

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORETO SALANGGA AND LAURETO LOPEZ, ACCUSED. LORETO SALANGGA, ACCUSED-APPELLANT.

G.R. No. 100910. July 25, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Loreto Salangga, alias "Dodong," and Laureto Lopez, alias "Retoy," were haled to court as conspirators in the rape and killing of a fifteen-year old barrio lass named Imelda Talaboc, allegedly committed in Magsaysay, Davao del Norte on or about July 18, 1987.[1]

Assisted by counsel de oficio, both accused pleaded not guilty during their arraignment. After trial, judgment was rendered by said trial court on February 21, 1991 finding appellant Salangga guilty of attempted rape with homicide, imposing upon him the penalty of reclusion perpetua but with full credit for his preventive imprisonment, and ordering him to pay P30,000.00 as indemnity to the heirs of the victim. Accused Laureto Lopez was acquitted for failure of the prosecution to prove his guilt beyond reasonable doubt.[2]

It appears that in the late afternoon of July 18, 1987, in Sitio Ogsing, Barangay Tacul, Magsaysay, Davao del Sur, Imelda Talaboc was sent by her mother to fetch water from the spring, or "bugac," the only source of water in the vicinity. Imelda left with two one-gallon containers.

At around 5:30 to 6:30 of the same afternoon, when the dusk of twilight was enveloping the area, one Ricky Monterde, a friend and brother in faith of the Talaboc family, who resided only two hundred meters away from the latter's residence, likewise went to fetch water. On his way, he saw appellant Salangga walking about three meters ahead of Imelda. He noticed that appellant kept glancing back towards Imelda who was carrying water containers. Trailing the girl was accused Lopez who was walking behind her at a distance of about twenty fathoms.[3]

On the same occasion, Lenie Alingay, a twelve-year old elementary student residing at Sitio Ogsing, was on her way home from her grandfather's house. She recounted that she met Imelda at the downhill crossing leading towards the barrio. Lenie explained that she was about four meters away from Imelda, while the latter was following appellant and walking about two meters behind him. As Imelda came abreast with Lenie, the former asked the latter if she was going to school on Monday. Then, as Lenie proceeded on her way home, she saw that Lopez who was sitting on a rice paddy suddenly stood up and followed Imelda. At about the same time, Lenie also saw Ricky Monterde fetching water from the spring.

When Bernardo Talaboc, father of Imelda, came home from work, he was informed by his wife that Imelda, whom she sent to the "bugac" earlier, was missing. Talaboc set out to look for Imelda. On his way to the spring, he came upon two water containers left standing at a spot about four hundred meters away from their house.[4]

His search for Imelda led Talaboc to the house of Ricky who told him that he had earlier seen Imelda on her way

home with appellant walking ahead of her. Ricky then accompanied Talaboc and his son to the house of the barangay captain, Severino Laput, to whom they reported Imelda's disappearance. Thereafter, together with the members of his household and some neighbors, they continued looking for Imelda. At around 8:00 o'clock that same night, they found the corpse of Imelda lying in the bushes about twenty meters away from where the water containers were earlier found.

Imelda was found with her clothes on but her panty was missing. Her face was disfigured by physical blows, she had been stabbed by a knife, and her eyes were gouged out. The searching party brought home the body of the victim.

Talaboc went to see Lenie Alingay and her family to inquire whether they witnessed any unusual happening that fatal afternoon, since the "bugac" is only about twenty meters away from their house. Lenie told him about her brief encounter with Imelda, as earlier narrated.

Appellant and Lopez were arrested that same night at around 8:00 o'clock, after the corpse of Imelda had been found, upon the orders of Barangay Captain Laput based on the information given by Ricky and Lenie implicating the two of them. They both became the main suspects responsible for the grievous fate of Imelda, as they were the persons last seen with her before the tragedy. The soldiers of the 46th Infantry Brigade of the Philippine Army took them into custody.

At the army detachment, said suspects were bodily searched. According to the prosecution, the soldiers recovered from appellant a piece of lady's underwear, later identified by Talaboc to be that of his daughter, Imelda. Afterwards, both suspects were ordered to undress. The prosecution claims that appellant's body bore what looked like bite marks and scratches, but none was found on the body of Lopez.

