

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO ANDAG Y TAFALLA, DEFENDANT-APPELLANT.

G.R. No. L-43618. March 31, 1980

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

Under automatic review is the decision rendered on February 7, 1976 by the Circuit Criminal Court of the Seventh Judicial District of Pasig, Rizal[*] imposing on the accused Rogelio Andag the supreme pen-alty of death for the crime of robbery with homicide. The Court upon a review of the record accepts the Solicitor General's recommendation for acquittal of the accused and in the absence of clear positive and direct evidence linking the accused to the commission of the crime, reverses the trial court's judgment of conviction for failure of the prosecution to discharge the burden of proving the guilt of the accused beyond reason-able doubt.

The accused was charged by the Cavite assistant provincial fiscal in an Information dated April 26, 1974 and docketed as Criminal Case No. CCC-VII-1439-Cavite, as follows:

"That on or about December 19, 1973 in the Muni-cipality of General Aguinaldo, Province of Cavite, Phi-lippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and a piece of wood, with intent to gain, did, then and there, wilfully, unlawfully and feloniously, rob, take, steal and carry away cash money in the amount of TEN PESOS and FORTY CENTAVOS (P10.40), Philippine Currency, belonging to one Mamerto Alano, and on the occasion of said robbery, and as a necessary means to commit the same, the above-named accused did then and there, wilfully, un-lawfully and feloniously, with intent to kill, assault, attack, beat and stab the said Mamerto Alano, inflicting upon the latter wounds on the different parts of his body which caused his death, to the damage and prejudice of the legal heirs of Mamerto R. Alano.

"Contrary to law, and with aggravating circumstances; 1) that the crime was committed at nighttime and in an uninhabited place to facilitate the commission of the crime; 2) that the crime was committed with evident premeditation; 3) that the crime was committed with treachery without giving the victim a chance to defend himself, and without any risk or danger to any defense that the victim might put; and 4) that the accused took advantage of superior strength."

Relying on purely circumstantial evidence and on the extrajudicial confession signed by the accused (which had been repudiated by him on the ground that the same had been extracted from him by force and intima-tion), the trial court reasoned out its guilty verdict, as follows:

"The corpus delicti in this case or the fact of death has been sufficiently proven by Exhibit 'C' which is the death certificate of the victim Mamerto Alano. While there is no direct evidence in this case, there being no actual eye witnesses to the killing incident, nevertheless the guilt of the accused has been sufficiently proven by circumstantial evidence. The following related circum-stances unmistakably prove the guilt of the accused. The accused knew that the victim was engaged in business who used to carry sums of money, they being residents of the same place; that the accused knew of the arrival of the copra truck in the evening of December 19, 1973, and he saw the victim on that particular time and place as testified by Marcos Andag; that while the

truck was still parked in front of Marcos' house and while the practice had not yet begun, although he was one of the participants in the drama, he left without permission from the group; that not long after the victim was found lying prostrate on the roadside with stab wounds on the different vital organs of his body and a few meters away from the corpse were a guava trunk 2-1/2 inches in diameter and a piece of cloth slashed from the pocket of the victim's pants; that the medical autopsy revealed that the injury suffered by the victim could have been caused by a big wood or a hard object.

"The foregoing events, the circumstances of slaying incident, the manner how it was executed and the instruments used in the commission thereof, dovetail with the admission of the accused as evidenced by Exhibit 'E'.

"The Court does not doubt the authenticity and truthfulness of the admission made by the accused. The Court is convinced that the same was executed voluntarily and not the result of undue influence or duress. Sgt. Val-lejos had no valid reason to maltreat the accused, they being complete strangers to each other before the incident. The Court is convinced of the high discipline of military personnel under the New Society. It must be noted that the admission was subscribed before a town judge who has sufficiently met the requirements of law before subscribing the aforesaid confession. With this complete turn-about denying the voluntariness of his admission and disregarding his affirmation of the same before a town judge on trial, the accused now interposed the defense of alibi. It is a convenient scapegoat there being no eyewitnesses to the slaying incident. Nonetheless to be given probative value the defense of alibi must be clearly and sufficiently proven by evidence clearly showing that the accused had no chance at all to perpetrate the crime; that it would have been physically impossible for him to be at the scene of the crime (*People vs. Re-sayaga*, L-23294, Dec. 26, 1973). By the accused's testimony that the distance of his residence and the place of the commission of the crime covers only a distance of less than a kilometer necessarily lead to the conclusion that he had every opportunity to perpetrate the crime imputed against him. (pp. 11-13, Decision)."

