

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEVERINO DUERO, ACCUSED WHOSE DEATH SENTENCE IS UNDER AUTOMATIC REVIEW.

G.R. No. L-52016. May 13, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This is an automatic review of the decision of the Court of First Instance of Iloilo dated April 17, 1979, con-victing Severino Duero of robbery with homicide, sentencing him to death and ordering him to pay the heirs of Fausta Duero an indemnity of fifteen thousand pesos and the sum of two thousand pesos which he took from her (Criminal Case No. 8860).

The issue is whether the trial court erred in con-victing the accused of robbery with homicide on the basis of his oral confession to the police station commander that he committed that offense but which confession was repu-diated by him on the witness stand and which was taken during custodial interrogation when the accused was not informed of his rights to remain silent and to have counsel, as required by section 20, Article IV of the Constitution.

There is no doubt as to the corpus delicti or the commission of robbery with homicide.

In the evening of Sunday, October 24, 1976, Fausta Condino Vda. de Duero, an octogenarian housekeeper living alone, was feloniously killed in her house located at Barrio Banguit, Cabatuan, Iloilo (Exh. A).

She sustained two gaping wounds on the right cheek, two gaping wounds on the neck, another gaping wound on the right shoulder and a bruise on the cheek. A piece of wire, which was used to strangle her, was tied around her neck (Exh. A). A scythe was sticking in her neck (Letter "B" in Sketch, p. 4, Record).

Regarded as fatal by the examining physician was the wound in the neck which pierced the jugular vein and which was connected with the other wound in the neck and the shoul-der wound (14 tsn June 18, 1978).

The gruesome crime was discovered in the afternoon of the following day, October 25, by Rodolfo Prevendido, the barangay captain. On noticing that the windows of the old woman's house had not been opened in the morning, he sus-pected that there was something amiss. He asked Doroteo Olmos, the grandson of the old woman, to peep through the bedroom window.

When Olmos informed Prevendido that the old woman's things were scattered in the bedroom, he requested Olmos to inform his uncle, Salvador Duero, a son of the old woman, to come to the house (p. 8, Record).

Salvador entered the house through the bedroom window and saw his mother's lifeless and bloodied body near the kitchen with a wire coiled around her neck and a scythe stuck in it. He found that money and pieces of jewelry were missing (p. 7, Record). A mallet was found on the floor near the victim's body.

The police and the rural health physician were notified. Patrolmen Tranquilino O. Tormon, Jr. and Cesar Moneva

repaired to the scene of the crime. From the fact that cooked rice and viands were found on the stove, Tormon concluded that the crime was committed at suppertime on the preceding night (p. 11, Record).

No eyewitness testified as to the commission of the offense. The principal evidence of the prosecution is the testimony of Lieutenant Tomas C. Lujan, the chief of police of Cabatuan.

Lujan declared that Severino voluntarily confessed to him that he (Severino) committed the robbery with homi-cide but Severino refused to sign a confession.

Severino implicated Rufino Macaya of Lambunao, Iloilo. Lujan and his men brought Severino to Macaya's house. Lujan found that Macaya had nothing to do with the crime.

Lujan further testified that Severino said that the money stolen from the old woman was in Severino's house at Sitio Rizal Ilawod, Barrio Banguit. Lujan and his men went to Severino's house. They did not find the stolen money.

Lujan was not the only police officer who heard Severino Duero's confession. Patrolman Rolando N. Alag, a member of the arresting team that picked up Duero and brought him to Lujan, stated in his sworn statement before the mayor that Duero admitted that he took part in the robbery with homicide, that his companions were Macaya and a certain Junior (whose parents were Severino's godparents) and that it was he (Severino) who induced the commission of the crime (p. 9, Record).

Alag further swore that after Macaya denied any participation in the commission of the crime, Severino Duero admitted sole responsibility for it and confessed that he took three thousand pesos after hitting Fausta Duero on the head with a mallet, strangling her with a piece of wire and hacking her with a scythe (p. 9, Record).

According to Alag, Severino said that the robbery with homicide was committed on momentary impulse after Fausta Duero, who had plenty of money, refused to lend him fifty pesos (Back of page 9, Record).

Alag confirmed his sworn statement at the preliminary examination when the municipal judge interrogated him. Alag said that Severino Duero made his confession in the course of their conversation on the way to the police station and not by reason of a formal investigation (p. 22, Record).

Alag clarified that, according to Severino, he had to kill Fausta Duero because the old woman recognized him as the intruder (p. 22, Record).

