

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICISIMO FRANCISCO, ACCUSED-APPELLANT.

G.R. No. L-40352. November 29, 1976

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the judgment of the Court of First Instance of Basilan City in Criminal Case No. 485, finding the appellant guilty beyond reasonable doubt of the crime of murder, and imposing upon him the penalty of reclusion perpetua, with the accessory penalties of the law and ordering him to indemnify the heirs of the deceased Esteban de la Cruz in the sum of P12,000.00 and to pay the costs.[1]

During the pendency of the appeal, the appellant escaped from prison or confinement.[2] The appeal, therefore, could have been dismissed under Section 8, Rule 124 of the Rules of Court.[3] In view, however, of the comment[4] of the Solicitor General as counsel for the appellee, the People of the Philippines, that since the appellant had already filed his brief, the proceedings may continue despite the reported escape of appellant from prison, as well as his manifestation in lieu of appellee's brief,[5] recommending the acquittal of the appellant on the ground that his culpability of the crime charged has not been shown beyond legal and moral certainty and finding such recommendation to be meritorious, We have taken the burden of deciding the case on the merits in order to avoid a miscarriage of justice.[6]

There is no doubt that on or about 7:30 in the evening of July 20, 1971, while the deceased was sitting on a chair at the porch of the house of Jacinto Perez, at Matarling, Isabela, Basilan City, he was shot once by an unknown assassin with a shotgun, hitting him on the head which caused his instant death.[7]

On December 2, 1972, the appellant was arrested by the Chief of Police of Guilingan, Zamboanga del Sur and was brought to the NBI Office in Zamboanga City on the following day for investigation.[8] During the investigation, the appellant allegedly executed a confession,[9] admitting that he killed the deceased in the evening of July 20, 1971.

Hence, on May 24, 1974, the appellant was charged in the Court of First Instance of Basilan City with the crime of murder,[10] docketed therein as Criminal Case No. 485. Upon arraignment, the appellant pleaded not guilty to the charge.[11] Thereafter, trial proceeded, and the prosecution as well as the defense adduced their respective evidence.

The prosecution was not able to present a single eyewitness to the commission of the crime, and relied for the conviction of the appellant solely upon his alleged extra-judicial confession. The appellant, however, testifying in his defense, repudiated the said confession, claiming that he was maltreated and tortured by NBI agents until he was forced to sign a prepared statement.[12]

The trial court rejected the appellant's claim of maltreatment, and held that his confession was executed freely and voluntarily. Hence, the appellant, as stated at the beginning of this opinion, was convicted of the crime

charged and sentenced to suffer the afore-mentioned penalty.

The issue now determinative of the appeal is whether the alleged extra-judicial confession of the appellant was executed by him freely and voluntarily.

It is a well-settled rule that the confession or "declaration of an accused expressly acknowledging his guilt of the offense charged" may be given in evidence against him, where it is voluntary.[13] We cannot close our eyes, however, to the fact that some officers of the law resort to illegal and reprehensible tactics in extorting confessions through violence and intimidation.[14] Hence, "the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to an alleged voluntary confession of the accused and the courts should be slow to accept such confession unless corroborated by other testimony." [15] Thus, "in passing upon the weight and admissibility of a confession, the court may take into consideration the circumstances and conditions under which it was obtained, and may consider claims that a statement was taken in circumstances which violate the standard of voluntariness -- a standard grounded in the policies of privileged self-incriminations." [16]

In the case at bar, the evidence of record shows that after the appellant was brought to the NBI Office in Zamboanga City, on December 3, 1972, he was immediately investigated and tortured by NBI agents. Recounting how he was maltreated and tortured, the appellant named names and recited specific acts of maltreatment. Thus, he testified that at the NBI Office, he was brought to a dark room where he was forced to remove his clothing; that he was boxed by a certain Lim and one Judge San Luis and at one time he was hit on the ears with open palms; that he was kicked in the mouth by a "stout big fellow named Lim" and suffered a broken tooth; that the investigators stepped on his hands and placed bullets in between his fingers; that he was not allowed to sleep the whole night of December 3, 1972; that to spare himself from further maltreatment, he finally decided to follow the wishes of the investigators; that although he knows how to write his name, the confession was thumbmarked by him because he could not hold the pen as his hand was swollen.[17]

Since the appellant repudiated his alleged confession, it was incumbent upon the prosecution to impeach the said repudiation.[18] It failed in the exercise of that task.