Having found the accused "guilty beyond and reasonable doubt of the crime of robbery with homicide, under Article 293 of the Revised Penal Code, in relation to section 1, Article 194 thereof as charged in the information," the trial court sentenced him "to suffer the penalty of death; to indemnify the heirs of the victim the amount of P12,000.00; to pay moral damages in the amount of P6,000.00 and another P6,000.00 as exemplary damages; and to pay the costs."

1. It is at once evident that the fate of the accused lies with the admissibility or non-admissibility of his extra-judicial confession, since as admitted by the trial court itself there is no direct evidence nor actual eyewitnesses in this case and it is equally evident that the circumstantial evidence relied upon by the trial court is too flimsy and unsubstantial to justify the verdict of guilty.

The Court finds, as submitted by the Solicitor General and accused's counsel de officio that the extra-judicial confession is inadmissible for having been coerced from the accused and for having been obtained in violation of the accused's constitutional right to counsel and to be informed of such right.

1. In repudiating his extra-judicial confession, the accused testified that he was intimidated and maltreated by Philippine Constabulary agents; he was given "seven-up treatment" on his nose; his ears were "banged"; he was beaten on the chest; and he was kicked.[1] He further testified that while PC Sgt. Andres Vallejos was interrogating him, a PC soldier in civilian clothes kept on boxing him.[2]

On this score, the Solicitor General aptly observed that "the prosecution failed to present any evidence to rebut appellant's claim, despite Sgt. Vallejos allegation that many persons were present during the investigation. It failed in the exercise of its task. [*People vs. Francisco*, 74 SCRA 158 (1976)]. In fact, Sgt. Vallejos admitted that the appellant, whom he claims executed the confession on January 6, 1974, had been in 'protective custody' since December 24, 1973, when he was arrested (pp. 11, 13, t.s.n., February 21, 1975). When asked if during the

intervening period the appellant was starved and tortured by his men, Sgt. Vallejos, instead of giving a categorical denial, merely answered, 'I do not know'. (p. 13, id.)."

The Court is not unmindful of the practice of some officers of the law resorting to illegal and reprehensible tactics in order to coerce a person to sign a confession admitting his guilt. Hence, the Court has repeatedly stressed that "the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to alleged voluntary confessions of the accused and the courts should be slow to accept such confessions unless corroborated by other testimony." [3]

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. All courts of justice have invariably rejected such confession not only because of their unreliability but more fundamentally on the ground of humanitarian principles which abhor all forms of torture or unfairness toward the accused in criminal proceedings. A coerced confession thus "stands discredited in the eyes of the law and is as a thing that never existed." [4]

The now Chief Justice had stressed in a 1971 case that "(I)t is likewise timely to impress anew on police officials that the imperative requirements of truth and of humanity condemn the utilization of force and violence to extract confessions from unwilling victims. Crime must be punished and the guilty must not be allowed to escape. A desirable end cannot, however, be attained by unconstitutional means. There should be less than full respect for the law if in the process of enforcing it lawless methods are employed. Once again, then, this Court is called upon to manifest in the strongest language possible its abhorrence for the employment of force to compel a person to sign a statement acknowledging guilt. A decent regard for the dignity that attaches to every human being as such will be satisfied with nothing less." [5]

2. The Solicitor General and counsel de oficio have likewise pointed out that accused-appellant was not afforded his constitutional right to counsel and to be informed of such right during the investigation. Sgt. Vallejos admitted on direct examination by Cavite Provincial Fiscal Narciso Salcedo that the accused-appellant insisted on having a lawyer during the investigation but he was not able to secure a lawyer to assist the accused-appellant on the unacceptable excuse that there were no available lawyers, thus:

x x x

"Q:

Considering the gravity of the charge that may be meted on the suspect therein, would you not at your own initiative secure a lawyer when he said he is not going to have a lawyer of his own or no-body could help him in this investigation of yours?

"A:

I would like to look for a lawyer that time, but in town, there are no lawyers and that is why I was not able to get a lawyer to help him." [6]

In fact, as stressed by the Solicitor General, "the constitutional right to counsel has not been afforded the accused-appellant. Lack of compliance with such a requirement is evidenced not only by the testimony of the accused-appellant (pp. 7-8, t.s.n., July 10, 1975) but also by the very sworn statement itself. The said sworn statement starts as follows:

"Ang saksi ay napagpaliwanagan ng kanyang kara-patan, siya'y sumumpa at kusang loob at buong layang nagsaysay gaya sa mga sumusunod:

1. Tanong -

Matapos maipaliwanag ang iyong karapa-tan na hindi ka ma-arang pilitin na mag-bigay ng salaysay kung hindi mo kagus-tuhan, ikaw ba ay nakahandang magsalay-say ng katotohanan at walang iba kung di pawang katotohanan lamang sa salaysay na ito?

