

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIOSCORO JOSE AND DOMINADOR BAJAO, ACCUSED-APPELLANTS.***G.R. No. L-35280. August 12, 1983*

Ponente: RELOVA, J.

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Accused-appellants Dioscoro Jose and Dominador Bajao were charged with the crimes of murder and frustrated murder before the then Circuit Criminal Court of Rizal, in CCC Case No. VII-973-Rizal, in an information which reads:

"That on or about October 22, 1970, in the New Bilibid Prisons, Muntinlupa, Rizal, Philippines and within the jurisdiction of this Honorable Court, the said accused while then confined at the said institution, conspiring, confederating and acting together and each armed with improvised deadly weapons, did then and there willfully, unlawfully and feloniously with intent to kill assault and wound therewith CRISANTO FAJARDO No. 72340-P and MARCIANO SULIT, No. 74382-P both sentenced prisoners serving final sentences in the same institution, inflicting upon Sulit multiple stab wounds which instantaneously caused his death and upon the person of Fajardo a stab wound which could have also caused his death had it not been for the timely medical attention extended the latter; the persons injured being then unarmed and unable to defend themselves from the assault launched by the accused, the said accused performing all the acts of execution which produced the crime of murder and frustrated murder and in the latter did not produce the offense by reason of the said timely medical attention extended by the NBP Hospital." (p. 1, Record)

Upon being arraigned, both accused, duly assisted by counsel de oficio, pleaded guilty to the crimes charged. In view at the gravity of the offense, the trial court ordered the prosecution to present evidence to determine the guilt and degree of culpability of the accused. Thereafter, the trial court found both accused-appellants guilty beyond reasonable doubt of the crimes of murder and frustrated murder as charged, and imposed upon both the penalty of death and both to pay jointly and severally the heirs of the deceased Marciano Sulit, the following amounts: P24,000.00 for indemnification, P20,000.00 for moral damages, P20,000.00 for exemplary damages; and, the costs of the suit.

Prosecution evidence shows that on October 22, 1970, at about 8:50 in the morning, appellant Dioscoro Jose, then confined at Brigade "3D" of the New Bilibid Prisons and serving sentence for murder, and his co-appellant Dominador Bajao, also confined at the same brigade and serving sentence for murder and frustrated murder, together with several other prisoners numbering more than 600, were at the waiting shed of the New Bilibid Prisons in Muntinlupa for a final check-up preparatory to their departure for the Davao Penal Colony where they were to be transferred. Upon arrival thereat, appellant Bajao sat at the center of the waiting shed beside Crisanto Fajardo, while appellant Jose stood at the door and waited for Marciano Sulit, also an inmate of the same institution. When Sulit arrived, appellant Jose drew a bladed weapon which was tucked inside a mat and, therefrom, stabbed Sulit several times at the right side of his chest, following which he ran away, threw his weapon into a canal and then laid flat on the ground.

When appellant Bajao saw that appellant Jose had already stabbed Sulit, he too stabbed Crisanto Fajardo with an ice pick hitting the victim at the stomach. Bajao then ran away until he was overtaken and beaten by the prison guards.

The victims, Sulit and Fajardo, were rushed to the New Bilibid Prisons' Hospital for emergency medical treatment. Notwithstanding, Sulit died at about 11:45 that same morning. Fajardo, who suffered stab wounds and lacerations in the abdomen as found by Dr. Avelina Alcantara, Supervising Physician of the New Bilibid Prisons, was confined at the NBP Hospital for eleven (11) days.

Appellants Jose and Bajao were investigated and they executed sworn statements, admitting that he (Jose) stabbed prisoner Marciano Sulit and that he (Bajao) stabbed prisoner Crisanto Fajardo (Exhibits "G" and "H", respectively).

As aforesated, appellants were both sentenced to suffer the supreme penalty of death. Thus, this case is now before Us on automatic review, pursuant to Section 9, Rule 122 of the Revised Rules of Court.

In this appeal, appellants, assisted by counsel de oficio, contend that the trial court erred (1) in convicting appellants Jose and Bajao of murder and frustrated murder on the basis of their extrajudicial confessions and their pleas of guilty which suffer from constitutional and legal infirmity; (2) in finding that there was conspiracy when in truth and in fact the prosecution failed to establish the existence of conspiracy other than on the basis of appellants' involuntary extrajudicial confessions and improvident pleas of guilty; and, (3) in convicting appellants of murder and frustrated murder on the basis of evidence which is consistent with their innocence.

Dioscoro Jose died on April 6, 1975 (p. 100, Rollo), and, this Court, in its resolution of May 27, 1975 (p. 103, Rollo), dismissed the case against him "but only insofar as his criminal liability is concerned." Hence, this appeal refers to Dominador Bajao only.

Bajao assailed the extrajudicial confession asserting that he executed the same in voluntarily as at the time he was questioned, he was in the hospital suffering from painful multiple injuries, and overcome by fear, he has resigned to all the proddings, promptings and insinuations, if not directions, either wittingly or unwittingly given by the prison guard investigator; that there were no witnesses when he was being investigated by Prison Guard De la Cuesta; and that the latter insisted on getting his thumbmark. (p. 24, Appellants' Brief)

We cannot sustain appellant Bajao's contention. He suffered only minor injuries and it was already on the fourth day of his confinement when he was investigated by Prison Guard De la Cuesta. Neither are We persuaded that he did not sign the extrajudicial confession (Exhibit "H") because his thumbmark appears thereon, together with the signatures of the witnesses, Evelyn Peneyra and Renato Banaag. On the other hand, there is the presumption that Prison Guard Buenaventura de la Cuesta and Supervising Prison Guard Filomeno Mencero performed their official duties regularly. Nothing in the record reveals any motive on the part of said prison officers to testify falsely against appellant. Finally, We cannot agree with the contention of appellant that the questioned extrajudicial confession, which was executed before the effectivity of the New Constitution on January 17, 1973, is inadmissible, pursuant to Section 20, Article IV thereof. In *Magtoto vs. Manguera*, 63 SCRA 4, the Supreme Court made it clear that:

"A confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."

