

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR DE LA CRUZ ALIAS “OSCAR”, ACCUSED-APPELLANT.

G.R. No. L-32661. July 20, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Cesar de la Cruz, Alfredo Mayo, Ernesto Vista and Leonardo Altura were accused of robbery in band with rape in Criminal Case No. 3015 of the Court of First Instance of Tarlac. The amended information against them reads as follows:

"That on or about May 12, 1963, at night time, in the Municipality of Pura, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above named accused together with Alberto Directo alias Betty, Federico Refalda alias Dicong, the latter two (2) being detained in the City Jail, Cabanatuan City, Lamberto Tamayo alias Lambert, Alfredo Monta alias Ernie, Benjamin Dilo alias Jamin, Boy Cabalona, John Doe and Richard Doe, the latter 6 being still at large, armed with carbines, pistols, bolos and knives, conspiring, confederating and helping one another, by means of force and intimidation upon the person of Fernando Salazar, did then and there wilfully, unlawfully and feloniously with intent of gain, take, steal and carry away with them cash money in the amount of P45.00, one flashlight valued at P4.50, one bolo valued at P4.50 and one transistor radio valued at P165.00 belonging to the said Fernando Salazar against his will, to the damage and prejudice of the same in the total amount of P219.00, Philippine Currency; that said accused on the occasion of the commission of the crime of Robbery, held and brought down Carmelita Salazar from the house of the latter and dragged her under the house of her uncle Isabelo Salazar and once there, in pursuance of their concerted conspiracy, by means of force and with grave abuse of superior strength, did then and there wilfully, unlawfully and feloniously have sexual intercourse with said Carmelita Salazar, an unmarried woman, against her will."

Ernesto Vista and Alfredo Mayo were discharged from the case, upon motion of the Fiscal, for insufficiency of evidence against them. The remaining accused were sentenced on October 9, 1965, as follows:

"IN VIEW OF THE FOREGOING, the accused Cesar de la Cruz alias Oscar and Leonardo Altura are found guilty beyond reasonable doubt of the crime of robbery with rape attended by the following aggravating circumstances: It was committed by a band in the house of the offended parties. And night time was purposely sought to facilitate the commission of the offense. Each is sentenced to suffer an imprisonment of Reclusion Perpetua, to indemnify Fernando Salazar jointly and severally in the sum of two hundred nineteen (P219.00) pesos and to pay one half of the costs, both without subsidiary imprisonment in case of insolvency by reason of the penalty imposed."

Both Altura and de la Cruz appealed their conviction to the Court of Appeals and that court in its resolution of February 26, 1970, dismissed the case against Altura who had died on January 29, 1969. The Court of Appeals had received the expediente of Criminal Case No. 3015 as early as February 27, 1967, but it was only on September 23, 1970, that it discovered it had no jurisdiction over the appeal for on that day the fourth division of the court issued the following resolution:

"It appearing from the record that the penalty imposed upon each of the accused-appellant in this case was reclusion perpetua; the Court RESOLVED that the appeal in this case be certified to the Supreme Court."

The People's version of the facts is as follows:

"In the evening of May 12, 1963, a group of men, some of whom were armed with guns, raided Barrio Linao, Pura, Tarlac (p. 18, t.s.n., November 12, 1964; p. 71, t.s.n., February 9, 1965). Among the houses victimized by the raiding party was that of Marcial Abagat, a resident of the barrio. The armed men went into the house of Marcial Abagat and demanded money (p. 71, t.s.n., February 9, 1965). When Abagat answered that he had no money, the robbers told him and the other members of the family to lie flat on the floor, after which, the armed men ransacked the house (pp. 71-73, t.s.n., id.). While the robbers were searching for money in the house of Abagat, one of them lighted a cigarette and from the illumination thereof, Abagat saw in the chest of the malefactor a tattooed eagle. This person who had an eagle tattooed on his chest was dressed only up to the waist (pp. 74, 75, t.s.n., id.).

