

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORENZO TUVERA Y BAUTISTA ALIAS “ENSO”; CORNELIO DE LA CRUZ ALIAS “NELY”; AND MATIAS GULENG, ACCUSED, CORNELIO DE LA CRUZ Y DU...

G.R. Nos. L-38468-69. June 29, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Appeal from the decision of the Circuit Criminal Court of San Fernando, La Union, in Criminal Cases Nos. 72 and 73, the dispositive portion of which reads:

"WHEREFORE, the court finds the accused Cornelio dela Cruz guilty beyond reasonable doubt of the crime of:

(1) Murder, as charged in Criminal Case No. 72 and hereby sentences him to suffer imprisonment for the rest of his natural life and to indemnify the heirs of the deceased in the amount of P18,000.00 and to pay the costs;

(2) Robbery, as charged in Criminal Case No. 73, and hereby sentences him to suffer imprisonment of from 2 years and 4 months of prision correccional to 6 years and 1 day of prision mayor, plus the accessory penalties provided for by law and to pay the costs.

For reasonable doubt the co-accused Matias Goleng is acquitted."

On September 14, 1972, a search party composed of policemen of Bacnotan, La Union, proceeded to the mountains of Bo. Ubbog to look for Amadeo Orejudos, barrio captain of said barrio, who had been reported missing. In the course of their search, they found the lifeless body of Orejudos lying near a shallow creek. The body was covered with branches, leaves and some earth. Dr. Julita Draculan, who conducted the autopsy, described the victim's injuries as follows:

"Anterior:

1. Wound, incised, 5 inches long, horizontally across the neck, depth causing injury to the trachea and severing big blood vessels of the neck, left side.
2. Wound, lacerated, ½ inch long, below lateral end, eye, left.
3. Wound, lacerated, 1-½ inches long, diagonally above right eyebrow, depth causing fracture of the skull.
4. Wound lacerated, 2-¾ inches long, diagonally and slightly above the median to wound No. 3, depth causing fracture of the skull.
5. Wound, lacerated, 2½ inches long, diagonally above lateral end, eyebrow left.

Posterior:

6. Wound, incised, 4-3/4 inches long, ½ inch deep, horizontally, inferior portion, occipital region.
7. Wound, lacerated, 4 inches long, ½ inch deep, horizontally, just above wound No. 6.
8. Wound, lacerated, 3 inches long, parietal region, left, depth causing fracture of the skull."

Upon receiving information that the persons last seen in the company of the victim were Lorenzo Tuvera and Cornelio dela Cruz, Pat. Espejo summoned them to the police station. In the ensuing investigation, Tuvera pointed to dela Cruz as the killer of Orejudos. At first, dela Cruz denied the accusation and, instead, countered by charging that Tuvera was the author of the crime. However, after Tuvera narrated the details of how dela Cruz perpetrated the crime, the latter readily admitted responsibility for the killing of Orejudos. He also informed the police that he took the gun of the victim. Asked as to the place where he had kept the gun, dela Cruz directed the police to a small hut in the mountains of Bo. Ubbog, where they recovered a 'Hi-standard' Cal.22 revolver with ammunitions, licensed in the name of the deceased Amadeo Orejudos. Dela Cruz executed two written statements which he signed in the presence of the Chief of Police, the Fiscal, and Judge Nemesio Molina of the Municipal Court of Bacnotan.

During the investigation, Tuvera also informed the police investigators that one Matias Guleng had offered dela Cruz the amount of P4,000.00 to kill Orejudos.

Cornelio dela Cruz, Lorenzo Tuvera and Matias Guleng were subsequently indicted for murder qualified by treachery, and in a separate information, dela Cruz and Tuvera were accused of the crime of robbery for having taken and carried away a 'Hi-standard' revolver, Cal. 22 with ammunitions, belonging to the deceased Orejudos, valued at P300.00.

At the trial, accused Tuvera, on motion of the prosecution, was discharged from the information and utilized as state witness. His testimony in open court, as summarized by the Solicitor General, is as follows:

"He testified that in the morning of September 14, 1972 he went to the mountains of barrio Ubbog, Bacnotan, La Union to pasture his carabao (pp. 125-126, tsn, May 23, 1973). After transferring his carabao, he proceeded to his hut in the mountains and found Cornelio dela Cruz there drying peanuts (p. 127, id). While Tuvera was making bamboo strands for tying firewood, De la Cruz told him, "Here comes Amadeo Orejudos. I have some business with him. Do not interfere or else you will be the first one to be killed or it will be you whom I will report as the killer." (p. 128, id). Upon hearing these words, Tuvera got scared. (p. 129, id).

