court Appeals. In a post-conviction proceeding, the Maryland Court of Appeals held that suppression of the evidence by the prosecutor denied petitioner due process of law, and it remanded the case for a new trial on the question of punishment, but not the question of guilt, since it was of the opinion that nothing in the suppressed confession could have reduced the offense below murder in the first degree. On appeal, the U.S. Supreme Court ruled that petitioner was not denied a federal constitutional right when his new trial was restricted to the question of punishment and the judgment was affirmed. It was further ruled that:

> (a) Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.
>
> (b) When the Court of Appeals restricted petitioner's new trial to the question of punishment, it did not deny him due process or equal protection of the laws under the Fourteenth Amendment, since the suppressed evidence was admissible only on the issue of punishment.

[8] 373 U.S. 83 (1963).

In *Giles v. Maryland*,[9] petitioners were convicted of rape and given death sentences which were later commuted to life imprisonment. They brought the proceeding under Maryland's Post-Conviction Procedure Act, alleging that they were denied due process of law by the prosecution's suppression of evidence favorable to them and by its use of perjured testimony. The evidence allegedly suppressed concerned (1) a proceeding in Prince George's County Juvenile Court which was pending prior to the alleged rape, in which a caseworker recommended probation for the complaining witness because she was beyond parental control; (2) an occurrence five weeks after the alleged rape, in which the girl had sexual relations with two men at a party and that night took an overdose of pills resulting in her hospitalization in a psychiatric ward for nine (9) days as an attempted suicide; and (3) a hearing in the Montgomery County Juvenile Court on the day of her release from the psychiatric ward which resulted in her commitment to a School for Girls. The Montgomery County Circuit Court ordered a new trial, holding that the proof did establish suppression of evidence which, although not in bad faith, constituted a denial of due process. The Maryland Court of Appeals reversed, holding that for non-disclosure of evidence to amount to a denial of due process, it must be such as is material and capable of clearing, or tending to clear the accused of guilt, or of substantially affecting the punishment to be imposed, in addition to being such as could reasonably be considered admissible and useful to the defense. In vacating the judgment and remanding the case to the Maryland Court of Appeals for further proceedings, the U.S. Supreme Court, without reaching the question of the extent of the prosecution's duty of disclosure, concluded that the evidence of two police reports which were submitted to it but were not considered by the courts below in the post-conviction proceeding justifies a remand to the Court of Appeals for it to consider whether an inquiry should be ordered to determine the applicability of *Napue v. Illinois*,[10] where it was held that a conviction must fall when the prosecution, "although not soliciting false evidence, allows it to go uncorrected when it appears," even though the testimony may be relevant only to the credibility of a witness.

---

[9] 386 U.S. 66 (1967).

[10] 360 U.S. 264 (1959).

In *Moore v. Illinois*,[11] Moore was convicted of murder and sentenced to death for the shotgun slaying of a bartender at a Lansing, Illinois, tavern. He claimed that he was denied a fair trial and due process because the State failed to make public the pre-trial disclosure of several items of evidence helpful to the defense, failed to correct false testimony of one Powell, and succeeded in introducing into evidence a shotgun that was not the murder weapon. The evidence not disclosed consisted of a pre-trial statement by one Sanders that Moore was known to him as "Slick" and that he had first met "Slick" some six (6) months before the killing, and documents and testimony that established that Moore was not the man known to others in the area as "Slick." Powell testified that he observed the killing, and the State did not introduce into evidence a diagram that, as Moore claims, illustrates that Powell could not see the shooting. The State Supreme Court rejected the claim that evidence had been suppressed and false evidence had been left uncorrected, and held that the shotgun was properly admitted into evidence as a weapon in Moore's possession when he was arrested and suitable for commission of the crime charged. Moore also attacked the imposition of the death penalty for noncompliance with the standards of *Witherspoon v. Illinois*.[12] It was held that:

> 1. The evidentiary items (other than the diagram) on which Moore bases his suppression claim relate to Sanders' misidentification of Moore as "Slick" and not to the identification, by Sanders and others, of Moore as a person who made incriminating statement in the Ponderosa Tap. The evidentiary items are not material under the standard of *Brady v. Maryland*, 373 U.S. 83. The diagram does not support Moore's contention that the State knowingly permitted false testimony to remain uncorrected, in violation of *Napue v. Illinois*, 360 U.S. 264, since the diagram does not show that it was impossible for Powell to see the shooting.
>
> 2. Moore's due process claim as to the shotgun was not previously raised and therefore is not properly before the Court, and in any event, the introduction of the shotgun does not constitute federally reversible error.

---

[11] 408 U.S. 786 (1972)

[12] 391 U.S. 510 (1972).

3. The sentence of death may not be imposed on Moore.

In *Giglio v. United States*,[13] the petitioner, after having been convicted of passing forged money orders and sentenced to five years imprisonment, filed a motion for new trial on the basis of newly discovered evidence, contending that the Government failed to disclose an alleged promise of leniency made to its key witness in return for his testimony. At a hearing on the motion, the Assistant United States Attorney who represented the case to the grand jury admitted that he promised the witness that he would not be prosecuted if he testified before the grand jury and at the trial. The Assistant who tried the case was unaware of the promise. On certiorari to the U.S. Court of Appeals for the Second Circuit, it was held that neither the Assistant's lack of authority nor his failure to inform his superiors and associates is controlling, and the prosecution's duty to present all material evidence to the jury was not fulfilled and constitutes a violation of due process thus requiring a new trial.

In *United States v. Agurs*,[14] the defense counsel moved for a new trial three (3) months after the accused had been convicted of second degree murder in a jury trial in the United States District Court for the District of Columbia. It was asserted that: (1) the murder victim had a prior criminal record that would have further evidenced his violent character, thus supporting the argument for the defense that the accused acted in self-defense; (2) the prosecution failed to disclose the victim's record to the defense; and (3) there was recent authority that such evidence was admissible even if not known to the accused. The District Court denied the motion but rejected the government's argument that there was no duty to tender the victim's criminal record to the defense in the absence of an appropriate request, holding that even if it were assumed that evidence was admissible, it was nevertheless, not sufficiently material. The United States Court of Appeals for the District of Columbia reversed (167 App DC 28, 510 F2nd 1249). On *certiorari*, the United States Supreme Court reversed. In an opinion by Justice Stevens, it was held that (1) for purposes of an accused's right to a fair trial under the due process

---

[13] 405 U.S. 150 (1972).

[14] 427 U.S. 97, 49 L Ed 342, 96 S Ct 2392 (1976).

clause of the Fifth Amendment for federal criminal trials and under the due process clause of the Fourteenth Amendment for state criminal trials, a prosecutor had the constitutional duty to volunteer exculpatory matter to the defense, which duty was governed by a standard under which constitutional error would be committed if the evidence omitted by a prosecutor created a reasonable doubt about guilt, and (2) in the case at bar, the prosecutor's failure to inform the defense about the victim's criminal record did not deprive the accused of a fair trial under the due process clause of the Fifth Amendment, since: (a) the victim's criminal record had not been requested and did not arguably give rise to any inference of perjury; (b) the trial judge, after considering the omitted evidence in the context of the entire record, had remained convinced of the accused's guilt beyond reasonable doubt; and (c) the trial judge's firsthand appraisal of the record was thorough and entirely reasonable.

In *United States v. Bagley*,[15] the accused was convicted of various narcotics violations in the U.S. District Court for the Western District of Washington. He moved to vacate his sentence on the ground that his right to due process under the rule of *Brady v. Maryland*,[16] which requires prosecutors to disclose material evidence favorable to an accused, had been violated because the prosecution in this case had failed to disclose before trial that federal agents had contracted to pay the prosecution's only witness for information and testimony against the defendant, despite a defense motion for disclosure of any inducements made to prosecution witnesses in exchange for their testimony. The District Court denied the motion, finding beyond reasonable doubt that a disclosure of these contracts before trial would not have affected its verdict, since the witnesses' testimony had primarily related to other charges which the accused had been acquitted and defense counsel had not attempted to discredit the relatively brief testimony concerning the narcotics charges. The United States Court of Appeals for the Ninth Circuit reversed, holding that the prosecution's failure to disclose requested information which the defense could have used to conduct an effective cross-examination impaired the accused's right to confront adverse witnesses, and

---

[15] 473 U.S. 667 (1985), 87 L Ed 2nd 481, 105 S Ct 3375 (1985).