"Not finding any money from the house of Abagat, the group proceeded to the house of a certain Ramos. In the meantime, some members of the group entered the house of Fernando Salazar and took cash amounting to P45.00, a radio worth P175.00, a bolo valued at P4.00 and a flashlight worth P4.50 (p. 87, t.s.n., Feb. 10, 1965). While this was going on, two members of the group entered the room of Carmelita Salazar. One of the two men, a tall one, who was holding a gun dragged Carmelita to a place under the house of Isabelo Salazar and forced her to lie down (p. 21, t.s.n., November 12, 1964). After bringing Carmelita to the ground, the malefactor forcibly removed her panty and threatened to shoot her if she resisted (p. 61, t.s.n., January 12, 1965). In spite of the victim's resistance, this robber was able to satisfy his criminal lust on Carmelita (p. 62, t.s.n., id.). After raping Carmelita, the tall man and his companion together with a third man went to the house of Isabelo Salazar where they broke open an aparador (p. 64, t.s.n., id.). The incident was reported to the 23rd Philippine Constabulary stationed at Paniqui, Tarlac on the following day, May 13, 1963. Forthwith, Sgt. Felix de la Cruz of the same PC outfit went to the scene and conducted an investigation (p. 105, t.s.n., February 24, 1965). He found that one of the robbers left a wallet containing a picture of a man who was later identified by Carmelita as her attacker (p. 109, t.s.n., Feb. 24, 1969). This man turned out to be Lamberto Tamayo, a police character. During the same investigation, Marcial Abagat told Sgt. de la Cruz that one of the robbers had a large eagle tattooed on his chest (pp. 73, 74, t.s.n., February 9, 1965). About a week later, the Chief of Police of Rosales, Pangasinan received an anonymous letter which he gave later to Sgt. de la Cruz, in which the names of Lamberto Tamayo, Raymundo Awanan of Guimba, Nueva Ecija, Leonardo Altura of Talugtug, Nueva Ecija, Alfredo Munta, Alfredo Mayo, also of Talugtug, Nueva Ecija and Pepe Saciao of Nanpican, Nueva Ecija were mentioned as the persons who committed the robbery at Barrio Linao, Pura, Tarlac on May 12, 1963 (pp. 110-111, t.s.n., Feb. 24, 1969). Since some of these persons mentioned in the letters were known police characters, the Philippine Constabulary authorities easily secured copies of their pictures from the Constabulary Investigation Section (CIS). Copies of the pictures of Lamberto Tamayo, Leonardo Altura and Alfredo Munta were distributed among the various police agencies and Philippine Constabulary Units in Tarlac and nearby provinces (pp. 111-113, t.s.n., id.). As a consequence, Cesar de la Cruz alias Oscar, who had previously been arrested for illegal possession of firearms in Moncada, Tarlac was turned over to the Philippine Constabulary on March 2, 1964 (pp. 117, 118, t.s.n., id.). Alfredo Munta and Alfredo Mayo were arrested in Pangasinan on March 5, 1964. On April 1, 1964, Leonardo Altura was found to be a detainee at the 28th PC Company at Guimba, Nueva Ecija, having been charged with robbery and illegal possession of firearms. Upon examination of Altura's body, it was found that a large picture of an eagle standing on a globe was tattooed on his chest (pp. 114-120, t.s.n., id.).

"Cesar de la Cruz alias Oscar and Leonardo Altura gave written confessions (Exhibit "A", p. 1, Folder of Exhibits; Exhibit "B", p. 2, Folder of Exhibits, respectively) of their participation in the robbery to Sgt. de la Cruz, which confessions were subscribed by them before Municipal Judge Felix Cabarios of Pura, Tarlac (pp. 115-120, t.s.n., id.). Cesar de la Cruz, in his confession described in detail how he and his companions robbed

several houses in Barrio Linao, Pura, Tarlac on the night of May 12, 1963. He also mentioned in said confession that on their way to Barrio Linao on the night in question, they passed by the house of an acquaintance named Calixto Gabuya, where they took their supper. The Constabulary authorities, checking the details of said confession, went to the house of Calixto Gabuya at Barrio Balite and found out from the statement of Gabuya himself that Cesar de la Cruz and his companions really took their supper in his house in the night of May 12, 1963 before proceeding to Barrio Linao (pp. 119, 120, t.s.n., id.)."