The record, however, reveals that after the prosecution and the defense had rested their respective case, the trial court called upon Leovegildo Mendoza, Jr. -- formerly the Clerk of Court of the Court of First Instance of Zamboanga City, before whom the alleged confession was subscribed and sworn to by the appellant -- to testify as a witness for the court, on the voluntariness of the confession.[19] In disbelieving the appellant's claim of maltreatment, and in upholding the voluntariness of the confession, the trial court relied heavily on the testimony of the said witness, and held:

"Most importantly, the testimony of Clerk of Court Leovegildo Mendoza, Jr., before whom Exhibit "A" was subscribed and sworn to by the accused Felicisimo Francisco, has been most definite in his stand that the said confession was signed and executed by the accused Felicisimo Francisco in his office, freely and voluntarily and without intimidation; that he interpreted the contents of the confession to the accused in Chavacano, a dialect which he knows because he himself is a native-born Zamboangueno; that he saw to it that the accused signed the statement in his presence while police or NBI authorities were not present; and that, while he had occasion to observe the accused, he did not notice any mark or sign on his face or any part of his body which might indicate that violence or force was inflicted on him. If, indeed, the accused suffered the injuries which he allegedly suffered as a result of maltreatment the day before, these injuries should have been noticed by Clerk of Court Mendoza. Since the latter testified that no such injuries were visible or apparent when the accused Felicisimo Francisco subscribed and swore to the confession, it follows as a necessary conclusion that no such injuries were inflicted. Besides, the confession having been signed and executed in the Court of First Instance of Zamboanga City, the accused was alerted to the fact that the occasion was an opportunity for him to complain not only because he was maltreated, but also because he was being forced and intimidated to sign the

confession. Clerk of Court Mendoza declared that he heard no such complaint from the accused and the accused himself testified that he never thought of making such a complaint. When the accused Felicisimo Francisco, there-fore, raised his hand in solemn affirmation of the confession he made, he did so freely and voluntarily." [20]

We do not agree with the above findings and conclusions of the trial court.

To begin with, the trial court erroneously held that Clerk of Court Leovegildo Mendoza, Jr., interpreted the contents of the confession to the appellant in Chavacano. On the contrary, he testified that the confession was interpreted by the Court Interpreter Rufino Detuyato. [21]

Besides, a perusal of his testimony [22] shows that he did not positively testify that he did not notice any injuries on the face of the appellant or in any part of his body, but simply answered the question of the court, by saying: "I do not remember, Your Honor." Nor did he categorically assert in his testimony, that the appellant did not complain to him that he (appellant) was maltreated, coerced or in-timidated into signing the confession, but, again, merely answered the question of the court, by saying: "I cannot remember the affiant made any complaint to that effect. Should the affiant made any complaint, I should have included that by way of certification. If there was any complaint, I will not administer the oath and on the contrary, I will try to investigate the investigating officers and to make a report to the authorities so that he could be exa-mined." Such answers do not evince that candor and free-dom of equivocation which are indicative of truth. His evasive answers to the questions propounded to him by the Court, does not impress Us favorably. "A witness is reliable when his answers are prompt, concise, responsive to interrogatories, outspoken, and entirely devoid of evasion or any semblance of shuffling." [23] His testimony is, therefore, highly unreliable, if not unworthy of any credence.

