

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LUDOVICO CERVANTES AND YOLANDO ALBA,
ACCUSED-APPELLANTS.**

G.R. No. L-38700. October 26, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

LUDOVICO CERVANTES and YOLANDO ALBA were accused in Criminal Case No. 276 of the defunct Court of First Instance of Davao Oriental of the crime of robbery with homicide. The information against them reads as follows:

"That on or about December 7, 1971, in the Municipality of Cateel, Province of Davao Oriental, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring and confederating together with Petronilo Castillo who is still at large, with the use of violence against and intimidation of persons, and armed with a sharp pointed instruments, did then and there wilfully, un-lawfully and feloniously enter the store owned and inhabited by Chua Chin alias Julian and once inside, with intent of gain, take, steal and carry away there from cash in the amount of P2,850.00, Wrist Watch valued at P200.00 and a ring (Chinese Gold) valued at P150.00, causing him damage and prejudice in the total sum of P3,200.00; that by reason and/or on the occasion of the aforesaid robbery, and in pur-suant of their conspiracy, the aforementioned accused, armed with sharp pointed instruments and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab Chua Chin alias Julian thereby inflicting upon the latter mortal wounds which caused his death." (Expediente, pp. 16-17.)

After trial, the following sentence was pronounced:

"WHEREFORE, the Court finds accused YOLANDO ALBA and LUDOVICO CERVANTES guilty beyond reasonable doubt of the offense of Robbery with Homicide, and there being three (3) aggravating circumstances of Craft, Treachery, and Dwelling attendant to the commission of the crime, and without any mitigating circumstance to offset the same, it hereby imposes upon the accused the supreme penalty of DEATH, and orders the two accused to pay, jointly and severally, the heirs of the victim Chua Chin alias Julian, the amount of TWELVE THOUSAND (P12,000.00) PESOS, and the further amount of THREE THOUSAND (P3,000.00) PESOS which is the total value of the cash and the Gold ring taken from the store of the said victim. The accused are furthermore ordered to pay the costs." (Expediente, pp. 576-577.)

The Expediente does not show that Cervantes and Alba appealed their conviction. Nonetheless, the law mandates a review of their sentence to assure that no person within the jurisdiction of the Republic of the Philippines shall forfeit his life except by a thorough study of the facts of his case and the law applicable thereto.

The People's version of the facts is as follows:

"Isidro Ebrano and Ramon Ebrano were houseboys of the late Chua Chin alias Julian who had a store at Barrio San Rafael, Municipality of Cateel, Province of Davao Oriental. In the eve-ning of December 7, 1971, they were sleeping at the mezzanine floor of the said store. At about 9 o'clock that same evening, Isidro Ebrano was

awakened by commotions he heard from downstairs. He went down one step of the stairs and looked towards the bedroom of his employer through the holes of the partition which separated the bodega and the stairs leading to the mezzanine floor. He saw Chua Chin, Yolando Alba and another one whom he did not know. Alba was pushing Chua inside the bedroom. He saw this because of the flashlight held by the other person that was focused on the ceiling (pp. 129-138, 139, 155--159, 167-170, tsn, July 18, 1972). Afraid of what he witnessed, Isidro went back to bed without telling his companion Ramon Ebrano (pp. 138-140, id.).

"At about 4:00 o'clock in the early morning of December 8, 1971, Lorenzo delos Santos, storekeeper and in-charge of the books of account in the store of Chua Chin alias Julian, was going to buy fish from fishermen in the vicinity of said store (pp. 55-56, 68, tsn, June 23, 1972). While passing by the store, Lorenzo was surprised to see its door leading to the bodega already opened, and the dog inside the store the night previous, already roaming outside. The thought of robbery flashed in his mind. So he went inside and found the drawers of the 'estantes' or display cabinets already opened. He called the name of Chua Chin alias Julian but received no response. He then called the two houseboys, Isidro Ebrano and Ramon Ebrano, who were sleeping at the mezzanine floor. The two boys did not say anything to him about any incident. With a small lamp ('lamparilla') borrowed from them, Lorenzo went to the room of the chinaman and there found him lying on the cement floor covered with a blanket. He rushed out-side and without bothering to tell the houseboys what he saw, notified Anacleto Ferrando, his compadre and Assistant Manager of the store, of the incident (pp. 56--62, 71-72, 77-78, 89-94, 97-105, id.; pp. 191, 192, 205- 206, 230, tsn, July 18, 1972). Together, they returned to the store. Anacleto Ferrando instructed Lorenzo not to touch anything while he (Ferrando) would go to the poblacion to report the matter to the authorities and the Chinese community. Lorenzo stood guard outside the store so that nobody could enter until Ferrando's return (pp. 62-63, 106-110, tsn, June 23, 1972).

