

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN URMINITA Y DE LEON, DEFENDANT-APPELLANT.

G.R. No. L-33314. December 14, 1979

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

MANDATORY REVIEW of the decision rendered in Criminal Case No. CCC-VII-456-Rizal, entitled "The People of the Philippines, plaintiff, versus Efren Urminita y de Leon, accused," the dispositive portion of which reads, as follows:

"WHEREFORE, finding the accused Efren Urminita y de Leon, GUILTY, beyond reasonable doubt, of the crime of Murder as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences him to suffer the penalty of DEATH; to indemnify the heirs of the offended party, Felipe de los Reyes, the amount of P12,000.00; to pay the amount of P5,000.00 as moral damages plus P5,000.00 as exemplary damages; and to pay the costs."

It appears that in the evening of April 24, 1970, Pat. Reynaldo Reyes, a member of the Marikina Police Department, who was on patrol on board a mobile patrol car where he was assigned as recorder, received a message from their control unit to investigate a shooting incident at the corner of Cirma and Gen. Luna Streets, Sto. Niño Marikina. They rushed to the place and found Felipe de los Reyes, a member of the Marikina Fire Department, lying on the ground and bleeding from gunshot wounds sustained by him. Felipe de los Reyes was still alive, but was unable to name his assailant. Several bystanders, however, described the assailant as a man, about five (5) feet tall, wearing a brown polo shirt, who ran towards Concepcion Street after the shooting incident.

About an hour later, accused, who was then riding in a tricycle, surrendered to a group of policemen whom he saw near the Aglipayan Cemetery. He admitted having shot one Felipe de los Reyes with a Ruby Extra Revolver Caliber .38, SN-9053071 (Paltik), which he surrendered to the peace officers. Accused was arrested and brought to the Marikina Police Department for investigation. He gave a written statement to Pat. Ricardo Mendoza wherein he admitted having shot the victim and the circumstances regarding the shooting. In his written confession,[1] accused stated:

"08. T : Maaari bang isalaysay mo sa pagsisiyasat na ito kung bakit at papaano mong binaril itong si Ipe o Felipe delos Reyes?

S : Kanina pong humigit kumulang sa alas 7:00 ng gabi, pecha 24 ng Abril 1970, habang ako po ay nakatayo sa may kanto ng Gen. Luna St. at Cirma St., Sto. Nino, Marikina, Rizal ay nakita ko si Ipe na papalapit sa kanyang motorsiklo na nuon ay nakaparada sa tapat ng tindahan ng balat. Na nang makita ko ito ay sinalubong ko na siya (Felipe delos Reyes) at binaril sa dibdib. Na pagkabaril ko sa kanya ay nanakbo na ako papunta sa may Agricultores St., ngunit habang ako ay nanaknakbo na ay binabaril naman ako ni Ipe. Na sa aking pagtakbo ay nadapa ako kung kaya siya (Ipe) ay binaril kong muli at ako ay nagpatuloy muli sa aking pagtakbo.

"09. T : Ano pa ang sumunod na pangyayari kung mayroon man?

S : Na sa aking pagtakbo ay may nakita akong isang motorized tricycle, na ang ginawa ko ay sumabit ako sa tricycle na ito hanggang Homeowners drive at ako ay bumaba sa Homeowners drive at ako ay nagtatakbo sa Rodriguez Ave. at ng ako ay makakita muli ng isang tricycle ay sumakay ako hanggang Concepcion, Marikina, Rizal at ako ay nakita duon ng mga pulis sa may sementerio ng Aglipay; Na nang makita ko na mga pulls na ang nakaharang sa kalsada ay binunot ko na ang aking baril at inilagay ko na sa upuan ng tricycle at ako ay sumuko ng mapayapa sa kanila."

xx xx xx xx

"22. T : Ang pagbaril bang ito na ginawa mo kay Felipe de los Reyes ay iyong binalak o pinagplanuhan mo?

S : Opo, binalak ko po.

23. T : Kailan mo binalak ang bagay na ito?

S : Mga tatlong araw na po ngayon, nuong pong ika-21 ng Abril 1970."

On April 28, 1970, Felipe de los Reyes died as a result of his injuries. The Necropsy Report,[2] issued by the Medico-Legal Officer of the NBI, contained the following findings:

"POSTMORTEM FINDINGS

"Pallor, conjunctiva and skin.

