

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
RAMON GOMEZ AND RICARDO ALCANTARA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-25815. May 31, 1969

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Appeal from a judgment of conviction rendered by the Court of First Instance of Bulacan in its Criminal Case No. 4348.

Convicted of the crime of murder and sentenced to suffer the penalty of reclusion perpetua were appellants Ramon Gomez and Ricardo Alcantara.[1] Both were found by the trial court "guilty beyond reasonable doubt" of the charge specified in the following information, to wit:

"That on or about the 9th day of August, 1958, in the Municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Ramon Gomez armed with a revolver, caliber .45, and Ricardo Alcantara alias Carding, with one John Doe who is still at large, conspiring and confederating together and helping one another and with intent to kill one Adelaida Roy Rubio, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and shoot the said Adelaida Roy Rubio, hitting the latter on the head which caused(her) instantaneous death

filed on 22 November 1960 by the Provincial Fiscal of Bulacan. The attending circumstances of nocturnity and dwelling were cited as aggravating.

The victim, Adelaida Rubio, was fatally shot inside her house in Calvario, Meycauayan, Bulacan, allegedly by one of two masked men who surreptitiously entered therein at about 8:30 in the evening of 9 August 1958 with no apparent purpose other than to kill her. Two years after her death, three persons, namely, Gomez, Alcantara, and one John Doe, were accused by constabulary agent Santiago Roquero in a criminal complaint filed in the town Justice of the Peace Court as the felons responsible therefor. Gomez was subsequently arrested in Nichols Air Base in Pasay City; Alcantara turned out to be already confined in the provincial jail of Ilocos Sur in Vigan, serving a seven-month prison term for another crime; while the third man, identified later by Alcantara as Felino Rubio, remained at large and was never formally prosecuted and tried.

Appellants waived their rights to the second stage of the preliminary investigation conducted before the Justice of the Peace Court. Thereafter, the afore-quoted information was filed in the Court of First Instance of Bulacan, and appellants were, accordingly, arraigned. They pleaded not guilty.

The case was heard, successively, by three judges: M. M. Mejia, Juan O. Reyes, and Emmanuel M. Mufioz. Judge Mufioz wrote the decision now on appeal before us.

The prosecutions' star witness was Buenaventura Rubio, a thirteen-year old son of the deceased. He testified that

on 9 August 1958, between 8:00 and 8:30 in the evening, he was in the kitchen of their house talking with his younger brother and sister; that all of a sudden their sala door opened, two masked men wearing white trubenized shirts with rolled long sleeves and armed with .45 caliber revolvers entered and ordered his mother, who was also in the kitchen, to raise her hands; that one of the gunmen with hairy arms held him by the neck and at the same time shot his mother on the left cheek despite her plea, for mercy; that after the gunmen left he hurried to his mother's side and, as she failed to respond to his calls, ran after said gunmen who fled towards the house of Pedro Robles, their neighbor; and that he ran afterwards to the municipal building and reported the matter to the police authorities. Asked during the trial if he knew the two gunmen, witness pointed at Gomez and Alcantara, stating that he was familiar with their physiques. He also singled out hairy armed Gomez as the triggerman.

Jose Rubio, husband of the deceased, supplied the motive of the killers whom he suspected to be Felino Rubio, son of Amadeo Rubio, aided by the accused Gomez and Alcantara. The alleged motive: revenge over a land boundary dispute between witness' father-in-law and wife, on one hand, and Pedro Robles and Amadeo Rubio, on the other, wherein the latter got the shorter ends of it.

