

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DATU OMBRA KIRAM, ET AL., DEFENDANTS, ESMAEL KUDANDING AND MAGANDINGAN GUIAMAN, DEFENDANTS-APPELLANTS.

G.R. No. L-28485. October 30, 1979

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Accused of kidnapping with murder in the CFI of Cotabato, together with six other accused who have not yet been brought to trial, Esmael Kudanding and Magandingan Guiaman, were convicted of the crime charged, with the qualifying circumstance of treachery (alevosia) and the aggravating circumstances of nighttime, use of motor vehicle, and isolated place, and thereby sentenced to death, to indemnify the heirs of the deceased the sum of P6,000.00 and to pay the Costs, the trial court, however, recommending commutation to reclusion perpetua, pursuant to the provisions of the Mindanao and Sulu Code, the two above-named accused being non-christians.

The death sentence is now before this Court for compulsory review.

The evidence of the prosecution established the following facts, as recited in the People's Brief:

"In the evening of September 9, 1966 at about 9:00 o'clock, Lourdes Trinidad saw and recognized from the window Cabalona Salik, Abonawas Abdul and Tongan Dimatingcal standing by the gate of their family residence calling for her brother the late Eduardo Ong. Forthwith, Eduardo Ong came down from the house and met the three persons. After talking for a short while, Cabalona Salik, Abonawas Abdul and Tongan Dimatingcal left together with Eduardo Ong. (pp. 11, 12, 13, 28, t.s.n., May 17, 1967).

"The following morning when the members of the Ong family discovered that Eduardo Ong was not able to come home, the father, Dr. Jose Ong, reported his son's disappearance to the police of Cotabato City as well as the P.C. (p. 4, t.s.n., Id.).

"Meanwhile, Cabalona Salik, Abonawas Abdul, Tongan Dimatingcal and the group of persons who used to frequent the store of Lourdes Trinidad failed to appear. After three days of futile search by the Ongs, Cabalona Salik came and broke the news that Eduardo Ong was somewhere in Tumbao or Marques and that he was being detained for ransom. Cabalona Salik volunteered to procure the release of Eduardo Ong provided that the Ongs pay the sum of P10,000.00 (pp. 17, 18, id.). Cabalona Salik even mentioned the names of the supposed kidnappers, namely Datu Ombra Kiram, Tongan Dimatingcal, Esmael Kudanding, Magandingan Guiaman, Bayan Agar, Saidon and Tanaka Kudanding (pp. 18, 19, id.). Cabalona Salik promised to procure the release of Eduardo Ong on the condition that he will not be implicated (p. 23, t.s.n., id.) and, so long as the P.C. do not interfere. (p. 24, t.s.n., id.). The mother of Eduardo Ong, however, promised to give the amount as long as Eduardo Ong should first be returned. The mother of Eduardo Ong just the same gave Cabalona Salik P50.00 for gasoline expenses to be incurred in connection with the search and release of her son Eduardo Ong Receipts, Exhibits L, L-1, and L-2; pp. 36, 37, t.s.n., id.).

"Meanwhile, in the morning of September 10, 1966, dead body was found lying in the bushes along the Linek Awang airport road, which is eight (8) kilometers more or less from Cotabato City. Among the local farmers

who saw the dead body were Alfredo Pantorilla and Julian Pantorilla, father and son, who are workers of the Broce Plantation at Tamontaka, Dinaig, Cotabato. The dead body was lying face up dressed in yellow pink polo shirt and black pants and beside it were a pair of slippers. The eyebrow and the nose appears to be wounded. The body was already in rigor mortis. (pp. 5, 6, 11, 14, 15, 19, 20, 21, t.s.n., May 19, 1967; pp. 21, 22, 23, t.s.n., June 14, 1967).

"The body was buried in a grave dug 50 meters away from the place where it was first discovered. (pp. 8, 9, 10, t.s.n., May 19, 1967); In the night of September 11, 1966, a jeep load of persons were seen by Alfredo Pantorilla going towards the grave. (p. 28, t.s.n., June 14, 1967). The following day, September 12, 1966, the grave was found empty. (p. 31, t.s.n., id.).

"Alfredo Pantorilla and Julian Pantorilla were brought to the P.C. where they were interrogated. They were shown the picture of Eduardo Ong, Exhibit K, and they readily recognized the picture as being that of the corpse they saw at the Linek Awang Airport road. (pp. 12, 13, t.s.n., May 19, 1967; pp. 25, 26, t.s.n., June 14, 1967).