"Abrasions, chest and abdomen, right, antero-lateral aspect, 16.0 x 7.0 cm. chest and abdomen, lateral aspect, left, 7.0 x 7.0 cm.

"Gunshot wounds (1) Entrance, chest, anterior aspect, left, 12.0 cm. to the left of the anterior median line, level of the 3rd intercostal space, 143.0 cm. above the left heel, 5.0 cm. modified by surgery and suturing, running laterally downwards, contusion collar 0.3 cm. wide at midportion inferomedial border, directed backwards medially and downwards, involving soft tissues, thru the 3rd intercostal space, along the midclavicular line, into the pleural cavity, left, perforating the lung, left, upper lobe, then thru the 7th intercostal space, left, along the paravertebral line, making an EXIT wound, at back, left side, interscapular region, 8.5 cm. to the left of the posterior median line, at the level of the 7th intercostal space, 134.0 cm. above the left heel, 1.3 x 1.0 cm. edges irregular and everted.

"(2) Entrance, shoulder, posterior aspect, right, 14.5 cm. from the posterior median line, 140.0 cm. above the right heel, 0.8 x 1.2 cm. with contusion collar 0.5 cm. wide at the supero-lateral border and 0.1 cm. wide at infero-medial border, directed medially downwards and slightly backwards, involving soft tissues, fracturing the scapula at the spine and infraspinous fossa, and a metal jacketed bullet was recovered subcutaneously, 7.0 cm. to the right of the posterior median line, level of the 6th thoracic vertebra, 119.0 cm. above the right heel.

"(3) Entrance, lumbar region, back, right, 8.5 cm. to the right of the posterior median line, level of the 12th thoracic vertebra, 119.0 cm. above the right heel, 0.8 x 1.0 cm. with contusion collar 0.1 cm. wide all around, directed forwards, from right to left and upwards, involving soft tissues, into the thoracic cavity right, lacerating the diaphragm, right, then perforating the lung, right lower lobe, into the posterior mediastinum, lacerating the pericardium posteriorly, into the thoracic cavity, left, perforating the lung, left lower and upper lobe, then thru the 7th intercostal space, left, along midaxillary line, making an EXIT wound, chest, left side, lateral aspect, along midaxillary line, level of the 7th intercostal space, 131.0 cm. above the left heel, 3.0 cm. sutured.

"Bronchopneumonia, extensive, bilateral.

"Peritonitis, generalized, extensive, with yellowish pus, 300 cc.

"Brain and other visceral organs, congested.

"Tracheostomy, neck, laparotomy incision, 46.0 cm. right paramedian, extending to left mammary region. Thoracotomy, chest, left, 4th intercostal space.

"Incision and drainage, iliac region, bilateral.

"Repair, diaphragm, right, pericardial sac, posteriorly, penumorrhapy, left.

"Stomach, empty.

"CAUSE OF DEATH: - Bronchopneumonia and peritonitis secondary to gunshot wounds."

A spent bullet[3] was extracted from his body and sent to the NBI for ballistics examination, together with the revolver which Efren Urminita had surrendered to the police. The NBI ballistics expert declared that the spent bullet was fired from the same revolver.[4]

As a consequence, an information was filed against Efren Urminita y de Leon charging him with Murder, committed as follows:

"That on or about the 24th day of April, 1970, in the municipality of Marikina, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a home-made revolver a .38 caliber marked 'Ruby Extra', with intent to kill and by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously assault, attack and shoot with the said revolver one Felipe de los Reyes on his body, thereby inflicting upon the latter mortal gunshot wounds which directly caused his instantaneous death."[5]

