

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL GAYOLA, ENRIQUE ARUTA, EDUARDO MURILLO, TENORIO
AYUCAN, SALVADOR AYUCAN AND CRUZ ABRASADO, ACCUSED,
TENORIO AYUCAN,...**

G.R. No. L-37014. April 06, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

On automatic review is the death sentence imposed on Tenorio Ayucan, Salvador Ayucan and Cruz Abrasado by the then Court of First Instance of Bukidnon, Branch II, in Criminal Case No. 373, for the crime of robbery in band with triple homicide and rape, for which they are also ordered "to indemnify the heirs of Delfin Redito in the amount of twelve thousand (P12,000.00) pesos and his wife, Milagros Roa Redito it another sum of twelve thousand (P12,000.) pesos and also the heirs of Silvino Maglinto in the further amount of twelve thousand (P12,000.00) pesos, and to pay the proportionate amount of the costs."

The amended information filed against the above-mentioned appellants and three others, namely: Manuel Gayola, Enrique Aruta and Eduardo Murillo, reads as follows:

"That on or about the 30th day of September 1971, in the afternoon, at Old Lilingayon, municipality of Valencia, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MANUEL GAYOLA, ENRIQUE ARUTA, EDUARDO MURILLO, TENORIO AYUCAN, SALVADOR AYUCAN and CRUZ ALRASADO, conspiring and confederating together, and mutually helping one another, all armed with bolos, with intent of gain, and by means of violence and intimidation against persons, did then and there wilfully, unlawfully, feloniously and criminally went to the house of Delfin Redito and once inside take, steal, rob and carry away a transistor radio, a pair of boots, a pair of pants, with a total value of ONE HUNDRED NINETY FIVE (P195.00) PESOS, Philippine Currency, and by reason and on the occasion of said robbery, and in furtherance of their conspiracy, the above-named accused took turns and alternated in hacking and stabbing Delfin Redito and Silvino Maglinto, with the use of their bolos, hitting the victims on different parts of their bodies resulting to their instantaneous death. That by reason and on the occasion of said robbery, the above-named accused, by means of force and intimidation, took turns in having sexual intercourse with Milagros Roa, after which, the above-named accused stabbed her to death.

"The crime was committed with the following aggravating circumstances:

1. That the crime was committed with evident premeditation;
2. That the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission;
3. That the crime was committed with insult and disregard due the deceased, Delfin Redito, who is an old man and Milagros Roa on account of her sex.

"Contrary to and in violation of Article 294, Paragraph 1, in relation to Article 14, Paragraph 3, 13, and 21 of the Revised Penal Code." (pp. 3-4, Appellants' Brief)

On April 13, 1972, all the accused were arraigned and the following incidents transpired before the trial court:

"FISCAL ARCADIO D. FABRIA:

Appearing for the prosecution, Your Honor, please.

ATTY. ISRAEL D. DAMASCO:

Appearing for all the accused. Your Honor. The accused are ready for arraignment.

COURT:

All right, arraign the accused.

(THE ACCUSED WERE ARRAIGNED)

MANUEL GAYOLA - 'not guilty'

ENRIQUE ARUTA - 'not guilty'

EDUARDO MURILLO - 'not guilty'

TENORIO AYUCAN – 'guilty'

SALVADOR AYUCAN - 'guilty'

CRUZ ABRASADO – 'guilty'

(tsn., pp. 1-2, April 13, 1972 hearing)

After arraignment, the prosecution introduced the following witnesses: Patrolman Uldarico Balmoreda, Jr., Alejo Lukday, Godofredo Roa, Victor Palma, Antonio Vale, Roberto Torres, Municipal Judge Paterno F. Aurelio and Donato Abejuela. Their testimonies refer to matters which occurred after the alleged incident of September 30, 1971 when Delfin Redito and Silvino Maglinto were killed; Milagros Roa, sexually abused and then stabbed to death; a transistor radio, a pair of boots and a pair of pants, with a total value of P195.00, were lost.