"Acting on Anacleto Ferrando's report the Chief of Police, Mayor Elano Cabrero, Dr. Cayo Rabe and two policemen repaired to Barrio San Rafael and arrived there at about 6:00 o'clock that same morning (pp. 207-208, tsn, July 18, 1972). While inside the store, they had to use a petromax lamp as it was still dark (pp. 209, 210, id.). They found the victim in his bedroom lying on the cement floor with his face down covered with a woolen blanket and an empty sack of flour (pp. 38-39, 42-44, tsn, Dec. 15, 1972). His hands were tied at the back with a rope (Exh. "S", pp. 42-43, id.). When the blanket and the empty sack were removed, his mouth was found to be covered with a 'camiseta' (Exh. "T") tied to the back (pp. 43-45, id.). The 'camiseta' he was wearing showed three (3) holes (Exhs. "U-1", "U-2" & "U-3") at the back (pp. 45-48, id.). The investigators also found in the bodega a drum of gasoline with a hose (Exh. "R") con-nected to a tin can (Exh. "Q") beside the drum (pp. 39--41, id.). Upon request of the Chief of Police, Marciana Toroba took pictures of the dead body (Exhs. "D", "D--1", & "D-2", pp. 48-51, tsn, June 23, 1972; pls. see Folder of Exhibits).

"Inspection of the 'estantes' or display cabinets made by Anacleto Ferrando showed that the drawers were already opened and the money totalling P2,850.00 representing the sales which Ferrando placed in one of the drawers the previous night at the close of business hours was already gone. Also missing was a gold ring valued at P150.00 placed inside the same drawer (pp. 195?198, 201-202, 212-214, tsn, July 18, 1972).

"An examination of the cadaver by Dr. Cayo R. Rabe (Exh. "B", p. 4, rec.) revealed that the victim suffered two (2) wounds at the occipital region or back of the head, one (1) inch and one and one-half (1-1/2) inches in length, reaching the occipital bone; two (2) wounds at the temporal region, one and one-half (1-1/2) inches and two (2) inches long, reaching the temporal bone; and four (4) stab wounds at the back puncturing the lungs, pleura, blood vessels and the heart (pp. 10-15, tsn, June 23, 1972). Dr. Rabe opined that the cause of death was internal hemorrhage due to the stab wounds at the back, on the ear and the occipital region (p. 25, id.), caused by a sharp instrument probably a bolo or a dagger (p. 27, id.). He issued the Death Certificate (Exh. "C", pp. 26-27, id.; p. 3, Rec.).

"Appellant Yolando Alba was apprehended by Major Teofilo Bulusan, then Provincial Commander of Davao Oriental (pp. 10-11, tsn, Aug. 17, 1972). The day following Alba's arrest, or on December 9, 1971, appellant Ludovico Cervantes was brought by PC operatives to the PC detachment at Lambajon, Baganga where he

voluntarily admitted to Major Bulusan his participation in the commission of the crime (pp. 11-13, 38, 46, id.). Cervantes gave his extra-judicial statement (Exhs. "P", "P-1", to "P-4", pp. 10-12, Rec.) before Sgt. Rodrigo Cabotaje of the Davao Oriental PC Command (pp. 13-16, 95-97, 106-112, tsn, id.). It was subscribed and sworn to before Judge Auxencio C. Dacuycuy, Municipal Judge of Baganga, Davao Oriental (pp. 16-17, 57-66, id.).