The accused, Efren Urminita y de Leon, admitted that he shot the deceased Felipe de los Reyes, but claimed self-defense.[6] He declared that he was one of the witnesses in a criminal case filed by one Eduardo Dizon against the deceased Felipe de los Reyes.[7] By reason thereof, he was hunted down by Felipe de los Reyes whom he knew to be one of the "bataan" of the Mayor's Squad. On April 24, 1970, while he was at the corner of Cirma and Gen. Luna Streets in Sto. Niño, Marikina, Rizal, standing in front of a gambling den, Felipe de los Reyes suddenly boxed him. He was hit twice on the left jaw and then kicked on the chest. As a result the accused fell on the motorcycle of the deceased parked near the curb, upsetting it. When the motorcycle fell on its side, a gun, wrapped in a piece of paper, dropped from the motorcycle. Upon seeing the gun, Felipe de los Reyes stepped backwards, drew a gun from his waistline, and pointed the same at him. Accused picked up the gun "and moved to the other side of the motorcycle and went to the other side of a parked jeep." As he was moving, Felipe de los Reyes fired at him. But, he was not hit. He returned the fire and ran towards Gen. Luna Street. He did not know if he hit Felipe de los Reyes who ran after him and again shot him. But, he was not hit. After running a distance of about 150 meters, he reached a wall and sought cover therein. Felipe de los Reyes also reached the wall and likewise flattened his body against it. They were "sensing each other for three minutes". When he "leaned" against the wall, Felipe de los Reyes again fired at him. He fired back, but he did not know if he hit Felipe de los Reyes.[8] Then, he ran. Upon seeing a tricycle, he boarded it until Homeowners Drive. He continued running along Rodriguez Avenue and later boarded another tricycle up to Concepcion, Marikina, Rizal, where he found policemen near the Aglipayan cemetery, to whom he surrendered peacefully.[9]

The accused also admitted that he affixed his signature to the "Salaysay"[10] but did so when he could no longer endure the "water treatment" given to him by the police investigators. He stated, however, that some of the answers appearing in the said "Salaysay" were given by him. He identified the revolver (Exhibit "D") as the firearm he picked up and used in shooting Felipe de los Reyes.[11]

Oscar Velardo, a driver of a passenger jeepney, corroborated the testimony of the accused. He declared that while he was sitting on his parked jeepney near the corner of Cirma and Gen. Luna Streets in Sto. Niño, Marikina, Rizal, at about 6:00 to 6:30 p.m. of April 24, 1970, waiting for passengers, he saw Felipe de los Reyes boxing Efren Urminita. Upon being hit, Efren fell back and bumped the motorcycle of Felipe and a paper bag (supot) containing a gun fell from the motorcycle. Upon seeing the gun, Felipe de los Reyes stepped back. When Efren picked up the gun, Felipe de los Reyes drew his gun and shot Efren who ran away and took shelter by a wall. Felipe fired 3 shots at Efren as the latter was running away. Felipe ran after Efren and fired 2 more shots. Efren retaliated, firing twice. At this juncture, he left the place. When he returned the following morning, he learned that Felipe de los Reyes died as a result of the shooting incident.[12]

He also stated that he knew Felipe de los Reyes long before the incident happened and knew the deceased to be an influential person in Marikina because whenever he was apprehended for a traffic violation, he just gave his "ticket" to the deceased and the latter would fix it for him. He further stated that the deceased was not a peaceable man, and was a member of the "Four Feet Gang", notorious for stealing goats, TV sets, dogs, and other articles with four feet; and that the deceased was a fireman, holding a high rank in the Marikina Fire Department.[13]

The trial court, however, rejected the claim of the accused that he killed Felipe de los Reyes in self-defense. The court said:

"To merit judicial confidence, plea of self-defense must be proven by clear, convincing and satisfactory evidence to erase any doubt of aggression on the part of the person defending himself. (Ramon, 77 Phil. 4; Jorge, 71 Phil. 451; Mendoza, 52 P.G. 6233; Berio, 59 Phil. 533; Cruz, 53 Phil. 635).

"The defense did not succeed in establishing the plea of self-defense by clear and convincing evidence. This is so because no less than the accused himself and his corroborative witness Oscar Velardo have contradicted each other in a very material point and therefore their testimonies are of doubtful probative value. Urminita testifying in his behalf, stated that he fired only one (1) shot, whereas, Oscar Velardo, on the stand claimed that the accused fired two (2) shots at the direction of the victim. So also the claim of the accused that the victim was then carrying two (2) guns at the time of the incident is not believable. Urminita claimed that the victim has a gun in his possession, while the other one was placed in the motorcycle of the victim. Common sense dictates that the victim would not be so reckless as to place a loaded unlicensed gun in his motorcycle, because the same could be easily detected by upon and could be picked up by anybody. Again, the testimony of the accused that prior to the shooting incident, he was rained with fist blows by the victim in the presence of so many people without any succor given him, cannot be given much credence because both accused and victim are known in the place and certainly they could have been pacified by the people around the place.

