

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. TOMAS NAVASCA, FLORENCIO GERALDES, LORENZO SOBERANO AND MANUEL MARQUEZ, DEFENDANTS.

G.R. No. L-28107. March 15, 1977

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PER CURIAM:

On December 18, 1962, Tomas Navasca, Florencio Germaldes, Lorenzo Soberano and Manuel Marquez were charged with the crime of robbery with homicide committed by a band before the Court of First Instance of Davao, Branch III (Criminal Case 7712), the information reading as follows:

"That on or about March 17, 1959, in the Municipality of Bansalan, Province of Davao, Philippines, and within the juris-diction of this Court, the above-mentioned accused, all armed with deadly weapons, conspiring, confederating together and helping one another, and with intent to gain and by means of force upon things and violence against persons, did then and there wilfully, unlaw-fully and Criminally take, steal and carry away the sum of One Thousand Eight Hundred (P1,800.00) Pesos belonging to Go So alias OWA, to the damage and prejudice of the latter ,in the aforesaid amount, and on the same occasion thereof, and in pursuance of said conspiracy the abovementioned accused; with intent to kill, did then and there, wilfully, unlaw-fully and criminally attack, assault and shoot said GO SO alias OWA, thereby inflicting upon him injuries which caused his death."

Before arraignment, the commitment of the accused Tomas Navasca to the National Mental Hospital was ordered and proceedings against him suspended after the court had adjudged him as suffering from mental disorder, on the strength of the report and recommendation of a court-appointed doctor (Exhibit "A"), and after the court had satisfied itself "that he cannot under, stand the nature of the proceedings to be conducted against him."

Due trial proceeded against the remaining accused, and on January 7, 1966, the court rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, in conformity to Art. 294, paragraph 1 in relation to Art. 296 of the Revised Penal Code, the accused FLORENCIO GERALDES and MANUEL MARQUEZ are hereby sentenced each of them to the supreme and extreme penalty of death.

"The Court holds the view that (each of) the accused:

'xxx has proven himself to be a dangerous enemy of society. The latter must protect itself from such enemy by taking his life in retribution for his offense as an example and warning to others. In these days of rampant criminality it should have a salutary effect to the criminally-minded to know that the Courts do not shirk their disagreeable duty to impose the death penalty in cases where the law so requires. People v. Carillo, No. L-2043, Feb. 28, 1950; 85 Phil 611.'

"Relative to accused Soberano, although he was not actually present at the time of the killing of the deceased Owa, for he was then acting as guard, yet, he is as much liable as his other co-accused, considering the following authorities:

x x x

"Considering however, accused Lorenzo Soberano's act of testifying for the prosecution and revealing voluntarily in Open Court, the sordid details of this crime, the Court considers this a mitigating circumstance in his favor similar to a plea of guilty, that is a mitigating circumstance of 'similar analogous nature', and, hence, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

"All the accused are like-wise ordered to indemnify jointly and severally the offended parties in the sum of P1,800.00 and to indemnify jointly and severally the heirs of the deceased GO SO alias OWA in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency by reason of the penalty imposed, with the accessory penalties of the law, and to pay the costs proportionately.

"Considering further that the accused Navasca is presently mentally ill and uncertain as to when he shall regain his sanity the case against him is ordered archived to be retrieved immediately as soon as the accused regained his sanity and in a position to stand trial for this crime."

By reason of the penalty imposed, this case is now before us on automatic appeal.

From the extra-judicial admission (Exhibit "B") and testimony of Lorenzo Soberano, the following facts can be gathered.

At about 5:00 o'clock in the afternoon of March 17, 1959 on his way home after buying DDT for his corn, he saw his co-accused sitting on the road by the river at Bo. Rizal: Manuel Marquez holding a thompson, Tomas Navasca armed with a pistol and Florencio Geraldles carrying a carbine. He bought tuba as requested by Navasca and after the same was consumed by Navasca and Geraldles, he was invited to go with the group to serenade. On their way, as they passed the house of a certain Primo, the latter was slapped by Navasca and threatened with a .45 cal. pistol should he not consent to go with the group to rob. Out of fear, he did not refuse and as they reached the house of their intended victim, he was given a hunting knife by Navasca and told to stand guard outside the house.

From where he stood, he heard gunshots coming from the house, after which his companions went out of the same and they altogether fled.

From the account of Mrs. Josefa Delejeros, widow of Go So, the following transpired inside their house which led to the robbery and death of her husband.