The following morning, the suspects were brought to the office of Station Commander Manuel Macabutas in the municipal hall where both were investigated by P/Sgt. Mario Gataber of the Magsaysay Police Station. Appellant scrawled his quivery signature on an unsworn statement,[5] handwritten by some other person, wherein he admitted the crime charged, except that he was not able to consummate his bestial desire because Imelda fought very hard against him.[6]

The defense had a different version to tell. It was claimed that on July 18, 1987, at about 9:00 P.M. while appellant was repairing a wall in his kitchen, some members of the 46th Infantry Brigade and Lopez came to his house. He was informed that Barangay Captain Laput was requesting for their presence at his house. Both accused complied with the request and went to the residence of Laput. The latter asked them if they were responsible for the death of Imelda and they vehemently denied any participation in the crime.

The accused were then brought to the 46th Infantry Brigade Headquarters where they were allegedly subjected to severe physical beatings by the soldiers. Unable to bear the maltreatment any further, they were compelled to admit the earlier accusations against them.

The next day, a strong and painful kick in the stomach was inflicted on appellant by one of his custodians for refusing to carry a lady's underwear and a pair of blue slippers in his pocket, which items were later identified by Talaboc as belonging to his daughter. Consequently, he carried the same with him when they were brought to the Magsaysay Municipal Hall where they were investigated by Sgt. Gataber. Afterwards, appellant was asked to sign a document, explained to him as having something to do with his food, to which importuning the unlettered appellant acceded. Unfortunately, the document turned out to be his supposed statement admitting his guilt for attempting to rape Imelda and subsequently killing her.[7]

Appellant Loreto Salangga has now come before us, through counsel de oficio, contending that the trial court

erred in convicting him of the crime charged on the basis of insufficient circumstantial evidence.

Section 5, Rule 113 of the Rules of Court provides that a peace officer or a private person may, without a warrant, arrest a person when (a) in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) an offense has in fact just been committed and he has personal knowledge of the facts indicating that the person to be arrested has committed it; and (c) the person to be arrested is a prisoner who has escaped. In cases falling under paragraphs (a) and (b) thereof, the person to be arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Section 7, Rule 112.

From these provisions, it is not hard to conclude that appellant was arrested in violation of his fundamental right against unjustified warrantless arrest. On the night he was arrested, he was in his house peacefully attending to some domestic chores therein. It cannot be suggested that he was in any way committing a crime or attempting to commit one. Also, the soldiers had no personal knowledge of the crime he was being charged with, nor was he a fugitive from the law.

The right of the accused to be secure against any unreasonable searches on and seizure of his own body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of a warrant of arrest is strictly construed. Its application cannot be extended beyond the cases specifically provided by law.[8]

Bernardo Talaboc testified that both accused were frisked and asked to undress before him, some soldiers of the 46th Infantry Brigade, and Barangay Captain Laput inside the Army detachment. If he is to be believed, that body search incredibly yielded a lady's panty from the pocket of appellant and which underwear he identified as that of his daughter. It would surely have been the height of stupidity for appellant to be keeping on his person an incriminating piece of evidence which common sense dictates should have been destroyed or disposed of. For that matter, according to Barangay Captain Laput before whom appellant was brought shortly after his apprehension and who was also present therein, nothing was taken from said appellant.[9]

In any event, the underwear allegedly taken from the accused is inadmissible in evidence, being a so-called "fruit of a poisonous tree." Likewise, there is definitely an improbability in the claim of Talaboc that he was able to recognize the underwear of his daughter. It is an atypical and abnormal situation under Filipino customs for a father to be familiar with the underwear of his daughter. This is highly improbable, and it is plain common sense that improbabilities must be carefully scrutinized and not readily accepted.

Again, during the initial investigation of Barangay Captain Laput on July 23, 1987 before Sgt. Gataber, nothing was ever mentioned regarding the supposed scratches and bite marks allegedly found on the chest of appellant. The truth is that these matters were mentioned in the trial court only after about two and a half years from the arrest of appellant. It is indeed strange that such vital evidence conspicuously found on the body of appellant, if true, could be omitted in the sworn statement of Laput[10] which was taken four days after the alleged discovery. He and the investigator could not have been unaware that the supposed scratches and bite marks were obviously relevant in this kind of crime, more particularly to prove the reported struggle of the victim against her unknown killer.

