

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FILOTEO MANIPULA, FERNANDO AZUCENA, QUIRINO AZUCENA, JOAQUIN LAUTRISO, AND LEOPOLDO AZUCENA, ACCUSED. FERNANDO AZUCENA AND QUI...

G.R. No. L-27608. July 06, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Automatic review and appeal of the death sentences imposed by the Iloilo court of first instance upon the accused-appellants Quirino Azucena and Fernando Azucena for the crime of robbery with homicide.

The Court reverses and sets aside the trial court's judgment for utter insufficiency of the evidence of the prosecution in accordance with the recommendation of the Solicitor-General.

The information for robbery in band with homicide was originally filed against the five above-named accused for having allegedly killed the spouses Modesto Ayusip and Visitacion Manipula in the evening of March 10, 1965 in Barrio Batete, Concepcion, Iloilo and robbed them of P5,135.20 (P4,000.00 of which was in cash).

The three Azucenas charged are brothers while accused Joaquin Lautriso is their brother-in-law, his wife being their younger sister. The Azucenas are first cousins of the deceased Modesto Ayusip while accused Filoteo Manipula is a brother of the deceased Visitacion Manipula.

Accused Manipula filed a petition for his bail. The prosecution in turn filed a motion to discharge accused Leopoldo Azucena for the purpose of utilizing him as a state witness. At the hearing of said incidents, the parties agreed that evidence presented thereat would be considered part of the evidence of the case on the merits.

The lower court granted Manipula's petition for bail and denied the prosecution's motion to discharge Leopoldo Azucena as per his order of April 27, 1965.

In granting Manipula's petition and fixing his bail at P30,000.00, the lower court ruled that "the evidence against Filoteo Manipula is not very strong as to his participation in the immediate killing of the spouses Modesto Ayusip and Visitacion Manipula," as follows:

"Evidence was received regarding the complicity of the accused Filoteo Manipula. The said evidence consisting in the testimony of Venancio Espolong, Chief of Police of Concepcion, Iloilo, where the incident happened in barrio Batete. It appears from the testimony of the said chief of police that on March 12, 1965, Filoteo Manipula accompanied by Felipe Navarro came to the office of the chief of police and notified the said chief of police that it has been two days since the 10th of March, 1965, that the couple Modesto Ayusip and Visitacion Manipula Ayusip have not shown up outside of their residence in barrio Batete, Concepcion. The report was recorded in the police blotter and ordered four of his policemen to accompany him. The chief of police went to the house of Modesto Ayusip in barrio Batete accompanied by Filoteo Manipula and Felipe Navarro. On entering the house, the chief of police discovered that Modesto Ayusip was lying face upward

with his hands tied behind him and with his throat and mouth showing incise wounds caused by sharp instrument.

"It appears from the testimony of the chief of police that when Filoteo Manipula saw the spouses Modesto Ayusip and Visitacion Manipula Ayusip, Filoteo Manipula was heard to exclaim: 'Abaw! guin patay guid nila,' which when translated means: 'Oh! they have gone to the extreme of killing them.' With this remark alone the Court is convinced that Filoteo Manipula did not personally know that his sister, Visitacion Manipula Ayusip and her husband Modesto Ayusip were killed in the night of March 10, 1965. Even conceding the testimony of Leopoldo Azucena in his signed statement (Exhibit C), or that the said accused Filoteo Manipula had no intention at all to cause the death of his sister and his brother-in-law which was done not by himself but by the Azucenas, including Leopoldo Azucena. Although in the testimony of Leopoldo Azucena, Exhibit C, he disclaims having performed acts which immediately led to the death of either of the spouses, the evidence for the prosecution, Exhibit C, clearly shows that Filoteo Manipula stayed downstairs as guard and had not even seen his sister or his brother-in-law in the night of the incident. And, while in the evidence presented before this Court Conrado Azucena tried to prove that Filoteo Manipula was the one who proposed to him to commit the robbery in the house of Modesto Ayusip and his wife, Visitacion Manipula, Exhibit C belies the said assertion because Leopoldo Azucena when asked in question No. 24, 'Who was the very person responsible to stage the robbery on the person of Modesto Ayusip and Visitacion Manipula?' A. 'Fernando Azucena.' Q. No. 25, 'Why, what was the motive behind this case?' A. 'Because Modesto Ayusip and Visitacion Manipula are not in good terms with our family and that of Filoteo Manipula.' So with this conflict in the statement of Conrado Azucena and the statement of Leopoldo Azucena, it is apparent that Filoteo Manipula could not have been a principal by induction as the prosecution tried to impress by presenting the testimony of Conrado Azucena." [1]