The prosecution had no eye-witness or direct evidence to the alleged incident. It relied mainly on the extra-judicial confessions of defendants-appellants Tenorio Ayucan, Salvador Ayucan and Cruz Abrasado - all taken by police-investigator Uldarico Balmoreda, Jr., of the Valencia Police Department on November 19, 1971 and subscribed and sworn to before Municipal Judge Paterno F. Aurelio (Exhibits "A" and "A-1"; "B" and "B-1"; and "C" and "C-1"). Said confessions are in Visayan (Cebuano) dialect, signed by Salvador Ayucan, and thumbmarked by Tenorio Ayucan and Cruz Abrasado, respectively. Appellants were not assisted by counsel during the investigation.

During the trial of the case on August 14, 1972, the following incidents transpired:

"COURT: Will the defense present any evidence?

ATTY. DAMASCO: We are desirous of presenting the three accused, Your Honor.

COURT: O R D E R

In view of the desire of the defense to present their evidence, let the continuation of this case be set to August 21, 1972 at 9:00 in the morning.

SO ORDERED.

Done in open court at Malaybalay, Bukidnon, 14th day August 1972.

(SGD.) ABUNDIO Z. ARRIETA

Judge”

(tsn, pp. 56-57, August 14, 1972 hearing)

Records do not show that defendants-appellants were able to adduce evidence. On September 29, 1972, the court a quo handed down its decision convicting them of the crime charged and sentencing them accordingly.

The case with respect to the other accused, namely: Manuel Gayola, Enrique Aruta and Eduardo Murillo, was dismissed by the court a quo on October 30, 1972, upon motion of the Fiscal.

Appellants assail the judgment of conviction on the ground that it was entered on an improper plea of guilty and insist that the lower court should not have considered the sworn statements because they were taken under circumstances which vitiated their free will. Further, they claim that there was a mistake in finding that the commission of the offense as attended by the aggravating circumstances of evidence premeditation, by a band and with insult of or in disregard of the respect due the offended party on account of his age or sex; in not appreciating in their favor the mitigating circumstances of plea of guilty and the fact of their being natives of the province of Bukidnon, pursuant to Section 106 of the Administrative Code for Mindanao and Sulu.

Indeed, records do not show that the amended information was read to the appellants or that its contents were interpreted to them in the language or dialect they understood. The only participation of the trial judge in the taking of the pleas of guilty was his remark: "All right, arraign the accused." It does not appear whether the trial judge asked defendants-appellants if they fully understood the meaning of their pleas and the nature of the punishment that may be imposed upon them as a consequence of their pleas of guilty, before sentencing them. Thus, speaking through the late Chief Justice Fred Ruiz Castro in *People vs. Apduhan, Jr.*, 24 SCRA 798, this Court had occasion to advert the fact that "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."

In the case at bar, We are not satisfied that His Honor, the trial judge, had properly discharged such duty. When he said: "All right, arraign the accused," appellants were not advised and appraised of the severity of the offense for which they were indicted and the possibility that the capital penalty might be imposed upon them despite a plea of guilty. There were no questions at all asked of the appellants by the lower court which would merit the approval by this Court that they completely understood the nature of the charges filed against them and the character of the punishment to be imposed upon them. And, despite their desire to present evidence, a decision was rendered without their having adduced any in their defense.

In all cases, especially those involving capital offenses, it is well-settled that:

"x x x (t)he court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, yet, in every case under the plea of guilty, where the penalty may be death, it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant (*People vs. Solacito*, 29 SCRA 64)."

Under the circumstances, We agree with the defense that the lower court was remiss in the performance of its duty in taking the pleas of guilty of herein defendants-appellants because what transpired below was not in accord with the guidelines set forth by this Court with respect to the taking of a plea of guilty involving capital offenses.

WHEREFORE, the decision of the lower court is hereby SET ASIDE and the case remanded thereto for further proceedings in conformity with the views expressed in the case of People vs. Solacito, supra.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., his concurrence is based not only on the highly-persuasive opinion of Justice Relova but on the fact that the case with respect to the other accused, namely: Manuel Gayola, Enrique Aruta and Eduardo Murillo, was dismissed by the Court a quo on October 30, 1972, upon motion of the Fiscal.

Teehankee, J., no part.

Aquino and Abad Santos, JJ., see dissent.

DISSENTING OPINION

ABAD SANTOS, J.:

I regret that I cannot give my assent to the ponencia of Mr. Justice Relova even as I admire his opinions for their wisdom and lucidity.