[16] 373 U.S. 83, 10 L Ed 2nd 215, 83 S Ct 1194 (1963).

therefore required an automatic reversal of his conviction (719 F2nd 1462). On *certiorari*, the United States Supreme Court reversed and remanded the case. In an opinion of Justice Blackmun, it was held (1) that the prosecutor's failure to assist the accused by disclosing evidence that might be helpful in conducting cross-examination is a constitutional error only if the evidence is material, under the Brady Rule; and (2) that undisclosed evidence is material for purposes of that rule only if it is reasonably probable that the outcome of the trial would have been different had the evidence been disclosed to the defense.

4) *Test of Materiality*

The U.S. Supreme Court, speaking through Mr. Justice Blackmun, in *U.S. v. Bagley*,[17] held that the prosecutor's failure to assist the accused by disclosing evidence that might be helpful in conducting cross-examination is a constitutional error only if the evidence is material under the Brady rule. It was further ruled that the undisclosed evidence is material for the purpose of the rule, only if it is reasonably probable that the outcome of the trial would have been different had the evidence been disclosed to the defense.

Evidence is "material," for purposes of the rule that the failure of the prosecution to disclose evidence favorable to an accused violates due process where the evidence is material to either guilt or punishment, only if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense; a "reasonable" probability sufficient to undermine confidence in the outcome.[18]

As ruled in *U.S. v. Agurs*,[19] in determining whether a prosecutor's nondisclosure of information to the defense is of sufficient significance to result in the denial of the accused's due process right to a fair trial, the standard is not one focusing on the impact of the undisclosed evidence on the accused's ability to prepare for trial but

---

[17] 473 U.S. 667 (1985), 87 L Ed 2nd 481, 105 S Ct 3375 (1985).

[18] *Id.*

[19] *Supra* note 12.

rather is one reflecting as overriding concern with the justice of the finding of guilt, and such finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt; thus, if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed. Also, if the verdict is already of unquestionable validity, additional evidence of relatively minor importance might be sufficient to create reasonable doubt.

5) *When Right is Violated; When No Violation of Right*

A principle which is settled in all criminal prosecutions is that although an attorney for the sovereign must prosecute the accused with earnestness and vigor, he must always be faithful to his client's overriding interest that justice shall be done; such attorney is the servant of the law, the twofold aim of which is that the guilty shall not escape nor the innocent suffer.[20]

In determining whether a prosecutor's non-disclosure of information to the defense is of sufficient significance to result in the denial of the accused due process right to a fair trial, the standard is not one focusing on the impact of the undisclosed evidence on the accused's ability to prepare for trial, but rather is one reflecting an overriding concern with the justice of the finding of guilt, and such finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt; thus, if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed, and such means that the omission must be evaluated in the context of the entire record.[21]

Where a prosecutor does not disclose information to the defense counsel and the accused is found guilty, if there is no reasonable doubt about guilt, whether the undisclosed additional evidence is considered, there is no justification for a new trial upon discovery of the nondisclosure, but if the verdict is already of questionable validity,

---

[20] *Id.*
[21] *Id*

additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.[22]

Extrajudicial Confession

An extrajudicial confession has been understood to be an admission or acknowledgment of guilt of the offense charged or any offense necessarily included therein made elsewhere than before a Magistrate or in Court.[23]

1) *American Period: Pre-1935 Constitution*

During the American rule in the Philippines, as provided for by Section 4 of Act No. 619, a confession must be voluntarily made in order to be admissible. Said section provided that no confession of any person charged with a crime shall be received in evidence against him unless it first be shown that such confession was voluntarily made or was not given as a result of violence, intimidation, threat or promise of reward or leniency. The burden of proof was placed on the prosecution to show that such a confession was voluntarily made.