"On December 10, 1971, appellant Ludovico Cervantes, in the presence of appellant Yolando Alba, Major Bulusan and Sgt. Cabotaje, re-enacted the crime in Barrio San Rafael, Cateel (Exhs. "G" to "M", pp. 19-25, 113-127, id.; pls. see Folder of Exhibits). Cervantes did the re-enactment freely and voluntarily even as Alba witnessed it without making any protest (pp. 21-22, 43-44, 114, tsn, id.).

"The records show that at about 9:00 o'clock in the evening of December 7, 1971, Ludovico Cervantes, Yolando Alba and a person named Castillo were drinking Tanduay Rum at a place in Barrio San Rafael about fifty (50) meters from the store of the victim. After the drinking spree, Alba got an empty kerosene can and they proceeded to the victim's store. Upon reaching the place, Alba told Cervantes to stay outside as a lookout while he and Castillo entered the store. Alba knocked at the window of the victim's bedroom. The victim asked, 'who is that?' Alba answered, 'I am Lando. I need gasoline for our truck because my mother-in-law met an accident.' Thereupon the victim opened the door of his bodega. Alba and Castillo immediately entered and closed the door. Cervantes remained outside (Exhs. "P", "P-1" to "P-4", supra).

"The events that transpired outside the victim's store were witnessed by Jose Sagang from his house which is in front of and only about ten (10) meters from said store. Sagang heard somebody calling for the victim by saying 'July, July, open the door because we will buy gasoline.' When he peeped thru the window, he saw Yolando Alba, Ludovico Cervantes and a third person who is not known to him. When the victim opened the door of the bodega, he saw Yolando Alba and the other person whom he did not know enter while Ludovico Cervantes posted himself outside near the door (pp. 78-90, tsn, Aug. 17, 1972)." (Brief, pp. 2--7.)

The appellants, through their counsel de oficio, claim that the trial court committed the following errors:

"1. THE LOWER COURT ERRED IN HOLDING THAT 'THE ROLE AND PARTICIPATION OF ACCUSED ALBA IN THE COMMISSION OF THE CRIME HAS BEEN WELL ESTABLISHED' BY MEANS OF THE TESTIMONY OF ISIDRO EBRANO AND JOSE SAGANG.

"2. THE LOWER COURT ERRED IN CONSIDERING THE EXTRA-JUDICIAL CONFESSION OF ACCUSED LUDOVICO CERVANTES AS AGAINST APPELLANT ALBA.

"3. THE LOWER COURT ERRED IN CONVICTING APPELLANT CERVANTES ON THE BASIS OF AN EXTRA-JUDICIAL CONFESSION WHICH HE HAS ASSAILED AND IMPUGNED; and

"4. THE LOWER COURT ERRED IN BELIEVING THAT 'THE CRIME OF ROBBERY WITH HOMICIDE BY HEREIN TWO (2) ACCUSED HAS BEEN PROVEN BEYOND REASONABLE DOUBT'." (Brief, p. 3.)

Anent the first error, it is asserted that the testimony of Isidro Ebrano is not credible for the following reasons: (1) He did not tell Ramon Ebrano that he saw Yolando Alba, who was with an unidentified person holding a flashlight, push the deceased Chua Chin towards the room of the latter. (2) He did not bother to tell any of the policemen investigating the killing in the morning of December 8, 1971, what he had seen. It is said that the behaviour of Isidro in these two instances was unusual and made his testimony incredible. (3) If it was true that Chua Chin was being pushed towards his room, Isidro could see only the backs of Chua Chin, Alba and the unidentified person. How then, it is said, could Isidro have identified Alba? (4) He was a newcomer in the barrio of San Rafael and he could not have identified Alba who was a resident of Bislig where his wife and children were staying.

It is Our considered opinion that the circumstances stated above do not seriously affect the trustworthiness of

Isidro Ebrano's testimony.