Cesar de la Cruz who is the lone appellant prays for the reversal of the judgment against him on the following grounds: (a) the trial court erred in finding that he participated in the robbery which took place in barrio Linao, Pura, Tarlac, on May 12, 1963; and (b) it erred in admitting and appreciating his extrajudicial confession.

The appellant claims no witness testified that he was at the scene of the crime; that the only witness against him was Calixto Gabuya who was not present at the scene of the crime and who said only that on May 12, 1963, at about 6:00 o'clock in the evening, a group of about ten (10) men which included Cesar de la Cruz appeared at his house in barrio Balite, Pura, Tarlac, and demanded food. The appellant claims that from the fact he was with the group who ate at Gabuya's house, it cannot be inferred that he was with the group that robbed barrio Linao. While this assertion is correct, Gabuya's testimony cannot be totally disregarded because at the very least it shows that the appellant was in the proximate vicinity of barrio Linao at the time it was ravaged because the two barrios -- Balite and Linao -- are near each other. This circumstance supports his extrajudicial confession (Exhibit A) but which he repudiates on the ground that it was made involuntarily.

The appellant's confession is embodied in Exhibit A. It was given to TSgt. Felix M. de la Cruz of the Philippine Constabulary on April 29, 1964, at Paniqui, Tarlac. It consists of three and one-half pages and sworn before Municipal Judge Felix M. Cabarios on April 30, 1964, at Pura, Tarlac. In his confession, the appellant says that he and his companions passed by the house of "Calis" at barrio Balite, Pura, Tarlac, where they ate their supper and afterwards they proceeded to barrio Linao pursuant to a pre-conceived plan and there:

"23. Q: - When you and your companions reached Bo. Linao, what did you do there, if any?

A: - When we reached Bo. Linao, Pura, Tarlac, we divided ourselves into three (3) groups, the first group consisting of three men goes up the houses to rob the residents or occupants of the houses, the second group consisting of four men stays or guard the first group and the third group will guard those persons that are being brought down by the first group, and I am with the third group.

24. Q: - Were you and your companions armed at that time?

A: - Yes, sir.

25. Q: - What kind of arms did you and your companions possessed?

A: - I have only seen one (1) carbine Cal. 30, three (3) pistols and the rest of us have boloes and knives.

26. Q: - Do you know if how many houses were you and your companions robbed in that night?

A: - I do not know if how many houses we have robbed but mostly of the houses thereat, sir.

27. Q: - What articles were you and your companions able to take thereat?

A: - We were able to rob the residents of Bo. Linao Pura, Tarlac of their cash money amounting around P300.00, four (4) transistor radios and other valuable belongings."

The appellant claims that his confession was obtained through force and intimidation and should not have been admitted in evidence. In the words of his brief:

"He was grilled for three hours (p. 44, t. s.n., 1st folio). The investigators asked him to admit that he knew Calixto Gabuya and when he consistently said he did not know him, Sgt. de la Cruz boxed him in the stomach six times (p. 40, id.). He was never asked to admit his participation in the crime (p. 41, id.). He was forced to sign his name because 'I was thinking of the threat of the PC made on us that they will maltreat us and kill us and said that we are trying to run away.' (p. 44, id.). After the interrogation, he was brought out of the stockade to the southern part of the camp and there they asked him if he would sign the statement; and when he refused, saying that he knew nothing about what had happened, he was threatened with death by Sgts. de la Cruz and Clemente, who were armed with carbines. Because of his refusal to sign, they told him to move to a place about 3 meters from them and asked him again if he would sign the statement. He again refused, whereupon Sgts. de la Cruz and Clemente cocked their carbines and when he heard this, he immediately said he would sign it. (pp. 46--49, id.). But when he said he would sign it, they told him 'You sign it in Court.' (p. 50, id.).