With the repeal of Act No. 619 by the Administrative Code of July 1, 1916, the prerequisite of voluntariness still remained. However, the prosecution enjoyed a *prima facie* presumption that the confession was voluntarily obtained.

If the accused satisfactorily shows that it was made involuntarily, the confession stands discredited in the eyes of the law and is as a thing which never existed.[24]

2) *Under the 1935 Constitution*

Under the 1935 Constitution, where a confession appears not to have been voluntarily made, it should be rejected. In the Bill of Rights of the 1935 Constitution, Article III, Section 1(18), provides that no person shall be compelled to be a witness against himself. There is

---

[22] *Id.*

[23] RULES OF COURT, Rule 130, sec. 33; 20 AM. JUR. 479.

[24] U.S. v. Zara, 42 Phil. 308 (1921).

thus a safeguard against the compulsory disclosure of incriminating facts. Certainly, where the confession is involuntary, being due to maltreatment or induced by fear or intimidation, there is a violation of the constitutional guarantee. Any form of coercion, whether physical, mental, or emotional, thus stamps it with inadmissibility.

In *People v. Bagasala*,[25] the accused was convicted on the basis of evidence other than the involuntary confession, thus indicating that the confession was true. The confession was rejected for being involuntary. What is essential for its validity is that it proceeds from the free will of the person confessing. Testimonial unworthiness and unreliability constitute the underlying principles upon which involuntary confessions are rejected as evidence. A conviction resting on such proof, and on such proof alone, certainly cannot be allowed to stand. Also, such an inadmissibility rests upon the grounds of public policy and humanity - of policy because if the party were required to testify, it would place the witness under the strongest temptation to commit the crime of perjury, and of humanity, because it would prevent the extorting of confessions by duress. However, if the guilt of the accused is demonstrated beyond reasonable doubt, the inadmissibility of the confession extorted from him could not justify a reversal of his conviction.

In the case of *People v. Chua Huy*,[26] the Supreme Court held that the defendant's statements to the police were extorted by physical force and therefore involuntary. The defendant's injuries, certified to by a physician in the employ of the police department to be still fresh when he saw them, were tell-tale corroboration of the charge of severe torture. They were of such nature and seriousness as to preclude possibility of being self-inflicted. For this reason, the trial court erred in admitting those extra-judicial statements and taking them into consideration in its findings.

---

[25] G.R. No. 26182, May 31, 1971, 39 S.C.R.A. 236 (1971).
[26] 87 Phil. 258 (1950).

In the 1953 case of *People v. de los Santos,*[27] a modification of the rule was made by the Supreme Court. Speaking through Mr. Justice Labrador, the Supreme Court held that:

> A confession to be repudiated must not only be proved to have been obtained by force or violence or intimidation, but also that it is false or untrue, for the law rejects the confession when the force or violence, the accused is compelled against his will to tell a falsehood not when by such force and violence is compelled to tell the truth.

Along the same line is the ruling made in 1957 by the Court of Appeals, when speaking through Mr. Justice Paredes, in ruling on the admissibility of an involuntary confession as evidence, it said:

> Even granting, *arguendo* that the appellant was really maltreated in order to obtain his confession, still said confession is admissible in evidence against the appellant because the contents are true. What the law abhors is false confession, obtained by force.[28]

3) *Under the 1973 Constitution*

Article IV, Section 20 of the 1973 Constitution provides as follows:

> SEC. 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 vitiates the free will shall be used against him. A confession obtained in violation of this section shall be admissible in evidence.

To give force and meaning to the above constitutional provision, it was further provided that any confession obtained in violation of such provision is declared as inadmissible in evidence. In *People v. Jimenez,*[29] citing *Magtoto v. Manguera,*[30] it was held,

---

[27] 93 Phil. 83, 92, 93 (1953).

