

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO OPIDA Y QUIAMBAO AND VIRGILIO MARCELO, ACCUSED-APPELLANTS.

G.R. No. L-46272. June 13, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

This is an automatic review of the Decision of the Circuit Criminal Court, Seventh Judicial District, imposing the death penalty upon Alberto Opida and Virgilio Marcelo for the crime of murder.

Unlike the victim in this case, who died from only one stab wound, the decision under review suffers from several fatal flaws, all equally deadly. It suffices to discuss only one of them.

Time and again this Court has declared that due process requires no less than the cold neutrality of an impartial judge.[1] Bolstering this requirement, we have added that the judge must not only be impartial but must also appear to be impartial, to give added assurance to the parties that his decision will be just.[2] The parties are entitled to no less than this, as a minimum guaranty of due process. This guaranty was not observed in this case.

On July 31, 1976, in Quezon City, several persons ganged up on Fabian Galvan, stoned and hit him with beer bottles until finally one of them stabbed him to death. The actual knife-wielder was identified as Mario del Mundo.[3] Nonetheless, Alberto Opida and Virgilio Marcelo were charged with murder as conspirators and, after trial, sentenced to death.[4]

The basis of their conviction by the trial court was the testimony of two prosecution witnesses, neither of whom positively said that the accused were at the scene of the crime, their extrajudicial confessions, which were secured without the assistance of counsel, and corroboration of the alleged conspiracy under the theory of interlocking confessions.[5]

What is striking about this case is the way the trial judge conducted his interrogation of the two accused and their lone witness, Lilian Layug. It was hardly judicious and certainly far from judicial, at times irrelevant, at worst malicious. Reading the transcript, one gathers the impression that the judge had allied himself with the prosecution to discredit at the outset the credibility of the witnesses for the defense.

Opida is a police character, admittedly a member of the Commando gang and with a string of convictions for robbery, theft and vagrancy.[6] It is worth noting that the judge took special interest in his tattoos, required him to remove his shirt so they could be examined, and even described them in detail for the record.[7]

Besides belaboring Opida's, criminal activities and his tattoos, the judge asked him if he had "ever been convicted at the National Mental Hospital" - with what else but malice? - and suggested to him that his claim of manhandling by the police was a lie because investigators leave no mark when they torture a suspect.[8] This was a point that could have been validly raised by the prosecution but certainly not by the court. The judge also made it of record that the witness was gnashing his teeth; was showing signs of hostility, that he was uneasy, and that he

was restless. "Now, whom do you want to fool," the judge asked, "the prosecutor, your lawyer, or the court?"[9]

In the hearing of September 22, 1976, the interrogation of Virgilio Marcelo, the other accused, was conducted almost wholly by the judge who started cross-examining the witness even before the defense counsel could ask his first question, and took over from the prosecution the task of impeaching Marcelo's credibility.[10] The judge asked him about his drug addiction, his membership in the Commando gang, his tattoos, his parentage, his activities, his criminal record - all when he was supposed to be under direct examination by his own lawyer. Defense counsel could hardly put in a word edgewise because the judge kept interrupting to ask his own questions.[11]

The questions were not clarificatory but adversary; and when they were not adversary, they were irrelevant, and sometimes also cruel. At one point, the judge drew from the witness the statement that his mother was living with another man; forthwith he suggested that the mother was unfaithful to his father.[12] We deplore this sadistic treatment of the witness, especially as, for all his supposed "toughness," he could not answer back. We fail to see what possible connection the mother's infidelity could have had, by any stretch of the imagination, with the instant prosecution.

But the judge was to save the best - or worst - of his spite for the third witness, Lilian Layug, a waitress in the restaurant where the appellant Opida was working as a cook. Noting at the outset that she spoke English, he wanted to know where she had learned it and asked in ill-concealed insinuation if she had worked in Angeles City or Olongapo or Sangley.[13] Because she was gesturing nervously, he asked, "Are you a conductor?"[14] Of the two accused, he asked her, "They are very proud of belonging to the Commando gang?" - to which the witness answered, putting him in his place, "That I do not know, Your Honor." [15]

One cannot but note the mockery in the following questions put by the judge to the witness, who was probably wondering what the interrogation was all about:

"Court

Q

You are a very good friend of Alberto Opida?

A

Yes, Your Honor.

Q

You have known him for years?

A

One year only, Your Honor.

Q

He always feed you with his favorite menu?

A

Yes, Your Honor.

Q

He is a very good cook?

A

Yes, Your Honor.

Q

Because what he could cook, you could not cook?

A

I know also how to cook, Your Honor.

Q

Answer my question.

A

Yes, Your Honor.

Q

Whenever you try to cook what he cooked, you could not imitate it, because he is a good cook?