On the prosecution's motion to discharge Leopoldo Azucena, the lower court after stating the prosecution's grounds in support thereof that

"xxx xxx xxx there is absolute necessity for the testimony of the aforementioned defendant whose discharge is requested; that there is no other direct evidence available and that as far as the identities of the other accused are concerned, the testimony of the herein defendant which they are asking to be discharged is necessary because the evidence available for the proper prosecution of the offense committed is not sufficient without the testimony of said defendant; that the testimony of said defendant can be substantially corroborated in its material points; xxx xxx xxx." [2]

denied the motion for discharge of the witness "in view of the evidence presented during the petition for bail wherein it appears that the testimony of said Leopoldo Azucena is not only uncorroborated but that the same is in direct conflict with the testimony of the witness Conrado Azucena." [3]

Trial on the merits proceeded thereafter and the lower court in its appraisal of the evidence ruled that conspiracy as alleged in the information had not been proven, so that "each individual will be responsible only for the immediate acts he has performed." Relying upon the alleged extra-judicial statement and confession of accused Leopoldo Azucena, (whose discharge to be utilized as state witness the lower court had denied for being uncorroborated and in direct conflict with Conrado Azucena's testimony which pointed to Filoteo Manipula as principal by induction) and who, upon testifying in his own defense, repudiated his extra-judicial confession and asserted that the same had been extracted from him by force and intimidation, the lower court rendered its verdict of March 31, 1967 finding all the accused, except Filoteo Manipula whom it acquitted, guilty of the crime charged, and imposed on accused-appellants Quirino Azucena and Fernando Azucena the extreme penalty of death for having caused the deaths of the victims, Modesto Ayusip and Visitacion Manipula, respectively, and on accused Leopoldo Azucena and Joaquin Lautriso lesser penalties as accessories after the fact, as follows:

"xxx xxx xxx Insofar as the conspiracy between Filoteo Manipula, Leopoldo Azucena and Quirino Azucena

is concerned, the only ones mentioned by Conrado in his testimony, the same has been denied by Filoteo and likewise by Leopoldo Azucena and Quirino. There is no evidence of that alleged conspiracy between Filoteo and Leopoldo and Quirino with the two other accused Fernando and Joaquin Lautriso. Apparently, there is a gap that disconnects the concerted acts among them. As has been clarified in the statement, Exhibit C, of Leopoldo Azucena only the four of them, namely, Fernando, Quirino, Leopoldo and Joaquin went up into the house. The evidence in the record is as per Exhibit C, that it was Quirino who cut the throat and slashed the mouth of Modesto Ayusip which resulted in his death and it was only Fernando Azucena who fired the fatal shots that hit and killed Visitacion Manipula, and (that) the three Azucenas and their brother-in-law Joaquin Lautriso have divided what they have taken from the house of the deceased the evidence is not clear as to what share Filoteo Manipula received, and this fact has been flatly denied by him. The very remarks of Filoteo Manipula when he first saw the cadaver of his sister as quoted by the witness Chief of Police Espu-long, 'Abaw! Guin patay guid nila ang utod co,' 'Abaw! They have gone to the extent of killing my sister,' is unmistakably an index that he did not know of the killing of his sister. The same is true of his remark which he made regarding his brother-in-law which is practically of the same tenor when he saw him dead for the first time. This remark is inconsistent with guilt; and coupled with the statement of Patrolman Villanueva that while on the way to the municipal building Leopoldo implicated only Quirino, Fernando and Lautriso, the Court entertains grave doubt about Manipula's guilty complicity; especially if it be taken into account that immediately after being notified by the son of Leopoldo Azucena while he was plowing in his farm that the spouses Modesto Ayusip and Visitacion Manipula have not gone out of their house for the last two days he immediately responded to his instinct of giving aid to his sister apprehensive that something may have happened to her; and considering further that he immediately proceeded to the town in company of Navarro in order to report the suspicious circumstances and the ominous silence in the house of his sister to the chief of police, and considering still further the fact that he had to sacrifice and go to the municipality of Sara in order to report the matter to the P.C., contract the services of photographer and that of the embalmer for the cadavers of his sister and his brother-in-law and the fact that he (lunged) at Quirino Azucena while in the jeep with the P. C. soldiers from Sara, to fight him after asking him if he killed his sister, - all these create a very serious doubt on his guilty complicity and belies completely and absolutely the probability of the existence of the alleged conspiracy between him and the other accused. His acts reflect the reaction of an innocent man. All these are indexes inconsistent with guilt and because of this grave doubt in the mind of the Court the said accused Filoteo Manipula deserves an acquittal.

