

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANATALIO BOMBESA, FRANCISCO JUSTO, AND VENANCIO JUSTO, DEFENDANTS, FRANCISCO JUSTO, DEFENDANT-APPELLANT.

G.R. No. L-41133. June 22, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. V-83 of the Court of First Instance of Lanao del Norte, Anatalio Bombesa, Francisco Justo and Venancio Justo were charged with the crime of Murder committed as follows:

"That on or about the 9th day of January, 1972, in the barrio of Upper Kulasihan, Municipality of Kolambugan, Province of Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, confederating and mutually helping one another, armed with scythe, bolo and hunting knife and with intent to kill, did then and there willfully, unlawfully and feloniously attack, stab and wound thereof with treachery one VICTORIO INTIA, inflicting upon him stab wounds in the different parts of his body, after which the said accused cut off the head of said Victorio Intia separately from his body, and as a direct result thereof, the said Victorio Intia died thereafter."

After trial, the accused were found guilty as charged and each sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of Victorio Intia in the amount of PI 2,000.00, plus P10,000.00 as moral damages, to pay attorney's fees of PI,000.00 jointly and severally and to pay the proportionate costs of the proceedings. From this judgment, the three (3) accused appealed.

On 28 March 1977, however, the appeal of Anatalio Bombesa was dismissed, upon his motion.[1] Then, on 17 August 1978, the Bureau of Prisons informed the Court of the death of the appellant Venancio Justo at the New Bilibid Prisons, and the case was dismissed, insofar as his criminal liability is concerned.[2]

The incriminatory facts of the case, according to the prosecution, as contained in the People's Brief, are as follows:

"On January 10, 1972, in the barrio of Kulasihan, Municipality of Kolambugan, Lanao del Norte, the headless cadaver of Victorio Intia was found by Manuel Genavaten (pp. 145-147, tsn, July 31 1974; Exh. G).

"Sometime in 1972, after the death of Victorio Intia, a step-son of the deceased heard the appellants, while they were drunk, say: 'you will be beheaded next to Kingkoy1 (pp. 148-149, tsn, July 31, 1974) and that when they will have a quarrel with somebody they will cut the head second to Kingkoy (p. 14, tsn, Sept. 19, 1974).

"In 1974, Sandoval reported the matter to the Philippine Constabulary (p. 151, tsn, July 31, 1974). The Philippine Constabulary thru Sgt. Fabricante invited the appellants for interview and interrogation (p. 49, tsn, Sept. 20, 1974). Rafael Justo, brother of the two appellants, executed an affidavit (Exh. A). Appellant Venancio Justo also executed an affidavit (Exh. C) admitting his participation in the killing of the deceased. On the bases of said affidavits, a criminal complaint for murder against the appellants was filed in the

Municipal Court of Kolambugan (p. 49, tsn, Sept. 20, 1974). However, the case was provisionally dismissed and the said court ordered the PC to reinvestigate (p. 51, tsn, Sept. 20, 1974). After gathering additional sworn statements from Urbano Colongan and Vicente Balog, the case was refiled in the Municipal Court of Kolambugan (Ibid).

"Urbano Colongan saw the headless body of the deceased near a coconut tree in Baybay near the fishpond at Upper-Kulasinan, Kolambugan, Lanao del Norte (pp. 103-104, tsn, July 31, 1974). He also heard appellant Bombesa say to his co-appellants: 'First Francisco hacked Victorio Intia and was not able to hit him because Victorio Intia retaliated and Francisco Justo hacked him at the back of Victorio Intia and then followed by Venancio and dragged Victorio Intia to the coconut trees and Bombesa beheaded him' (p. 107, tsn, July 31, 1974).

"Rafael Justo, the brother of appellants Venancio and Francisco Justo, also declared that he was told by his brothers that they hacked Victorio Intia. Francisco was the first to hack him, followed by Venancio and then Bombesa cut the head (pp. 13-15, tsn, July 30, 1974).