Sagot -

Opo."[7]

It is thus clear that the accused was not even informed at the start of the investigation of his right to counsel, much less afforded the services of counsel notwithstanding his insistence. His "confession" is therefore plainly inadmissible in evidence under Article IV, section 20 of the 1973 Constitution which mandates that

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

The Solicitor General has aptly submitted, citing *Magtoto vs. Manguera*[8] and the Constitutional Convention's "adoption (of) U.S. Supreme Court rulings in the *Miranda-Escobedo* cases," that "before a person under investigation for the commission of a crime may be interrogated, he must first be warned that he has the right, among others, 'to the presence of an attorney and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.' The exercise of this right may be availed of throughout the interrogation. While this right may be waived, the individual must knowingly and intelligently waive said right and agree to answer questions or make a statement even without the assistance of counsel. Unless and until such warning and waiver are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against an accused," and that consequently, the accused's "confession" is inadmissible in evidence.

In *Magtoto*, the majority of the Court ruled that the cited constitutional proscription applies only to confessions obtained after the effectivity of the 1973 Constitution on January 17, 1973,[9] with the minority headed by the late Chief Justice Fred Ruiz Castro, the now Chief Justice and the writer dissenting and holding that such proscribed confessions even if taken before January 17, 1973 but sought to be offered in evidence after said date are inadmissible like coerced and involuntary confessions.[10] In the words of the Chief Justice, "absent such a showing [of proper safeguards and warnings to the accused] whatever statement or admission was obtained during such stage of custodial interrogation is a worthless piece of paper."

In the case at bar, there is no question as to the inadmissibility of the accused's "confession" since it was taken on January 6, 1974 long after the effectivity date of January 17, 1973 of the 1973 Constitution and was offered in evidence much later. As held in *People vs. Jimenez*[11], such confessions obtained during custodial interrogation by the police without proper safeguards and warnings to the accused that "he has a right to remain silent, that any statement he does make may be used against him and that he has a right to the presence of an attorney - either retained or appointed" are "inadmissible in evidence to prove the guilt of appellant."

II. The trial court also took into account the plea of guilty entered by the accused before Municipal Judge Emmanuel Montoya of Gen. Aguinaldo, Cavite during the preliminary investigation. This was plainly an improvident guilty plea that is of no worth. The records show that accused-appellant was not represented by counsel at the proceeding, as confirmed by Judge Montoya himself during the trial "because in that far, far away town, there are no lawyers to be appointed." [12] The preliminary investigation was hastily conducted. The contents of the confession were not read to the accused nor did Judge Montoya allow the accused to read the

same. It is significant to note, as observed by the Solicitor General, that Judge Montoya failed to identify the accused when he (the Judge) testified in court.[13] The Court has said time and again that while justice demands a speedy administration, judges are duty-bound to be extra solicitous in seeing to it that when an accused pleads guilty, he understands fully the meaning of his plea and the import of an inevitable conviction.[14] Judge Montoya utterly failed in this regard.

III. We agree with the Solicitor General's submittal that the "evidence linking the accused to the commission of the crime is grossly wanting." The circumstances considered by the trial court in its decision, *su-pra*, as having proved accused-appellant's guilt beyond reasonable doubt in place of direct and positive proof - are weak, trivial and unsubstantial.

The circumstance that the accused, who was a participant in a play to be presented on Christmas day, left the place of rehearsal even before the practice had actually began, was satisfactorily explained by him. He testified that he had to leave and go home after one hour because he "did not feel good." [15] This was corroborated by his father who testified that in the evening of December 19, 1973, his son Rogelio was in their house sleeping.

Also considered as circumstantial evidence against the accused by the trial court was his failure to attend the funeral rites of the vic-tim. This cannot be considered as a sign of guilt, and there is no evidence that the accused and the deceased were related to each other, even if remotely. The accused, however, did attend the wake at the house of the victim. In fact, there were also three youths in the community who did not attend the burial of the deceased, two of whom were also partici-pants in the rehearsal conducted in Marcos Andag's house but this was not taken against them.

As to the circumstance that the accused knew that the victim was engaged in business who used to carry large sums of money since they were residents of the same place and that the accused knew of the arrival of the copra truck in the evening of December 19, 1973, suffice it to say that the accused was not the only resident of the place who had knowledge of these facts. It may even be true that there are others more intimate or closely associated with the deceased and therefore with better and much more accurate information about him, but none of them has apparently been placed under the cloud of suspicion. As the Solicitor General observed, "it is likewise strange that other than Eufemio Cleofe, the persons who were with the victim in the business trip to Manila were not investigated." [16] And of course, the sum alleged in the information to have been robbed by the accused from the victim, far from being a "large sum" was the ri-diculously petty sum of Ten pesos and forty centavos (P10.40) - which completely negates the circumstance cited by the trial court against the accused and indicates that the real culprits did get away with the loot after killing the victim.