Patrolman Rufino Tormon, another member of the arresting team, corroborated in his sworn statement Alag's declaration as to Severino Duero's confession. Tormon de-clared at the preliminary examination that Severino Duero knew that Fausta Duero had money because, according to Severino, Fausta's daughter Mauring repaid to Fausta the sum of one thousand one hundred pesos (which amount Fausta had not yet deposited in the bank), another person named Ayuy Duero paid to Fausta her debt and Fausta had ten sacks of palay (pp. 10 and 14, Record).

Tormon said that Severino met Fausta at a store in the morning of October 23, 1976 (the day before the crime was committed). Fausta was willing to lend Severino one hundred fifty pesos (p. 14, Record).

Buenaventura Hudieras, the barangay captain of Barrio Pamulogan, which adjoins Barrio Banguit where the old woman resided, declared in his sworn statement that in the evening of October 26 (two days after the commission of the crime) he was drinking liquor (biti-biti) with Severino Duero in the house of Valentino Pambo, Hudieras' brother-in-law. On that occasion, Severino told Hudieras that Fausta Duero was killed by clubbing her with a mallet, choking her with a piece of wire and hacking her with a scythe (p. 6, Record).

Hudieras stated that when he remarked that the best thing to do was to kill the killer of Fausta Duero, Severino behaved in an unnatural manner and said that Hudieras could testify that he saw daily Severino harvesting palay ("Si 'To boy nga dya, baryo kapitan dya, sarang makatestigos nga adlaw-adlaw doon takon nagapanggarab") (p. 6, Record).

Hudieras confirmed his affidavit at the preliminary examination. He said that his suspicion was that Severino Duero killed Fausta Duero (p. 16, Record).

The sworn statements of Alag, Tormon and Hudieras and others were the basis of the criminal complaint for robbery with homicide filed by Lieutenant Lujan in the municipal court against Severino Duero. They did not testify at the trial most probably because Lujan himself, the station commander, took the witness stand to give evidence on the same oral confession allegedly made by Severino to the police.

To reinforce and render credible Lujan's testimony on Duero's oral confession of guilt, Tranquilino Duero, a second cousin of the accused, testified that at about five o'clock in the afternoon of October 24, 1976, he met the accused in Barrio Tabucan which is about two kilometers away from the old woman's house in Barrio Banguit. In the course of their conversation, Severino allegedly revealed to Tranquilino that he (Severino) would rob his owao or grandmother, Fausta Duero. Tranquilino said to Severino: "Are you an idiot?"

In answer, Severino explained that Fausta Duero would not even lend him ten pesos or a ganta of rice, a fact known to one Roman Sipaya. The next day when Tranquilino learned from Severino that the old woman was killed, it occurred to Tranquilino that Severino was responsible for the killing (2-3 tsn March 10, 1978).

Another prosecution witness, Jose Montaña, testified that about six o'clock in the evening of October 24, 1976, when he passed by the house of Fausta Duero, he saw Severino Duero near the stairs of the house.

Severino was calling the old woman. Montaña was just about three meters away from Severino when Montaña passed by him (6 tsn April 21, 1978). Montano's house was about one hundred meters away from Fausta's house. He was going to watch television in his uncle's house.

Montaña had known Severino Duero for about four years. He was on friendly terms with Severino. The latter used to gather mangoes for him. Montaña was positive that Severino killed the old woman (6 tsn April 21, 1978).

Another prosecution witness, Wilfredo Cenizal (Senesal), also a resident of Barrio Pamulogan, testified that at six-thirty in the morning of October 25, 1976 or about ten hours after the commission of the crime, Cenizal had a conversation with Severino Duero.

Severino spontaneously revealed to Cenizal that he (Severino) helped his grandmother (owao, the colloquial term for grandmother) who was "held up by the bandit" and that her money amounting to two thousand pesos was taken from her. Severino recounted to Cenizal that the old woman was struck in the head with a hammer and wounded with a scythe.

Cenizal's testimony was a confirmation of his affidavit taken on October 30, 1976 by a policeman wherein he stated that, according to Severino, the old woman was killed by striking her with a mallet, strangling her with a piece of wire and wounding her with a scythe and that the money taken from the old woman was in a purse (buon-buon) placed in a bamboo basket (tabungos) (p. 5, Record). Cenizal confirmed his affidavit at the preliminary examination (p. 17, Record).

The circumstantial evidence summarized above shows that the prosecution had a strong case against Severino Duero in spite of the absence of the testimony of an eyewitness. During the trial no objection was interposed by the defense to the evidence on Duero's oral confession.