The aforesaid testimony of Laput thus suffers from serious flaws attendant to its taking which accordingly taint its credibility. The long delay in his disclosure bolsters the suspicion that such testimony is biased, if not fabricated. Laput's claim that he revealed the aforesaid facts to Sgt. Gataber[11] is belied by his own sworn statement. It is true, and we have so held, that sworn statements executed before police officers are usually incomplete and contain data which are inconsistent with the facts narrated by the witnesses to said officers. For this reason, courts

have generally brushed aside, as inconsequential, contradictions in the sworn statement of a witness and his testimony as long as these dwell only on minor and reconcilable matters.[12]

However, the aforesaid allegations on the supposed scratches and bite marks on the body of appellant can by no means be considered as minor or trivial matters. The prosecution, in fact, relies heavily thereon to support its theory of the case. Since every circumstance must be taken into consideration in passing upon the guilt or innocence of the accused, it becomes crucial for his eventual acquittal when such discrepancies touch on substantial and irreconcilable facts, as when the omission in the sworn statement concerns an important detail which the affiant would not have failed to mention, and which omission could accordingly affect his credibility.[13]

We are not persuaded by the theory that the accused waived their right against the said unreasonable search and seizure, simply because they did not object thereto. To constitute waiver, it must appear, firstly, that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such right; and, lastly, that said person had an actual intention to relinquish the right.[14] Courts understandably indulge every reasonable presumption against waiver of fundamental safeguards and do not deduce acquiescence in the loss of elementary rights.[15]

Coming now to Sgt. Gataber's testimony, we find that the same seriously undermines the case for the People. On the witness stand, he recited the rights of an accused but apparently none of these were granted to or applied in his investigation of appellant. This is partly explained by the fact that he had a wrong, if not a weird, perception or understanding regarding a "person under custodial interrogation," his duty to apprise such person of his rights, and the right of that person to counsel, as demonstrated below.

"Q How would you say that a person is under custodial interrogation?

A When the accused is assisted by a counsel of his own choice.

x x x

Q In other words, if the accused is not assisted by counsel in the investigation he is not under custodial interrogation, is that what you mean?

A Yes.

Q In other words, (in) this particular case, you considered this investigation on accused Salangga as not under custodial interrogation because he was not assisted by counsel?

A Yes, because that is not the proper custodial interrogation.

Q In other words, on that day that you conducted the investigation, you did not apprise him of his rights to have counsel?

A I apprised him but there was no available lawyer in our place but I considered his statement is true.

Q Will you please go over this statement if you can find a portion wherein you apprised the declarant of his right to counsel?

A I did not apprise because of some circumstantial facts.

Q What are these circumstantial facts?

A I did not bother to write the rights of the accused.

Q Did you not find it important x x x because this case is quite serious?

A I made that question and interrogation in my office but I was doubtful whether that would be acceptable in Court because that question and answer was not subscribed and sworn to before the municipal judge.

x x x

Q In other words, you did not tell him that the government can provide him counsel if he cannot afford one?

A Yes.

Q You did not tell him that?

A I told him that if you cannot afford to have a counsel, the government will give you one.

Q Did you place that in your question and interview?

A No.

Q Why did you not place that in your question and interview?

A Because my question and interview which I made before him is not acceptable.

x x x

Q Because you thought that Salangga was under custodial interrogation of the Police Station of Magsaysay at that time x x x why did you not require him to have counsel of his own choice as you have attended a lot of seminars?

A That is the reason why because there is no available lawyer in our place.

Q And you are aware about Atty. Mat(i)as Acquiatan?

A Yes, but sometimes he is out of Magsaysay.

Q And despite that fact, you did not find ways and means to contact the CLAO or Atty. Acquiatan in order to assist Salangga in the interview?

A There were several lawyers which I approached to assist the suspect but they refused and at that time I also approached Atty. Acquiatan and he advised me to see the lawyer of CLAO.