The prosecution also presented in evidence, two sworn declarations, Exhibits "A" and "B", of Alcantara. In Exhibit "A", dated 28 September 1960 and subscribed and sworn to before the First Assistant Fiscal of Ilocos Sur, Alcantara related his participation in the shooting incident thus: That on 9 August 1958, at about 7:00 o'clock in the evening, Gomez invited him to go someplace; that he tagged along until they reached the riverside in Meycauayan where they met another man whom he failed to recognize as the same was wearing a mask; that Gomez told him to act as a guard outside the house of Jose Rubio while Gomez and the masked man would go upstairs to kill Adelaida Rubio; that he stayed downstairs as instructed and saw Gomez pull out a .45 caliber revolver; that after a while he heard gunshot, got scared, and ran towards Barrio Saluysoy wherein he boarded a rig going to the adjoining town of Marilao, Bulacan. In Exhibit "B", dated 27 December 1960 and subscribed and sworn to before a local deputy clerk of court, Alcantara divulged the identity of the masked man mentioned in Exhibit "A" as his friend Felino Rubio. While in the Vigan jail, he claimed, he received a letter from Felino threatening him and his family with death should he betray the killers of Adelaida Rubio, and so, out of fear, did not identify Felino at the outset. He also stated that he had occasion to see a .45 caliber pistol in the house of Felino where he once stayed for a week with a girl friend. The first statement, Exhibit "A", was taken by Agent Roquero in the office of the provincial jail warden of Ilocos Sur, while the second, Exhibit "B", was taken by one Sgt. Simeon Alvaro in the office of the Philippine Constabulary provincial commander in Malolos, Bulacan.

Lucas Ronidel, a rig driver, testified that on 9 August 1958, at around 9:00 o'clock in the evening, he picked up Alcantara, whom he had known for about five years prior to said date, in Saluysoy and transported him to the latter's house in Kaliwa, Marilao, Bulacan.

Dr. Nery Y. Ramirez, medico-legal officer of the National Bureau of Investigation, testified in connection with his necropsy report, Exhibit "F", and reiterated his finding therein that the victim died of shock secondary to a gunshot wound of the face. He disclaimed knowledge of the result of the ballistic examination of the bullet which, according to the same Exhibit "F", was recovered from the body of the deceased.

The defense presented the accused-appellants themselves, who denied any involvement in the killing charged and sought to establish alibis.

Upon mature consideration of the evidence, we are constrained to agree with the defense that there was insufficient identification of the appellants as the masked gunmen who shot and killed Adelaida Roy Rubio. The only eyewitness was her son, Buenaventura, who admitted not having recognized the assailants on the night of the murder (sworn statement, Exhibit "2"; t.s.n., 26 February 1963, pages 6-7). His claim that he could recognize the

murderers if he saw them again, despite the fact that their faces were covered from the eyes down to the chin, because of their build, height and appearances (t.s.n., pages 7-8, 72, 73), can not be relied upon, considering that despite his alleged familiarity with both accused the witness did not, or could not, indicate any characteristic feature or trait, other than the hairy arms of the one he later identified as Gomez. The latter detail, however, is so common as to be without identificatory value.

It is true that in the PC camp at San Fernando, Pampanga, two years after the death of his mother, Buenaventura picked out Gomez although the latter's face was covered. But as he was able to see the accused before being masked, and as Gomez was not shown to the witness mixed with other civilians equally masked, but only with soldiers, the identification was not valid, nor trustworthy, specially when it is considered that for two years Buenaventura did not give any inkling that accused herein were in any way involved.

But while there is no clear evidence linking accused Ramon Gomez to the murder of Adelaida Roy Rubio, accused-appellant Ricardo Alcantara admitted his participation therein in his confession (Exhibit "A"), subscribed and sworn to before First Assistant Fiscal Laya of Ilocos Sur on 28 September 1960, and confirmed in a subsequent statement (Exhibit "B") sworn to by him before the deputy clerk of the Court of First Instance of Bulacan. To be sure, he claimed that outside of his name and personal circumstances, the confessions were concocted by the C.I.S. investigators, and that he signed them because of maltreatment and upon the promise that he would be later excluded from the case. He admitted, however, that he did not disclose these motivations either to the Fiscal or to the Clerk of Court when he swore to the truth of Exhibits "A" and "B", albeit he claims having kept silent through his fear of the PC investigators who accompanied him. Neither did he reveal the maltreatment to the Justice of the Peace of Meycauayan when he appeared at the preliminary investigation.

The trial court correctly rejected Alcantara's explanations as a mere attempt to avoid the incriminating effect of said confessions. For if it were true that the main contents of Exhibits "A" and "B" were devised by the investigators, it is not understandable why they made this accused record a narration minimizing his own responsibility by making it appear that he merely acted as a guard for his companions; that he stayed below the house entered by them; and that he ran away upon hearing a shot from upstairs. The investigators knew by then that Buenaventura Rubio had pointed to Gomez and Alcantara as the culprits. Why should they concoct a confession that contradicted the version of their eyewitness? What interest could they possibly have in trying to make it appear that it was Gomez, rather than Alcantara, who was the main culprit that went up the house and killed the victim? And why should the investigators not make it appear in Exhibit "A" that Felino Rubio was with Alcantara and Gomez on the night of the crime, instead of leaving that detail to be revealed in a subsequent confession, Exhibit "B"? Further, the confession, Exhibit "A", as pointed out by the court, contains details that the investigators were not in a position to know: for example, that Alcantara had jumped bail in case for qualified theft.[2]