The defendant-appellant, Francisco Justo, denied the commission of the crime and branded, as false, the testimony of his brother Rafael Justo.

The trial court gave no credit to Francisco's denial, holding the same to be in the nature of negative testimony and "self-serving," which cannot overcome the positive testimonies of Rafael Justo and Urbano Colongan. Hence, the present appeal.

In seeking the reversal of the judgment appealed from, the appellant claims that the evidence of the prosecution is insufficient to sustain a conviction, for the reason that the testimonies of Rafael Justo and Urbano Colongan, upon which the judgment of conviction is based, are not credible for being biased and full of contradictions and inconsistencies. Counsel for the defendant-appellant points to certain contradictions and inconsistencies in the declaration of Rafael Justo which, according to said counsel, seriously affect his credibility, notably that portion of his testimony where he recanted and told the court that his brothers, Venancio and Francisco, had no part in the commission of the crime.

The trial court, however, properly disregarded the recantation or change in testimony as it was made unnaturally. The following transpired in the trial below:

"ATTY. LEGASPI:

The witness while testifying was making an action.

"ATTY.GALEON: '

Q I want to make of record the mannerism of the witness while testifying in court were in a loud voice. Watching his actuation he is very irregular.

"COURT:

The court took cognizant of his attitude because this morning he seems to be not comprehensive or could hardly answered the question. This time he appears to be aggressive I do not know what happened to him. Perhaps he is ...

"ATTY.GALEON:

After my examination, you did not drink tuba?

A I did not drink tuba."[3]

It is a settled rule that courts may believe one part of the testimony of a witness and disbelieve another part. Courts are not required to accept or reject the whole of the testimony of a particular witness.[4]

Counsel for the defendant-appellant also claims that Rafael Justo had testified against his brothers because he was threatened or forced to do so by PC investigators, and after being given financial support by Capistrano Sandoval. Counsel points out that, during the investigation, Rafael Justo was "manhandled," told to stand on tiptoe, and threatened to be detained again by PC investigators. This "manhandling" of Rafael Justo, however, was made in connection with the execution of his affidavit. But, there is nothing in the record to show that he was forced or threatened to testify falsely against his brothers during the trial. There were no strictures in what he was to tell the court. The alleged financial assistance extended to Rafael Justo by Sandoval (P3.00 a day for plowing a field) is too miniscule to sever his blood ties with Francisco and Venancio.

The testimony of Urbano Colongan is assailed for his failure to inform the authorities immediately of what he saw, and it was only after the lapse of more than two (2) years and four (4) months when he voluntarily presented himself to Capistrano Sandoval and informed the latter of what he knew about the killing of Victorio Intia.

It appears, however, that this witness (Colongan) was only about 10 years old when he saw the headless body of Victorio Intia: he is not very literate and probably did not know what to do. To him, it might have been sufficient then that he informed his father. His failure to inform the authorities sooner, therefore, should not militate against his credibility. Besides, the reluctance to get involved in a murder trial is a common trait of most people.

Counsel for the defendant appellant further assails the trial court for admitting in evidence the sworn statement executed by Rafael Justo which was obtained from him by means of force or intimidation and without the assistance of counsel.

The Solicitor General, on the other hand, maintains that the question of whether or not the sworn statement of Rafael Justo was voluntarily given is irrelevant because Rafael Justo is not the accused, but merely a witness for the prosecution; and besides, Rafael Justo actually testified in open court and reiterated the contents of his sworn statement.

The Court finds the appellant's contention, as to the inadmissibility of Rafael Justo's sworn statement, to be impressed with merit. Article IV, Section 20 of the 1973 Constitution provides:

"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. Any confession obtained in violation of this section shall be inadmissible in evidence." (Italics supplied)

The 1973 Constitution thus expressly and clearly states that a confession obtained by force, violence, threat, intimidation, or any other means which vitiates the free will is inadmissible in evidence. And, it does not distinguish whether or not the confession obtained during custodial interrogation is that of the accused or of a witness.