Q But in this particular case, you never tr(ied) to approach Atty. Acquiatan to assist accused Salangga?

A No.

Q Neither did you approach the lawyer of CLAO in that particular interview?

A No."[16]

It is consequently evident that since appellant was not assisted by any counsel during his custodial investigation, his supposed incriminatory statement is inadmissible and cannot be considered in the adjudication of this case. Oddly enough, even Sgt. Gataber was skeptical as to the validity of the statement he took from appellant.[17] The rule, of course, is that no in-custody investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person in his behalf or appointed by the court upon petition either of the detainee himself or by someone in his behalf.[18]

While the right to counsel may be waived, such waiver must be effected voluntarily, knowingly and intelligently. Further, waiver must be with the assistance of counsel.[19] The absence of counsel at that stage makes the statement, in contemplation of law, involuntary, even if it was otherwise voluntary in a non-technical sense.

With the Court now unanimously upholding the exclusionary rule in toto, the constitutional mandate is given full force and effect. This constitutional edict has been proved by historical experience to be the practical means of enforcing the constitutional injunction against unreasonable searches and seizures by outlawing all evidence illegally seized and thereby removing the incentive part of the military and police officers to disregard such basic rights. This is of special public importance and serves as a shield in the remote provinces and rural areas to the people who have no access to courts for prompt and immediate relief from violations of their rights.[20]

Section 5 of Rule 133 provides that when no direct evidence is available, circumstantial evidence will suffice when the following requirements are present: (a) there are more than one circumstance, (b) the facts from which the inferences are derived are proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Furthermore, before conviction can be had upon circumstantial evidence, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.[21]

A meticulous and closer inquiry into the records reveals that there is really but one sole circumstance upon which the court relied in its decision, that is, that Imelda was seen trailing behind appellant by a few meters on the path towards her house. The prosecution presented two witnesses on this very same fact but the testimony thereon of two witnesses cannot convert one circumstance into two. All other "circumstances" under the prosecution's theory, such as the underwear allegedly found in appellant's pocket, the supposed scratches and bite marks on his body, and his dubious confession to Sgt. Gataber are all products of an illegal process, aside from their questionable veracity.

Assuming arguendo that appellant was seen walking in front of Imelda about two hours before the discovery of the death of the latter, such fact could not lead a prudent man to conclude that appellant was the one responsible for the misfortune that befell the victim. Also, Sgt. Gataber believed that Lenie Alingay and Ricky Monterde could shed light on the case and so he claimed to have taken their statements, but, surprisingly, no sworn statements were executed by them. Later, he retracted what he said, announcing instead that he actually referred the taking of the statements to Sgt. Saraum, but he could not remember if the statements, if thereafter taken, were attached to the records.[22]

We reject the People's hypothesis on the alleged "confession" of appellant to a certain Pastor Juan Tapic. The records reveal that there was a statement of appellant merely saying that he and Lopez were suspects in the rape and death of Imelda but never did he say that they were the ones responsible for such crime. Also, if the prosecution really believed that the appellant truly admitted to Pastor Tapic his participation in the crime, it is puzzling that said pastor was not called by the prosecution to take the witness stand. A party's failure to produce evidence, which if favorable would naturally have been produced, is open to the inference that the facts were unfavorable to his case.[23] Verily, that failure to present Pastor Tapic can only mean that the prosecution itself doubted what appellant precisely meant when he said that there are two of them, that is, himself and Lopez.

We also note that while the prosecution presented a medical certificate[24] to prove the alleged rape, it failed to present the physician to affirm it. In the absence of the doctor's testimony, the contents thereof are hearsay.[25] At any rate, even if the physician had been presented there was in fact no need for him to make that affirmation since the conviction of appellant is based merely on his supposed inculpatory statement which has no probative value for having been taken in violation of explicit constitutional mandates and proscriptions.

Well-entrenched is the rule that the findings of facts of trial courts carry great weight for these courts enjoy the advantage of having observed the demeanor of the witnesses on the witness stand and, therefore, can discern if these witnesses are telling the truth or not. However, likewise well-settled are the exceptions thereto, which are

when (1) the conclusion is a finding based entirely on speculations, (2) the inference made is manifestly mistaken, absurd or impossible, (3) there is a grave abuse of discretion, and (4) the finding is based on a misapprehension of the facts.[26] The evidentiary bases for the conclusions of the lower court having been demonstrated to be either incompetent in law or incredible in fact, the exceptive circumstances have to be given full sway.