In Criminal Case No. 373 of the defunct Court of First Instance of Bukidnon, six persons were accused of robbery in band with triple homicide and rape.

When the six accused were arraigned, three of them pleaded NOT GUILTY while the other three pleaded GUILTY. The three who pleaded GUILTY with the assistance of their lawyer, Atty. Israel D. Damasco, were TENORIO AYUCAN, SALVADOR AYUCAN and CRUZ ABRASADO. They are the persons who are the subjects of the present appeal.

The trial judge was Abundio Z. Arrieta who succeeded me as such in 1958 so that when he presided over the case in 1971 he was already an experienced judge.

After the two Ayucans and Abrasado pleaded GUILTY, Judge Arrieta required the prosecution to introduce its evidence and he explained his move as follows:

"Due to the nature of the offense charged which carries the maximum penalty of death, the court, pursuant to the latest pronouncement of the highest tribunal, directed the introduction of evidence by the prosecution to determine the extent of the involment of Tenorio Ayucan, Salvador Ayucan and Cruz Abrasado in connection with their plea for the imposition of the proper penalty."

After the prosecution had presented its evidence, Judge Arrieta asked the defense if it would present any evidence. Atty. Damasco gave an affirmative answer so the trial was continued to August 21, 1972. On that date the following transpired:

"Upon motion of Atty. Israel Damasco for the defense he is hereby given five (5) days from this date within which to submit a memorandum and to furnish copy thereof to the fiscal who is also given the same period of time from receipt thereof to answer after which this case shall be considered submitted to the court for decision."

On September 29, 1972, Judge Arrieta rendered a Partial Decision wherein he sentenced the appellants to suffer the penalty of death and held for further disposition the case of the other three accused who pleaded NOT

GUILTY. It may be stated as a footnote that the case against the latter three was dismissed on October 30, 1972, upon motion of the prosecution.

The Partial Decision recites the evidence for the prosecution which had no eye-witness or direct evidence to prove the crime. There was no doubt, however, that robbery was committed and in the course thereof two men were killed and a woman was raped and then killed. Judge Arrieta based the conviction of the appellants on the basis of the corpus delicti, their extra-judicial confessions and their plea of GUILTY.

The ponencia of Justice Relova would set aside the decision and remand the case for further proceedings because he says, the appellants were arraigned without fully understanding the charge against them and so their plea of GUILTY was improvident.

I submit that the plea of GUILTY was not improvidently made. A Memorandum filed by the appellant's counsel proves this for it says in part:

"The above-named three (3) accused [Tenorio Ayucan, Salvador Ayucan and Cruz Abrasado] all made and executed, sworn statements, admitting their guilt of the crime charged, as evidenced by Exhibits "A", "A-1", "B", "B-1", and "C", and "C-1". When this case was called for trial on April 13, 1972, the said accused, freely and voluntarily, entered into a plea of guilty, immediately after their arraignment. x x x" (p. 243, rec.)"

To my mind the appealed decision which is based, as previously stated, on the corpus delicti, the extra-judicial confessions and the pleas of GUILTY is unassailable.

At the risk of being repetitive I submit that the extra-judicial confessions were validly considered and were not vitiated by the fact that the confessors were not assisted by counsel. At the time they were made Miranda was not yet in force in the Philippines. The pleas of GUILTY were voluntarily made. It is enough that the prosecution presented its evidence because there is no law requiring the defense to submit evidence when it elects not to do so.

In the light of the foregoing, I vote for the affirmance of the decision but considering that the appellants have been in death row for more than ten years, reclusion perpetua is adequate.

DISSENTING OPINION

AQUINO, J.:

I dissent. There was no improvident plea. The prosecution did not present any eyewitness testimony because it did not have that kind of evidence. The accused did not testify and present evidence because they had no countervailing proof to refute their own confessions, Exhibits A, B and C. They could not dispute the truth and voluntariness of their confessions which were corroborated by evidence of the corpus delicti.

Judge Arrieta's decision which was based on the confessions reads:

"The evidence presented by the prosecution shows that on October 6, 1971, the barrio captain of Lilingayon, Valencia, Bukidnon received a report of the missing status of his constituents Delfin Redito and his wife, Milagros Roa, from their house at Sitio Malangpangan, Lilingayon. Immediately he sent an inquiry to Kibawe, Bukidnon where they come from.