[28] People v. Samonte, 53 O.G. 7260-7261 (1957).

[29] G.R. No. 40677, May 31, 1977.

[30] G.R. Nos. 37201-02, 37424, 38939, March 3, 1975, 63 S.C.R.A. 4 (1975).

however, that a confession of an accused who was not informed of his right to silence and to counsel in violation of Section 20 was admissible against him if obtained before January 17, 1973, when the Constitution took effect, on the ground that the Constitution should be given prospective effect and that no law gave the accused such right before that date.

In *People v. Trinidad*,[31] the appellants were accused and convicted of murder by the then Court of First Instance. One of the assigned errors was the admission of the evidence for the prosecution which was obtained with irregularity by means of violence. The accused testified that he signed his confession because he was maltreated. The Supreme Court held that "[s]ince there is no proof that when they made their confessions they were informed of their right to remain silent and to counsel and that they knowingly and intelligently waived these rights, such confessions are inadmissible in evidence."

Under the 1973 Constitution, which was then in force, a confession without the accused having been warned of his rights under Section 20 is not admissible in evidence. Even if he was warned, if the warning was so mechanically given that it could not have been meant to inform him of his constitutional rights, the warning is insufficient.[32] It was ruled that even if the rights of the accused under Section 20 were explained to him, if he was not asked whether he wanted to avail of such rights, his confession is inadmissible.[32]

4) *Under the 1987 Constitution*

Article III, Section 12, of the 1987 Constitution provides as follows:

> (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

[31] G.R. No. 38930, June 28, 1988, 162 S.C.R.A. 714 (1988).
[32] People v. Dilao, G.R. No. 43259, October 23, 1980, 100 S.C.R.A. 358 (1980).
[32] People v. Felipe, 196 Phil. 464.

> services of counsel, he must provided with one. These rights cannot be waived except in writing and in the presence of counsel.

It is further provided that "[a]ny confession or admission obtained in violation of this (Section 12[1]) or (Section 17) shall be inadmissible evidence against him."

In *People v. Demaisip*,[33] *People v. Bernardino*,[34] and *People v. Nicholas*,[35] the Supreme Court ruled that the confessions of the accused were not admissible in evidence, because the accused were not informed of their right to remain silent and to be assisted by counsel. In *People v. Rumeral*,[36] and *People v. Caponpon*,[37] it was held that a confession extracted from the person arrested without the assistance of counsel was inadmissible in evidence. Likewise, in *People v. De Jesus*,[38] the Supreme Court rejected the confessions of the accused. In the course of their investigation of the stabbing of a tricycle driver, the police officers asked the two (2) accused if they knew anything about the incident and the latter answered in the affirmative. One of them surrendered a dagger and a knife. The police officers brought them to the police headquarters. They were interrogated without the assistance of counsel. The next day, the investigator fetched a lawyer from the Public Attorney's Office and in the presence of such lawyer, the statements of the accused were reduced into writing. In this case, the Supreme Court held that the statements were inadmissible in evidence, because the accused should have been assisted by counsel from the very start of the investigation.

However, in *People v. Luvendino*,[39] the Supreme Court ruled that the confession of the accused was admissible even if he was not assisted by counsel during his interrogation if he later on signed the confession with the assistance of a lawyer of his own choice. By doing

---

[33] G.R. No. 89393, January 25, 1991, 193 S.C.R.A. 373 (1991).
[34] G.R. No. 83810, January 28, 1991, 193 S.C.R.A. 448 (1991).
[35] G.R. Nos. 88381-82, November 21, 1991, 204 S.C.R.A. 191 (1991).
[36] G.R. No. 86320, August 5, 1991, 200 S.C.R.A. 194 (1991).
[37] G.R. No. 71145, November 21, 1991, 204 S.C.R.A. 146 (1991).
[38] G.R. No. 91535, September 2, 1992, 213 S.C.R.A. 345 (1992).
[39] G.R. No. 69971, July 3, 1992, 211 S.C.R.A. 36 (1992).