"From the evidence on record, there exists a signed extra judicial confession on the part of the accused (Exhibit 'E'). Settled is the rule that conviction will suffice if an extra judicial confession is corroborated by the evidence of corpus delicti. From the records, the corpus delicti or fact of death is undisputed. In his extra judicial confession, accused admitted that he has planned to kill the victim, because of information that the victim is after him for having testified against the deceased in a certain case. As an act of self-preservation, he armed himself with a gun (Exhibit 'D') and waited for an opportune time, and that when he saw the victim, he shot him treacherously causing the latter's death. However, during the trial of this case, testifying in his behalf, accused made a sudden turn about claiming that he was maltreated and pressured by Patrolman Ricardo Mendoza, Jr. into signing his confession. This vain attempt of Efren Urminita to evade criminal responsibility is hard to believe for assuming that he was really maltreated by the police, it does not necessary mean that what he will say is not the truth for it is highly probable that it is the real truth (PP. vs. Miguel, 44 O.G. 2791). Besides, on the stand, he admitted that he did not file any charges, be it administrative or criminal against his alleged tormentors even up to the present. This unnatural and uncommon attitude of the accused, therefore is not consistent with his vehement claim of the involuntariness of his confession. No proof was presented to

show any evil motive on the part of Patrolman Ricardo Mendoza, Jr., to coerce the accused into admitting a crime that he did not commit. This being the case, regularity in the performance of official duties is presumed and that we should give the benefit of the doubt to the law enforcers involved that their actuations have been motivated only by their desire to be true to their oaths of office as Peace Officers.

"Another circumstance which is not consistent with the accused's claim of innocence is his action of trying to hide away from the authorities after the commission of the crime. This is not the common reaction of one who has a clear conscience for as the saying goes 'the innocent is as brave or bold as a lion, but the guilty fleeth even where no man pursueth.'"[14]

The accused seeks a reversal of the decision, claiming that the trial court erred:

- (1) in refusing to believe that accused-appellant acted in self-defense; hence, there was a wrong conviction;
- (2) in giving credence to the prosecution witnesses, specially to the testimony of Patrolman Ricardo Mendoza, Jr., the police investigator who is biased and one-sided; and
- (3) in giving weight to the alleged extra-judicial confession of accused-appellant marked as Exhibit E for the prosecution.

1. The accused claims that "the trial judge did not make the attempt to scrutinize the conflicting versions of the prosecution and the defense on what transpired, as specially testified by eyewitnesses for the defense;"[15] and that the trial judge was prone to convict the accused regardless of the defenses he may put up.[16] He quoted certain portions of the transcript of stenographic notes taken during the hearing to show the "biasness and arbitrariness of the trial judge." [17]

We have examined the entire records of the case, together with portions of the transcript of stenographic notes quoted by the appellant, and find no justification for the claim that the trial judge was partial. Counsel for the appellant had magnified a minor incident, wherein the trial judge sustained the objections of the fiscal to the propriety of the questions asked, and considered the same as proof of a conspiracy to deny his client his day in court, without taking into consideration the fact that the action of the trial judge was within the purview of the Rules. We find that the accused had been given every opportunity to defend himself.

We also find that the accused had not offered conclusive and satisfactory proof that he killed Felipe de los Reyes in self-defense. As found by the trial court, the testimony of the accused and that of Oscar Velardo are not worthy of credence for being contradictory and inconsistent with each other and We find no reason or motive for not accepting the conclusion arrived at by the trial court after considering the result and weight of the oral evidence and other circumstances which the proceedings show. Besides, the plea of self-defense lies only if the injuries inflicted upon the victim by the defendant were preceded by an unlawful aggression by the victim, which was not provoked and was repelled by him in a reasonable manner. The records of the case do not conclusively show that the accused had been unlawfully and without cause assaulted by the deceased Felipe de los Reyes before the latter was shot by him. Upon the other hand, the record shows that the accused shot the deceased Felipe de los Reyes immediately upon seeing him.[18]

2. The appellant further assails the trial court for giving credence to the testimony of Pat. Ricardo Mendoza, Jr., whom he claims to be biased and one-sided, for testifying that he does not know that the deceased Felipe de los Reyes had other cases pending against him.