"Insofar as the other accused Leopoldo Azucena is concerned the Court finds that all that he did was to accompany them without being armed and possibly share in the spoils of the loot as admitted by him in his signed statement. It was Fernando Azucena who searched for the money inside the cabinet and found the can containing assorted coins and thereafter gave the can to Quirino Azucena.

"As is true with Leopoldo Azucena, this is also true insofar as the accused Joaquin Lautriso is concerned. There is no evidence absolutely that he has laid hands on any of the spouses if at all he was there present during the killing although the Court is convinced that he had shared in the spoils of the robbery. Neither is there evidence of conspiracy as far as he is concerned.

'xxx xxx xxx'

"FOR ALL THE FOREGOING, the Court believes that the guilt of the accused Quirino Azucena and Fernando Azucena has been proven beyond reasonable doubt for the killing of Modesto Ayusip and Visitacion Manipula, respectively, and therefore, convicts Quirino Azucena for the crime of robbery with homicide for the killing of Modesto Ayusip; and Fernando Azucena for robbery with homicide for the killing of Visitacion Manipula and imposes on each of them the penalty fixed under Art. 294, No. 1 of the Revised Penal Code, which is life imprisonment to death in its maximum as provided for in Republic Act No. 12, which is death.

"As far as the accused Leopoldo Azucena and Joaquin Lautriso are concerned the Court finds them guilty of

being accessory after the facts and convicts them to suffer the penalty of two degrees lower or an imprisonment of SIX (6) YEARS and ONE (1) DAY to EIGHT (8) YEARS of prision mayor. All with pro-portion al costs.

"As far as the accused Filoteo Manipula is concerned the Court, for reasonable doubt, acquits him of the charge with proportional costs de oficio and orders the cancellation of the bond put up by him for his temporary liberty.

"The Court does not believe the accused of having stolen P4,000.00 but only for the amount which they have divided among themselves as stated above in the total sum of P240.00, plus the value of the ar-ticles stolen in the total sum of P663.60 and orders them to pay the value thereof to the heirs of the de-ceased spouses Modesto Ayusip and Visitacion Mani-pula. The Court also orders that the accused Quirino Azucena and Fernando Azucena pay the heirs of the deceased the sum of P6,000.00 for the deaths of each of the spouses." [4]

The accused Leopoldo Azucena and Joaquin Lautriso did not appeal the verdict, and the judgment appealed by Quirino and Fernando and elevated for automatic review is the death verdict imposed upon them. Said accused-appellants requested the appointment of an attorney de oficio and the Court so appointed Atty. Alfredo R. Barrios, who filed an extensive and well-prepared brief on their behalf.