so, it was said that the accused ratified his confession. Where the counsel was provided for by the investigators, the confession taken in the presence of such counsel is inadmissible in evidence because it failed to satisfy the constitutional guarantee that the counsel must be independent and preferably of the choice of the accused or suspect.[40] But, if the suspect agreed to be assisted by the lawyer from the Public Attorney's Office, the lawyer became a counsel of his own choice.[41] It is worthy to note that the doctrine enunciated in *U.S. v. Zara,*[42] that a confession is admissible until the accused successfully proves that it ws given as a result of violence, intimidation, threat or promise of reward or leniency has been reiterated in the 1993 case of *People v. Dasig.*[43] Furthermore, the law presumes that a written extrajudicial confession concededly signed by an accused, was voluntarily given, upon the basis that no person in his right mind would knowingly confess to being the doer of a crime unless prompted by truth and conscience.[44] Also, an extrajudicial confession is binding only on the confessant and is not admissible in evidence against his co-accused except when the confession is to be used as circumstantial evidence to show the probability of participation of said - accused in the crime charged.[45] Where the accused was required to sign a receipt of property seized, there must be proof that constitutional requisites for admission of confession were complied with.[46] The signing of such a receipt is in the nature of a confession to the commission of a crime. This rule was applied in the 1991 case of *People v. Enrique,*[47] where the accused was asked by a police investigator to write his name on the

---

[40] People v. Pamon, G.R. No. 102005, January 25, 1993, 217 S.C.R.A. 501 (1993).

[41] People v. Pinzon, G.R. No. 94757, February 7, 1992, 206 S.C.R.A. 93 (1992); People v. Enamoria,G.R. No. 92957, June 3, 1992, 209 S.C.R.A. 577 (1992).

[42] *Supra* note 22.

[43] G.R. No. 100231, April 28, 1993, 221 S.C.R.A. 549 (1993).

[44] People v. Remollo, G.R. No. 104498, October 22, 1993, 227 S.C.R.A. 375 (1993).

[45] People v. Alvarez, G.R. No. 103464, September 23, 1993, 226 S.C.R.A. 683 (1993).

[46] People v. Deocariza, G.R. No. 103396, March 3, 1993, 219 S.C.R.A. 488 (1993).

[47] G.R. No. 90738, December 9, 1991, 204 S.C.R.A. 674. (1991).

rolled marijuana cigarettes. However, in *People v. Linsangan,*[48] the Supreme Court declared that asking the person arrested for selling marijuana to sign the money used to buy the marijuana did not violate Article III, Section 12, of the Constitution. The Court reasoned out as follows:

> Although he was not assisted by counsel when he initialed the P10-bills which the police found tucked in his waist, his right against self-incrimination was not violated for his possession of the marked bills did not constitute a crime because the subject of the prosecution was his act of selling marijuana.

In the 1993 case of *People v. Molas,*[49] it was held that an extrajudicial confession made without the advice and assistance of counsel, hence, inadmissible, may be treated as a verbal admission of the accused established through the testimonies of the persons who heard it or who conducted the investigation of the accused. The Supreme Court added that "at any rate, the trial court did not rely solely on the extrajudicial confession of the accused. Even if that confession were disregarded, there was more than enough evidence to support his conviction."

Illegally Seized Evidence - Pre-Trial Motion to Suppress

1) *Basic Principles and Concept*

Article III, Sec. 1 of the Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." No person shall be held to answer for a criminal offense without due process of law.[50] Any evidence obtained in violation of the Constitutional provisions on 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, and the privacy of communication and correspondence shall be inadmissible for any purpose in any proceeding.

---

[48] G.R. No. 88589, April 16, 1991, 195 S.C.R.A. 784 (1991).

[49] G.R. Nos. 97437-39, February 5, 1993, 218 S.C.R.A. 473, 481 (1993).

[50] CONST., art. III, sec. 14, par. (1).