The fact, however, that Pat. Mendoza did not know of other cases pending against the deceased which, incidentally, the accused did not bother to enumerate, is not proof of bias or partiality. He is a mere police patrolman and not the custodian of police or court records. While he may be a nodding acquaintance of the

deceased,[19] he cannot be expected to know every facet of the man's life.

3. The accused also contends that the evidence of the prosecution is insufficient to sustain a conviction for murder because the extra-judicial confession (Exh. "E") upon which the findings of treachery and evident premeditation are based, was obtained from him by means of force; and that the accused was not attended by counsel nor informed of his right to counsel, during the custodial interrogation, and, therefore, the said extra-judicial confession is inadmissible in evidence.

The allegation of maltreatment, however, was not corroborated and the accused had not filed any case, whether administrative, criminal, or civil, against those persons who had allegedly maltreated him and forced him to sign the "Salaysay" (Exh. "E"). On the other hand, the accused admitted having affixed his signature to the Salaysay" and affirmed the veracity of certain statements contained therein.[20] Besides, the said statement or admissions were given by him soon after the incident happened, leaving no opportunity for the police investigators or anyone else to concoct a story. The fact that his "Salaysay" (Exh. "E") was not subscribed and sworn to is not an indication that the said "Salaysay" was involuntary, for if, indeed, he had been forced to sign the confession, in all probability, he would have been also forced or further coerced to affirm his confession. But, since nothing happened to the accused after he refused to confirm his "Salaysay", his claim cannot be sustained.

The fact that the accused was not assisted by counsel of his choice during the custodial investigation, as required under Article IV, Section 20 of the Constitution, does not render the extra-judicial confession executed by him, previous to the effectivity of the new Constitution, inadmissible. In *Magtoto vs. Manguera* and other cases,[21] the Court said:

"We hold that this specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."

The trial court correctly found the accused Efren Urminita y de Leon guilty of the crime of Murder, qualified by treachery and attended by the generic aggravating circumstance of evident premeditation. Although the attack was frontal, yet it was made suddenly and unexpectedly. The accused, therefore, employed a means in the execution of the crime that insured its execution without risk to himself arising from the defense which the offended party might make. But the Court erred in imposing the death penalty upon the said accused in view of the presence of the mitigating circumstance of voluntary surrender because he surrendered peacefully to the Marikina policemen, after the shooting incident, whom he found near the Aglipayan cemetery, which circumstance offsets the generic aggravating circumstance of evident premeditation. Under the circumstances, reclusion perpetua is the proper penalty to be imposed upon the accused Efren Urminita y de Leon.

WHEREFORE, the judgment of the trial court is hereby affirmed, with the modification that the accused Efren Urminita y de Leon should suffer the penalty of reclusion perpetua. With costs against the accused in this instance.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Antonio, Aquino, Santos, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., took no part.

[1] Exhibit "E-2".

[2] Exhibit "A", p. 87, Record.

[3] Exhibit "F-1".

[4] pp. 1-6, t.s.n. of Oct. 9, 1970; See also Exhs."B" and "F", also Exh. "A".

[5] p. 16, Record.

[6] p. 10, t.s.n. of Nov. 26, 1970.

[7] Exhibit "C", "C-1", pp. 93-94, Record.

[8] pp. 1-10, t.s.n. of Nov. 26, 1970.

[9] See Exh. "E".

[10] Exh. "E", also Exhibit "2".

[11] pp. 14-19, t.s.n., November 26, 1970.

[12] pp. 3-10, t.s.n., January 13, 1971.

[13] pp. 21-27, t.s.n., January 13, 1971.

[14] pp. 15-17, Sentence.

[15] Appellant's Brief, p. 4.

[16] Id., p. 7.

[17] Id., p. 12.

[18] See Exhibit "E".

[19] p. 23, t.s.n., Sept. 29, 1970.

[20] pp. 11-18, t.s.n., Nov. 26, 1970.

[21] G.R. Nos. L-37201-02, L-37424; L-38929, March 3, 1975, 62 SCRA 4, 12.

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