

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELOY MAGSI, ET AL., DEFENDANTS, TEODORO DEL ROSARIO, DEFENDANT-APPELLANT.

G.R. No. L-32888. August 12, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a mandatory review of a death sentence.

Information dated January 10, 1968 filed with the Court of First Instance of La Union, Second Judicial District, charged:

"That on or about the 14th day of January, 1968 in the Municipality of San Fernando, La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, namely ELOY MAGSI, JUAN PONCE y BILLON, alias JOHNNY, PERFECTO ARCE alias PEPING, conspiring and confederating with their fellow accused GERARDO FLORES alias GERRY, OPRING OLAZO, DORO DOE and PETER DOE, the latter four being still at large, and mutually helping one another with intent to kill and with treachery, while the said accused were armed with carbine, pistols and revolvers, did then and there wilfully, unlawfully and feloniously enter the house where JESUS GALLARDO and his family live and once inside the said house, attack, assault and shoot one JESUS GALLARDO, inflicting upon the said offended party JESUS GALLARDO multiple gunshot wounds on the different parts of his body which caused the instantaneous death of the said JESUS GALLARDO.

"That the following aggravat-ing circumstances were attendant in the commission of the offense: (1) abuse of superior strength; (2) use of a motor vehicle; (3) the offense was committed in the dwelling place of the offended party; and (4) that the offense was committed by a band.

"CONTRARY TO ARTICLE 248 in relation to Article 14 of the Revised Penal Code.

xx xx xx (p. 2, rec.).

"Doro Doe," subsequently identified as Teodoro del Rosario, was arraigned on October 19, 1970 and an unqualified plea of guilt was entered. The next day, October 20, 1970, the court rendered its judgment, the dispositive part of which reads:

"WHEREFORE, the Court finds TEODORO DEL ROSARIO guilty beyond reasonable doubt of the crime of MURDER as charged in the informa-tion and hereby sentences him to suffer the penalty of DEATH x x" (pp. 4-5, rec.).

In his brief, defendant-appellant assailed the aforesaid decision and alleged that:

"I. The Trial Court erred in imposing upon the accused the DEATH penalty on a plea of GUILTY without ascertaining that the accused fully understood the charges against him and the char-acter of the penalty that may be imposed upon him notwithstanding his plea of guilty.

"II. The Trial Court erred in not making inquiry as to the extent of the force applied by Eloy Magsi and his companions upon the accused Teodoro del Rosario, when they ordered him to kill Jesus Gallardo.

"III. The Trial Court erred in appointing as attorney de officio for the accused a lawyer who is the 'compadre' of the person killed by said accused and who, because of the special relationship with the deceased, reluctantly discharged his duties as attorney de officio, after the Court had denied his repeated petition to be relieved of his appointment as such" (p. 46, rec.).

The Solicitor General recommended the affirmation of the decision, and refuted the allegations of the defendant-appellant, but said recommendation is negated by the facts that actually transpired during the proceedings.

Records show that soon after defendant-appellant was apprehended on August 20, 1970, his arraignment was scheduled before the Criminal Circuit Court of San Fernando, La Union, presided over by Judge Lino Añover.

Altogether, this case was actually set and rescheduled for six (6) times, first of which was on August 1, 1970. On that date, despite appointment by the court of Atty. Mario Rivera as de officio counsel for the accused, hearing was re-set to September 8, 1970 on motion of Atty. Rivera, who was prompted to ask for it because of accused's desire to be represented by a de parte counsel. Prior to the next hearing, Atty. Rivera moved to withdraw as de officio counsel and it was favorably acted on by the court on September 7, 1970. At the second hearing on September 8, 1970, for failure of the de officio and de parte counsels to appear, despite a second call of the case, the hearing was re-set for the next day and the court appointed Atty. Dominador Carias de officio counsel for the accused. On the third hearing date, neither the de parte nor the de officio counsel was in Court, so Atty. Rivera was reappointed that day as de officio counsel for arraignment purposes only. The accused del Rosario entered a plea of guilty but qualified it with the allegation that he committed the crime out of fear of his co-accused Eloy Magsi and the other co-accused. Hearing conducted that day showed, to wit:

"Court - It seems that nobody wants to defend you. They probably think that you are guilty.

