

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO SABILANO Y FIRMANES, DEFENDANT-APPELLANT.

G.R. Nos. L-32866-7. September 21, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Automatic review of the decision of the Circuit Criminal Court of Manila in Cases Nos. 234 and 235, imposing two death penalties on accused Alfonso Sabilano y Firmanes, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered as follows:

(1) In CCC-VI-234 (70), accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by abuse of superior strength and there being proved the aggravating circumstances of evident premeditation and craft without any mitigating circumstance to offset the same, the court sentences him to DEATH, to indemnify the heirs of the deceased Benilda Macalde y Tiongco the sum of P12,000 by way of moral damages; and the sum of P10,000 by way of exemplary damages;

(2) In CCC-VI-235 (70), accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by abuse of superior strength and there being proved the aggravating circumstances of evident premeditation and craft, without any mitigating circumstance to offset the same, the court sentences him to DEATH, to indemnify the heirs of the deceased Eduardo Dasmariñas the sum of P12,000.00 for the death of the latter; the sum of P12,000.00 by way of moral damages; the sum of P10,000.00 by way of exemplary damages;

And accused to pay the costs." (Decision, pp. 45-46).

The judgment of conviction is founded solely on the accused's extrajudicial confession, Exhibit P, the admissibility of which is here challenged by the accused on the theory that the same was extracted through intimidation and violence.

The evidence for the prosecution discloses that at about 11:30 in the evening of June 19, 1970, Eduardo Dasmariñas and Benilda Macalde were shot while waiting for a ride at the corner of Rodriguez St. and Younger St., in Tondo, Manila. The victims, both officers of an activist organization known as the Kabataang Tagapag-ugnay, had just attended a "teach-in" meeting of the Kabataang Tagapagugnay, Tondo Chapter, where Dasmariñas was a lecturer.

Dasmariñas and Macalde were immediately rushed to the Sta. Rita Hospital in Tondo and were pronounced dead on arrival. Dr. Luis Larion of the MPD medico-legal division, who conducted the autopsy, certified that the cause of death of Benilda Macalde was "shock and hemorrhage due to two (2) gunshot wounds, one fracturing the skull and lacerating the brain, and the other fracturing the second proximal metacarpal right trapezoid and distal right radius and ulna." [1] The doctor ascribed the death of Eduardo Dasmariñas to "shock and hemorrhage due to gunshot wound on the head fracturing the skull and lacerating the brain." [2]

Immediately after the incident, Cpl. Nicolas Aspeli and Pat. E. Diego of the Manila Police Department repaired to the scene of the crime and interviewed several persons in the neighborhood. Their findings are set forth in the Advance Information Sheet,[3] pertinent portions of which read as follows:

"x x x People interviewed at the scene of the crime stated that they heard five (5) shots fired in succession and when they looked out the window they saw a civilian jeep, gray colored, Plate No. unknown with undetermined number of occupants fleeing from the scene towards H. Lopez Ave., turned right towards Navotas, Rizal."

Further investigation conducted by the police pointed to Ruben Guevarra as the triggerman, and Tanggol Abreu, Teddy Beltran, Danny Mina and accused Sabilano as co-conspirators in the liquidation of the victims. The police pursued their search of said suspects, but only accused Sabilano was apprehended on August 2, 1970 in Bo. Oring-Oring, Brookes Point, Palawan. The other suspects were never arrested until the present time.

The accused was brought to Manila after his arrest, and upon arrival in the Manila, he was immediately subjected to intensive interrogation by the police officers of the MPD headed by Clp. Aspeli. At the investigation, accused was not assisted by counsel; and said custodial proceeding terminated after accused signed an extrajudicial statement, Exhibit P, wherein he admitted complicity in the shooting incident.

Pertinent portions of said extrajudicial statement are quoted as follows:

"x x x x x x x x x."

"T: Alam mo ba kung bakit ka ini-imbestigahan ngayon dito sa himpilan No. 5 ng MPD?