2) *Standing to File Motion to Suppress*

In all cases, the legal standing of a person has for its basis his being a real party in interest.[51] A real party in interest has been defined as "any person who claims an interest in the controversy or who is necessary to a complete determination or settlement of the question involved."[52] He must have a real interest in the subject matter of the action. He is the party who would be benefited or injured by the judgment in the case.[53]Real interest means a present substantial interest as distinguished from a mere expectancy or a future or contingent interest.[54] In a settlement proceeding, it has been held that an interested party is one who would be benefited by the estate, such as an heir, or one who has a certain claim against the estate, such as a creditor.[55]

It is well-settled, said the Supreme Court in *Stonehill v. Diokno*,[56] "that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties." Proceeding from this premise, the Supreme Court ruled thus:

> Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs exclusively to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their individual capacity. Indeed, it has been held:
>
> 'x x x that the Government's action in gaining possession of papers belonging to the *corporation* did not

---

[51] RULES OF COURT, Rule 3, sec. 11.

[52] RULES OF COURT, Rule 3, sec. 2.

[53] Filipinas Industrial Corporation v. San Diego, G.R.22347, May 27, 1968, 23 S.C.R.A. 706.

[54] Garcia v. David, 67 Phil. 279 (1939).

[55] Ngo The Hua v. Chung Kiat Chua, G.R. No. 17091, September 30, 1963, 9 S.C.R.A. 11 (1963).

[56] G.R. No. 19550, June 19, 1967, 20 S.C.R.A. 383, 390 (1967).

> relate to nor did it affect the *personal* defendants. If these papers were unlawfully seized and thereby the constitutional rights of or any one were invaded, they were the rights of the *corporation* and not the rights of the other *defendants.* Next, it is clear that a question of the lawfulness of a seizure can be raised *only* by one *whose rights have been invaded.* Certainly, such a seizure, if unlawful, could not affect the constitutional rights of defendants *whose property had not been seized or the privacy of whose homes had not been disturbed;* nor could they claim for themselves the benefits of the Fourth Amendment, when its violation, if any, was with reference to the rights of *another.* Remus v. United States (C.C.A.) 291 F. 501, 511. It follows, therefore, that the question of the admissibility of the evidence based on an alleged unlawful search and seizure does not extend to the personal defendants but embraces *only the corporation* whose property was taken. x x x.'
>
> (A. Guckenheimer & Bros. Co. v. United States, [1925], 3 F 2d. 786, 789, Italics supplied).

The above ruling on standing was reiterated in *Nasiad v. Court of Tax Appeals*[57] where the owners of allegedly smuggled goods were precluded from questioning the legality of the search and seizure of documents from a vessel not owned by them and from a hotel room occupied by another third party. The Supreme Court, speaking through the then Chief Justice Fernando held that:

> There is force and substance to the contention that Stonehill v. Diokno is inapplicable. As was so clearly pointed out in the opinion rendered by the then Chief Justice Concepcion: 'Indeed, it is well settled that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs exclusively to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their

[57] G.R. No. 29318, November 29, 1974. 61 S.C.R.A. 238, 234-244 (1974).

> individual capacity.' Petitioners are thus bereft of any legal support. Their effort to condemn respondent Court when it took into consideration the evidence yielded by what was alleged to be illegal searches and seizures is marked by futility. Only by disregarding a doctrine aptly characterized as 'well-settled' could the slightest attention be paid to their submission. That, we are not disposed to do. It is one thing to assure that constitutional rights remain inviolate; it is an entirely different matter, one devoid of justification in law, no less than in morals, one moreover at war with the valid state policy against the evils of smuggling, if a constitutional right, personal in character, could be seized upon by a third party engaged in an illegal activity. That would be to demean a constitutional mandate. For even a cursory perusal of what did transpire yields no other conclusion except that the forfeited cargo of copra and coconut was smuggled. The Commissioner of Customs who declared the forfeiture had thus to be sustained by respondent Court of Tax Appeals.

