

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TAKEO TABUCHE ET AL., DEFENDANTS. TAIJO YOKIMISO AND KUMEKICHI SAITO, APPELLANTS.

G.R. No. L-21884. July 31, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellants Taijo Yokimiso and Kumekichi Saito were prosecuted for the crime of robbery with homicide in the Court of First Instance of Manila, together with one Takeo Tabuche, who is still a fugitive from justice.

The action was prosecuted against the appellants only, as the defendant Takeo Tabuche had not yet been arrested, and after trial, the Honorable Nepomuceno, judge, who took cognizance of the case, on December 19, 1923, rendered judgment of the following tenor:

"In the information subscribed and sworn to by the Fiscal Mr. M. Albert, Takeo Tabuche, Taijo Yokimiso, on Calle Sande, City of Manila.

"Second. That Maria Castro, whose daughter was serving in said store and was living almost in front thereof, was there on September 21st last at about 5 o'clock in the evening and there saw two Japanese men—one tall and the other a little short—and saw the tall one show to Saito a watch (Exhibit H) which he had taken from his pocket, this witness (Maria Castro) having identified the accused Saito as one of them; that on Saturday, September 21, 1923, she still saw the deceased Saito in his store, because it was at that time that the witness and her daughter left the store for their home; that on the night of the 21st or 22d of said month, a woman, Felisa Felipe, who had also been in that store, saw a Japanese there with his back toward her.

"Third. That on September 24, 1923 (Sunday) Lieutenant Antonio Xerez Burgos found the corpse of the said Japanese Kiro Zuki Sato in Caloocan, Rizal, within two and a half miles from the City of Manila. Said corpse was taken to the General Hospital where it was examined by Dr. Villegas, who, after having made the autopsy (Exhibits A; and O), certified and testified that she had found twenty-seven wounds on the body, of which four were necessarily mortal, and were on the carotid region, on the base and the nape of the neck, and on the back, respectively, said wounds having been the cause of the death of Kiro Zuki Sato of whom Exhibit A is a picture. (See Exhibit B.)

"Fourth. That Lieutenant Antonio Xerez Burgos declares having found the corpse of the Japanese Sato, (Exhibit A) on a Sunday morning of the month of September, 1923, on a certain land in Caloocan about two or three meters from the Caloocan-Balintawak Road, where he also found traces of blood, and a cane (Exhibit G) besides the corpse and a coat (Exhibit L) with blood-stains, on the grass and in front of the 'Loma' which coat, the defendants told them, belonged to the deceased; that having learned that the deceased had been living in an outhouse on Sande Street, Tondo, City of Manila, he went to see that house (Exhibit S) on the noon of the day when the corpse was found, in company with some secret service agents, who helped him to open the door that was closed, and they found within the house and on an ice-box a small case containing some one-centavo coins

left there and some crushed papers; that he made an investigation and in view of the testimony of some women who resided in the neighborhood, he arrested Taijo Yokimiso and Kumekichi Saito on the evening of that same day, but could not arrest Takeo Tabuche, who had escaped, his whereabouts being unknown; that on the night of the same day and with the assistance of some secret service agents and in the presence of the accused Yokimiso and Saito themselves, he searched the garage of Yaptico where the chauffeur, Yokimiso, was living, and there he found a trunk and two suit cases, and in the trunk of Saito some coats with blood stains, a knife (Exhibit D) and the coat of Tabuche, Saito having told him to have stabbed the deceased Sato; that in the suit case of Yokimiso were found, besides the sum of thirteen pesos, a 'gris' (gray) coat (Exhibit E) and a pair of white trousers (Exhibit I) stained with blood, which Yokimiso admitted to be his, and the watch (Exhibit H) of Tabuche which he took from his possession; that in the trunk of Saito were found a 'camisa' (shirt) (Exhibit J) and a pair of trousers (Exhibit L) with blood stains, which, according to information given by these two defendants, belongs to Tabuche; a pair of trousers (Exhibit K) with blood stains and a 'camisa' with stripes (Exhibit R), which Saito himself admitted to be his, the same Saito having admitted to have received thirteen pesos from Tabuche, and spent a part of said sum, leaving a balance of P9.04 (Exhibit P).

"Fifth. That after having been arrested as presumptive authors of Sato's violent death, the accused themselves made important revelations in the statements (Exhibits C and B) made by them under oath before Colonel Dominguez of the Constabulary and interpreted by another Japanese, G. Meguri.