The prosecution's evidence regrettably leaves much to be desired, unfortunately as a consequence of faulty investigative work in the first place. This Court must, however, be guided by a rule of long standing and consistency that if the inculpatory facts and circumstances are capable of one or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[27]

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. This determinant, with the constitutional presumption of innocence which can be overthrown only by the strength of the prosecution's own evidence proving guilt beyond reasonable doubt, irresistibly dictate an exoneration in this case. It is indeed a bitter truth for the victim's family to face, that human justice seems to have failed them due to the foregoing confluent factors. We deeply commiserate with them and sincerely hope that, somehow and in God's own time, divine retribution shall be visited upon the evil author of this human tragedy.

WHEREFORE, the assailed judgment of the court a quo is REVERSED and SET ASIDE. Accused-appellant Loreto Salangga is hereby ACQUITTED and ordered to be immediately released unless there are other grounds for his continued detention, with costs de oficio.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] Criminal Case No. XXI-92 (88) Regional Trial Court, Branch 21, Bansalan, Davao del Sur; Original Record, 1; Judge Rodolfo A. Escovilla, presiding.

[2] Rollo, 58-59.

[3] TSN, June 1, 1990, 4-5; March 21, 1990, 5-8, 11, 38-39.

[4] TSN, April 25, 1990, 4-12; June 1, 1990, 4-5.

[5] Exhibit A.

[6] TSN, June 1, 1990, 6-8, 11-18, 29-30; January 9, 1990, 10-11, 16-17; April 27, 1990, 3-4.

[7] TSN, November 9, 1990, 21-22, 24-27, 35, 37-40.

[8] People vs. Burgos, etc., et al., G.R. No. 92739, August 2, 1991, 200 SCRA 67.

[9] TSN, January 9, 1990, 16.

[10] Original Record, 12.

[11] TSN, January 9, 1990, 25-26.

[12] People vs. Ponferada, et al., G.R. No. 101004, March 17, 1993, 220 SCRA 46.

[13] People vs. Hadji Bassar Maongco, et al., G.R. Nos. 108963-65, March 1, 1994.

- [14] *Passion Vda. de Gracia vs. Locsin, etc., et al.*, 65 Phil. 689 (1938).
- [15] *Johnson vs. Zerbst*, 304 U.S. 458 (1938).
- [16] TSN, April 27, 1990, 12-14.
- [17] TSN, January 9, 1990, 20-21; April 27, 1990, 13, 22; November 9, 1990, 50.
- [18] *People vs. Vasquez, et al.*, G.R. No. 92658, April 30, 1991, 196 SCRA 564.
- [19] Sec. 12(1), Art. III, Constitution.
- [20] *Nolasco, et al. vs. Paño, etc., et al.*, G.R. No. 69803, January 30, 1987, 147 SCRA 509.
- [21] *People vs. Ganohon*, G.R. Nos. 74670-74, April 30, 1991, 196 SCRA 431; *People vs. Manliguez, et al.*, G.R. No. 91745, March 4, 1992, 206 SCRA 812.
- [22] TSN, April 25, 1990, 17-19.
- [23] *Tulod, etc. vs. First City Line Transportation Company*, G.R. No. 92710, February 27, 1991, 194 SCRA 583.
- [24] Exhibit I, List of Exhibits, 1.
- [25] *People vs. Marcedonio, et al.*, G.R. Nos. 78551-52, December 21, 1990, 192 SCRA 579.
- [26] *People vs. Yutuc*, G.R. No. 82590, July 26, 1990, 188 SCRA 1.
- [27] *People vs. Pacana*, 47 Phil. 48 (1924); *People vs. Parayno, et al.*, L-24804, July 5, 1968, 24 SCRA 3; *People vs. Taruc*, G.R. No. 74655, January 20, 1988, 157 SCRA 178; *People vs. Yabut*, G.R. No. 82263, June 26, 1992, 210 SCRA 394.

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