At about 6:00 o'clock in the evening of March 17, 1959, she was having dinner with her husband Go So at their house in Curbada, Bansalan, when three persons armed with "short" and "long" "articles" entered their house, ordered them to go upstairs and directed her husband to open a trunk where their money was kept. Go So gave the money amounting to P1,800.00 to the men, after which the man with the "short article" fired at Go So many times. The "long articles" were not used. After shooting the victim, the men fled, and her husband was brought to the Brokenshire Memorial Hospital where he died as a result of "gunshot wound through and through, with involvement of abdominal organs" and severe, secondary hemorrhage (Exhibit "C"). The witness further testified that because of fear, she could neither identify the armed men who shot and robbed her husband, nor remember their size and height (t.s.n. January 13, 1965, p. 85).

From the records of the case, the vital link between the accused and the crime consists in the extra-judicial confession of Florencio Geraldles (Exhibit "A") and the extra-judicial admission (Exhibits "B" & "B-1") and testimony of Lorenzo Soberano in court. Notably, both Geraldles and Soberano repudiated their respective statements, claiming that their so-called statements were pre-pared by the police and that they were compelled to affix their signatures thereto after they had been maltreated, and, in the case of Soberano, after he had, in addition, been promised freedom.

After a meticulous study of the records and mature deliberation, it is unnecessary for us to discuss the question squarely raised by Geraldles regarding the voluntariness and truth of his statement (Exhibit "A"), for it is our view that even without the extra-judicial statement of Geraldles, the extrajudicial statement and testimony of Lorenzo Soberano in open court, corroborated by the other evidence for the prosecution, suffice to justify the affirm-ance of the conviction of all the accused by the trial court.

We cannot sustain the argument of Lorenzo Soberano that his statement was prepared by the Chief of Police and that he affixed his thumbmark thereto after he had been maltreated and promised freedom because there are certain characteristic features in his statement that refute his claim of involuntariness. To cite a few: If it be true that the police prepared his statement, it would not contain details which are inconsistent with the details mentioned in the extra-judicial confession of Geraldles. But inconsistencies do exist between the statements of Geraldles and Soberano. Thus, said Geraldles:

"Q. Where and when the robbery was planned? (sic)

"A. I do not know sir. But when they were on their way to the house of GO SO ALIAS OWA, they passed in my house and invited me to join them." (Exhibit "A")

On the other hand, Soberano stated that even before he knew of the plan to rob and even before they started on their way, Florencio Geraldles was already with the group of Navasca, Marquez and another person whom he did not know.

"Q. Would you please relate to the investigator the circumstances surrounding the commission of the crime?

"A. Yes, sir. At about 3:00 o'clock in the afternoon of March 17, 1959, I went to the poblacion of Bansalan to buy DDT. On my way home, I saw Maning Marquez, Tomas Navasca and Florencio Geraldles sitting on the side of the creek in barrio Rizal." (Exhibit "B")

Another reason which argues against the involuntariness of Soberano's statement 'is that it contains details which only he could distinctly know such as his previous conviction for the theft of a plow and the number of years of his sentence. Besides, Soberano complained of the maltreatment and the alleged inducement only after he had pre-viously testified and had been convicted by the trial court. Heretofore, this Court has held that these features in an extra-judicial admission are proofs not of involuntariness and falsity but rather of voluntariness and truth.[1]

The paramount consideration, however, which, to our mind, weighs heavily in favor of the volun-tariness and truth of Soberano's admission, and testimony in court is the significant fact that he took the witness stand as witness for the prosecu-tion notwithstanding the severe admonition by the trial judge of the consequences of his testimony. Verily, the trial judge had painstakingly advised and informed the accused of his rights as an accused and could not be indicted for dereliction of his duties as judge, as shown by the following portion of the transcript:

"QUESTIONS BY THE COURT:

"COURT:

"Q. You are one of the accused in this case?

"A. Yes, sir.

"Q. As an accused in this case, under the constitution, you cannot be compelled to tes-tify for the prosecution.

"Q. Do you understand that?

"A. Yes, your Honor.

"Q. Do you also understand that under the Constitution if you remained silent and do not testify, your silence will not be taken in any way against you?

"A. Yes, your Honor.

"Q. Now, the Fiscal desires to present you as one of the witnesses for the prosecution against you and your other co-accused. Do you know that?

"A. Yes, your Honor.

"Q. And you know you have every right under our law to refuse?

"A. I cannot refuse, your Honor. What I will do is to tell the truth.

"Q. Do you understand that ... do you know that anything you say during this time maybe taken against you?