"On October 7, 1971, Godofredo Roa, the brother of Milagros, arrived from Kibawe with the information that the Redito couple had not been there for quite some time and a search was begun. The police of Valencia was therefore availed of and on November 8, 1971, the decomposing body of Delfin Redito was found by the bank of a creek about 40 meters from his house with two hacked wounds on the right side of his neck and on the

head (Exh. N).

"A further search downstream also revealed the dead body of Silvino Maglinto about 30 meters from that of Delfin Redito with bolo wounds on the left side of the neck, at the nape and on the top of his head, in the same state of decomposition.

"The Philippine Constabulary subsequently joined the Valencia police in looking for the authors of the killing on November 15, 1971. Salvador Ayocan and Tenorio Ayocan were picked up in the neighboring barrio of Sungco, municipality of Lantapan, both of whom readily admitted having murdered Delfin Redito, an old man, Silvino Maglinto and also Milagros Roa Redito whom they first raped before stabbing her to death inside an abaca plantation.

"Cruz Abrasado who was also apprehended at Sitio Pamation the next day where Salvador Ayocan led the police, readily acknowledged his participation in the crime and related to the policemen the manner in which they accomplished their dastardly act.

"According to the story related by Cruz Abrasado to the police, the killing took place at about 3:00 o'clock in the afternoon of September 30, 1971, when the six of them arrived at the house of the deceased Delfin Redito.

"Tenorio Ayocan and Manuel Gayola led them as both had grudges against the old man for failing to pay an old debt of about P60.00 to Tenorio and P30.00 to Gayola; that Tenorio Ayocan hacked Redito with a bolo from behind under his house as he was talking to Gayola, after which they deposited his body at the bank of the creek.

"Incidentally, they saw the other victim, Silvino Maglinto near the creek and approaching him from behind, Manuel Gayola and Enrique Aruta slashed him with their bolos after which they left his body which fell into the creek where it was discovered; that after accomplishing the murder of the two men, they went back to the house and carried the late Milagros Roa Redito to an abaca plantation some distance away, where Manuel Gayola raped her as she was held by two of their companions.

"The six of them then took turns in having sexual intercourse with her and after satisfying their sexual lust, they brought her farther inside the abaca plantation; Manuel Gayola then stabbed her to death and they deposited her body in a canal which they covered with abaca pulp; that they immediately returned to the house of Delfin Redito and took therefrom a radio transistor which Salvador Ayocan sold to one Victor Palma at Kibanggay, Lantapan, a 20 caliber homemade revolver and the rubber boots of Delfin Redito. Salvador Ayocan also gave to the police said rubber boots which he appropriated.

"The bodies of Delfin Redito and Silvino Maglinto were identified by barrio captain Alejo Lukday while that of Milagros Roa Redito was identified by her brother Godofredo Roa by means of her black panty and jean found near her corpse.

"The bones and remains of Milagros Roa Redito together with a black jean and black panty were found beneath a pile of abaca pulp inside an abaca plantation about one kilometer away from their house on the exact spot pointed by the three accused.

"Each of the accused after being taken into custody voluntarily confessed their participation in the perpetration of the crime by executing their corresponding sworn statements to the police which they subscribed before the municipal judge of Valencia (Exhs. A, B and C).

"According to Judge Paterno Aurelio of Valencia, the three accused, Tenorio Ayocan, Salvador Ayocan and Cruz Abrasado were completely relaxed and in a hurry to have their case disposed of by him and sent to the Court of First Instance; that they were properly apprised by him of the seriousness of the charge against them and were advised to get the services of a lawyer because whatever statements they may give could be utilized against them but they were quite frank and wanted their case immediately remanded to the Court of First

Instance where they would get a lawyer to assist them.

"Tenorio Ayocan, in his sworn statement to the police on November 19, 1971 and subscribed before the municipal judge on November 23rd of the same year, gave substantially the same version of the incident as Cruz Abrasado who confessed the day before. He admitted having struck the first blow with his bolo on the neck of Delfin Redito and pointed Manuel Gayola as the next to stab said victim, as well as the very person who stabbed Milagros Roa Redito after they had alternately consummated sexual intercourse with her.