When Orejudos arrived, De la Cruz asked Tuvera to place the potful of peanuts on the stove and requested Orejudos to shape a piece of wood into an arrow (pp. 130-133, id). Both Tuvera and Orejudos complied with the request of De la Cruz. While Tuvera was putting the pot of peanuts on the stove, De la Cruz was standing beside Orejudos who was then fashioning the piece of wood into an arrow (p. 135, id). Tuvera started to kindle fire in the stove, and as he raised his head to pause after near exhaustion from blowing at the fire, he saw De la Cruz clubbing Orejudos three times with a piece of wood about three feet long and about the size of a man's wrist in circumference (pp. 135-137, id). The deceased Orejudos was seated facing West, shaping the piece of wood into an arrow when De la Cruz, who was then on the side but a little bit at the rear, delivered the first blow which landed on the left temple of the deceased (pp. 137-138, id). The first blow felled Orejudos to the ground on his back, snoring (p. 138, id). De la Cruz stooped down and with all force struck the right temple of the deceased (id). The third blow hit the forehead (pp. 138-139, id). The deceased was unable to parry any of the blows because he was unaware of the attack (p. 139, id).

After inflicting the third blow, De la Cruz took the gun from the pocket of the deceased, pointed it to Tuvera and ordered him to drag the body of the victim (p. 140, id). Tuvera could not drag the body because of fear so he

asked De la Cruz to help him do the job (id). Finally, both of them helped together drag the body to the creek where De la Cruz hacked the deceased twice - the first landed on the neck; the second, on the nape (p. 141, 144-145, id). The bolo used by De la Cruz in hacking the deceased belonged to the latter (p. 141, id.). After the hacking, De la Cruz ordered Tuvera to cut branches of an "aludig" tree which were used, in addition to earth, in covering the body."

Appellant imputes as error the action of the trial court "in accepting and giving weight to the testimony of co-accused Lorenzo Tuvera who turned state witness." It is noted that in assigning such error, appellant does not question either the correctness or the propriety of Tuvera's discharge under Section 9 of Rule 119 of the Rules of Court. It is merely contended that the testimony of said state witness is subject to the gravest suspicion and, therefore, not entitled to any weight or credence whatsoever.

The contention is devoid of merit. An accused is always a competent witness for or against his co-accused and the fact that he had been discharged from the information does not affect the quality of his testimony, for the admissibility, the relevancy, as well as the weight that should be accorded his declarations are to be determined by the Rules on Evidence. And in this connection, it has been held that the uncorroborated testimony of an accused, when satisfactory and convincing, may be the basis for a judgment of conviction of his co-accused.[1]

The trial court had the opportunity to observe the demeanor and manner of testifying of the witnesses of both the prosecution and the defense, and it assessed the testimony of Tuvera to be convincing and credible. What is more, the declarations of this witness find solid corroboration in the statements contained in the appellant's affidavits. The latter not only admitted having killed the deceased Orejudos, he also informed the police authorities of the place where he hid the gun which he took from the victim. In fact, the police officers did recover the said gun at the same hut pointed to by him.

Equally untenable is appellant's attempt to repudiate his confession on ground of force and intimidation. He claimed that he was mauled and tortured by his investigators, but he failed to identify his alleged torturers. Neither did he file charges against them. He admittedly affixed his signature in the two affidavits and voluntarily swore to the truth of the recitals therein before Judge Nemesio Molina of the Bacnotan Municipal Court, but never for a moment did he complain of any alleged maltreatment. At the preliminary investigation, Judge Molina propounded questions to appellant, and it appears that his answers thereto were confirmatory of the facts set forth in his affidavits. All these circumstances strongly belie appellant's allegation of coercion and duress.

As to the claim that appellant had not been informed of his right to silence and to counsel at the time of the custodial investigation, it suffices to state that such constitutional objection is unavailing for the reason that the confession in question was obtained before the effectivity of the 1973 Constitution.[2]

WHEREFORE, the judgment appealed from is hereby affirmed, with the modification in Criminal Case No. 72, that the amount of indemnity awarded to the heirs of the deceased Amadeo Orejudos is increased to P30,000.00. SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Cuevas, JJ., concur.

[1] US v. Shoup, 35 Phil. 56; US v. Remigio, 37 Phil. 599, 610.

[2] Magtoto v. Manguera, 63 SCRA 4.

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