

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOLI SALCEDO @ “KA TONY,” GEMO IBAÑEZ @ “KA TITING,” BOLODOY CALDERON, JUANITO SUAL, JR., EDISON BANCULO, NONOY ESQUILONA, GIL...

G.R. No. 100920. June 17, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The rights of a person under custodial investigation, particularly the right to remain silent and to counsel, have been explained, echoed and stressed no end by this Court. They are no less constitutionally enshrined.[1] Innumerable court decisions[2] have been rendered, evincing the great importance with which the state regards them. A law[3] was recently enacted defining the rights of persons arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officers; and penalizing violations thereof. In spite of these clear constitutional, jurisprudential and statutory guidelines, one still finds persistent infractions by public investigators and police authorities that have resulted in acquittals which oftentimes are not understood or appreciated by the public at large.

In the present case, the issue confronts us once more. As we have held in similar cases, a voluntary extrajudicial confession of an accused, even where it reflects the truth, if given without the assistance of counsel and without a valid waiver thereof, is inadmissible in evidence against him.[4]

Of course, where the statements in the uncounselled confession are reiterated in open court, or where other conclusive evidence proves the guilt of the accused beyond reasonable doubt, the court should not hesitate to convict and mete the proper penalty.[5]

In an Information[6] dated October 28, 1988, First Assistant Provincial Fiscal Andres B. Barsaga, Jr. charged Accused-appellants Noli Salcedo, Edison Banculo, Juanito Sual, Jr. and Danilo Laurio, together with Nonoy (Teodulo, Jr.) Esquilona, Reynaldo Cortes, Paco (Romarico) Manlapaz, Gemo Ibañez, Bolodoy Calderon, Gil Rapsing, Jose Fernandez, Noe Albao, Ely Rapsing and Norie Huelva, with the crime of murder committed as follows:

“That on or about June 20, 1988, in the evening thereof, at Barangay Gabi, Municipality of Baleno, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused, conspiring together and mutually helping one another, with intent to kill, evident premeditation(,) treachery and superiority of strenght (sic) and taking advantage of nighttime, did, then and there willfully, unlawfully and feloniously attack, assault and shot with a gun(,) hack with a bolo one Honorio Aparejado y Fideles, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused his instantaneous death.”

On September 12, 1989, Accused Noli Salcedo, Juanito Sual, Jr., Edison Banculo, Danilo Laurio, Reynaldo Cortes and Nonoy Esquilona, assisted by Attys. Ricardo Merdegia and Jose Medina, pleaded not guilty to the above charge, while Accused Romarico Manlapaz, assisted by Atty. Ruben Songco, entered the same plea on

January 23, 1990.[7] The rest of the accused remained at large. Trial ensued insofar as those apprehended and arraigned were concerned. On May 6, 1991, the trial judge rendered judgment convicting Salcedo as principal; and Banculo, Sual, Jr. and Laurio as accomplices in the crime of murder. Esquilona, Jr., Cortes and Manlapaz were acquitted.[8]

The Facts Evidence for the Prosecution

The principal witness for the prosecution, Edwin Cortes, a 30-year old farmer, resident of Gabi, Baleno, Masbate, and brother-in-law of the victim, Honorio Aparejado, identified and affirmed his statement[9] given on June 30, 1988 relative to the incident which he had subscribed to before Municipal Circuit Trial Judge Vicente Lim Yu on July 11, 1988. The gist of Cortes' testimony[10] is as follows:

About 8:00 o'clock in the evening of June 20, 1988, he was in his house together with his wife, their four children and the victim when several armed men led by Accused Noli Salcedo arrived. Salcedo shouted for him and the victim to come out of the house. Once outside, Cortes and Aparejado were ordered to lie on the ground; then they were hogtied. Thereafter, they were told to get up and were led to the other side of a creek, about twenty (20) meters from the house, where they were ordered to lie down again. While the witness and the victim were in such position about two or three meters apart, Salcedo shot Aparejado twice, then hacked him. Salcedo's companions likewise hacked the victim. Afterwards, they turned Aparejado's body around, opened his stomach and took out his liver. His kneecap was also removed. Then all the accused left, bringing with them the victim's liver and kneecap. Cortes claimed to have witnessed all these since the accused had a flashlight and the moon was just rising.

After the accused had left, Cortes ran towards a grassy area where he was able to untie his hands. The following morning, he informed the relatives of the victim about the incident and likewise reported the same to police authorities at Baleno, Masbate. Cortes further stated that he had known Salcedo for about a year prior to the incident and that he had no knowledge of any reason why the accused had killed Aparejado. Although he admitted not knowing the identities of Salcedo's companions at the time of the murder, he identified each of the accused before the trial court and said that they were the ones who killed Aparejado.

Municipal Health Officer Conchita Ulanday conducted the postmortem examination on the body of the victim. Her findings included:

"Signs of violence:

(1) Incised wound with a zigzag appearance 11" penetrating exposing the stomach and a portion of the intestines, located at the epigastric area (Rt.) up to the level of the navel.

(2) Incised wound slightly curving in appearance(,) 7" penetrating exposing a portion of the intestines crossing the wound #1 at the level of the navel.

(3) Gunshot wound point of entry #2, 1 cm. circular each 1" apart pre-axillary line at the level of the 4th and 5th (illegible) with the presence of tattooing (sic) (powder burns) around the wound(,) back, left, with a downward-inward in (sic) direction.