"He also alleged that Enrique Aruta also used his bolo upon Milagros Roa Redito after she was stabbed by Manuel Gayola, and that they ransacked the house later during which he took the 20 caliber unlicensed pistol and the trousers of Delfin Redito, alleging however to have cast the pistol into the river for not knowing how to manipulate the same. Tenorio Ayocan confessed that he was motivated in killing Delfin Redito due to the latter's failure to pay an old debt of P57.00.

"Salvador Ayocan, in his affidavit taken also by the police on the 19th and sworn by him before the municipal judge of Valencia on November 23, 1971, related a similar version of the killing and said that it happened at about 3:00 o'clock in the afternoon of September 30, 1971 in Upper Lilingayon, Valencia. Salvador Ayocan pointed Manuel Gayola and Tenorio Ayocan as masterminds who led their group in killing Delfin Redito due to a long standing debt of P60.00 to Tenorio Ayocan and P30.00 to Manuel Gayola.

"He declared that the old man Delfin Redito was sitting under his house and Enrique Aruta and Manuel Gayola talked to him for a short while before Tenorio Ayocan slashed him from behind with a bolo after which they dragged his body to the nearby creek; that they killed the victim Silvino Maglinto who was a nephew of Delfin Redito and living in his house, upon seeing him loitering near the place where they deposited the body of Delfin Redito, with Manuel Gayola and Enrique Aruta approaching him and slashing him with their bolos on his head without warning until he died. He also admitted having taken his turn in the raping of Milagros Roa Redito inside the abaca plantation after she was undressed of her trousers and panty by Manuel Gayola who ravished her first followed by Enrique Aruta, Tenorio Ayocan, Eduardo Murillo and himself and Cruz Abrasado last.

"Salvador Ayocan pointed Manuel Gayola as the first to stab Milagros Roa Redito to death after they had satisfied their sexual lust, and said that they deposited her corpse into a shallow canal which they covered with abaca pulp. Salvador Ayocan confessed having taken the radio transistor which he later sold to Victor Palma and the rubber boots of Delfin Redito which he saw under the house as they were leaving the premises.

"Victor Palma, a farmer residing at Kibanggay, Lantapan, testified that Salvador Ayocan whom he did not know personally came to his house on October 20, 1971 and sold to him the radio transistor, Holiday brand (Exh. K) for the amount of P60.00; that due to his unfamiliarity with him, he caused him to sign a receipt for the radio in his favor; that when Sgt. Torres of the Valencia police came to his house on November 18, 1971 looking for it, he surrendered the same.

"The plea of guilty entered by the three accused, Salvador Ayocan, Cruz Abrasado, Tenorio Ayocan, considered in relation to their extrajudicial confessions and in conjunction with the other evidence adduced by the prosecution, constrain the court to conclude, without any tint of misgiving, that they are all guilty of the crime charged as co-principals thereof.

"The commission of the offense was accompanied by at least three (3) aggravating circumstances namely: evident premeditation; that it was committed by a band and with lack of respect to Delfin Redito on account of his age as well as the regard that was due to Milagros Roa Redito on account of her sex.

"The court cannot accord the accused the benefit of the circumstance of being ignorant natives of Bukidnon. Although only Salvador Ayocan could sign his name and Tenorio Ayocan and Cruz Abrasado are totally illiterate, they have been in contact with civilization for a long time since they are residents of a place only

about 30 kilometers from the capital town of Bukidnon and much nearer to the recently organized municipality of Lantapan which are connected by good public roads to their place of residence so that it could be assumed without fear of contradiction that they have frequently visited said places and learned the ways of civilized life."

The trial judge correctly sentenced to death the three accused for robbery with triple homicide and rape. They were not denied due process. Their counsel, Israel D. Damasco (not their counsel de oficio in this Court), instead of presenting the accused to testify, as originally intended, moved that he be given five days to submit a memorandum. The trial court granted the motion (Minutes of August 21, 1972, p. 240, Record).

In his memorandum, lawyer Damasco said that the herein three accused executed confessions admitting their guilt and that they "freely and voluntarily entered a plea of guilty immediately after their arraignment" (p. 243, Record).

Sending back the case to the trial court is not warranted (See *People vs. Duaban*, L-31912, August 24, 1979, 92 SCRA 743; *People vs. Palupe*, 69 Phil. 703, 705).

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