"Del Rosario - I have not yet talked personally to the lawyer, x x"

(p. 4, t.s.n., Sept. 9, 1970).

"Court to Interpreter - Will you call Atty. Rivera? xx xx Atty. Rivera, do not be afraid to assist the accused. xx xx (To the accused): This is for arraignment only. Do not expect Atty. Carias to come here and be your law-yer nor the top bracket lawyers of Manila.

"Del Rosario - I want to enter the plea of guilty xx x" (pp. 5-6, t.s.n., Sept. 9, 1970).

"Court -- xx xx All right, arraign the accused. (Interpreter Mariano Lete reads the information before accused Teodoro del Rosario).

"Interpreter Lete --

The accused prays that before he pleads, he be given a chance to say something in court.

"Court -- Can your lawyer not say that for you?

"Atty. Rivera -- Your Honor, he wants to manifest to the Court what I have already manifested regarding the mitigating cir-cumstance and the extent of his participation (pp. 10-11, t. s.n., Sept. 9, 1970).

Accused's allegation of duress prompted Atty. Rivera to move for the re-setting of the case for the study and presentation of possible mitigating circumstances. The case was accordingly re-set for September 14, 1970. On the fourth hearing date, the presentation of mitigating circumstances was not held as scheduled, but de officio

counsel Atty. Cariaso's explanation regarding his close ties with the deceased and his family was heard, and his motion to be relieved as counsel by reason thereof, and be replaced by one who can attend to the defense of the accused with candor, was denied by the court. However, per the note presented to the Court by Atty. Cariaso presumably from Atty. Bateria, de parte counsel for the accused, the contents of which sought the re-setting of the case for the first week of October, the case was again re-set for October 6, 1970. The Court motu proprio changed accused's plea of guilty to not guilty. At the fifth hearing, Atty. Cariaso, who appeared in court only after a warrant for his arrest was issued, informed the Court that those interested in the conviction of the accused opposed his appearance as de officio counsel, and at the same time, also turned over another note, the contents of which asked for another resetting. The Court denied the motion of Atty. Cariaso to withdraw as counsel, but re-set the case for October 19, 1970.

At the outset of the sixth hearing held on October 19, 1970, Atty. Cariaso outrightly informed the Court that the accused was ready to enter an unqualified plea of guilty. Hearing conducted that day showed, to wit:

"Court - Witnesses for the prosecution?

"Atty. Cariaso - Before we proceed, may I inform the Court that I have just been conferring with the accused and he wants to be re-arraigned because the order of this Court the last time is that his plea of guilty be disregarded and a plea of not guilty was entered. Now he says he wants to be re-arraigned and I believe he will not offer any qualifying circumstance.

"Court - Let me see the record. Now he wants to be re-arraigned?

(Court issued an order.)

"Court to accused - Your attorney informed the court that you are willing to be re-arraigned and that this time you will enter an unqualified plea of guilty, is that true?

"Del Rosario - I admit.

"Court - All right, re-arraign the accused.

"Interpreter Lete - After reading the information, the accused Del Rosario pleaded guilty x x x" (pp. 31-33, t.s.n., October 19, 1970).

Based on accused's plea of guilty without any evidence for the prosecution on any of the alleged aggravating circumstances nor accused's evidence on duress, the Court rendered its decision the next day, October 20, 1970.

Of the six hearing dates held relative to the case, accused at two instances entered a qualified plea of guilty.

Recorded proceedings at the first instance on September 9, 1970 reproduced previously, showed that de officio counsel Atty. Rivera and accused were hardly afforded by the Court any opportunity to discuss the case together, and the qualified plea of guilty resulted from the Court's proddings rather than from accused's spontaneous volition.