The record shows that when Isidro testified on July 18, 1972, he was only 20 yrs old. When the incident occurred on December 7, 1971, he was even much younger. He was a mere houseboy - a simple, rural lad. He could not be blamed if he chose to keep his mouth shut for fear of his life because one of the assailants of Chua Chin was Alba who had been a policeman in Cateel. When asked on cross-examination why he did not tell his roommate Ramon what he had seen, the reply was: "I did not inform him because I was afraid." (TSN, July 18, 1972, p. 171.) And he kept repeating that he was afraid.

The fact that he saw Chua Chin being pushed towards the latter's room does not mean that he saw only the backs of the three men. In fact he categorically stated that the three were facing him because Chua Chin's room was "not fronting" his room. And there was sufficient light to see the three persons because of the light emitted by the flashlight held by Alba's companion.

And the circumstance that Isidro was a newcomer to San Rafael was no obstacle to the identification of Alba. The fact is that Alba was in San Rafael in the evening of December 7, 1971, according to the positive testimony not only of Isidro but also of Jose Sagang.

Still on the first assignment of error, the credibility of Jose Sagang who testified that he saw Alba, Ludovico Cervantes and a third person in front of Chua Chin's store in the evening of December 7, 1971, is assailed on the ground that there was no electric service in barrio San Rafael and so he could not have seen the three men. This argument deserves scant consideration because electricity is not the only source of illumination.

The appellant's also harp on the testimony of Dr. Rabe that the victim probably died at 2:00 a.m. on December 8, 1971. From this they argue that they could not have killed Chua Chin as alleged in the evening of the preceding day. It suffices to state that Dr. Rabe merely expressed an opinion. And considering the fact that no persons other than Alba et al. were seen at the scene of the crime, the discrepancy in respect of the time of death is not significant.

The trial court stated that the testimony of Isidro Ebrano was corroborated by the testimony of Jose Sagang and the extra-judicial confession of Ludovico Cervantes (Exhibit P). It is claimed that the trial court should not have taken the Cervantes confession against Alba absent proof of conspiracy. This claim is without merit because on the contrary the trial court precisely found that there was a conspiracy. It said:

"The evidence has clearly shown and established conspiracy. As a matter of fact, they were seen together by witness Jose Sagang at the store of the victim before accused Yolando Alba and the other person entered the bodega. This is corroborated by the extra-judicial confession (Exhs. "P", "P-1", "P-2") which states that they came together from Cateel and proceeded to the store of the victim at barrio San Rafael. All these facts point to the existence of conspiracy. The evidence on record also affords no cogent explanation why accused Yolando Alba and Ludovico Cervantes, together with another person whose identity has not been recognized by the Prosecution witnesses, were at the store of the victim Chua Chin alias Julian, at 9:00 o'clock in the evening of December 7, 1971 knocking at the window and asking to buy gasoline except that they were there with a united and common design to rob the victim. Since there is conspiracy, although accused Ludovico Cervantes was only a mere look-out and had not actually participated in the killing and the taking of things of the victim Chua Chin alias Julian, he is still equally liable with accused Yolando Alba in the commission of the crime for in a conspiracy, the act of one conspirator is the act of all." (Expediente, pp. 574.)

The extrajudicial confession of Cervantes is assailed on the ground that it was obtained by force. True it is that an involuntary confession is inadmissible in evidence. But in this case there is no proof that the confession was the fruit of coercion. The trial court discussed this claim at length and its conclusion is amply supported by the record.

The trial court said:

"With respect to accused Ludovico Cervantes, said accused has impugned the voluntariness of his extra-judicial confession charging that said extra-judicial confession was obtained by means of violence and intimidation made by the PC men, particularly Sgt. Cabotaje and Major Bulusan. He declared that because of the maltreatment that he received from the PC men, he submitted to an examination and medical treatment by Dra. Batao of the NORCAMCO Clinic at Lambajon, Baganga, Davao Oriental, but said accused has not presented any medical certificate and gave the reason that Dra. Batao refused to give a medical certificate. On the alleged mal-treatment, he presented also witnesses Domiciano Sobrecarey and Jose Martinute who attempted to show that there was maltreatment made on him, but the testimonies of these two (2) witnesses do not show how said accused was maltreated. They merely testified that they, as suspects, were maltreated by the PC men during the time that they were at the PC detachment in Lambajon, Baganga, together with the herein two (2) accused. The Court cannot accept this assertion because it is not clear and convincing. If really he had submitted himself to a medical examination and treatment, there was no reason why he could not produce any medical certificate of Dra. Batao or he could have presented the said doctor on the witness' stand to support his allegation. On this score, it is the considered view of the Court that his allegation was merely a product of his attempt to assail the voluntariness of the extra-judicial confession made by him.

