

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOBIAS RIBADAJO, ROMEO CORPUZ, FEDERICO BASAS, ROSENDO ANOR AND RODOLFO TORRES, DEFENDANTS-APPELLANTS.

G.R. No. L-40294. July 11, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The death penalty having been imposed by the then Circuit Criminal Court of Pasig, Rizal, in Criminal Case No. CCC-VII-1329-Rizal for Murder, the case is now before us for automatic review.

There were originally six (6) accused: Tobias Ribadajo, Romeo Corpuz, Federico Basas, Rosendo Anor, Rodolfo Torres and Loreto Rivera, all inmates of the New Bilibid Prison at Muntinlupa, Rizal. One of them, however, Loreto Rivera, died during the pendency of the case.

We find the facts of the case, as narrated in the Decision of the Trial Court, borne by the evidence, thus:

"From the evidence on record, it is clear that on November 18, 1971, at about 7:55 o'clock in the evening, prisoners from brigade 3-C, Muntinlupa, Rizal, succeeded in opening the door of their dormitory by means of a false key (tin can) attached the inmates from dormitory 3-a, while the latter were then getting their food rations from the delivery truck wherein the victim was among them, Records further show that while the victim, Bernardo Cutamora, was getting his ration he was sandwiched by the accused who rushed towards the door and stabbed the victim simultaneously whereby the latter sustained multiple stab wounds on the different parts of his body which wounds caused his death as evidenced by Necrospy Report marked Exhibit 'A'. To gain exit from their brigade, accused Tobias Ribadajo used a false key (tin can) and immediately the door was opened and his co-accused rushed towards the place where the prisoners of brigade 3-a were waiting for their ration, and with respective matalas on their hands they stabbed the victim to death. All the assailants confessed participation in the killing claiming that they did it because they were being mocked by the inmates of 3-a who were members of the OXO; there was a time when these inmates threw human waste on their brigade shouting that 'you Commando members could not do anything', and then they would laugh at them; that in order to avenge this mockery the accused headed by Tobias Ribadajo called up a meeting in the afternoon of November 18, 1971, at around 1:00, and they planned to kill any prisoner from brigade 3-a in the evening and they would do the killing at the time they (inmates from 3-a) were waiting for their 'rancho'. Soon their plan was consummated and the victim, Bernardo Cutamora was the unlucky guy overcome by their respective bladed weapons." [1]

In an investigation conducted by the Investigation Section of the New Bilibid Prisons on November 20, 1971, all the accused executed statements admitting their participation in the slaying of Bernardo Cutamora.[2] Consequently, an Information for Murder was filed against them on April 24, 1973 with the then Circuit Criminal Court of Pasig, Rizal. The delay in filing was due to the separation from the service of a principal investigator.

Upon arraignment on July 5, 1973, accused, Tobias Ribadajo, Romeo Corpuz, Loreto Rivera (who died on August 15, 1974, p. 46, Rollo), and Rodolfo Torres, all with the assistance of counsel de officio, pleaded Guilty, while the

other two accused Federico Basas and Rolando Aunor, alias Rolando Amor, alias Rolando Anor, alias Tagalog, entered pleas of Not Guilty.[3] The Information was amended to correct the name of Rolando Aunor to Rosendo Anor, alias Negro, alias Tagalog. Thereafter, evidence was adduced.

At the presentation of evidence for the defense, accused Tobias Ribadajo, Romeo Corpuz, and Rodolfo Torres withdrew their pleas of Guilty.[4] Accused Corpuz and Ribadajo also denied their participation in the killing of Bernardo Cutamora, and repudiated their confessions, claiming that they had signed the same under duress. Accused Federico Basas and Rodolfo Torres admitted having executed their respective confessions[5], while accused Rosendo Anor changed his plea of Not Guilty to Guilty of the lesser offense of Homicide.[6]

On November 28, 1974, the Trial Court pronounced a verdict of guilty, as follows:

"WHEREFORE, after determining the degree of culpa-bility of all the accused, namely: Tobias Ribadajo, Romeo Corpuz, Federico Basas, Rosendo Anor and Rodolfo Torres, the Court finds them GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, and hereby sentences each one of them to suffer the pe-nalty of DEATH; to indemnify the heirs of the victim the amount of P12,000.00, jointly and severally; to pay moral damages in the amount of P10,000.00 and another P10,000.00, as exemplary damages, jointly and severally, and to pay their proportionate shares of the costs."[7]

Appellants claim infirmity of the Trial Court Decision on the following grounds:

I

"The Trial Court erred in admitting as evidence, and in giving weight to the supposed extrajudicial confession of the accused.