Moreover, when the appellant was brought to the Clerk of Court, he was still under the custody of the NBI agents. He testified on cross-examination that he did not complain to the Clerk of Court that he was maltreated and tortured, because he was afraid of the NBI agents who were beside him in the Office of the Clerk of Court. [24] This goes to show that when the appellant was brought to the Clerk of Court, he was not yet relieved of the fear of further maltreatment impelled by the boxing and kicking which he received at the time of the making of the confes-sion. It was, therefore, but natural for the appellant not to complain of maltreatment and torture to the Clerk of Court because being in the custody of his torturers, he was reasonably apprehensive of further maltreatment if he complained. [25] In this connection We reiterate what this Court has said in *People vs. Castro*: [26]

"Nevertheless, we think that judges, justices of the peace and fiscals, to whom persons accused are brought for swearing to the truth of their statements, would do well to adopt the practice of having the confes-sants physically and thoroughly examined by independent and qualified doctors before ad-ministering the oath, even if it is not reques-ted by the accused. Or, if no doctor is immediately available, the swearing officers should themselves examine the entire bodies of the confessants for mark of violence, par-ticularly the portions covered by their cloth-ing. Such examination, if regularly required, and the results officially noted, would not only deter attempts to secure confessions through violence but ultimately shorten and speed up criminal trials (where accused persons almost invariably repudiate their confessions) by precluding future controversies on whether the statements were obtained through torture or not. Common sense advises that the swearing officers should not be content with affirmations by the accused that their statements are vo-luntary, nor with denials that they were improperly procured. Manifestations of this kind are to expected if the accused is to return to the custody of the agents who obtained the confessions, since repu-diation of the statement would result in the infliction of further punishment by those charged with improperly extracting the challenged statements."

At any rate, there are disturbing inconsistencies in the testimony of court witness Leovegildo Mendoza, Jr. and the testimonies of the prosecution witnesses. Thus, according to Leovegildo Mendoza, Jr., the NBI agents who

brought the appellant to his Office were ordered by him to leave his office before he explained the contents of the confession to the appellant which was subsequently signed by him.[27] On the other hand, NBI agent Restituto Reluya testified that he was present when the appellant affixed his thumbmark on the confession.[28] Felicisimo Mortera, the interpreter of the NBI, also testified that there were NBI agents when the confession was thumbmarked by the appellant.[29] Leovegildo Mendoza, Jr., further testified that he did not require anybody to sign as a witness at the time the appellant affixed his thumbmark on the confession;[30] however, it appears in the confession that Felicisimo Mortera signed as a witness to the thumbmarking.[31] All these inconsistencies, as correctly pointed out by the Solicitor General,[32] lend weight and credence to the appellant's assertions that the confession was signed at the NBI Office in Zamboanga City and all he did at the Office of the Clerk of Court was to take his oath, in the very presence of several NBI agents.[33]

Another evidence which the trial court took into consideration in discarding the appellant's claim of maltreatment is the testimony of Dr. Ismael Piedad that when he examined the appellant on December 3, 1972 at 3:35 o'clock in the afternoon, he found him to have no visible injuries on any part of his body.[34] Again, the trial court fell into error in giving undue importance to the testimony of Dr. Piedad. The herein appellant was investigated and maltreated starting at 5:00 o'clock in the afternoon of December 3, 1972.[35] The testimony of Dr. Piedad, as correctly noted by the Solicitor General,[36] is irrelevant as to the physical condition of the appellant on December 4, 1972, after the alleged confession was thumbmarked by the appellant.

We do not also agree with the trial court's observation that it was impossible for the police or NBI agents to make out or concoct the confession because the facts disclosed therein were facts known only to the appellant himself.[37] While this Court has ruled in previous cases that the presence of details in the confession which only the accused could have supplied is indicative of voluntariness, nevertheless, the present case does not call for its application. The record discloses that when Jacinto Perez, a witness for the prosecution, was investigated by NBI agents on November 30, 1971, he narrated in his sworn statement,[38] that the appellant had a motive to kill the deceased, the details of which substantially tally with some portions of the confession. In other words, the facts disclosed in the confession were not only known to the appellant but also to Jacinto Perez.