Then Solicitor-General, now a member of this Court, Felix Q. Antonio thereafter filed on February 13, 1971 a manifestation in lieu of appellee's brief, wherein inter alia he delineated the prosecution's evidence and showed its utter insufficiency to produce a moral certainty of guilt and to justify the lower court's imposition of the death penalty against the herein accused-appellants, as follows:

"5. A first pertinent observation is that the same evidence adduced against all the herein accused resulted in the conviction of appellants Quirino Azucena and Fernando Azucena, a finding of lesser degree of participation of two accused and the acquittal of Filoteo Manipula;

"6. Except for the alleged extra-judicial confession (Exh. "C") of the accused Leopoldo Azucena, the only other evidence in the record tend-ing to implicate accused-appellants herein are as follows:

"Erlinda Ayusip - the only daughter of the deceased spouses Modesto Ayusip and Visita-cion Manipula, testified that Filoteo Manipula, who is the brother of her mother tried to borrow money from her mother sometime in January 1965 but was refused (pp. 2, 9-10, t.s.n., Aug. 9, 1966). Also, that Quirino Azucena was formerly a tenant of Modesto Ayusip. In December 1964 or January 1965 Quirino left the land after he failed to borrow 5 bultos of palay from witness' mother. (p. 12, t.s.n., sess. Aug. 9, 1966).

"Pedro Esperella - a relative of the deceased Modesto Ayusip and described by the trial court as an eleventh hour witness since he was not listed as a wit-ness either in the complaint filed by the police or the information filed by the fiscal, testified that he saw ap-pellants Quirino Azucena and Fernando Azucena, accused Joaquin Lautriso and Filoteo Manipula pass by his house at about 8:00 o'clock p. m. on the night of March 10, 1965 walking fast headed towards the west and having come from the direction of the east (house of the deceased Modesto Ayusip was towards the east); that witness' house was located near his farm in Bo. Jamolaoan, Concepcion, Iloilo which is 1-1/2 kilometers from Bo. Batete; precisely, his house is about 1 km. from the house of the deceased in Bo. Batete (pp. 94-96, 98, t.s.n., sess. August 12, 1966).

"Conrado Azucena - testified that on February 5, 1965, Filoteo Manipula passed by his house in Jamo-laoan (2 km. from Bo. Batete) and asked him to go with him; on the way Filoteo broached to him the proposal to rob the house of Modesto Ayusip, a first cousin of witness and brother-in-law of Filoteo; they were joined later by appellants Leopoldo Azucena and Quirino Azucena; that Leopoldo at first refused to join the conspiracy but later agreed when Filoteo pointed a revolver at him (pp. 14-17, t.s.n., sess. April 21, 1965).

"This witness' testimony was, however, debunked by the lower court which observed that "the demeanor of

this witness while testifying that he is a schooled witness' (at p. 36, Decision).

"7. That with the rejection of Conrado Azucena's testimony, the lower court correctly held:

'xxx xxx that conspiracy as alleged in the information has not been duly proven, as far as Filoteo Manipula and Con-rado Azucena are concerned. It is, however, the opinion of this Court that while this conspiracy was not established sufficiently each individual will be responsible only for the immediate acts that he has performed. xxx xxx' (at p. 37, Decision)

"8. The only evidence directly linking appellants herein to the crime is the alleged extra-judicial confession (Exh. C, p. 12, rec.) of Leopoldo Azucena the contents of which, according to Sergeant Julio Gerona of the 32nd P.C. Battalion, was uttered in the Visayan dialect, translated by him in English, and accordingly reduced in writing, after which said written extra-judicial confession was signed by Leopoldo Azucena and affirmed by him under oath before the Municipal Judge of Concepcion, Iloilo (pp. 138-140, 143, t.s.n., Aug. 29, 1966; pp. 159-160, August 30, 1966). It would appear that the lower court based appellants' conviction on the Exhibit C. We quote:

'xxx xxx The evidence in the record is as per Exhibit C, that it was Quirino who cut the throat and slashed the mouth of Modesto Ayusip which resulted in his death and it was only Fernando Azucena who fired the fatal shots that hit and killed Visitacion Manipula, xxx xxx'

"9. Declarant Leopoldo Azucena never testified for the prosecution, either at the hearing of the motion to have him discharged as a state witness or during the hearing of the above-entitled case on the merits, to confirm the contents of his extra-judicial confession. On the contrary, when he testified in his behalf, he repudiated his extra-judicial confession, alleging that the same was extracted from him by force and intimidation after his apprehension on March 18, 1965 and investigation culminating in Exhibit C on March 20, 1965 (pp. 33-39, t.s.n., Aug. 9, 1966).

"10. Thus, the alleged extra-judicial confession of Leopoldo Azucena is admissible, if at all, only against him but not against his co-defendants, the herein appellants as to whom said confession is hearsay evidence. We are constrained to agree with appellants' observation in their third assignment of error, to wit:

'xxx xxx There is, however, a portion in the decision appearing on Page 27, thereof, where the court took pains in rebutting the doctrine of hearsay evidence with respect to extra-judicial confession as against other co-accused and cited the case of People vs. Sim-bajon, et al., G.R. No. L-18073-75, September 30, 1965, pp. 71-76 Adv. Dec. which reads:

'While it is true that extrajudicial confessions are admissible only against the persons who made them, it is however, the rule that they may be admitted as corroborative evidence of other facts that tend to establish the guilt of the other defendants.'

yet the lower court had completely forgotten that there is no other fact or facts corroborated by the said sworn statement. xxx xxx'

"11. Without the said extra-judicial confession (Exh. 'C', p. 12, rec.) which narrates in detail the supposed participation of the herein appellants in the commission of the crime at bar, the prosecution has not adduced sufficient evidence to warrant their conviction beyond reasonable doubt and the imposition against them of the extreme penalty of death." [5]

The Solicitor-General concluded his manifestation with a re-commendation "in the interest of justice (for) the acquittal of the herein appellants."

After a review of the record, the Court concurs with the Solicitor-General's report, supra, and approves the

recommendation for reversal of the death verdict and acquittal of appellants.

In addition to those already discussed above, the following additional considerations call for a reversal of the lower court's ver-dict:

- As stressed in *People vs. Urro*,^[6] "the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to alleged voluntary confessions of the accused and the courts should be slow to accept such confessions unless they are corroborated by other testimony," having in mind that "Involuntary or coerced confessions obtained by force or intimidation are null and void/and are abhorred by the law, which proscribes the use of such cruel and inhuman methods to secure a confession;"

- Several clear warning signals called for rejection of Leopoldo Azucena's alleged extra-judicial confession small-typed in three legal-size single-spaced pages in English even as against himself alone, viz:

- Leopoldo was a mere second grader^[7] who could give his answers only in Visayan, and as already noted by the Solicitor-General's manifestation, the 27 questions of the state-ment had to be asked in Visayan but typed in English and similar-ly Leopold's alleged answers in Visayan had to be translated and typed in English;

- As pointed out in *Urro*, supra, "Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the said answers is naturally pregnant with possibilities of human, if unintentional, inadequacies and incompleteness which render the said confession unsafe as basis of conviction for a capital offense, unless sufficiently corroborated; "[8]

- A mere reading of the long, precise narrative of Leopoldo's statement in answer No. 13 to the simple question of what transpired when he and his four other co-accused alleged-ly entered the victim's dwelling, filling up two-thirds of the whole page complete without any prodding in every detail of what each accused did and precise to the last item as to the cash in coins and bills forcibly taken by them -

e.g. "(T)hen Fernando Azucena searched the money inside the cabinet and found (a) can container with assorted coins amounting to TWO HUN-DRED PESOS (P200.00) and two pieces (P20.00 paper bills). He gave the can container to Quirino Azucena. Then Fernando Azu-cena took three (3) pieces blankets, three (3) pieces untailored wash and wear, five (5) pieces dresses owned by Visitacion Canipula (sic), six (6) pieces dresses of Erlinda Canipula (sic) Ayusip, 1 pair ear-ing (sic), and one (1) necklace and gave it to alias Quining"

would readily raise very serious doubts as to whether such a precise and detailed narrative could be attributed to an unschooled farmer like Leopoldo; and