II

"The Trial Court erred in finding the presence of the aggravating circumstances of treachery, evident premeditation and recidivism.

III

"The Trial Court erred in convicting the accused and in imposing the death penalty."

Appellants submit that their extrajudicial confessions were extracted by force; that, they had been exposed for more or less one day to the heat of the sun and the wetness and coldness of the rain, and had been subsequently beaten up and placed in a "bartolina."

On their face, however, the individual confessions do not show any suspicious circumstance casting doubt on their integrity. On the Contrary, they are replete with details only appellants could have supplied. In those state-ments, they called their co-accused by their nicknames, not knowing their true names, like "Lilat" for Basas, "Manok" for Anor and "Bukid" for Torres. The investigators could not have concocted that on November 18, 1971, at around 1:00 P.M., appellants had planned to kill any prisoner from Brigade 3-a during the distribution of the "rancho"; that they are members of the Sigue-Sigue Commando Gang and their leader is accused Ribadajo; that, as planned, on the same date at around 8:00 P.M. Ribadajo using a false key (tin can) opened the door of their dormitory and all the accused rushed towards the place where the inmates from Brigade 3-a were waiting for their food; that they stabbed the victim with their "matalas"; and their motive was to avenge the throwing of human waste on them heat by inmates of Brigade 3-a.

What is more, during the presentation of evidence by the defense, they were all admitting their guilt but for the lesser offense of Homicide, as manifested by their de officio counsel.

"Atty. Galvan

"Your Honor, inasmuch as I have also conferred with all the accused and that having appointed me as counsel de oficio before when Fiscal Guerrero was here and after a long conference with the accused, and if the Fiscal will not object if all the accused will change their former plea of not guilty to that of guilty, as that was their proposal and they were very insistent, that if the Court will allow them to withdraw their former plea of not guilty and substitute with a plea of guilty to a lesser of homicide, your Honor." [8]

Despite counsel's appeal for "humanity sake," the prosecution, however, opposed the change of plea because it had already finished with the presentation of its evidence.

We find no sufficient basis, therefore, to destroy the presumption of voluntariness of appellants' confessions. The presumption of the law is in favor of the spontaneity and voluntariness of an extrajudicial confession of an accused in a criminal case [9], for no sane person would deliberately confess to the commission of a crime unless prompted to do so by truth and conscience. [10] The burden of proof is upon the declarant to destroy this presumption. [11] Mere repudiation of confession by the accused at the trial is not sufficient to disregard his confession. [12] Concrete evidence of compulsion or duress must be presented to sustain their claim of maltreatment. No such evidence has been put forward. No report of such maltreatment was made to the prison authorities nor to the Fiscal who conducted the preliminary investigation. During cross-examination, Corpuz admitted that he was not maltreated. [13] Rabadajo himself did not protest when he was brought to Exequiel Santos, Administrative Office III, Bureau of Prisons, who, in his own words, was "like a father to me". [14]

As to appellants' claim that they have not been informed of their right to silence and to counsel during custodial investigation, suffice it to state that the proscription against the admissibility of confessions obtained from an accused during the period of custodial interrogation, in violation of procedural safeguards, applies to confessions obtained after the effectivity of the 1973 Constitution. [15] No law gives the accused the right to be so informed before the enactment of the 1973 Constitution [16], even if presented after January 17, 1973. [17] That Constitutional guaranty relative to confessions obtained during custodial investigation does not have any retroactive effect. [18]

The Trial Court committed no reversible error either in finding the existence of the aggravating circumstance of treachery, evident premeditation and recidivism.