"A. Never mind, if it will be taken against me, but I will do so to tell the truth.

"Q. Does the Court understand that you waived the right granted to you by our constitution under our law and not incriminating yourself? (sic)

"A. What I will do, sir, is only to tell the truth.

"Q. Now, were you promised any reward or money by the Fiscal for the act which you are about to do?

"A. No, your Honor.

"Q. So, you are aware of the consequences of what will happen to you if you testify and notwithstanding that you assure this Court that you are waiving your right not to testify against yourself?

"A. I will just tell the truth, sir." (t.s.n. January 13, 1965, pp. 96-98)

No more express waiver of the right of not testifying against oneself can be had than what Soberano had done in the trial court. His statements clearly, indicate an awareness and understanding of the consequences of his testimony, yet, notwithstanding, he insisted as in fact he did testify against himself and his co-accused. Nor can it be suspected that his act of testifying was prompted by his belief that in doing so, he would be released, for, in his own words:

"Q. Now, when you affix your thumbmark on Exhibit 1, thereof, you understand the impression that you would be discharge from this case. Is that correct? (sic)

x x x

"COURT:

The import of the question Mr. Fiscal is the answer of the witness that he was not promised any reward by the Fiscal. So, by this question he want to show that he was testifying now for the prosecution precisely of the promise that he will be released in this case if you file the Motion to Dismiss. That is the point. Let the witness answer. (sic)

"A. I did not believe that I will be discharged. But, what I did was to tell the truth." (t.s.n., January 14, 1965, p. 138)

The subsequent retraction by Soberano of his extra-judicial statement and his testimony in court regarding the same cannot detract from its truth and voluntariness, considering that his retraction came, not at the trial -- for he affirmed the truth of the contents of his statement at the trial but only after he had been convicted and sentenced, together with some of his co-accused. Nor was the denial of the motion for new trial which was filed by his

counsel on the ground of the retraction by Soberano of his testimony in court, an improvident act by the trial judge, for, time and again, it has been held by this Court that retraction of previous testimony is not a ground for new trial.[2]

The testimonies of two witnesses for the prosecution fortify the finding that the extra-judicial statement of Soberano was voluntarily made. Thus, Chief of Police Alfonso Gomez testified that the questions therein were asked and answered in the Visayan dialect which Soberano speaks and understands and later on translated into English. Municipal Judge Hermenegildo Cabreros testified that when Soberano was brought before him to subscribe to his statement, he asked the said accused if he understood English and upon receiving a negative reply, he read the document in the Cebu-Visayan dialect. Thereafter, he asked the accused if he understood what were read to him and if they were correct, to which the accused gave his affirmation. In addition, the finding of the trial court as to the earnestness and fidelity of the prosecuting fiscal as against the accusation of the accused that he was promised freedom by the same fiscal -- a finding which will not ordinarily be disturbed by the appellate courts in the absence of clear evidence to the contrary -- is determinative of the unreliability and incredibility of the grounds relied upon in the motion for new trial and retraction of his testimony by Soberano.

Having allayed all fears as to the involuntariness and falsity of Soberano's testimony, we now proceed to correlate the same with the other evidence for the prosecution.

The testimony of Soberano that Navasca Marquez and Geraldles and another person whom he could not identify were armed with a .45 cal. pistol, a thompson, a carbine and a bolo, respectively, when they went up into the house of the victim is corroborated by the testimony of Mrs. Josefa Delejeros, the wife of the victim and only eyewitness to the commission of the crime, when she testified that three men armed with "short and long articles" entered their house at about 6:00 o'clock in the evening (exactly the same time that Soberano said they reached the house of their intended victim) and proceeded to accomplish their criminal scheme. From the testimony of Soberano and Mrs. Delejeros, the identities of the three men with "short and long articles" have thus been established (t.s.n. January 13, 1965, pp. 79-80; 110-114).

The testimony of Soberano that the fatal weapon was a .45 cal. pistol is corroborated by Mrs. Delejeros when she stated that the man with the "short article" fired at her husband but the "long articles" were not used (t.s.n. January 13, 1965, p. 112; p. 84).

The ensnaring net of collective responsibility was cast with the admission of Soberano that he was armed with a hunting knife as he stood guard outside the house of Go So while his companions perpetrated the crime inside the house. Take this together with the testimony of the lone eyewitness -- Mrs. Delejeros -- that the three men who entered their house were armed with "short and long articles" which Soberano himself described as a .45 cal. pistol, a thompson and a carbine, and there converges into sharp focus the responsibility appertaining to a band without having to consider the statement of Soberano that one of the men was armed with a bolo, for it suffices to establish the existence of a band that more than three armed men take part in the commission of a crime.