"As to the signing of Exhibit "A", defendant appellant declared: That when he refused to sign it before the judge at Pura, Tarlac, he was brought to a room and, with the door locked, Sgt. de la Cruz hit him at the buttock with his carbine, threatening to kill him if he would shout; that Sgt. de la Cruz also threatened to kill him on the way home if he would not sign the statement. (p. 57, id.). These declarations surrounding the investigation and signing of the statement were never rebutted."

We reject the claim of the appellant.

Elementary is the rule that a confession is presumed to be voluntary until the contrary is proved and the burden of proof is upon the person who gave the confession. In the case at bar the presumption has not been overcome. Not only is the appellant's confession replete with details which only he could have supplied, the circumstances of its execution belie his claim. First, he did not submit to a medical examination to support his claim of physical injuries inflicted upon him. Second, he did not complain to Municipal Judge Cabarios at the time he signed the confession. On the contrary, according to Judge Cabarios, every precaution was taken before swearing the appellant so that his constitutional rights were safeguarded. Judge Cabarios said that he excluded the PC soldiers from his office and only Cesar de la Cruz and Leonardo Altura were left in the room when he translated to them in Ilocano the contents of their confessions. Thereafter, he asked the two if they were willing to sign their confessions and they readily answered in the affirmative. Judge Cabarios also testified that when he administered the oath to de la Cruz and Altura he did not notice any injuries on their bodies, nor signs of fatigue and fear.

The appellant's claim that he was not apprised of his constitutional rights before he was investigated by the PC is belied in Exhibit A as follows:

"1. QUESTION: - After having been apprised of your constitutional rights, are you willing to give a free and voluntary statement in this investigation?

ANSWER: - Yes, sir.

2. Q: - State your name, age, occupation and all other personal circumstances?

A: - CESAR DE LA CRUZ alias "OSCAR", 23 years old, single, at present a detainee of the Tarlac Provincial Jail in Tarlac, Tarlac, and with a postal address at Bo. Ambassador, Nampicuan, Nueva Ecija."

What specific constitutional rights the appellant was apprised are not revealed in the record. Nonetheless this circumstance does not make his confession inadmissible because the comprehensive formula laid down in *Miranda vs. Arizona*, 384 U.S. 436, 16 L. Ed. 2d. 694, 86 S. Ct. 1602 (1966) which is invoked by him was not mandatory in 1964 and the provision of the 1973 Constitution (Art. IV, Sec. 20) which embodies the *Miranda* doctrine has no retroactive effect.

We ratify the resolution of the Court of Appeals dismissing the case against Leonardo Altura.

WHEREFORE, finding the judgment under appeal to be factually and legally in order, it is hereby affirmed. No costs.

It appears that when the crime was committed in 1963, the appellant was only 22 years old and he has been under detention since April, 1964, or for a period of over 18 years. For this reason, the Court recommends Cesar de la Cruz for executive clemency to the President.

SO ORDERED.

Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Barredo, (Chairman), concurs in the opinion of Justice Aquino that appellant is guilty only of robbery. In his confession which is the basis of the condemnatory main opinion, there is no indication of any conspiracy to commit rape. In fact, appellant does not appear to have any knowledge that rape had been committed by one of their companions. Accordingly, there is no need to recommend executive clemency. Appellant is entitled to immediate release.

Aquino, J., dissents.

DISSENTING OPINION

AQUINO, J.:

I dissent. Cesar de la Cruz is guilty of robbery only under paragraph 5 of article 294 of the Revised Penal Code and not of robbery with rape. He had nothing to do with the rape. There was no conspiracy to commit rape. What he admitted in his confession was his participation in the robbery in the house of Fernando Salazar.

The penalty imposable on him should have a minimum taken from prison correccional medium and a maximum taken from prison mayor medium like four years to nine years.

Cesar de la Cruz, Alfredo Mayo, Ernesto Vista and Leonardo Altura were accused of robbery in band with rape in Criminal Case No. 3015 of the Court of First Instance of Tarlac. The amended information against them reads as follows:

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"23. Q: - When you and your companions reached Bo. Linao, what did you do there, if any?