It stated further that the accused's right to object to the use of the illegally obtained evidence must rest, not on a violation of his own constitutional rights, but on the ground that the government must not be allowed to profit by its own wrong and thus be encouraged in the lawless enforcement of the law.[58]

3) *Where Filed*

A motion to suppress illegally obtained evidence necessarily involves a mere incident in the whole framework of a pending criminal case. Of necessity, the motion shall be filed in the criminal case involving the accused. It is in said criminal case where the illegally obtained evidence is supposed to be presented. Hence, if any move concerning said evidence has to be taken, such move must be brought to the attention of the court where the case is pending for resolution.

4) *Specification of Evidence*

Just as in any motion or pleading for that matter, the evidence sought to be suppressed must be specified with sufficient particularity.

---

[58] *Id.*

The description should be made in such a way as to afford the requisite identity of the evidence in question.

Such description or specification of the document in question is indispensable to enable the court to determine the merit or lack of merit of the motion to suppress. Sufficient description or specification will also afford the court ability to exclude or suppress the evidence in question should the court find merit in the motion.

5) *Illegality of Evidence; Facts Showing Illegality of Seizure*

As a prerequisite to the merit of the motion to suppress illegally seized evidence, such motion must state facts showing the illegality of the seizure of the evidence in question. If the facts are borne by the record of the case, the accused-movant can just make reference to the record in support of the motion. Otherwise, the accused-movant has to resort to evidence in motion under Rule 133, Sec. 7 of the Rules of Court. This can be done by affidavit/s and/or testimonial or documentary evidence or both. Such step is necessary to provide factual basis/support for the motion.

6) *Proceedings on Motion*

After the motion to suppress illegally seized evidence is prepared, the same has to be filed in the court where the criminal case is pending. That is done after a copy of said motion is served upon the public prosecutor and/or the private prosecutor at least three (3) days before the date on which the motion is set for hearing.[59] This is to give the public or/private prosecutor a chance to oppose/comment on the motion before the scheduled hearing thereon. The three-day notice required by law in the filing of motions is intended not for movant's benefit but to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the motion.[60]

---

[59] RULES OF COURT, Rule 15, sec. 4.

[60] Tuason & Co., Inc. v. Magdangal, G.R. 15539, January 30, 1962, 4 S.C.R.A. 84 (1962).

The motion shall be set for hearing, during which the movant and the prosecution shall be heard. It was held in a case that where lack of original notice to set the motion to resolve for hearing was cured by the fact that petitioner was heard on her motion for reconsideration, it cannot be said that she was denied her day in court.[61]

It is after the parties had been given their day in court and the issue/s have been sufficiently ventilated that the motion may be considered submitted for resolution. Thereafter, it is for the court to evaluate the arguments advanced by the respective sides before finally issuing the order granting or denying the motion to suppress illegally seized evidence.

7) *Advantage of Pre-Trial Motion to Suppress*

The motion to suppress illegally seized evidence may be considered in the nature of a mode of discovery. In this sense, it is a means of enabling the defense to gauge the strength or weakness of the evidence for the prosecution. Along this line, the defense may be able to limit the scope of the evidence which the prosecution can present during the trial.

The advantage for the defense in filing the motion before the start of the trial on the merits lies in the opportunity to obtain the proper relief from an order denying the motion. For this purpose, the remedy of *certiorari* under Rule 65 of the Rules of Court can be availed of by the defense. In this way, the defense can avoid a possible prejudice which may be brought about by the admission of illegally seized evidence into the record of the case. This situation may arise when the objection to the presentation of illegally obtained evidence during the trial is overruled by the court. When such evidence is admitted into the record of the case, what can prevent a resourceful prosecution from curing the defect which originally attached to said kind of evidence.

---

[61] Cruz v. Ernesto Oppen, Inc., G.R. No. 23861, February 17, 1968, 22 S.C.R.A. 608 (1968).

In the trial of cases, as in war or any aspect of life's struggle, it is always advantageous for a party to be several steps ahead of his opponent.

- oOo -