"Sixth. That in the sworn declaration (Exhibit C) the accused Taijo Yokimiso admits having been the chauffeur of the Chinaman, Yaptico, and residing then somewhere behind a warehouse on Calle Dagupan, Tondo, City of Manila; that at about 10 o'clock in the morning of Saturday, September 22, 1923, a friend of his by the name of Tabuche had seen him and invited him to ride at night in the automobile of his master, and at five o'clock in the afternoon of that day, Tabuche in company with Kumekichi Saito came to his office to ascertain his answer as to the trip they were to make at night; that at about 11.30 in the night of the 22d of September last, he went out in the automobile of his master and stopped at the Plaza de Binondo where he took Tabuche and Saito who were there waiting for him, and they went to Calle Juan Luna and then to Calle Sande, City of Manila, where the Japanese, Kiro Zuki Sato, later joined them and all rode in the automobile through different places until they reached Caloocan, where they stopped and asked Sato for money, and as the latter would not give the money asked for, Tabuche, Saito and the witness Yokimiso, seized Sato by his arms and caused him to alight from the car; then Yokimiso took a stick from the automobile and handed it to Tabuche and with it Tabuche struck Sato on the head, and stabbed him, besides, on the back, Sato falling to the ground; that at the dawn of Sunday, they left the place after telling their companion, Yokimiso, that they were going to Sato's house and putting on the clothings of Yokimiso; that Saito returned at three o'clock in the morning and Tabuche came to the house of Yokimiso at 8 o'clock in the morning of Sunday and gave him the sum of thirteen pesos, the witness Yokimiso stating that that was in payment of the gasoline that was used on the night in question, and told him, besides, that they had been in Sato's house and taken possession of the sum of P43 or P45, there remaining with him P9.21 of the money he had received from Tabuche; that he has Tabuche's watch (Exhibit H) in his possession, because it was given to him-by Tabuche as security for the money that Tabuche had told him to borrow; that the gray coat, the white trousers and the 'camisa' (Exhibits E, I and J) are Yokimiso's.

"Seventh. That in the affidavit, Exhibit N, the accused Kumekichi Saito admits knowing his coaccused Tabuche and Yokimiso, and says, moreover, that he knows said Kiro Zuki Sato had a store on Calle Sande; that on Friday he went with Tabuche to Sato's store to obtain a loan from him of P20 to be secured by the watch (Exhibit H), which Tabuche was carrying, but could not obtain it because Sato told them that he could not give them any money for he had to pay P240 at the end of the month; that on the evening of Saturday he (Saito) and Tabuche met in his office on Calle Juan Luna where Yokimiso also used to go, and then Tabuche told him that they would

ride in the automobile of Yokimiso and would get on said car at 11.30 in that night on the 'Plaza de Binondo;' and to this end, at 8 o'clock in that evening he (Saito) and Tabuche went to 'Plaza de Binondo' and waited there until Yokimiso arrived, and from that place they went to Sato's house on Calle Sande, and he (Saito) invited Sato to take a ride with them, as Tabuche wanted to ask money of Sato; that he (Saito) was carrying a knife (Exhibit D) that night, because Tabuche had threatened him the day before that, if he would not help him, he would kill him; and that Tabuche was carrying a knife (Exhibit J) that night and a fan-palm stick (Exhibit G); that they went to Novaliches and then returned to Manila, wherefrom they took the way to Caloocan, and when they were near Caloocan, they stopped on the middle of the road, and then Tabuche again talked to Sato about the loan he was asking, to which Sato answered that he could not make him any loan because he had to pay a debt of P240; and upon hearing this, Tabuche threatened to kill him, and at the same time and at the request of Tabuche, his companions, Saito and Yokimiso, helped him in causing Sato to alight from the car, and Tabuche struck Sato with the stick that Yokimiso had handed to him; that this accused (Saito) stabbed him with a dagger on the right shoulder near the neck, when Sato was already lying on the ground as a result of the stab received from Tabuche; that once Sato was dead, Tabuche undressed him and took the key and the watch that Sato had in his coat; that then they went to Yokimiso's garage on Calle Dagupan where they changed their clothes; and afterwards, at the instance of Tabuche, made in the presence of Yokimiso, Tabuche and Saito went to the house of the deceased Sato, and having found the door closed, Tabuche opened the same with the very key that he had taken from the pocket of the deceased Sato and caused Saito to enter, ordering him to look for the money of Sato, and found a small box of cigars, which contained P42 or P43 in bank bills and coins; that of that amount Tabuche gave him and Yokimiso P13 each, telling them not to worry about the crime committed because he would assume responsibility for all that had happened; that the white 'camisa' with black stripes (Exhibit R) stained with blood and the trousers (Exhibit K) with blood stains are his (Saito's); that on the preceding day, Friday, September 21st, Tabuche told him to find a knife for him; and as he did not have any, he bought a file, and on the morning of Saturday, September 22d, sharpened that file to make a knife of it (Exhibit D) and gave it to Tabuche, but the latter returned it to him and so he had it on the night of the event.