Treachery was present because the attack on the victim was sudden and unexpected. [19] When the inmates from Brigade 3-a went out to get their food ration, appellants immediately rushed out of their own cell and attacked, with their improvised weapon, the unsuspecting victim. There was a collective effort on appellants' part, who were all armed, in assaulting the victim who was unarmed [20], and who was completely deprived of an opportunity to prepare for the attack or to defend himself [21], or to prepare for a fight or retreat. [22]

Evident premeditation was also present because the plan to kill any prisoner from Brigade 3-a was hatched around 1:00 o'clock in the afternoon of November 18, 1971, and the plan was consummated at about 8:00 in the evening of the same day. Evident premeditation is present when murder was contemplated at least one hour prior to its execution. [23] Appellants had ample time to desist from the execution of the offense but they clung to their determination to achieve their criminal intent.

The aggravating circumstance of recidivism has to be considered because all the accused at the time of the commission of the offense, were serving their respective sentences by virtue of a final judgment for other crimes embraced in the same Title of the Revised Penal Code (Corpuz for Homicide; Rabadajo for Murder; Basas for Murder; Anor for Murder; and Torres for Homicide).

No error either was committed by the Trial Court in imposing the death penalty. The penalty for murder is reclusion temporal in its maximum period to death.[24] Considering that appellants committed the present felony after having been convicted by final judgment and while serving their respective sentences, they should be punished by the maximum period of the penalty prescribed by law for the new felony.[25] Given this circumstance, Anor's change of plea from Guilty to Not Guilty will not change his liability besides the fact that it was made after the prosecution had rested its case. [26]

The defense contention that appellants should be held guilty only for "Death Caused in a Tumultuous Affray" and sentenced to prision mayor under Article 251 of the Revised Penal Code, upon the allegation that the commotion was spontaneous, lacks merit. There was no confusion and tumultuous quarrel or affray, nor was there a reciprocal aggression between both parties.[27] Appellants rushed out of their cell with the common purpose of attacking the victim of a rival group, which unity of purpose indicates appellants' common responsibility for the consequences of their aggression.[28]

WHEREFORE, the judgment of conviction is hereby AFFIRMED. However, for lack of the necessary votes, the penalty to be imposed on all the accused-appellants is reduced to reclusion perpetua. The indemnity to be paid to the heirs of the deceased is hereby raised to P130,000.00. Proportionate costs against the accused.

SO ORDERED.

Abad Santos, Feria, Yap, Fernan, Narvasa, Alampay, Cruz, and Paras, JJ., concur.
Teehankee, C.J., concur in the result in a separate opinion.
Gutierrez, Jr., signed Appellee's Brief as Acting Solicitor General and take no part.

[1] Pp. 202-203, Rec. of Crim. Case No. CCC-VII-1329.

[2] Exhibits "J", "K", "L", "M", "N", & "O" - pp. 90-97, *ibid*.

[3] p. 13, Rec. of Crim. Case No. CCC-VII-1329-Rizal.

[4] T.s.n., April 23, 1974, p. 172; April 30, 1974, p. 87, September 24, 1974, p. 209.

[5] T.s.n. May 15, 1974, pp. 160-162; September 24, 1974, pp. 212-213.

[6] T.s.n., September 13, 1974, pp. 144-145.

[7] p. 32, Rollo.

[8] T.s.n., September 13, 1974, p. 142.

[9] *People vs. Saligan*, 101 SCRA 264 (1980); *People vs. De la Cruz*, 115 SCRA 184 (1982).

[10] *People vs. Flores*, 112 SCRA 10 (1982).

[11] *People vs. Saligan*, *supra*.

[12] *People vs. Abejero y Villon*, 97 SCRA 647 (1980).

[13] T.s.n., April 23, 1974, p. 173.

[14] T.s.n., April 30 1974, p. 84.

[15] *People vs. Jimenez*, 71 SCRA 186 (1976).

