

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. ROMEO ZAGANAY AND FEDERICO MANGSAT,
DEFENDANTS-APPELLANTS.**

G.R. No. L-34675. January 30, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

This is an automatic review of the decision of the then Circuit Criminal Court in Pasig, Rizal, finding Romeo Zaganay and Federico Mangsat guilty of the murder of Moises Malinis and sentencing "each one of them to suffer the penalty of DEATH; to indemnify the heirs of the victim, Moises Malinis, the amount of P12,000.00; to pay P10,000.00 as moral damages and another P10,000.00 as exemplary damages, jointly and severally; and to pay their proportionate shares of the costs." (p. 3, Decision).

About 3:00 in the afternoon of April 9, 1971, Moises Malinis, a prisoner serving sentence at the National Penitentiary at Muntinlupa, Rizal was at the neuro-psychiatric ward of the prison hospital where he then worked as an attendant. The kitchen boys, who brought food for the patients, were preparing to leave when three prisoners entered the ward. There was a brief commotion and, thereafter, the three prisoners, later identified as Pablo Gonzales and the herein appellants Romeo Zaganay and Federico Mangsat, came out from the ward running to the direction of their brigade, carrying with them their blooded weapons. Attracted by the commotion, several prisoners-employees arrived and saw Moises Malinis fatally stabbed.

Dr. Ruperto Garcia of the National Bureau of Investigation found on the body of Malinis multiple stab wounds, the most fatal of which were stab wounds Nos. 1 and 2 in the necropsy report (Exhibit "C"). They penetrated through the left and right lungs of the victim. Considering the nature and location of the wounds, Dr. Garcia testified that they could have been caused by sharp-bladed instruments and inflicted by more than one person.

On April 10, 1971, Romeo Zaganay and Federico Mangsat were investigated at the Investigation Section of the Penitentiary where they gave statements admitting participation in the killing of Moises Malinis. Earlier that day, Pablo Gonzales also confessed to the killing of Malinis and implicated therein herein appellants Zaganay and Mangsat.

Informations for the murder of Moises Malinis were filed against Pablo Gonzales (Criminal Case No. CCC-VII-883) and against Federico Mangsat and Romeo Zaganay (Criminal Case No. CCC-VII-912).

Arraigned on September 2, 1971, both accused in Criminal Case No. CCC-VII-912, assisted by counsel de oficio, pleaded not guilty, to the charge. However, before the trial, Mangsat changed his plea of not guilty to "guilty."

On October 22, 1971, the case of Zaganay was heard, together with the reception of prosecution evidence in order to determine the liability of Mangsat who had earlier interposed a plea of guilty.

On November 4, 1971, Romeo Zaganay, through counsel, manifested to the court his desire to withdraw his former plea of not guilty and to change the same to that of guilty. The court apprised Zaganay if he was aware of

the consequences of his plea of guilty and he answered in the affirmative.

On November 16, 1971, the trial court rendered its decision, imposing on both accused-appellants Romeo Zaganay and Federico Mangsat the supreme penalty of death.

In his brief, defense counsel maintains that the lower court erred (1) in not holding that the accused were denied the right to counsel at the prison investigation and hence were denied due process; (2) in not informing the accused of their right to choose their own counsel at the arraignment and the trial before appointing a counsel de oficio and hence were denied due process; (3) in convicting appellants on the basis of their pleas and their confessions; (4) in not acquitting appellants in view of circumstances that raise a doubt as to their guilt; (5) in imposing damages, particularly moral and exemplary damages; and (6) in imposing the death penalty because (a) such a penalty is "cruel and unusual", (b) the laws imposing such a penalty are applied unconstitutionally, and (c) the state has forfeited its right to demand the death penalty.

Under the first three assignments of errors, counsel raises the question of the constitutional right to counsel which includes no less than the right of the accused to select his own counsel. It is argued that the record fails to show that the trial court made clear to the appellants that they had the right to select their own counsel.