A: - When we reached Bo. Linao, Pura, Tarlac, we divided ourselves into three (3) groups, the first group consisting of three men goes up the houses to rob the residents or occupants of the houses, the second group consisting of four men stays or guard the first group and the third group will guard those persons that are being brought down by the first group, and I am with the third group.

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"As to the signing of Exhibit "A", defendant appellant declared: That when he refused to sign it before the judge at Pura, Tarlac, he was brought to a room and, with the door locked, Sgt. de la Cruz hit him at the buttock with his carbine, threatening to kill him if he would shout; that Sgt. de la Cruz also threatened to kill him on the way home if he would not sign the statement. (p. 57, id.). These declarations surrounding the investigation and signing of the statement were never rebutted."

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Elementary is the rule that a confession is presumed to be voluntary until the contrary is proved and the burden of proof is upon the person who gave the confession. In the case at bar the presumption has not been overcome. Not only is the appellant's confession replete with details which only he could have supplied, the circumstances of its execution belies his claim. First, he did not submit to a medical examination to support his claim of physical injuries inflicted upon him. Second, he did not complain to Municipal Judge Cabarios at the time he signed the confession. On the contrary, according to Judge Cabarios, every precaution was taken before swearing the appellant so that his constitutional rights were safeguarded. Judge Cabarios said that he excluded the PC soldiers from his office and only Cesar de la Cruz and Leonardo Altura were left in the room when he translated to them in Ilocano the contents of their confessions. Thereafter, he asked the two if they were willing to sign their confessions and they readily answered in the affirmative. Judge Cabarios also testified that when he administered the oath to de la Cruz and Altura he did not notice any injuries on their bodies, nor signs of fatigue and fear.

The appellant's claim that he was not apprised of his constitutional rights before he was investigated by the PC is belied in Exhibit A as follows:

"1. QUESTION: - After having been apprised of your constitutional rights, are you willing to give a free and

voluntary statement in this investigation?

ANSWER: - Yes, sir.

2. Q: - State your name, age, occupation and all other personal circumstances?

A: - CESAR DE LA CRUZ alias "OSCAR", 23 years old, single, at present a detainee of the Tarlac Provincial Jail in Tarlac, Tarlac, and with a postal address at Bo. Ambassador, Nampicuan, Nueva Ecija."

What specific constitutional rights the appellant was apprised are not revealed in the record. Nonetheless this circumstance does not make his confession inadmissible because the comprehensive formula laid down in *Miranda vs. Arizona*, 384 U.S. 436, 16 L. Ed. 2d. 694, 86 S. Ct. 1602 (1966) which is invoked by him was not mandatory in 1964 and the provision of the 1973 Constitution (Art. IV, Sec. 20) which embodies the *Miranda* doctrine has no retroactive effect.

We ratify the resolution of the Court of Appeals dismissing the case against Leonardo Altura.

WHEREFORE, finding the judgment under appeal to be factually and legally in order, it is hereby affirmed. No costs.

It appears that when the crime was committed in 1963, the appellant was only 22 years old and he has been under detention since April, 1964, or for a period of over 18 years. For this reason, the Court recommends Cesar de la Cruz for executive clemency to the President.

SO ORDERED.

Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Barredo, (Chairman), concurs in the opinion of Justice Aquino that appellant is guilty only of robbery. In his confession which is the basis of the condemnatory main opinion, there is no indication of any conspiracy to commit rape. In fact, appellant does not appear to have any knowledge that rape had been committed by one of their companions. Accordingly, there is no need to recommend executive clemency. Appellant is entitled to immediate release.

Aquino, J., dissents.

DISSENTING OPINION

AQUINO, J.:

I dissent. Cesar de la Cruz is guilty of robbery only under paragraph 5 of article 294 of the Revised Penal Code and not of robbery with rape. He had nothing to do with the rape. There was no conspiracy to commit rape. What he admitted in his confession was his participation in the robbery in the house of Fernando Salazar.

The penalty imposable on him should have a minimum taken from prision correccional medium and a maximum taken from prision mayor medium like four years to nine years.

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