"Meanwhile the accused Magandingan Guiaman and his co-accused Esmael Kudanding were apprehended by the P.C. on September 14, 1966. They were investigated at the P.C. headquarters where both signed their confession. (pp. 42, 43, t.s.n., May 17, 1967). Magandingan Guiaman executed his extra judicial confession, Exhibits A, A-1 to A-3 (pp. 44, 55, 56, t.s.n., id.) and so did Esmael Kudanding who likewise executed Exhibit B, B-1 to B-3 (pp. 54, 56, t.s.n., id.). After the written confessions of Magandingan Guiaman and Esmael Kudanding (disclosing in vivid details their conspiracy) were prepared, Magandingan Guiaman and Esmael Kudanding were brought by the P.C. soldiers to the Office of the Clerk of Court, Court of First Instance of Cotabato, Branch I. Francisco Alalan, Deputy Clerk of Court interpreted the affidavit of Magandingan Guiaman from English to Maguindanao (pp. 6, 7, 8, t.s.n., May 18, 1967) and there-after, Magandingan Guiaman affixed his thumb-mark on Exh. A, A-1 to A-3 after he was first asked by the Clerk of Court if the contents of the affidavit were true and correct (pp. 9, 10, 11, 12, t.s.n., id.). Magandingan Guiaman swore to the truth of the contents of his affidavit before the Clerk of Court, Atty. Benjamin Munasque, (id.). Benjamin Pascual, official court interpreter and special deputy clerk of court interpreted to Esmael Kudanding the latter's affidavit, Exhibits B, B-1 to B-3, from English to Maguindanao (pp. 18, 19, 20, 21, 26, t.s.n., id.). Esmael Kudanding acknowledged the truth and correctness of his written statement, affixed his thumbmark and swore before the Clerk of Court Atty. Benjamin Munasque (pp. 22, 23, 24, 25, 26, t.s.n., id.).

"From the Office of the Clerk of Court, Magandingan Guiaman and Esmael Kudanding were brought to the Cotabato Provincial Hospital where Dr. Wilfredo Tanyag, a resident physician physically examined Magandingan Guiaman and Esmael Kudanding (p. 5, t.s.n., June 14, 1967). According to the medical certificates (Exh. C and D) which Dr. Tanyag executed, there was no sign of violence whatsoever on the bodies of Magandingan Guiaman and Esmael Kudanding. (pp. 9, 10, t.s.n., id.).

"From the hospital, the P.C. soldiers brought Magandingan Guiaman and Esmael Kudanding to the scene of the crime at Linek Airport Road at Tamontaka for re-enactment. The two accused pinpointed the place where the body of Eduardo Ong was buried. Then the two accused re-enacted the killing of Eduardo Ong including the manner of as to how the body of Eduardo Ong was buried. (Pictures, Exhibits E, E-1, E-2, E-3; F, F-1, F-2, F-3; G, G-1, G-2, G-3; H; I; J; pp. 65, 66, 67, t.s.n., May 17, 1967). According to the two accused, the body of Eduardo Ong was buried at approximately 30 meters away from where Eduardo Ong was allegedly shot (id.)." (Appellee's Brief, pages 2-6).

To the foregoing narration should be added that from the extra-judicial confessions of appellants, a jeep was used in the kidnapping (Exhs. A, A-1 to A-3 and B, B-1 to B-3).[1]

The foregoing facts are as testified to, among others, by Lourdes Trinidad, particularly on her having seen in the evening of record, from the window of her father's house, where she was living together with her brother, the

victim Eduardo Ong, Cabalona Salik, Abonawas Abdul and Tongan Dimatingcal, standing by the gate of their family residence. She recognized them well because they used to frequent her store, but after her brother had disappeared after being brought away by the two on the same night aforementioned, the said group stopped going to the store. Through Lourdes' testimony, it was also proven that Cabalona Salik volunteered to secure the release of Eduardo Ong for a ransom of P10,000.00, naming the persons who were detaining Eduardo Ong. After three days of futile search, he was given P50.00 for gasoline expenses by Eduardo's mother.

The finding of the dead body of the victim on September 10, 1966 along the Linek Awang Airport road, an uninhabited place near bushes, was testified to by two farmers, Juliano and Alfredo Pantorilla, father and son, respectively, who identified the dead body as that of Eduardo Ong by means of a picture of the latter. With the wounds found on the body, there could be no doubt that his death was brought about by foul means. The corpus delicti was thus proven through the testimonies of the state witnesses, corpus delicti being the fact of the commission of the crime--the death caused by a criminal act.

The aforementioned witnesses had no motive to testify falsely against the appellants. It is significant to note that even the victim's sister, Lourdes, did not point to the appellants herein with a directly accusing finger. She named three other persons as the ones who spirited away her brother, never more to come home alive. If the prosecution were bent merely to have appellants convicted at all cost, as only the two of them were present to face trial, Lourdes should have been made to point to appellants directly as the ones who called for her brother to come down his house, and led him away to his death. The candor of Lourdes as a witness is thus amply demonstrated which makes her worthy of credence.

The other two state witnesses, father and son, Juliano and Alfredo Pantorilla, are simple farmers who absolutely had no reason to testify having seen the dead body of the deceased unless they had really seen and identified the corpse as that of Eduardo Ong. They were aware that their testimony was being used against the appellants, who were just two of the eight accused, all Muslims generally feared for their unquenchable thirst for vengeance. Only their sense of truth could have made them hold to perform a civic public duty, but with so much risk as intimated.