Indeed, the trial court on the basis of such evidence found Severino guilty of robbery with homicide beyond reasonable doubt. He did not appeal from the trial court's decision.

But the trouble is that at the trial Severino repudiated his alleged oral confession and even claimed that he was maltreated by the police. (Lujan in his rebuttal testimony denied the maltreatment.) Severino said that the victim was "the wife of my grandfather", meaning that "the husband of Fausta Duero (the victim) was the grandfather of Severino Duero" (28 and 37 tsn January 5, 1979).

As alibi, Severino testified that he was in his house when the crime was perpetrated. His wife Salvacion, his neighbor Adriano Lopez and his friends, the spouses Rufino Macaya and Erlinda Macaya, confirmed his alibi.

Severino Duero's counsel de oficio in this Court contends that the trial court erred in admitting the oral testimony on Severino Duero's oral confession, in giving credence to the testimonies of Lujan, Cenizal, Montaña and Tranquilino Duero, in finding that robbery with homicide was committed and in not sustaining Severino's alibi.

The Solicitor General agrees with the counsel de oficio's contention that Severino's oral confession is inadmissible in evidence by reason of Article IV of the Constitution which provides:

"SEC. 20. 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.

All the foregoing provisions are new except the first sentence, regarding the right against self-incrimination (*nemo tenetur seipsum accusare*), which is the only provision found in section 18 of the Bill of Rights of the 1935 Constitution, now revised or expanded in section 20. (See article 125 of the Revised Penal Code and Republic Act No. 857 as to the right of the accused, who is in police custody, to confer and communicate at anytime with his counsel.)

If this case were to be decided under the 1935 Constitution, the trial court's judgment of conviction could be affirmed. But we have to decide it under the rule in the 1973 Constitution as to a confession obtained while the confessant is under police custody. And that rule applies squarely to this case (*Magtoto vs. Manguera*, *Simeon vs. Villaluz* and *People vs. Isnani*, L-37201-02, L-37424 and L-38929, March 3, 1975, 63 SCRA 4).

Inasmuch as the prosecution in this case failed to prove that before Duero made his alleged oral confession he was informed of his rights to remain silent and to have counsel and because there is no proof that he knowingly and intelligently waived those rights, his confession is inadmissible in evidence.

After discarding Lujan's testimony on Duero's oral confession, the rest of the prosecution's circumstantial evidence against him is not adequate for his conviction. His acquittal follows as a matter of course.

The new provisions in section 20, Article IV of the 1973 Constitution were adopted from the ruling in *Miranda vs. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 ("an earthquake in the world of law enforcement") which specifies the following procedural safeguards for in-custody interrogation of accused persons:

"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

"The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

"If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an

attorney before speaking there can be no questioning.

"Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him.

"The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned."

As restated by Chief Justice Warren in the *Miranda* case, the following procedure should be adhered to:

"At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.

"For those unaware of the privilege, the warning is needed simply to make them aware of it - the threshold requirement for an intelligent decision as to its exercise.

"More important, such a warning is an absolute pre-requisite in overcoming the inherent pressures of the interrogation atmosphere. x x x.

"Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it. x x x.

"The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. x x x.

"An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. The accused who does not know his rights and therefore does not make a request may be the person who most needs counsel. x x x.

"If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. x x x.

"In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. x x x.

"Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at anytime prior to or during questioning, that he wishes to remain silent, the interrogation must cease. x x x. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent. x x x.

"If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. x x x.

"An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. x x x.

"The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant."

In the Miranda case, the Federal Supreme Court made it clear that what is prohibited is the "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights."

The State's right to prosecute criminals may be a great right but, as Lord Chancellor Sankey observed, it is not permissible "to do a great right by doing a little wrong".

The Miranda ruling does not mean that the police should stop a person who enters a police station and states that he wishes to confess to a crime. It does not affect volunteered statements of guilt by persons not in police custody.

At the risk of repetitiousness, we reproduce here-under Chief Justice Warren's summary of the procedural safeguards for persons in police custody where the interrogation is regarded as the commencement already of the trial or adversary system:

"He (the accused) must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right 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.

"Opportunity to exercise these rights must be afforded to him throughout the interrogation.

"After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

"But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

The above procedure was not followed by the police in this case. Hence, Severino Duero's oral confession is inadmissible in evidence. Without that confession, the prosecution's other evidence is not sufficient to establish Duero's guilt beyond reasonable doubt.

WHEREFORE, the death penalty is set aside. The accused is acquitted. He should be released immediately unless he is being detained for another offense. Costs de officio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Concepcion, Jr., J., on official leave.

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