Neither do we find any cogent explanation why the investigators should insist in extracting a confession from Alcantara when they did not coerce Rubio into making one.[3] Yet from the tenor of Alcantara's confession, Rubio's guilt was greater. And although Alcantara claimed in court that he had revealed his maltreatment by the Constabulary agents to his cousin Amado Cruz (t.s.n., page 96), but the latter was not called to corroborate the point.

The same inherent inconsistencies and improbabilities that taint Alcantara's attempt to repudiate his first confession (Exhibit "A") exist in connection with his second confession (Exhibit "B") wherein he revealed that the man who accompanied Gomez up the house of the victim was one Felino Rubio. Alcantara claimed he executed this Exhibit "B" because Captain Luna (Raymundo), then PC Assistant Provincial Commander of Bulacan, told the accused that he must involve Felino Rubio before he could be discharged. This story is

destroyed by the evidence of the Chief of Police of Meycauayan, Servando Barazon, who revealed to the court that, prior to the date of Exhibit "B", Alcantara sent for said chief of police and revealed to the latter that he (Alcantara) and Gomez had Felino Rubio for a companion in the killing of Adelaida Rubio, just as this accused-appellant stated in the first part of the confession, Exhibit "B". It is, therefore, untrue that the confession was a product of the imagination of the investigators; and, as a matter of fact, Captain Luna denied having promised Alcantara that the latter would be dropped from the case.

Accused Ramon Gomez not having been properly connected by the prosecution with the murder in question, it becomes unnecessary to inquire into his defense. As to the alibi resorted to by Alcantara, the same is extremely weak and insufficient to overcome his two confessions. Alcantara testified that on the night of the crime he was in Marilao grinding rice for one Loreto de Guzman from 6:00 to 9:00 o'clock p.m. (the murder was committed around 8:30 o'clock p.m.); that about four days later he left for Ilocos Norte, summoned by his wife, who wrote to him that one of their children was sick, and that he remained in Ilocos Norte for several months. But not only are Marilao and Meycauayan very close to one another, but Loreto de Guzman was not produced to support Alcantara's version.

The killing of Adelaida Roy Rubio having been proved independently of Alcantara's extra-judicial confession, through the testimony of her son, Buenaventura Rubio, and the necropsy report (Exhibit "F"), the confession suffices to establish the guilt of this appellant.[4] And it appearing from the same that the appellant Alcantara, in concert with two other men, both armed, went to the house of the victim; that while his two companions went up the house Alcantara stood downstairs as a guard, according to their agreement, said accused-appellant must be held guilty of the murder, as a principal by conspiracy, as fully responsible as those who actually perpetrated the heinous deed.

WHEREFORE, the decision under appeal is modified, by declaring the guilt of appellant Ramon Gomez not proved and decreeing his acquittal, with costs de oficio as to his share. The decision is affirmed as to appellant Ricardo Alcantara, who is sentenced to life imprisonment (reclusion perpetua); to indemnify the heirs of the victim, Adelaida Roy Rubio, in the sum of P12,000.00, without subsidiary imprisonment, and to pay one-half of the costs.

Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano and Barredo, JJ., concur.

Teehankee, J., did not take part.

Concepcion, C.J., and Ruiz Castro, J., both on official leave.

[1] Appellants were also ordered to indemnify the victim's heirs in the sum of P12,000.00 and to pay the costs.

[2] People vs. Viernes, L-1794, 30 June 1949; People vs. Pulido vs. Pulido, L-2447, 4 March 1950.

[3] Non-torture of co-accused as proof; People vs. Cildo, L-2189, 31 March 1950.

[4] Peo. vs. Castaneda, 63 Phil. 480; Peo. Ms. Balmonte, 90 Phil. 365; Peo. vs. Madrid, L-3023, 3 Jan. 1951; Peo. vs. De la Cruz, L-1745, 23 May 1950; Peo. vs. Manansala, L-13142, 30 Jan. 1959.

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