- [16] *People vs. Hipolito*, 106 SCRA 610 (1981).
- [17] *Cudiamat vs. People of the Philippines*, 84 SCRA 248, 251 (1978).
- [18] *People vs. Jimenez*, 105 SCRA 721 (1981).
- [19] *People vs. De la Fuente*, 126 SCRA 518 (1983); *People vs. Agda*, 111 SCRA 330 (1982).
- [20] *People vs. Chavez*, 117 SCRA 221 (1982).
- [21] *People vs. Beralde*, 91 SCRA 125 (1979).
- [22] *People vs. Lanseta*, 95 SCRA 166 (1980).
- [23] *People vs. Dumdum, Jr.*, 92 SCRA 198 (1979).
- [24] Article 248; *People vs. Parohinog*, 96 SCRA 373 (1980).
- [25] Article 160, Revised Penal Code; *People vs. Perez*, 102 SCRA 352 (1981).
- [26] *People vs. Onavia*, 120 SCRA 232 (1983).
- [27] *U.S. vs. Sevilla*, 2 Phil. 162, 164 (1903).
- [28] *U.S. vs. Tandoc, et al.*, 40 Phil. 954 (1920).

SEPARATE OPINION

TEEHANKEE, C.J.:

I concur in the result, there being sufficient evidence other than the challenged extrajudicial confession for affirmation of the judgment of conviction. I write this brief concurrence to maintain my dissenting view in the case of *Magtoto vs. Manguera* (63 SCRA 4, 27) and subsequent cases that "(T)here is no room for interpretation and the plain mandate of the Constitution expressly adopting the exclusionary rule as the only practical means of enforcing the constitutional injunction against such confessions obtained in violation of one's constitutional rights by outlawing their admission and thereby removing the incentive on the part of state and police officers to disregard such rights (in the same manner that the exclusionary rule bars admission of illegally seized evidence) should be strictly enforced,' and' (T)he outlawing of all such confessions is plain, unqualified and without distinction whether the invalid confession be obtained before or after the effectivity of the Constitution." I take exception to the statement in the main opinion that no law gives the accused the right to be so informed of his right to silence and to counsel before the enactment of the 1973 Constitution, which does not have any retroactive effect. I maintain, as in *Magtoto*, that such a law was enacted as of June 15, 1954 when Republic Act 1083, authored by the late Senator Mariano Jesus Cuenco, inserted the second paragraph of Article 125 of the Revised Penal Code authorizing the right of a detained person to counsel in any custodial investigation, thus: "In 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."

I had expressly joined the vigorous dissent of the late Chief justice (then Associate justice) Fred Ruiz Castro in *Magtoto* that "the majority of my brethren are of the literal view that the 'only right granted by the said paragraph to a detained person was to be informed of the cause of his detention,' and that a detained person 'must make a request for him to be able to claim the right to communicate and confer with counsel at any time.' I regard this interpretation as abhorrent because it gravely offends against the provisions of the 1935 Constitution as well as of

the 1973 Constitution that guarantee equal protection of the laws to every person in the realm. x x x An accurate paraphrase of the Majority view may be stated in the following words: 'If this detained wretch asserts his right to counsel, I will allow him to communicate and confer with a lawyer of his choice. But if he says none because he is unlettered or uninformed, I am under no moral or legal obligation to help him because, standing mute, he has no right to counsel.' The absurdity so implicit in these words strikes terror in me at the same time that it saddens me, for it not only denies the poor and the unschooled the equal protection of the laws but also inflicts a horrendous indignity on them solely because of their poverty, ignorance or illiteracy. The cogent remark of the late Senator Mariano Jesus Cuenco, truly a man of wisdom and experience, when Republic Act 1083 as a bill was under discussion in the Senate, that a detained person in every custodial interrogation should, under the proposed amendment, be informed beforehand of his right to counsel, was therefore not a mere wisp of wind, but was indeed a warning most pregnant with meaning."

It seems clear that the second paragraph of Article 125 of the Revised Penal Code as inserted by Republic Act 1083 makes it the duty on the part of any police or military officer to inform the person detained of his right to counsel at the start of any custodial interrogation and that this duty was made a statutory one as early as 1954 upon the enactment of the aforesaid Act.

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