On the other hand, the 1987 Constitution appears to limit inadmissible confessions to those executed by the accused himself, when it provides that:

"3. Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him."^[5] (Italics supplied)

In analogous situations, this Court has said:

'*** But here is a clear case of a failure to express a meaning, and a becoming sense of judicial modesty forbids the courts from assuming and, consequently, from supplying. 'If there is no meaning in it.' said the King in Alice in Wonderland, 'that saves a world of trouble, you know, as we needn't try to find any. Frankfurter, who himself was fond of quoting this passage, admonishes that a judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statemanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration.'^[6]

In any event, the issue is one of credibility of witnesses and we find no cogent reason to disturb the trial court's findings as to the credibility of the prosecution's witnesses.

The evidence of the prosecution, however, does not prove Murder, absent a qualifying circumstance in the killing of the victim. In the information, the killing is alleged to have been committed with treachery. But, to constitute treachery, the method, form or means adopted in the killing of the victim must be consciously and deliberately chosen to insure its execution without any risk to the offender arising from the defense which the victim might make.^[7] There is nothing in the records of the instant case which shows that the accused reflected on the means or method to insure the killing of the deceased or remove or diminish any risk to himself that might arise from the defense that the deceased might make. There were no eyewitnesses in the commission of the crime charged and the conviction of the defendant-appellant was based upon the testimony of Rafael Justo who declared that the herein defendant-appellant (his brother) had admitted to him the killing of the deceased, and the testimony of Urbano Colongan who overheard the accused Anatolio Bombesa state that he and his co-accused Venancio and Francisco Justo had killed the deceased.

Besides, the statement of Urbano Colongan tends to show that the victim was not completely unaware and was not deprived of the chance to ward off the attack, as he was able to retaliate and defend himself the initial assault. The killing was described, as follows:

A. Bombesa said, "When Venancio hacked Victorio Intia he was not able to kill Kingcoy because Kingcoy retaliated and rolled to the ground. Victorio Intia turned to retaliate but he was not hit. Bombesa stabbed the side of the body of Victorio Intia and was hit and they dragged the body to the coconut trees and beheaded him."^[8]

As principal in the crime of Homicide, the defendant-appellant, Francisco Justo, should suffer an indeterminate penalty of from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum. The indemnity to be paid to the heirs of the victim, however, shall be increased to P30,000.00. Attorney's fees awarded should be eliminated.

WHEREFORE, with the modifications above-indicated, the judgment appealed from is AFFIRMED. With proportionate costs against the defendant-appellant.

SO ORDERED.

Yap, C.J. (Chairman), Paras, and Sarmiento, JJ., concur.

[1] Rollo, p. 87.

[2] Id., p. 94.

[3] tsn of July 30, 1974. p. 34.

[4] People vs. Montecillo, G.R. No. L-47810, Nov. 29, 1984. 133 SCRA 472.

[5] Sec. 12(3), Art. III. 1986 Constitution.

[6] Demafiles vs. Comelec, 129 Phil. 792, 796.

[7] Art. 14, par. 16, Rev. Penal Code.

[8] tsn of July 31, 1974, p. 121.

SEPARATE OPINION:**MELENCIO-HERRERA, J.,**

I concur in the affirmance of the judgment of conviction.

I also join the Solicitor General in his observation that the question of whether or not the sworn statement of Rafael Justo was voluntarily given is irrelevant because he is not the accused but a witness for the prosecution; his sworn statement is neither a confession nor an admission; besides which he had actually testified in open Court. In fact, Rafael Justo's right against self incrimination need not be considered at all because the same is invocable by a witness, who is not an accused, only when an incriminating question linking him to or proving the commission of a crime is asked of him, and not in respect of a statement orally made to him by an accused.

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