"Eighth. That on the morning of September 22, 1923, one Dequinosoki Tanaka saw the accused Saito, according to his (Tanaka's) own testimony, sharpening a file to make a knife of it (Exhibit D) and at about 3 o'clock in the afternoon he put it in his pocket, went away and never returned.

"Ninth. That upon being arrested by Lieutenant Xerez Burgos, these two accused, Yokimiso and Saito, told him that if they assisted Tabuche, it was because they were afraid of him, knowing him to be a criminal, and besides because they were threatened by said Tabuche before and at the perpetration of the crime; that in testifying in their own behalf, the accused admitted, in open court, having gone in company with Tabuche and the deceased, Sato, to the place of the crime in the automobile that Yokimiso was driving, and been present at the time of the perpetration of the crime; they also admit having made declarations to the policemen, although, according to them, they knew not what was written on those declarations, but they deny having taken any part in Sato's violent death, laying the guilt at the door of their coaccused Tabuche, who was absent, saying that it was only through fear that they did what they did that night; and as to the clothes and arms and watch of Tabuche, found by the policemen in the garage, they admitted those clothes to belong to them, and tried to explain the blood stains appearing thereon, Yokimiso adding that the money that was found in their possession by the police is a part of the TIB that Tabuche had given him on the morning of the 23d to buy gasoline, and Saito in turn testified that if he received the P13 from Tabuche, it was because he was afraid of him, because he threatened him should he refuse to receive it.

"The undersigned cannot believe that these defendants acted only through fear of their coaccused, Tabuche; for, as above stated, Yokimiso, without the consent of his master, used the automobile driven by him for carrying the

deceased and his codefendants to the place of the crime, having gone to the 'Plaza de Binondo' on the night of September 22d just for the purpose of meeting them, in which place Tabuche and Saito were, according to the agreement had on the afternoon of that day, to wait for him; that if they really did not want to help Tabuche in the per petration of the crime, the latter could not have done anything, because they were three (Saito, Sato and Yokimiso); that, besides, Saito prepared a weapon, which is Exhibit D, and with this weapon he also attacked Sato; and that although Yokimiso tried to deny it afterwards, it can be affirmed that he spoke the truth when he said in the beginning that he also struck Sato on the head with the stick, Exhibit G, and as to his participation in the violent death of Sato and the robbery of the watch and money of the deceased, it cannot seriously be denied, in view of the fact of there having been found in their trunks clothings stained with blood that they themselves admit to be their own, and a part of the money that Tabuche and Saito took from Sato's house, after the latter had been killed by them and after they had thrown his body to a grass field in Caloocan. Neither is there any doubt that their object in killing Sato was to take his watch and money which the deceased did not want voluntarily to deliver to them and for this reason, the court is of the opinion that the facts herein proved, namely, their act of having violently taken Sato's life in order to take afterwards with intent of gain his watch which was worth P10 and his money, which amounted to P42 or P43, constitute the crime of robbery with homicide, defined and punished in article 503, case No. 1, of the Penal Code, the accused Taijo Yokimiso and Kumekichi Saito being responsible for said crime as principals for having taken direct part in the commission thereof, and the penalty to be imposed upon them in the medium degree, inasmuch as while the commission of the crime was attended by the aggravating circumstances of evident premeditation, treachery and nocturnity, yet these circumstances are reasonably offset by the mitigating circumstance of article 11, as amended by Act No. 2142.

"In view thereof, the accused Taijo Yokimiso and Kumekichi Saito are hereby sentenced each to suffer the penalty of cadena perpetua with the accessories of article 54 of the Penal Code, to return to the heirs of the deceased the watch which was worth P10 and the money that they took from his store, to indemnify jointly and severally the heirs of the deceased in the sum of one thousand pesos and to pay, in addition, the costs of the action."