It could thus be seen that the evidence upon which the trial court based its findings and conclusion is not only open to doubt as to weight but also as to admissibility.

In any event, independently of the foregoing, there are other circumstances extant in the record which calls for the rejection of the alleged confession as a basis for a judgment of conviction.

Firstly, We find it rather strange why the appellant, who could write his name in long hand,[39] did not sign the alleged confession but merely affixed his thumb-mark. This only confirms the claim of the appellant that he could not hold the pen because his hand was swollen as the investigators stepped on it and placed bullets in between his fingers.

Secondly, considering that the appellant is an unschooled farmer, who does not know how to read and can only write his name,[40] his confession which is in English had to be asked in Chavacano, and had to be translated to and typed in English and similarly his alleged answers in Chavacano had to be translated to and typed in English.[41] "Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the answers is naturally pregnant with possibilities of human, if not unintentional, inadequacies and incompleteness which render the said confession unsafe as a basis of conviction for a capital offense, unless sufficiently corroborated." [42]

Thirdly, the long and precise narrative of appellant's answer to the simple question in No. 5 as to his whereabouts on March 1, 1971, filling up two-thirds of the whole page, complete in every detail of what he did on and after the

said date, is open to grave suspicion as to whether such a detailed and precise narrative could be attributed to the appellant --- a poorly schooled farmer who does not know how to read and can only write his name.[43]

Finally, a guilty person seldom admits his guilt fully and completely; he has a tendency to explain away his conduct, or minimize his fault' or crime or shift the blame to others.[44] A cursory reading of the alleged confession shows that this tendency is absent and its absence tends to corroborate the appellant's claim that he was forced to sign a prepared statement, and therefore, the contents of the said confession were not his free and voluntary statements.[45]

In the light of the foregoing, We hold that the trial court erred in rejecting the appellant's claim of maltreatment and in holding that the alleged confession was executed by the appellant freely and voluntarily.

It is now well settled that a confession which is induced or extorted by torturing the accused or by personal violence or abuse directed against the accused for the purpose of obtaining a confession, is an involuntary one and is not admissible against him, unless found to be true.[46] Involuntary or coerced confessions obtained by force or intimidation are null and void and are abhorred by the law, which condemns the use of such cruel and inhuman methods to secure a confession. A coerced confession stands discredited in the eyes of the law and is as a thing that never existed.[47] Since the appellant was convicted by the trial court solely on the basis of his alleged confession and it having been shown that the same was involuntary, the judgment of the trial court convicting the appellant has no leg to stand on.

It is noteworthy that aside from the fact that the alleged confession was involuntary, the record also discloses that the appellant herein could have been the victim of a frame-up, plotted by the murderer himself. Thus, as correctly pointed out by the Solicitor General,[48] the defense had offered evidence that it was Jacinto Perez, a witness for the prosecution and in whose house the deceased was slain, who had shot the deceased. Oscar Flores, a witness for the defense, testified that at about 7:00 o'clock in the evening of July 20, 1971, while he was about 10 meters away from the house of Jacinto Perez, he heard a shot; that when he heard the shot, he went near the house of Perez; that he met Jacinto Perez and he asked him about the gun explosion and the latter said that he had killed Esteban; that when he asked Jacinto Perez why he killed Esteban, the latter replied that "he can no longer be patient and that his conscience cannot stand anymore." [49] To this statement, Dominga Samson Vda. de la Cruz, widow of the deceased, gave further enlightenment. She testified that the wife of Jacinto Perez was the mistress of her husband; that the wife of Jacinto Perez even filed a case of slander against her; and that her husband admitted to her that Perez's wife was his mistress.[50] Nowhere has Jacinto Perez denied that his wife was the mistress of the deceased, Esteban de la Cruz, as alleged by the latter's wife; nor has he categorically denied the pointed accusation of Oscar Flores that it was he who shot the deceased. These circumstances serve to underscore the hasty and incomprehensive investigation conducted by the authorities.