"S: Opo, tungkol po doon sa pagkamatay nuong isang lalaki at isang babae nuong gabi matapos ang teach-in doon sa Younger st., Balut, Tondo, Manila.

T: Kilala mo ba kung sino yaong dala-wang napatay na yaon?

S: Kilala ko lang po sa kanyang palayaw nad "DASMA" at nalaman ko sa diaryo kinabukasan na sila ay sina 'Eddie Dasmariñas' at isang babae ay 'Benilda Macalde.'

T: Alam mo ba kung papaano sila napatay, at kung saang lugar?

S: Binaril po ng Cal. .45 automatic doon po sa kanto ng Rodriguez at Younger st., sa Balut, Tondo, Maynila.

T: Anong oras at fecha nuong mangyari ang pagpatay na ito kay Eddie Dasmariñas at kay Benilda Macalde?

S: Mag-iika alas 11:30 ng gabi, nuong Hunyo 19, 1970. Birthday po ni Rizal nuon at kami ay nanggaling sa teach-in sa headquarters ng MTT sa no. 165 Younger st., Balut, Tondo, Maynila.

T: Ano ba ang ibig sabihin ng MTT?

S: Makabayan Tagapag-ugnay sa Tundo.

T: Sino-sino ang nagsalita doon sa sinasabi mong teach-in?

S: Si Eddie Dasmariñas lang po. Yaong babaeng kasama niya ay hindi nagsalita.

T: Anong oras nagumpisa at anong oras natapos and nasabing teach-in?

S: Nuong dumating ako ay may teach-in na. Alas 9:00 ng gabi ako dumating doon nuong matapos na ay alas 11:25 na ng gabing yaon, ika 19 ng Hunyo, 1970.

T: Nuong matapos na ang sinasabi mong teach-in, ano ang inyong ginawa?

S: Hinatid ko muna si 'Abet', si 'Ben Parco' at si 'Jose' doon sa Calle Nava, at ako ay bumili ng pan de sal doon sa Saivacion Bakery sa kanto ng Nava at Rodriguez at naglakad ako patungo sa Younger st., at doon ko nasalubong sina Eddie Dasmariñas at yaong kasama niyang babae.

T: Sino naman ang kasama nina Eddie Dasmariñas at nuonq babae na kasama niya patungo sa kanto ng Rodriguez at Younger st., Balut, Tundo, May-nila?

S: Si (1) Ruben Guevara at si (2) Tanggol Abreu, taga U.P. at ako naman ay naki-sama na sa kanila. Nag-aabang sila ng sasakyan doon sa kantong yaon mata-pos ang teach-in.

T: Samakatuwid ay apat sila na patungo sa nasabing kanto nuong masalubong mo sila?

S: Opo, si (1) Eddie Dasmariñas, (2) Benilda Macaldel (3) Ruben Guevara, at Tanggol Abreu. Apat sila at ako ang ika-lima.

T: Nuong kayong lima nina (1) Eddie Dasmariñas, (2) Benilda Macalde, (3) Ruben Guevara, (4) Tanggol Abreu, at (5) ikaw ay nasa kanto na ng Rodriguez at Younger may nangyari ba roon na hindi pangkaraniwan?

S: Nakita ko na bumunot ng baril cal. .45 si Ruben Guevara at kanyang binaril sa ulo si Eddie Dasmariñas. Tu-mumba si Eddie Dasmariñas. Nuong makita ng babae ang nangyari ay tatakbo sans ngunit hinawakan siya ni Ruben Guevara at nakapiglas ang babae. Binaril ni Ruben Guevara ang babae at tinamaan dahil sa na-kita ko na natumba ang babae doon sa may damuhan. Lumapit si Ruben Guevara sa babae na natumba sa may damuhan at binaril niyang muli.

T: Ilang putok ang iyong narinig sa pamamail na iyan?

S: Tatlo po. Isa putok kay Eddie Dasmariñas at dalawang putok doon sa babae na kasama ni Eddie Dasmariñas, na nalaman ko sa diaryo na Benilda Macalde ang ngalan.