In the case at bar, the confession of Bajao was given by him before the effectivity of the New Constitution.

The claim of appellant Bajao that he was not assisted by counsel during the arraignment and that his plea of guilty was improvidently entered and therefore suffered from constitutional and legal infirmity is untenable because during the arraignment, the following transpired:

"ATTY. CORONEL:

Appearing as counsel de oficio for the accused, your Honor.

FISCAL GUERRERO:

In connection with this case, may I make a manifestation, your Honor?

ATTY. CORONEL:

Your, Honor, before the State Prosecutor starts with his manifestation, I wish to make of record that one of the accused is willing to plead guilty to the crime of Murder and the other one is willing to plead guilty to the crime of Frustrated Murder. I noticed that there are two sets of information here.

FISCAL GUERRERO:

Precisely, your Honor, this case arose from the same incident and there seems to be an identity of the interest. One of them is willing to plead guilty to the crime of Murder and the other one is willing to plead guilty to the crime of Frustrated Murder.

Your Honor, the position of the government in this case is that the two accused are guilty in both Murder and Frustrated Murder which arose from the same incident. And we feel that we cannot do other-wise than to prosecute the case for both offenses because it will establish a very awkward precedent in the National Penitentiary.

COURT:

At any rate, I will receive the evidence.

FISCAL GUERRERO:

Yes, Your Honor.

COURT:

All right, arraign the accused.

At this juncture, the interpreter is reading the information in the presence of accused Dioscoro Jose and Dominador Bajao and counsel de oficio, Atty. Coronel.

INTERPRETER - to the accused

WHAT IS YOUR PLEA?

DIOSCORO JOSE - GUILTY

DOMINADOR BAJAO - GUILTY

COURT:

Q Are you aware that by pleading guilty you will be punished in accordance with law?

ACCUSED JOSE and BAJAO:

A Yes, your Honor.

Q And the Court had no other alternative but to impose the death penalty under Article 116?

A Yes, your Honor.

Q And notwithstanding the fact that you will be punished by death, you still insist on pleading guilty?

A Yes, your Honor.

At any rate, we better present evidence." (pp. 2-4, tsn, March 2, 1972)

Where the accused was assisted by counsel at the arraignment, the presumption is that said counsel regularly are faithfully discharged his official functions, which included the duty of advising the accused as to the meaning of his plea of guilt (People vs. Perete, 1 SCRA 1290).

While We admit the admissibility of the extrajudicial confession of Bajao, We cannot accept the position of the prosecution that conspiracy is attendant in the case at bar merely because of his plea of guilt. "Conspiracy must be proved by independent evidence other than the confession. x x x Conspiracy must be real and presumptive. It must be proved as the crime itself, independent from the confession (People vs. Chaw Yaw Shun, 23 SCRA 127)."

Records do not show that he pleaded guilty to both of the crimes charged. Dominador Eajao did not participate in the stabbing of Sulit. Thus, he is guilty only for the injuries suffered by victim Crisanto Fajardo, who, according to prosecution witness Dr. Avelina G. Alcantara, would not have died even if he was not attended to, unless there was complication. Hereunder is the testimony of Dr. Alcantara on this point:

"COURT:

Q If it were not for your treatment, would Fajardo die?

A No, sir.

Q He could not have died even if you did not attend to him?

A If there is no complication, the patient may not have died.

ATTY. GALVAN:

Your honor, I will stop my cross examination because it is very clear that the wounds will not cause death which is not serious because according to the doctor, the patient was confined for 11 days only. I have no further question on cross, your Honor." (pp. 13-14, tsn., March 18, 1972)

Thus, appellant Dominador Bajao is guilty of attempted murder and not of frustrated murder. However, his liability is increased by the presence of the special aggravating circumstance of quasi-recidivism, because after having been convicted by a final judgment and while serving the same, he committed a new felony. He shall be punished by the maximum period of the penalty prescribed by law for the new felony (Article 160 of the Revised Penal Code). Thus, the mitigating circumstance of plea of guilty cannot be considered in his favor.

WHEREFORE, Dominador Bajao is found guilty of attempted murder only and he is hereby sentenced to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as minimum, to TEN (10) YEARS of prision mayor, as maximum, and to pay the costs.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Teehankee, Acting C.J., concurs in the result, while maintaining his dissent in Magtoto on the inadmissibility of all uncounselled confessions. Republic Act 1083 enacted on June 15, 1954, long before the 1973 Constitution, recognized the right to counsel of every person under custodial interrogation, by adding the second paragraph of Art. 125 of the Revised Penal Code that “(I)n every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

Aquino, J., concurs but because of his plea of guilty the maximum of his indeterminate penalty may be fixed at eight years and one day of prision mayor medium and minimum could be four or three years.

Abad Santos and Vasquez, JJ., on leave.

De Castro, J., on sick leave.

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