A

Yes, Your Honor.

Q

So, your admiration developed because of his cooking?

A

Yes, Your Honor.

Q

What favorite dish does he cook that you like, as far as you are concerned?

A

Adobo, Your Honor.

Q

Most often you request him to cook adobo for you?

A

Yes, Your Honor.

Q

That is precisely one of the reasons why you also admire him?

A

That is also a part, Your Honor.

Q

Whenever you request him to cook adobo for you, he always accommodate you?

A

Yes, Your Honor.

Q

As a matter of fact, the moment that he starts cooking adobo, you could smell it already?

A

Yes, Your Honor.

Q

That starts your admiration for him?

A

Yes, Your Honor.

Q

And in return you reciprocate?

A

Yes, Your Honor.

Q

What kind of reciprocation do you give to Alberto Opida, whenever you admire his cooking of adobo for you, cooking just for you?

A

None, Your Honor.

Q

Whenever he cooks adobo, he was singing?

A

Sometimes, Your Honor.

Q

What kind of song?

A

He is singing a song with....., intended for Cora, Your Honor.

Q

And you were also affected by it?

A

No, Your Honor.

Q

You mean to say, you are not very fond of emotional songs?

A

I am not, because Cora is not minding him, Your Honor.

Q

But sometimes he sings in the absence of Cora because, as you said, he is cooking adobo for you?

A

Yes, Your Honor.

Q

What does he sings (sic) for you?

A

He sings many songs, Your Honor.

Q

For example, give the title?

A

Milagro, Your Honor.

Q

He also sings Diyos Lamang Ang Nakakaalam?

A

Sometimes, Your Honor.

Q

He also sings Kapantay ay Langit?

A

Yes, Your Honor.

Q

He also sings Sapagkat Tayo'y Tao Lamang?

A

I did not hear, Your Honor.

Q

But, you said he also sings even in the absence of Cora?

A

Yes, Your Honor.

Q

You smell adobo while he cooks and sings. So, you developed admiration also?

A

Little only, Your Honor.

Q

One way or another you have appreciated him, but the only thing, as you know, he is related to Cora in the same way?

A

Yes, Your Honor.

Q

That is why you are testifying in his favor? Because of the smell of adobo and his songs and it is an admiration. Therefore, there is that tendency to testify in his favor?

A

Yes, Your Honor."^[16]

On direct examination, Opida challenged his extrajudicial confession, claiming it had been obtained without observance of the rights available under Article IV, Section 20 of the Constitution, particularly the right to counsel.^[17] Parenthetically, the extrajudicial confession of Marcelo was also made without assistance of counsel.^[18] Opida also testified, under questioning from his counsel, that he had been repeatedly hit with a "dos por dos" by a police officer while he was being investigated.^[19]

We have consistently held that the rights guaranteed during a custodial investigation are not supposed to be merely communicated to the suspect, especially if he is unlettered, but must be painstakingly explained to him so he can understand their nature and significance. Moreover, manhandling of any sort will vitiate any extrajudicial confession that may be extracted from him and renders it inadmissible in evidence against him.^[20]

Those principles were given mere lip service by the judge, who did not bother to look deeper into the validity of the challenged confessions.

Given the obvious hostility of the judge toward the defense, it was inevitable that all the protestations of the accused in this respect would be, as they in fact were, dismissed. And once the confessions were admitted, it was easy enough to employ them as corroborating evidence of the claimed conspiracy among the accused.

The accused are admittedly notorious criminals who were probably even proud of their membership in the Commando gang even as they flaunted their tattoos as a badge of notoriety.^[21] Nevertheless, they were entitled to be presumed innocent until the contrary was proved and had a right not to be held to answer for a criminal offense without due process of law.^[22]

The judge disregarded these guarantees and was in fact all too eager to convict the accused, who had manifestly earned his enmity. When he said at the conclusion of the trial, "You want me to dictate the decision now?"^[23], he was betraying a pre-judgment long before made and obviously waiting only to be formalized.

The scales of justice must hang equal and, in fact, should even be tipped in favor of the accused because of the constitutional presumption of innocence. Needless to stress, this right is available to every accused, whatever his present circumstance and no matter how dark and repellent his past. Despite their sinister connotations in our society, tattoos are at best dubious adornments only and surely not under our laws indicia of criminality. Of bad taste perhaps, but not of crime.

In any event, convictions are based not on the mere appearance of the accused but on his actual commission of crime, to be ascertained with the pure objectivity of the true judge who must uphold the law for all without favor or malice and always with justice.