"While it is true that he was at the PC detachment during the investigation, but immediately after said investigation he was brought to Judge Auxencio C. Dacuycuy, Municipal Judge of Baganga, Davao Oriental, before whom the said extra-judicial confession (Exhs. "P", "P-1", "P-2") was subscribed. Judge Dacuycuy categorically stated that before accused Ludovico Cervantes affixed his thumbmark, the contents of the said Affidavit were explained to said accused, and the accused answered in the affirmative upon being asked of the truth of the same. It is significant to note that said Judge is the uncle of the accused because the mother of the Judge bears the family name of Cervantes. If accused Ludovico Cervantes was really maltreated and coerced to execute the Affidavit, he could have stated such fact to the Judge who happens to be his uncle. Said Judge would have been the first to protect him if really he was maltreated and intimidated.

"Another consideration that would belie the involuntariness of the execution of the extra-judicial confession by accused Ludovico Cervantes is the fact that this confession contains many details which could have been supplied only by the accused himself. Some of these details narrated in the earlier portion of this Decision are definitely facts that could not have been supplied by any other person except the accused himself who had actually participated in the commission of the crime.

xxx xxx xxx

"Accused Ludovico Cervantes furthermore argues, through Counsel, that he was forced to admit the thumbmark affixed on the extra-judicial confession (Exhs. "P", "P-1", "P-2") as his, although actually, according to him, he knows how to write his own signature. He maintains that because he could write his own signature, the thumbmark affixed on the said Affidavit was forced on him by the PC authorities. The affixing of the thumbmark by the accused was well explained by Judge Auxencio C. Dacuycuy, before whom the Affidavit was subscribed and sworn to. The Judge declared that after having read and asked the accused about the contents of the Affidavit, and after said accused answered in the affirmative as to the veracity of the said contents, he assisted the accused in affixing the latter's thumbmark because said accused could not write due to the injury of the right arm. The Court accepts this explanation as a true fact of what actually happened, considering that there is no showing of improper motive on the part of the Judge." (Expediente, pp. 570- 574.)

As a footnote, it may be mentioned that Sobrecarey and Martinute signed a statement that they were neither harmed nor maltreated by their PC investigators and that they were released in good health. (Exh. W.)

The defense of both appellants is alibi - one which is easily manufactured.

Alba told a long story about an injury to his throat in the evening of December 7, 1971; how he was attended by

his mother-in-law in San Rafael; the treatment administered to him by his uncle Dr. Oriculo Alba at a clinic in the poblacion of Cateel; his return to San Rafael where he slept at 10:00 p.m. only to be told that next day by his mother-in-law of the death of Chua Chin.

It is to be noted that Alba's story did not preclude his presence at the scene of the crime when it happened. This, coupled with the positive identification of Isidro Ebrano and Jose Sagang plus the extrajudicial confession of Cervantes, shatters his alibi.

On the part of Cervantes, he claimed that he was in Cateel at the time the crime was committed. But as the trial court said, Cateel is only three (3) kilometers from San Rafael and is accessible by road so that it was not physically impossible for him to be at the scene when the crime was committed. Moreover, he was positively identified by Jose Sagang. Finally, he executed an extrajudicial confession.

All things considered, We are satisfied that the trial court committed no factual and legal errors.

WHEREFORE, the judgment under review is affirmed in all respects except that instead of the death penalty each of the accused shall suffer reclusion perpetua because the votes necessary to impose the former were not obtained.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, and Relova, JJ., concur.

Fernando, C.J. and Teehankee, JJ., in the result.

Gutierrez, Jr., J., no part.

De Castro, J., on sick leave.

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