In the final analysis, We find that the evidence does not warrant the conviction of the appellant, whose culpability of the crime charged has not been shown beyond legal and moral certainty.

The National Bureau of Investigation should inquire into the actions of its agents in Zamboanga City, and take the necessary steps to prosecute them under the pertinent laws, if justified by the evidence, as well as to conduct again an independent and thorough inquiry into the death of ESTEBAN DE LA CRUZ to ferret out the real culprit or culprits.

WHEREFORE, the judgment of the trial court is hereby reversed, and the appellant FELICISIMO FRANCISCO is acquitted, with costs de oficio.

Let a copy of this decision be furnished the Director of the National Bureau of Investigation and the Secretary of

Justice for appropriate action.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Aquino, JJ., concur.

[1] p. 72, Record.

[2] pp. 98-101, Rollo.

[3] The pertinent provision of Section 8, Rule 124 of the Rules of Court, reads as follows:

"The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal."

[4] p. 106, Rollo.

[5] p. 111, Rollo.

[6] Cf. *People vs. Valencia*, 82 Phil. 657.

[7] Exhibits "B" and "C", Record of Exhibits.

[8] pp. 106, 123, t.s.n.

[9] Exhibit "A", Record of Exhibits.

[10] p. 1, Record.

[11] pp. 17-18, Record.

[12] pp. 106-112, 128-131, t.s.n.

[13] Rule 130, Section 29.

[14] *People vs. Clido*, 85 Phil. 845.

[15] *People vs. Urro, et al.*, L-28405, April 27, 1972, 44 SCRA 473, 484; *People vs. So Fo*, 23 Phil. 379.

[16] *People vs. Chaw Yaw Shun*, L-19520, April 25, 1968, 23 SCRA 127.

[17] pp. 106-112, t.s.n.

[18] *People vs. Tipay, et al.*, 74 Phil. 621.

[19] pp. 214-215, t.s.n.

[20] pp. 66-67, Record.

[21] pp. 218-219, t.s.n.

[22] pp. 219-220, t.s.n.

[23] *Moran, Comments on the Rules of Court*, 1970 Edition, Volume 6, p. 145.

[24] pp. 132-135, t.s.n.

[25] *People vs. Gande, et al.*, L-28163, Jan. 30, 1970, 31 SCRA 347, 351; *People vs. Entrina, et al.*, L-21603,

April 15, 1968, 23 SCRA 40, 46-47; *People vs. Castro, et al.*, L-17465, Aug. 31, 1964, 11 SCRA 699, 711.

[26] *Supra*.

[27] pp. 230-231, t.s.n.

[28] pp. 56-57, t.s.n.

[29] pp. 83, 84, t.s.n.

[30] p. 232, t.s.n.

[31] Exhibit A-4, Record of Exhibits.

[32] pp. 12-13, Manifestation in Lieu of Appellee's Brief.

[33] pp. 112-113, 133-134, t.s.n.

[34] pp. 242-243, t.s.n.

[35] p. 107, t.s.n.

[36] p. 11, Manifestation in Lieu of Appellee's Brief.

[37] pp. 68-69, Record.

[38] Exhibit 1, Record of Exhibits.

[39] Exhibit 5, Record of Exhibits.

[40] pp. 111, 127, t.s.n.

[41] pp. 55-56, t.s.n.

[42] *People vs. Maisug*, L-22187, Mar. 28, 1969, 27 SCRA 742, 753; *People vs. Urro, et al.*, *supra*.

[43] Cf. *People vs. Manipula, et al.*, L-27608, July 6, 1973, 52 SCRA 1, 11.

[44] *People vs. Obenia*, 91 Phil. 292, 302.

[45] pp. 110-112, 120-121, t.s.n.

[46] *People vs. Chaw Yaw Shun*, *supra*.

[47] *People vs. Urro, et al.*, *supra*.

[48] pp. 16-18, Manifestation.

[49] pp. 160-16, t.s.n.

[50] pp. 92, 93, 101, t.s.n.

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