"T: Ano naman ang ikinilos nitong si Tanggol Abreu sa pagkakataong iyan?

S: Nanood lamang siya at pagkabaril ni Ruben doon kay Eddie at Benilda ay tumakbo na kami ni Tanggol patungo doon sa headquarters ng MTT sa no. 165 Younger st. Si Ruben Guevara ay hindi ko alam kung saan tumakbo ngunit hindi naman siya kasama sa pagtakbo patungo sa MTT headquarters sa Younger.

T: Kailan pinag-usapan ang pagpatay kay Eddie Dasmariñas at doon sa kasama niya?

S: Nuong gabi na ako ay dumating doon sa teach-in, mag-iika alas 9:00 ng gabi, ika 19 ng Hunyo; 1970, doon sa MTT headquarters sa no. 165 Younger st., samantalang si Eddie Dasmariñas ay nagsasalita sa teach-in.

T: Sino-sino ang may piano sa pagpa-tay na iyan kay Eddie Dasmariñas?

S: Sina (1) Ruben Guevara, (2) Tanggol Abreu, (3) Teddy Beltran, (4) Danny Mina at ako po.

T: Samaktuwid ay lima kayong lahat sa plano ng pagpatay kay Dasmariñas at sa babae na kasama niya doon sa nasabing teach-in sa MTT headquarters?

S: Opo, ngunit si Ruben Guevara lamang ang may baril at siya ang na-atasan na babaril doon sa dalawa, si Eddie Dasmariñas at yaong kasama niya na si Benilda Macalde."[4]

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At the trial, the accused narrated the mal-treatment he suffered in the hands of the police investigators, thus:

"xxx xxx xxx.

"Q: You executed, I mean you stated that you were maltreated by the police whose names you mentioned and others, what sort of maltreatment did they commit upon your person?

A: May I be allowed to demonstrate?

Court:

Go ahead.

A: They had a bench 4 feet long and the width is about 6 inches. They made me lie down on the bench, tied me with my head dangling on one end of the bench and they put on me the towel which I took along with me. When I was already lying down, they put a blind-fold on me. They placed the towel above my nose and mouth. They pulled my head while dangling at the end of the bench and poured water with pepper.

Q: What else did the police do to you?

A: And they poured water with pepper on my nose and all over my body and they tore my pants and while they were pouring the water with pepper on my nose and body, Sgt. Aspeli told me to talk and to admit because after all, Aspeli said, that even if you have no fault I will certainly admit, and then gave me pure water and I passed out. When I came to, he said maybe you will talk now.

Q: Is that all that the police officers who were present at the time your state-ment was taken did to you?

A: Many things more.

Q: You relate to this court that what the other thing was, that what the police did to you while your statement was being taken did to you?

A: My wound was soaked on the water with pepper and they tied me on a post with my two hands and then hit me at my back.

Q: Is that all?

A: There were many more.

"Q: What else did they do to you?

A: And also upon alighting from the plane they let me board a taxi and blindfolded me and they brought me to Precinct 5 where they untied me or removed the blindfold."[5]

We have carefully scrutinized the record and we find the evidence for the prosecution woefully inadequate to overturn the foregoing allegations of force and coercion. Pat. E. Diño, who was presented as rebuttal witness, declared that "we transferred him (accused) to Capt. Escarcha after more than an hour, I made myself excused because we were very very tired."[6] He further stated that he knew of no member of the police force who maltreated the accused because he excused himself one hour after the accused was brought to Capt. Escarcha.[7]

It is not disputed that accused, without aid of counsel, was grilled non-stop for thirteen (13) hours, i.e., from 11:00 in the morning to 12:00 mid-night. At the trial, Pat. Dino, the only witness presented to contradict the accused's testimony, was candid enough to admit that he did not know what happened during the remaining twelve (12) hours, because he went home one (1) hour after the investigation started. The prosecution rebuttal evidence is therefore too deficient and meager to overturn the defense that physical violence had been inflicted to extort the confession.