At the second instance, the Court knew that accused's prior plea of guilty was qualified by alleged duress employed on him by the other accused. It behooved the Court to allow the accused an opportunity to present evidence on the alleged duress, as well as discover for itself the reasons for accused's change of mind regarding his plea.

But more importantly, the Court could have complied, as it failed to do so the first time, with its bounden duty to apprise and advise the accused of the seriousness of the charges, the meaning of the qualifying and modifying circumstances, and gravity of the penalty that may be imposed on him despite the plea of guilty, as well as

received prosecution's evidence on the alleged aggravating circumstances attendant to the commission of the offense charged. But these considerations notwithstanding, sans any evidence whatsoever from the prosecution nor from the defense, after Atty. Cariaso's manifestation, and its trite queries addressed to the accused whether he confirmed the same or not, the Court proceeded to decide the case.

WE have consistently enjoined strict and substantial adherence to Our rulings in cases where defendants are charged with capital offenses. Mere pro-forma appointment of de officio counsel, who fails to genuinely protect the interests of the accused, resetting of hearing by the court for alleged reception of evidence when in fact none was conducted, perfunctory queries addressed to the accused whether he understands the charges and the gravity of the penalty, are not sufficient compliance with Our injunctions.

On the appointment of reluctant de officio counsels, We have commented in the case of *People vs. Valera* (43 SCRA 207-211), thus:

"In the absence of an explanation why Atty. Ansaldo Jr. asked to be released as counsel de officio as soon as he was appointed by the trial court; why he failed to appear for the trial on July 2, 1968 when the court ordered his arrest and on July 3, 1968 when the Court had to appoint another (the third) counsel de officio and that when Ansaldo appeared on July 16, 1968 he informed the Court that his client, upon his advice wished to change his previous plea of not guilty to one of guilty, this Court is forced to conclude that counsel was not disposed to discharge his duties as counsel de officio and it was naive for the court to have proceeded to re-arraign the accused with a counsel of such disposition and expect that the rights of the accused would be amply protected. x x x"

In the case of *People vs. Simeon* (47 SCRA 141, 142), We brought to fore the court's obligation to the accused, and We said:

"The court a quo cannot plead ignorance of the injunction directed towards trial judges to exercise the patience and circumspection in explaining the meaning of the accusation and the full import of the plea of guilty to the accused, who should likewise be granted all the chances to acquaint his counsel de officio with his version of the incident and to conduct his own investigation at the locale of the crime as much as practicable, more than just examining the records of the case. This Court in numerous cases as early as October 29, 1906 in *U.S. vs. Talbanos* (6 Phil. 541, 543) enunciated that '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.' This was reiterated over a year later on December 21, 1907 in *U.S. vs. Rota, et al.* (9 Phil. 426, 431) wherein this Court added that 'in all cases, and especially in cases where the punishment to be inflicted is severe, the 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. x x x"

Focusing attention on the trial court's duties to the accused, We have again said in *People vs. Domingo* (55 SCRA 243-244):

"WE enunciated times without number in Our injunctions addressed to the trial courts that they should exercise solicitous care before sentencing the accused on a plea of guilty especially in capital offenses by first insuring that the accused fully understands the gravity of the offense, the severity of the consequences attached thereto as well as the meaning and significance of his plea of guilty; and that the prudent and proper thing to do in capital cases is to take testimony, to assure the court that the accused has not misunderstood the nature and effect of his plea of guilty (*People vs. Villafuerte*, supra; *People vs. Alamada*, L-34594-5, July 13, 1973; *People vs. Busa*, L-32047, June 25, 1973; *People vs. Silvestre*, L-27821, June 22, 1973; *People vs. Simeon*, L-33730, Sept. 28, 1972; *People vs. Espiña*, L-33028, June 20, 1972; *People vs. Bulalake*, 106 Phil. 760; *U.S. vs. Jamad*, 37 Phil. 305)."