Accepting, as we do, the findings of fact of the trial court, the same being in accordance with the evidence, the affirmance of the judgment appealed from is inevitable. But it is alleged by the defense that the lower court erred in admitting as evidence against the appellants their extrajudicial declarations, Exhibits C and N, and the testimony of Colonel Dominguez.

No such error was committed. In *United States vs. Zara* (42 Phil, 308), this court held:

"While section 4 of Act No. 619, to the effect that no confession of any person charged with crime shall be received as evidence against him unless it first be shown that such confession was voluntarily made and was not given as a result of violence, intimidation or threats, or of promises of rewards or leniency, has been repealed, this circumstance in no wise impairs the general rule of jurisprudence which rejects a confession obtained by the means or under the conditions stated in that section. The repeal of that provision, however, has modified the law relative to the burden of proof upon the point as to whether the confession was in fact given under such circumstances as to entitle it to be accepted against the accused.

"In the present state of the law it will suffice for the admission of the confession that it appears to have been given under conditions which accredit prima facie its admissibility, leaving the accused at liberty to show that it was not voluntarily given or was obtained by undue pressure, thus destroying its weight. The burden of proof has thus shifted to the accused, and the prosecution is in turn entitled, when a confession is thus impeached, to rehabilitate the same by submitting any relevant proof showing that it was given voluntarily and without the pressure of undue influence."

Confirming that doctrine on the admissibility of extrajudicial confessions of the accused, this Court, in *People vs. Buda Singh* (45 Phil., 676), said:

"The Administrative Code has repealed the provisions of Act No. 619 that no confession of a person charged with a crime shall be received in evidence unless it be first shown to the satisfaction of the court that it was freely and voluntarily made, and evidence of a confession may now be received without direct affirmative proof that it was so made, thus shifting the burden of proof on the accused to show that the confession was obtained by undue pressure."

We have made an examination of the record before us, but have not found anything tending to show that said extrajudicial declarations were obtained through violence, intimidation or threat, or through promise of reward or leniency, or under such circumstances as would render them inadmissible.

As to the error assigned to the action of the lower court in considering the extrajudicial declaration of each of the appellants against the other, we hold that if it was an error, it is not a reversible error, inasmuch as even disregarding the confessions of the appellants, there is in the record evidence sufficient to prove their guilt beyond a reasonable doubt. Their own declarations made at the trial, corroborated, among others, by the declarations of the witnesses Maria Castro, Felisa Felipe and Dequinosoki Tanaka, and by the fact of there having been found in appellants' possession clothings which they recognize as theirs, stained with blood, and a part of the money that Tabuche and Saito took from Sato's house, are sufficient to justify their conviction.

The well-settled rule of law on the admissibility of defendants' extrajudicial confessions is that when two or more persons are accused of a crime in the same case, the confession made by one of them is admissible against himself, even though it may be incriminatory to his coaccused; but when the accused are tried jointly for a crime that was not committed as the result of a conspiracy, the confession of one of them is not a competent evidence against his coaccused who did not take part in the making of such a confession. (1 R. C. L., 118.) A confession is admissible only against the person making it, and is not admissible for any purpose against his coaccused.

In cases of this nature it is the duty of the court to consider the confession of one of the accused as evidence against him alone. (*Daniels vs. State*, 6 Am. St. Rep., 238; *Porter vs. State*, 55 Ala., 95; *Metcalf vs. Conner*, Little's Select Cas., 497; 12 Am. Dec, 340; *Priest and Walker vs. State*, 10 Neb., 393.) In the instant case, the evidence against Yokimiso is sufficient without Saito's confession, and the judgment, as to Yokimiso, cannot be reversed on account of any error assigned to the action of the lower court in considering the confession of one against the other.

The contention that the lower court erred in allowing the prosecuting attorney to introduce new evidence after the trial was terminated is devoid of any importance, for while the prosecution had rested, yet the trial was not yet terminated and the cause was under the control and jurisdiction of the court, and the latter, in the exercise of its discretion, did not err in receiving additional evidence. (*U. S. vs. Base*, 9 Phil., 48; *U. S. vs. Tria*, 17 Phil., 303.)

The errors assigned being, as they are, held to be groundless, and the judgment appealed from being in accordance with law, the same must be, as is hereby, affirmed with the costs against the appellants. So ordered.

Johnson, Street, Malcolm, Ostrand, and Romualdez, JJ., concur.

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