It is proverbial in law that a confession made freely and voluntarily constitutes one of the most effectual proofs against the person making it. But stripped of its free and voluntary character, which otherwise gives it its value, a confession is wholly inadmissible. This principle stems from the constitutional right of the accused against self-incrimination; and this precludes the use of a confession obtained through force, threat or other means which vitiates the free will. Upon this premise, the confession, Exhibit "P", must be excluded from consideration by

the court.

With the exclusion of Exhibit "P", we find the record bereft of any substantial evidence to sustain the judgment of conviction. It is true that Carlito Gatpandan and Alfredo Santos, who were present at the scene of the crime, were presented by the prosecution; but their testimonies did not implicate the accused in the commission of the crime.

Carlito Gatpandan, then 23 years of age and a resident of No. 210 Younger St., Balut, Tondo, Manila testified that at about 11:30 in the evening of June 19, 1970 he, his brother Maximo and his friends Julian Abarquez, and Leandro Leonardo boarded his jeep which he intended to park in front of his house; that when he started the engine of the vehicle, he saw a woman and three men coming from the squatters' area at Younger St.; that one of the men was clothed in khaki pants and naked from the waist up, the other man was in white T-shirt holding an umbrella and the third in white polo shirt; that when his jeep passed the corner of Younger and Rodriguez Sts., he again noticed the four persons standing at that place; that upon reaching his house and was about to park his jeep he heard a gun explosion, followed by two more gunshots; that whereupon, he recognized two men, one of whom he identified as the accused, walking at a fast pace to-wards their direction; that they passed by the jeep and proceeded to the squatters' area at the end of Younger St.; and that thereafter, he and his compa-nions went to the street corner and there they found a man and woman lying on the ground.[8]

The other witness, Alfredo Santos, then 14 and a resident of 739 Solis St., Tondo, testified that while he was standing in front of the Gatpandan's residence at about 11:30 that night, he heard a gun-shot; that looking towards the corner of Younger and Rodriguez Sts., he saw a man in white polo shirt fire his gun twice; and that immediately thereafter, the gun wielder in white polo shirt and the accused, who was naked from the waist up, ran towards the squatters' area in Younger St.[9]

Thus, as attested to by said witnesses, the assail-ant was the man clad in white polo shirt. The fact that the accused was present at the scene of the crime at the time of its commission is not, by itself, sufficient to establish his criminal liability. To hold the accused guilty as co-principal in the crime charged, the exist-ence of conspiracy between the accused and the actual killer, must be shown; and the same degree of proof required for establishing the crime is required to support a finding of the presence of the conspiracy, i.e., it must be shown to exist as clearly and con-vincingly as the commission of the crime itself.[10]

It the case at bar, there is not a shred of competent evidence, direct or indirect, to show the accused's participation in a common criminal design. It is needless to add that in the absence of conspiracy, the accused cannot be held liable for the acts of the assassin.

WHEREFORE, the accused Alfonso Sabilano y Firmanes is hereby acquitted of the crime charged, with costs de oficio. His immediate release from custody is ordered, unless otherwise detained for some other lawful cause.

SO ORDERED.

Fernando, C.J., Abad Santos, Melencio-Herrera, Plana, Relova, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Makasiar, J., reserves his vote.

Aquino, J., dissents. The confession was voluntarily executed before Fiscal Mariano Castañeda. The case is not covered by the Miranda ruling. But he vote for reclusion perpetua.

Teehankee, J., no part.

Concepcion, Jr., and Guerrero, JJ., on leave.

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- [1] Exhibit E.
 - [2] Exhibit J.
 - [3] Exhibit Q.
 - [4] Exhibit "P".
 - [5] T.S.N., Aug. 21, 1970, pp. 33-36.
 - [6] T.S.N., Aug. 21, 1970, p. 116.
 - [7] T.S.N., pp. 116-117, id.
 - [8] T.S.N., pp. 36-48, Aug. 20, 1970.
 - [9] T.S.N., pp. 96-101, Aug. 20, 1970.

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