WE continued to stress lengthily the same injunctions in the case of *People vs. Baluyut* (L-32752-3, Jan. 31, 1977, 75 SCRA 153-55):

"To start with, the court a quo did not even ascertain for itself whether the accused completely understood the precise nature of the charge and the meaning of the aggravating circumstances of nighttime, craft and abuse of superior strength as having attended the commission of the crime, so as to obviate any doubt as to the possibility that they have mis-understood the nature and gravity of the charge to which they were pleading guilty. The trial court did not conduct a dialogue with the accused on their educational attainment, especially considering that a cursory perusal of their signatures on the statements they gave to the Malolos Police Force (Exhs. A, B and C) tends to show that they have very little or scanty education. Moreover, from the transcript, We have noted that after the arraignment, trial was held on three dates and on each day the accused were assisted by three different counsel de officio. In the hearing of October 7, 1970 -- the day the decision under review was rendered -- the counsel de officio who assisted the accused was designated by the trial court only after the case was called for trial, i.e., after the accused had informed the trial court that they did not have a lawyer. Under these circumstances, it is not unreasonable to assume that said counsel de officio proceeded to trial without first fully investigating the facts of the case and that his interview with the accused, even if it lasted for twenty (20) minutes as the record insinuates, was not, and could not have been sufficient to enable him to acquire a fairly good grasp, much less a comprehensive knowledge, of the relevant facts of the case. Incidentally, under the Rules of this Court, whenever an attorney de officio is employed or assigned by the court to defend the accused at the trial, he shall be given a reasonable time to consult with the accused and prepare his defense before proceeding further in the case, which shall not be less than two (2) days in case of trial (Sec. 5, Rule 116, Revised Rules of Court). The record, incidentally, does not show the existence of a 'good cause' to justify the trial court in shortening the trial fixed by the Rules.

xx xx xx

"WE deeply lament this attitude of the court a quo. Be that as it may, however, We only hope that hereafter trial courts would strictly comply with the rigid standard set in the following cases of *Apuhan*, *Arpa* and *Solacito*, all of which have invariably, consistently and firmly established and stressed the duty of trial courts before accepting the plea of guilty of an accused to a capital offense. xx xx"

In the recent case of *People vs. Regular* (L-38674, Sept. 30, 1981, 108 SCRA 23, 32-33), the injunction is reiterated:

"At the outset, it must be stated that the plea of guilty by the two accused were improvidently laid. During the arraignment, the trial judge did not adhere strictly to the doctrine laid down in *People vs. Apuhan* (24 SCRA 798) where We postulated the guideline in cases where there is a plea of guilty by the accused. In the instant case under review, We observe that the trial judge failed to explain fully to the two accused the meaning and the far-reaching effect of their plea. It was not explained to them the meaning of the term 'treachery,' an aggravating circumstance which qualified the crime to murder and frustrated murder respectively. Neither did the judge explain the terms 'evident pre-meditation' and 'recidivism,' both aggravating circumstances alleged in the information which had legal significance and consequences not ordinarily understandable to a layman.

"The trial judge asked the appellants whether they were aware that the court had no other alternative except to impose the capital punishment on them without explaining why it had to be so. In *People vs. Solacito* (L-29209, August 25, 1969, 29 SCRA 61), We had the occasion to say that, '(j)udges 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.

xx xx xx"

"The desire to speed up the disposition of cases should not be effected at the sacrifice of the basic rights of the accused" (*People vs. Simeon*, 47 SCRA 141).

The conduct of the court a quo taken in the light of the foregoing decisions clearly established the fact that it had been remiss in its duties to the herein accused, who was convicted on an improvident plea of guilty.

WHEREFORE, THE JUDGMENT CONVICTING ACCUSED TEODORO DEL ROSARIO IS HEREBY SET ASIDE AND THE CASE IS HEREBY REMANDED TO THE COURT A QUO FOR RE-ARRAIGNMENT AND FURTHER PROCEEDINGS. NO COSTS.

Teehankee, Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., on official leave.

De Castro, J., on sick leave.

Guerrero and Vasquez, JJ., no part.

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