Accused-appellants Opida and Marcelo, who have been imprisoned since 1976, have sent us separate letters pleading for the resolution of their death sentences one way or the other once and for all. Considering the way

they were tried, we now declare that they should not be detained in jail a minute longer. While this is not to say that the accused are not guilty, it does mean that, because their constitutional rights have been violated, their guilt, if it exists, has not been established beyond reasonable doubt and so cannot be pronounced. Due process has stayed the uneven hand of the quick condemnor and must set the de-fendants free.

WHEREFORE, the conviction of Alberto Opida and Virgilio Marcelo is reversed and they are hereby ordered released immediately. No costs.

SO ORDERED.

Abad Santos, Yap, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

Teehankee, C.J., see separate concurrence.

Feria and Fernan, JJ., on leave.

[1] Gutierrez v. Santos, 2 SCRA 249; Banco Español Filipino v. Palanca, 37 Phil., 921; Ignacio v. Villaluz, 90 SCRA 16; Tumey v. Ohio, 273 U.S. 510; Rule 137, Sec. 1, Rules of Court; Article IV, Sec. 19, of the 1973 Constitution; Paderanga v. Azura, 136 SCRA 266.

[2] Fernandez v. Presbitero, 79 SCRA 61.

[3] TSN, Sept. 13, 1976, p. 142. Del Mundo was at large and could not be prosecuted.

[4] Rollo, p. 51-A; pp. 152-160.

[5] Ibid.

[6] TSN, Oct. 4, 1976, pp. 77-78.

[7] TSN, Sept. 29, 1976, p. 162.

[8] TSN, Oct. 4, 1976, pp. 72-77.

[9] TSN, Oct. 4, 1976, pp. 71-77.

[10] TSN, Sept. 22, 1976, pp. 49-50.

[11] TSN, Sept. 22, 1976, pp. 161-162.

[12] TSN, Sept. 22, 1976, p. 56.

[13] TSN, Oct. 4, 1976, p. 91.

[14] TSN Oct. 4, 1976, p. 93.

[15] TSN, Oct. 4, 1976, pp. 107-108.

[16] TSN, Oct. 4, 1976, pp. 110-115.

[17] Rollo, p. 51-A.

[18] Rollo, p. 51-A.

[19] TSN, Oct. 4, 1976, pp. 75-76.

[20] People v. Caguioa, 95 SCRA 2; People v. Alde, 64 SCRA 224; People v. Holgado, 85 Phil. 752; People v. Ramos, 122 SCRA 312; People v. Galit, 135 SCRA 465; People v. Cabrera, 134 SCRA 362.

[21] TSN, Oct. 4, 1976, pp. 106-108.

[22] 1973 Constitution, Art. IV, Secs. 19, 17.

[23] TSN, Oct. 4, 1976, p. 121.

SEPARATE CONCURRING OPINION

TEEHANKEE, C.J.:

I concur. I wish to state that some of us are not persuaded at all that the two herein accused should be held guilty of the single stab wound inflicted on the victim in what appears to have been a tumultuous affray. I hail the Court's ratio decidendi that prescinding therefrom, the accused's guilt, if it exists in reality, cannot be pronounced because of the violation of their basic constitutional rights of due process and of the constitutional provision outlawing uncounselled confessions.

In my dissenting opinion in the habeas corpus case of Dr. Aurora Parong[1], I wrote that "the Court stands as the guarantor of the constitutional and human rights of all persons within its jurisdiction and must see to it that the rights are respected and enforced. It is settled in this jurisdiction that once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment or before whom the case is pending is ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention.[2] So accused persons deprived of the constitutional right of speedy trial have been set free.[3] And likewise persons detained indefinitely without charges so much so that the detention becomes punitive and not merely preventive in character are entitled to regain their freedom. The spirit and letter of our Constitution negates as contrary to the basic precepts of human rights and freedom that a person be detained indefinitely without any charges. "

I had stressed in another case that the plain mandate of the constitutional provision expressly adopted the exclusionary rule as the only practical means of enforcing the constitutional injunction against uncounselled confessions obtained in violation of one's constitutional rights by outlawing their admission in court. The outlawing of such confessions thereby removed the incentive on the part of military or police officers to disregard such basic constitutional rights, in the same manner that the exclusionary rule bars admission of illegally seized evidence.[4]

This fundamental rule that the court that rendered the judgment or before whom the case is pending is ousted of jurisdiction upon showing of deprivation of a basic constitutional right was eroded during the past authoritarian regime. I hail its vigorous restatement in the ponencia of Mr. Justice Isagani A. Cruz.

[1] 121 SCRA 472, 522, 531.

[2] Gumabon vs. Director of Prisons, 37 SCRA 420, 427.

[3] Conde vs. Diaz, 45 Phil. 173.

[4] Magtoto vs. Manguera, 63 SCRA 4, 29.

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