The Court's pronouncement in *People vs. Padirayan* [17] may well be reiterated here, thus: "It cannot be said that the stage of moral cer-tainty as to the guilt of appellant was reached. The liberty of a citizen would be rendered insecure if on proof tainted by ambiguity and capable of a less sinister connotation, he could be held culpable. There is the traditional respect for the finding of facts of the judge who presided at the trial, but certainly it cannot be invoked where, as is quite apparent, circumstances of weight and influence have either been overlooked or misinterpreted. What is more the acceptance usually accorded to the conclusion reached by the court below inasmuch as it heard and observed the witnesses testify cannot negate the constitutional presumption of in-nocence."

Proof of the guilt of the accused should not be tainted with ambi-guity.[18] The accused has in his favor the presumption of innocence. This is a mandate of the fundamental law. Even when the previous Organic Act did not so provide, a defendant, as held by this Court in the early 1902 case of *United States vs. Asiao* (1 Phil. 304) "must be pre-sumed to be innocent until his guilt is proven by satisfactory testimony and even in case there is a

reasonable doubt as to his innocence he is entitled to acquittal.[19] Only by proof beyond reasonable doubt which requires moral certainty, "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it," may the presumption of innocence be overcome.[20] The Court finds no such proof in the case at bar.

ACCORDINGLY, the decision of the lower court under review imposing the death penalty on herein accused-appellant Rogelio Andag is hereby reversed and set aside for failure of the prosecution to prove his guilt beyond reasonable doubt and he is hereby acquitted of the charge against him. His immediate release is hereby ordered, unless he is being held for some other lawful cause. Costs de oficio.

Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Barredo, J., I concur, with the suggestion that the proper authority investigate the taking by force of the alleged confession of the accused so that they may be duly prescribed.

Aquino, J., took no part. Abad Santos, J., on leave.

[*] Presided by then Judge (now Associate Justice of the Court of Appeals) Onofre A. Villaluz.

[1] T.s.n. of July, 1975, pp. 17-18.

[2] T.s.n. of Sept. 4, 1975, pp. 12-13.

[3] *People vs. Urro*, 44 SCRA 473 (1972); *People vs. Palacpac*, 49 SCRA 440 (1973); *People vs. Manipula, et al.*, 52 SCRA 1 (1973); and *People vs. Francisco*, 74 SCRA 158 (1976).

[4] *U.S. vs. de los Santos*, 24 Phil. 329; *People vs. Nishisima*, 57 Phil. 26.

[5] *People vs. Bagasala*, 39 SCRA 236, 243-245 (1971), per Fernando, J.

[6] T.s.n. of Feb. 21, 1975, p. 14.

[7] Solicitor General's manifestation in lieu of brief, p. 7.

[8] 63 SCRA 4 (1975).

[9] Followed in *Cudiamat vs. People*, 84 SCRA 247, (1978, 2nd Division), per Fernando, J.

[10] See separate opinions of Chief Justice Fernando and the writer in *Gumaua vs. Espino* and *Gumaua vs. Zagala*, L-36188 and L-37586, February 29, 1980.

[11] 71 SCRA 186 (1976, 2nd Division) per Antonio, J.; see also *Ledesma vs. Climaco*, 57 SCRA 473 (1974) and *Draculan vs. Donato*, 85 SCRA 266 (1978).

[12] T.s.n. of Feb. 7, 1975, pp. 5-6.

[13] *Idem*, p. 5.

[14] *People vs. Esteban*, 40 SCRA 90 (1971); *People vs. Saligan*, 54 SCRA 190 (1973); and *People vs. Ybañez*, 61 SCRA 468 (1974).

[15] T.s.n. of July 10, 1975, p. 4.

[16] Solicitor General's Manifestation, p. 14.

[17] 67 SCRA 135 (1975).

[18] Ibid.

[19] *People vs. Joven*, 64 SCRA 126 (1975).

[20] *People vs. Ramos*, 41 SCRA 19 (1971) *People vs. Dra-mayo*, 42 SCRA 59 (1971); *People v. Imperio*, 44 SCRA 75 (1972); *People vs. Custodio*, 47 SCRA 289 (1972); *People vs. Basuel*, 47 SCRA 207 (1972); *People vs. Palacpac*, *supra*; *People vs. Zamora, et al.*, 54 SCRA 47 (1973); *People vs. Alvarez*, 55 SCRA 81 (1974); *People vs. Beltran*, 61 SCRA 246 (1974); *Duran vs. CA, et al.*, 71 SCRA 68 (1976); and *People vs. Montero*, 76 SCRA 437.

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