The discrepancies pointed to by appellants in the testimony of the aforementioned witnesses, could not detract from the veracity of the essential fact testified to, which is none other than their having seen the body of a person whom they identified to be that of the victim through a picture shown to them. Their credibility remains solid, unimpaired by inconsistencies that are patently attributable only to the frailty of memory, not to a wilful desire to commit falsehood. This usually happens in recalling dates that do not impress themselves deeply for one reason or another, to which the inconsistencies allegedly committed refer.

With such independent and very credible proof of the corpus delicti, as has just been shown, it cannot be successfully contended that the extra-judicial confessions of appellants would not suffice to form the basis of their conviction. The rule is well-settled that an extra-judicial confession, if corroborated by proof of the corpus delicti, independent of the confession itself would be sufficient basis for conviction.[2]

The only question that remains to be answered is whether the extra-judicial confessions of the appellants are admissible in evidence with their claim of having been tortured into making them. In the first place, by the abundance of details which could not have been set forth in the confessions except by the declarants themselves, so evident on the face of the confessions, particularly the mention of the names of their confederates who went into hiding, including the individual role and distinct participation performed by each, the voluntariness of the confession is vividly manifested.[3]

Secondly, the facts proven by evidence outside of the sworn statements of appellants tally with those found in the said statements. Precautions were taken to insure against the possibility of successful repudiation of the statements

by appellants. They were asked to sign their statements only after it was made certain that they knew and understood what they were swearing to, and the consequences of their act of signing the affidavits under oath. Thus, proper translation of the questions and answers in said affidavits was made by reliable officials, the Deputy Clerk of Court and the Court Interpreter, for appellants Guaman and Kudanding, respectively. Familiar with the last refuge usually taken to by accused with extra-judicial confession by repudiating such confession, in desperate attempt to escape conviction, these court officials must have done their job conscientiously to maintain the integrity of the confessions and insure their admissibility.

Finally, to foreclose any claim of torture or of being placed under pressure in the taking of the statement, appellants were brought to a physician for an examination of their bodies for any external sign of violence. The doctor certified to having found no signs of injury or violence. Certainly, the bare allegation of maltreatment against the investigators mouthed by the appellants themselves, without corroboration of any sort, cannot overcome the presumed regularity of the performance of official duty, as well as the presumed voluntariness of the confession itself.[4]

From the foregoing discussion, We find no merit in appellants' assignments of error which the court a quo allegedly committed (1) in admitting their extra-judicial confessions; (2) in not considering the discrepancies in the testimonies of the witnesses for the prosecution; and (3) in holding that evidence of corpus delicti has been established by the prosecution by means of evidence independent of their extra-judicial confessions.

However, the court a quo should not have considered nighttime as an aggravating circumstance, the same being already absorbed by treachery which was alleged as the qualifying circumstance of murder.[5] Nevertheless, with two remaining aggravating circumstances: (1) use of motor vehicle, and (2) isolated place, with no mitigating circumstance to offset them, and pursuant to Article 48 of the Revised Penal Code which directs the imposition of the maximum of the penalty for the more serious offense when the crime committed is a complex crime, the imposition of the death penalty is inevitable.

Accordingly, We are constrained to affirm, as We do hereby affirm, the judgment of conviction. However, in accordance with the recommendation contained therein We hereby impose the penalty of reclusion perpetua on each of herein appellants, instead of death as meted out by the trial court, pursuant to the provisions of the Mindanao and Sulu Code, appellants herein being Moslems or non-Christians. Likewise, as recommended by the Solicitor General, the indemnity of P6,000.00 is hereby raised to P12,090.00.[6] With the modifications as are above indicated, the decision appealed from is affirmed in all other respects, with costs.

SO ORDERED.

Fernando, (C.J.), Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Santos, Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

Teehankee, J., took no part.

[1] Pages 6-13, Record of Exhibits.

[2] *People vs. Sabenorio, et al.*, L-26704, June 29, 1979; *People vs. De la Cruz*, 85 SCRA 205; *People vs. Peña*, 80 SCRA 589; *People vs. Narciso*, 23 SCRA 844; *People vs. Manobo*, 18 SCRA 30.

[3] *People vs. Ty Sui Wong*, 83 SCRA 125; *People vs. Ventura*, 80 SCRA 515; *People vs. Navasca*, 76 SCRA 70; *People vs. Paras*, 56 SCRA 248.

[4] *People vs. Sumayo y Bersebal*, 70 SCRA 488; *Thomson Shirts Factory (Aaron Go & Co.) vs. Commissioner*

of Internal Revenue, 67 SCRA 1; Cornejo vs. Secretary of Justice, 57 SCRA 663; Confederation of Citizens Labor Unions (CCLU vs. National Labor Relations Commission, 60 SCRA 450; People vs. La Caste, 37 SCRA 767; Mahilum, et al. vs. Court of Appeals, 17 SCRA 482; People vs. Pereto, 21 SCRA 1469; People vs. Dorado, 30 SCRA 53.

[5] People vs. Tizon, 66 SCRA 372; People vs. Echaluze, 66 SCRA 221; People vs. Enot, 6 SCRA 325.

[6] People vs. Pantoja, G. R. No. L-18793, October 11, 1978, 25 SCRA 468.

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