

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSARIO CABRERA AND CONRADO VILLANUEVA, DEFENDANTS,
CONRADO VILLANUEVA, DEFENDANT-APPELLANT.**

G.R. No. L-37398. June 28, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the judgment of conviction of Robbery-Hold-up with Homicide of the Court of First Instance of Bulacan, Branch III, in its Criminal Case No. 0423-V, the dispositive portion of which reads thus:

"WHEREFORE, the Court finds the accused Rosario Cabrera y Martin alias Charing and Conrado Villanueva y Santos alias Cadoc guilty, beyond reasonable doubt, of the crime as charged in the information and hereby sentence each of them to life imprisonment; to indemnify jointly and severally the heirs of the offended party the amount of P12,000.00; and also jointly and severally to pay the amount of P8,000.00, the cost of the jeep stolen; and the further amount of P30,000.00 representing actual, moral and exemplary damages; to suffer all the accessory penalties prescribed by law and to pay the costs.

Accused shall be entitled to full credit for the preventive imprisonment they have already undergone in accordance with Rep. Act 6127.

SO ORDERED."

Accused Rosario Cabrera did not appeal. Only defendant Conrado Villanueva's appeal is before Us.

Accused Rosario Cabrera and appellant Conrado Villanueva were charged in an information reading:

"The undersigned Provincial Fiscal accuses Rosario Cabrera y Martin alias Charing and Conrado Villanueva y Santos alias Cadoc of the crime of robbery holdup with homicide, penalized under the provisions of Art. 294, paragraph 1 of the Revised Penal Code, committed as follows:

That on or about the 17th day of January, 1972, in the municipality of Valenzuela, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Rosario Cabrera y Martin alias Charing and Conrado Villanueva y Santos alias Cadoc, with John Doe alias Ben and Peter Doe alias Abay, who are still at large, armed with knives or ice picks, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, holdup, take, rob and carry away with them a jeep with plate number 84-26 S'71, Bulacan, being driven by Luis dela Cruz y de Jesus and owned by one Reynaldo Santos, Jr., with a value of P8,000.00, to the damage and prejudice of the said owner in the said amount of P8,000.00; that during the commission of this crime, and on the occasion thereof, the said accused in furtherance of their conspiracy, did then and there wilfully, unlawfully and feloniously tie and stab several times with the said knives or ice picks the said Luis dela Cruz y de Jesus and thereafter was abandoned, thereby inflicting upon the said Luis dela Cruz y de Jesus stabbed wounds which caused his death after a few days of confinement in the hospital.

Contrary to law."

The facts pertinent to this appeal are briefly stated in the brief of Solicitor General Estelito P. Mendoza assisted by Assistant Solicitor General Conrado T. Limcaoco and Solicitor Pio C. Guerrero as follows:

"At about 11:00 in the evening of January 17, 1972 Police Sgt. Mario Tanfelix of Valenzuela, Bulacan, while on a patrol duty received an instruction from his superior Lt. Carlos Palomares to proceed immediately to Jose Reyes Memorial Hospital at Manila to investigate an abandoned person who was found at the North Diversion Road suffering from stab wounds (pp. 12-13, tsn., May 11, 1972.).

This abandoned and wounded person was identified as Luis de la Cruz (pp. 6-7, tsn., May 11, 1972). He gave an ante mortem statement (Exhibit A; p. 11, tsn., May 11, 1972). In the ante-mortem statement the deceased named defendant Rosario Cabrera as the person who hired his jeep (Exhibit A) but did not know the names of the three men who stabbed him and took his money and jeep (pp. 11-72, tsn., May 11, 1972; Exhibit A).

In the morning of January 18, 1972, defendant Rosario Cabrera was arrested by the police (p. 18, tsn., May 18, 1972). On January 20, 1972 she executed an extra-judicial confession (Exhibit B, to B-3, inclusive). In the said extra-judicial confession she pointed to appellant Conrado Villanueva as the mastermind of the robbery. She merely hired the jeep upon instruction of appellant but the robbery and the killing of the deceased were done by appellant and his two unidentified companions (Ibid).

Lt. Carlos Palomares of the Valenzuela Police Department who took the extra-judicial confession of defendant Rosario Cabrera testified to identify and to read the contents of the said extra-judicial confession (pp. 3-37, tsn., May 18, 1972). Dr. Ernesto G. Brion of the National Bureau of Investigation (NBI) testified regarding the post-mortem examination conducted on the body of the deceased (pp. 3-10, tsn., September 7, 1972). Reynaldo Santos Jr. testified on the ownership and value of the jeep stolen (pp. 4-14, tsn., June 9, 1972). Alejandro de la Cruz testified on the expenses and damages suffered by the family of the deceased (pp. 15-27, tsn., June 9, 1972) on account of the deceased's untimely death. Dante Marcelo testified that in the early evening before the robbery took place he saw defendant Rosario Cabrera riding on the jeep of the deceased (pp. 29--41, tsn., June 9, 1972) but did not notice whether there were other passengers (p. 33, tsn., June 9, 1972).

Defendant Rosario Cabrera and appellant Conrado Villanueva did not take the witness stand. Neither did they present any evidence. On the basis of the evidence adduced by the prosecution together with their respective cross-examination and objections to some of the exhibits, particularly appellant's objection to the admission of Exhibits B to B-3 (defendant Cabrera's extra-judicial confession) insofar as he was concerned, the case was considered submitted for decision." (Pp. 2-4, Brief for the Appellee.)

xxx xxx xxx

"The only evidence that would support the judgment of conviction of appellant Villanueva was the extra-judicial confession of his co-accused Rosario Cabrera which was read into the record over the continuing objection of appellant's counsel (p. 10, tsn., May 18, 1972). Appellant reiterated his objection when the said extra-judicial confession was being offered in evidence (p. 12, tsn., September 7, 1972)." (Id.)

In their prayer, counsel for the People, joining appellant's counsel, ask for the reversal of appellant's conviction and his acquittal.

After carefully going over the record and minutely reviewing the evidence, We are fully convinced that the prayer for acquittal is in order.

The extrajudicial statement of accused Cabrera does point to appellant as the mastermind and perpetrator, together with two persons whose identities are still unknown, of the killing of the deceased Luis dela Cruz and the taking of the jeep he was driving. But said statement is obviously inadmissible against appellant, who made timely objection thereto.

There is no question that Cabrera's inculpatory statements were made by her during the investigation conducted

by the Valenzuela police on January 20, 1972, two days after the date of the incident in question. For this reason alone, that is, that said statement was not made during the existence of the alleged conspiracy between her and appellant, but after said supposed conspiracy had already ceased and when she was already in the hands of the authorities, Section 27 of Rule 130 cannot be availed of. Said provision reads:

"Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration."

There being no other evidence against appellant, We have no alternative but to reverse the judgment appealed from and to acquit him, as prayed for by his counsel as well as counsel for the People.

PREMISES CONSIDERED, the judgment of the lower court is reversed, appellant Conrado Villanueva is acquitted, and his immediate release from confinement is ordered, unless he is lawfully held for another case, with costs de oficio.

Zaldivar, (Chairman), Fernando, Antonio, Fernandez, and Aquino, JJ., concur.

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