- The handwritten corrections made in ink on the alleged confession, without any initials or explanation thereof, particularly, the superimposition in several places of ".45" on ".32" as to the caliber of the gun used in the killing presuma-bly so as to tally with the shells recovered are on the face of the statement made by a schooled person with fine handwriting and definitely not by Leopoldo, whose belabored drawn out signa-ture reveals his meager schooling;

- The lower court thus rejected the prosecution's theory based on the alleged extra-judicial confession of Leopoldo; but if there was no conspiracy among the five accused to rob the victims, then it necessarily followed that they could not have possibly just converged by chance at the victims' dwelling and helped one another by surrounding and threatening Visitacion to force her to reveal where she kept their money, as stated in the said alleged confession;

- Prescinding then from the utter lack of authenticity of the said alleged extra-judicial confession of Leopoldo and

from the fact that the same could not be used against his co-accused, the lower court's ambivalent appreciation of the same in rejecting it totally and pronouncing that there was no conspiracy among the five accused and yet discrediting it entirely insofar as accused Filoteo Manipula was concerned by acquitting him but giving it full credence to find the four other accused guilty of the crime charged is wholly inconsistent and absolutely untenable;

- The prosecutions failure to produce any of the death weapons, such as the gun and bolo allegedly used by appellants in killing the victims, nor for that matter to recover any of the stolen money and personal effects, is of course to be expected, in view of the said alleged extra-judicial confession having been totally discredited, as above shown; and

- Under the circumstances of the case at bar, where there was no competent or reliable evidence placing the accused at the scene of the crime or positively identifying them as the perpetrators of the crime, the forthright denials by the accused of any part or complicity therein and their duly corroborated defense of alibi are measurably and proportionately strengthened. The defense of alibi become still stronger when it is shown that the prosecution witnesses have openly lied in court, as per the lower court's rejection of Esperella's testimony as an eleventh hour witness who would simply have placed the accused near the scene of the crime as well as of the victims' daughter Erlinda Ayusip's testimony who would ascribe to her own uncle, Filoteo Manipula, the latter's alleged failure to borrow money from her mother some two years ago as motive for murder and robbery against his own sister and brother-in-law. It is well to note that the rule that alibi must be convincingly proven was never intended to change or shift the burden of proof to the accused, which would result in the absurdity of the accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong.[9]

ACCORDINGLY, the decision of the lower court under review imposing the death penalty on herein accused-appellants Fernando Azucena and Quirino Azucena is hereby reversed and set aside for insufficiency of the evidence and they are hereby acquitted of the charge against them. Their immediate release is hereby ordered, unless they are held for some other lawful cause. Costs de oficio.

Let copies of this decision be furnished to the Pardon and Parole Board, Department of Justice and to accused Leopoldo Azucena and Joaquin Lautriso (who did not appeal their conviction as accessories after the fact) for appropriate action towards the granting of executive clemency to them in the light of this decision.

SO ORDERED.

Makalintal, (Acting C.J.,) Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, and Esguerra, JJ., concur. Antonio, J., took no part.

[1] Record, pp. 43-45; emphasis supplied.

[2] Idem, pp. 42-43.

[3] Idem, p. 45.

[4] Record, pp. 447-450; emphasis supplied.

[5] Rollo, p. 229-233; emphasis supplied.

[6] 44 SCRA 473, 484 (1972).

[7] T.s.n. of August 9, 1966, p. 36.

[8] At p. 486; citing *People vs. Maisug*, 27 SCRA 472, 753 (1969).

[9] *People vs. Bulawin*, 29 SCRA 710 (1969); *People vs. Fraga*, 109 Phil 241 (1960).

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