Upon examination of the records, We are satisfied that His Honor, the trial judge did not err in accepting the pleas of guilty of both appellants. Subject decision reads:

"When both accused, Romeo Zaganay and Federico Mangsat were arraigned on September 2, 1971, pursuant to Section 1, Rule 116 of the New Rules of Court, in relation to Rule 118 thereto, duly assisted by their counsel de oficio, Atty. Jose C. Galvan, accused Federico Mangsat pleaded 'guilty' to the crime charged in the information but the accused Romeo Zaganay interposed a plea of 'Not Guilty.'"

"The Court apprised accused Federico Mangsat if he was aware of the circumstances of his plea of guilty and he stated that he will be duly punished in accordance with law.

"x x x x x x x x

"On November 4, 1971, while this case was still pending, accused Romeo Zaganay manifested through his counsel, Atty. Jose C. Galvan, his desire to withdraw his former plea of not guilty and to change the same to that of guilty, which was granted by the Court. The Court apprised him if he was aware of the consequences of his plea of guilty and he declared that he knew that he will be punished in accordance with law." (pp. 1-3, Decision)

It is clear that when the appellants pleaded guilty to the charge of murder they were assisted by counsel de oficio, Atty. Jose C. Galvan. The fact that the records do not show whether or not the court informed them of their right to have counsel of their own choice cannot be interpreted to mean that the court failed to inform them of such right. On the contrary, the presumption is, the court did comply with its duty and appointed a counsel de oficio only after they had waived or did not have one and willingly accepted the assistance of a designated lawyer.

"If we should insist on finding every fact fully recorded before a citizen can be punished for an offense against

the laws, we should destroy public justice, and give unbridled license to crime. Much must be left to intendment and presumption, for it is often less difficult to do things correctly than to describe them correctly (United States vs. Labial and Abuso., 27 Phil. 82, 88)."

With respect to the extra-judicial statements of appellants (Exhibits "A" and "D"), We find no reason to doubt that the contents thereof were voluntarily given. There was no attempt to discredit the same during the trial; neither did appellants challenge their admissibility on grounds that they were extracted out of violence, torture or intimidation. The truth is, they even pleaded guilty to the charge. The fact that Exhibits "A" and "D" were made while Mangsat and Zaganay were under detention does not render the same inadmissible since they were made and executed in 1971, or prior to the adoption of the 1973 Constitution.

As regard the fourth assignment of error, We hold that prosecution witness Cecilio de Leon testified that he was in the upper mezzanine of their office which is about six meters away from the ward where Moises Malinis was stabbed. He saw appellants and Pablo Gonzales, each armed with weapons, enter the ward and, after a brief commotion, he again saw the three coming out running, with their blooded weapons. It is true that no eyewitness to the killing was presented but what other conclusion could there be than that Malinis was ganged upon and stabbed to death by Mangsat, Zaganay and Gonzales. And, whatever deficiency there may be in the testimony of de Leon, the same was supplied by appellants when they narrated the details of the killing in their extrajudicial confessions, Exhibits "A" and "D".

The fifth assignment of error impugns the award of moral and exemplary damages in the decision under review on the ground that there is no evidence or record that Malinis has any heir. On this point, suffice it to say that the body of Moises Malinis was identified by his father, Agapito Malinis. The identification appears in the necropsy report, Exhibit "C". Besides, Article 100 of the Revised Penal Code clearly provides that "every person criminally liable for a felony is also civilly liable." When a criminal action is therefore instituted against one, the civil action for the recovery of civil liability is impliedly instituted, unless such civil action is expressly waived or there is a reservation to institute it separately.

We need not discuss the sixth and last assignment of error which attack the constitutionality of the death penalty because for lack of the required votes to impose this extreme penalty in this case. We are reducing it to reclusion perpetua.

WHEREFORE, the trial court's judgment is AFFIRMED with the modification that the penalty imposed upon appellants Romeo Zaganay and Federico Mangsat is reclusion perpetua, with all the accessory penalties prescribed by law. With costs.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, and Gutierrez, Jr., JJ., concur.
Fernando, C.J., Teehankee, and Makasiar, J., took no part.

Melencio-Herrera, J., Although she do not think that the Trial Judge, by his perfunctory queries, had adhered to the stringent guidelines laid down by his Court for observance when defendants, who are charged with capital offences enter a plea of guilty, considering the accused's own extrajudicial confessions and the testimony of prosecution witness Cecilio de Leon, she concurs in their conviction.

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