The evidence for the prosecution clearly established that the members of the band committed the crime of robbery on the occasion of which a homicide was committed, thus classifying the crime as one of robbery with homicide. It has also been established that the aggravating circumstance of band attended the commission of the crime and none of the members thereof attempted to prevent the same. The state of the evidence for the prosecution being such, we now assay the defense of the accused.

The defense of all the accused is anchored on the inadmissibility of the extra-judicial confession of Florencio Geraldles (Exhibit "A") and the extra-judicial admission of Lorenzo Soberano (Exhibits "B" & "B-1") on the ground that these were obtained by force and promise of freedom and hence, involuntary. As we have mentioned

earlier, it does not behoove this Court to determine the voluntariness or involuntariness of both extra-judicial statements, it being enough that other evidence adduced at the trial fulfill the required quantum of evidence to convict the accused. Like-wise, we have found that the extra-judicial statement of Soberano contains the indicia of voluntariness and his testimony in the court as prosecution witness negates the suspicion of a promise of freedom. Woven together with the other evidence of the prosecution, the pattern for the crime has thus been formed, and the claim of Soberano as to the involuntariness of his admission as well as that of his testimony must fall.

The crime established by the evidence for the prosecution is robbery with homicide attended by the aggravating circumstance of band. In the case of *People vs. Apduhan*[3], we held that if the crime of robbery with homicide is committed by a band, the indictable offense would still be robbery with homicide with the aggravating circumstance of band and not robbery in band with homicide.

The penalty for the crime of robbery with homicide is reclusion perpetua to death. The crime having been committed by a band, all the members thereof are liable for each of the assaults committed,[4] unless any one of them attempted to prevent their commission. No evidence was adduced by any of the accused that he had attempted to prevent the commission of the crime, hence all must be held liable for the crime of robbery with homicide. There being one aggravating circumstance and no mitigating circumstance to offset the same in the case of *Florencio Geraldес and Manuel Marquez*, the penalty of death was correctly imposed on them. The act of testifying for the prosecution, without previous discharge, by *Lorenzo Soberano* should be considered in his favor as a mitigating circumstance analogous to a plea of guilty, hence there exist, in the case of *Lorenzo Soberano*, one mitigating circumstance and one aggravating circumstance which offset each other. Consequently, *Lorenzo Soberano* was properly sentenced to reclusion perpetua.

Considering the length of time that has elapsed from the time the accused *Tomas Navasca* was committed to the National Mental Hospital, the Director of the said hospital should now conduct a full-blown examination of the mental state of the said accused for the purpose of determining his mental capacity to stand trial, and thereafter submit the proper report and recommendations to this Court.

ACCORDINGLY, the judgment a quo finding *Florencio Geraldес, Manuel Marquez* and *Lorenzo Soberano* guilty of the crime of robbery with homicide and sentencing *Florencio Geraldес* and *Manuel Marquez* to the supreme penalty of death and *Lorenzo Soberano* to reclusion perpetua, is hereby affirmed. All the accused are ordered to indemnify, jointly and severally, the heirs of *Go So alias Owa* in the amount of P1,800 representing the money stolen and the increased amount of P12,000[5] as indemnity for the death of *Go So alias Owa*. The Director of the National Mental Hospital is hereby directed to conduct without delay a full-blown examination of the mental state of the accused *Tomas Navasca* for the purpose of determining his mental capacity to stand trial, and thereafter submit the proper report and recommendations to this Court. Costs against the appellants.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

[1] *People vs. Viernes*, 84 Phil. 144; *People vs. Alcantara*, L-16832, Nov. 18, 1967, 21 SCRA 906; *People vs. Gomez*, L-25815, May 31, 1969, 28 SCRA 440.

[2] *People vs. Concepcion*, 84 Phil. 787; *People vs. Cu Unjieng*, 61 Phil. 906; *People vs. Farol*, 103 Phil. 1166; *People vs. Rodriguez*, 103 Phil. 1008; *People vs. Casalme* 101 Phil. 1205; *People vs. Valeriano*, 90 Phil. 15; *People vs. Genilla*, L-23681, September 3, 1966, 18 SCRA 12.

[3] L-19491, August 30, 1968, 24 SCRA 798.

[4] Art. 296, Revised Penal Code.

[5] People vs. Pantoja, L-18793, October 11, 1968, 25 SCRA 468.

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