(4) Gunshot wound point of entry 1 cm. circular, scapular line, (with) tattooing (sic) around the wound, lower back, left.

(5) Hack wound at the level of the nape of the neck, almost completely detaching the head from the body.

(6) A emulsion (sic) knee cartilage, Rt.

Due to the above-mentioned post mortem findings (sic) was made that death was caused by hack, gunshot and incised wounds."[11]

Dr. Ulanday described the first, second and last wounds as serious but not fatal, although they might have been “secondary to infection.” However, the three other wounds were fatal since they injured vital organs such as the lungs, heart and liver.[12]

Witness Lydia Aparejado, widow of the victim, testified on how she learned of the killing of her husband. At that time, she was in Baleno attending to the needs of their children who were studying there. She further testified to the actual expenses incurred as a consequence of the death of her husband, amounting to P5,000.00. She also demanded indemnification for the physical and mental anguish she felt due to the killing of her husband, in an amount she left to the discretion of the court.[13]

P/Sgt. Jose Bajar of the Aroroy Police Station testified that he had conducted the investigation of Accused Danilo Laurio, Juan[14] Sual, Jr. and Edison Banculo on August 22, 1988. The investigation was in the form of questions and answers in the vernacular which were reduced into writing.[15] During cross-examination, he admitted that the three were not assisted by counsel when they signed their respective waivers--neither during the investigation nor at the time they affixed their signatures to their respective statements.[16]

Pfc. Wencell[17] Esquilona, member of the INP (now PNP) Baleno Police Station, was presented as a rebuttal witness for the prosecution. He stated that he had effected the arrest of six of the accused, namely: Manlapaz, Cortes, Esquilona, Jr., Laurio, Banculo and Sual. As to the latter three, Esquilona admitted that he was not armed with a warrant for their arrest but that he had only received a wire from the headquarters that the three were suspects in the murder of Aparejado. At the time of the arrest, he likewise recovered one lantaka, an “armalite” revolver and fatigue uniforms at the house where the three were arrested. He stated further that he did not maltreat any of them and was not present during their investigation conducted by Sgt. Jose Bajar.[18]

Evidence for the Defense

Accused Edison Banculo testified that he had been in Balite, Aroroy, Masbate, sleeping in the house of his adoptive parents, Celia[19] Laydo and Angel Entines,[20] on the night the incident occurred. His adoptive parents and co-accused Danilo Laurio were also in the same house at that time. He declared that he had signed Exhibit “G”, purportedly his confession of his participation in the killing of Aparejado, only because he could not bear the physical maltreatment by the police who had further threatened to kill him. He confirmed that he was not assisted by counsel or apprised of his rights to remain silent and to be assisted by counsel of his own choice during his investigation.[21]

Another accused, Teodulo Esquilona, Jr., testified that he had been in Masbate, Masbate, learning the art of wood lamination from a certain Eduardo Marabe, on the day the incident took place. Among his co-accused, he knew only Reynaldo Cortes while he met the others for the first time in court. He testified further that, contrary to the assertion of Prosecution Witness Edwin Cortes, he personally knew the latter who had been his neighbor in the poblacion of Baleno, Masbate from 1978 to 1986. Besides, his wife was the cousin of Edwin.[22]

Accused Reynaldo Cortes corroborated the alibi of Teodulo, Jr., stating that he slept in the latter’s house on the night of June 20, 1988 at Lagta, Baleno, Masbate. The latter had left early morning of that day and came back only the following day. He denied having known the other accused previous to the filing of the case except for Romarico Manlapaz who was a neighbor of Teodulo, Jr. He claimed to be a cousin of the victim’s father but knew no enmity or ill feeling between them. He likewise claimed to have been physically maltreated by the police during his investigation.[23]

The principal suspect, Noli Salcedo, likewise denied complicity in the murder of Aparejado. He claimed to have been in Manila working as a construction laborer from 1987 until August 1988. When asked the name of his

employer and of the firm where he worked, he could not, however, name either. At the latter date, he went back to Bantigue (in Masbate) to attend the fiesta. He was later arrested in his hometown of Kinamaligan. At the time of his arrest, he had tried to escape, as a result of which he was shot by one of the police officers. He denied knowing the Aparejados and his other co-accused.[24]

Another accused, Romarico Manlapaz, also claimed that he had been in Manila from May 10, 1988 until February 1989 when he returned to Lagta, Baleno. He admitted knowing, among his co-accused, Teodulo Esquilona, Jr. and Reynaldo Cortes who were his neighbors in Lagta. As to the rest, he only met them in jail. He also denied knowing the victim or his widow.[25]

Juanito Sual, Jr. stated that he was in his house in Gabi, Baleno, Masbate during the night of the incident. He admitted affixing his signature to the statement marked Exhibit "F" for the prosecution, but only because he could no longer bear the maltreatment of Policeman Wencell Esquilona. He confirmed that he had not been assisted by counsel during his investigation, and denied that he had been informed of his rights to remain silent and to be assisted by counsel of his own choice. He also claimed that at the time he was apprehended, there was no warrant for his arrest. He denied having been in the company of Noli Salcedo, whom he allegedly met in jail only in the evening of June 20, 1988. He said that, among the other accused, he knew only Edison Banculo, Danilo Laurio and Reynaldo Cortes prior to this case.[26]

Danilo Laurio stated that he was sleeping at the house of his adoptive parents in Balite, Aroroy, Masbate, on the night that Honorio Aparejado was killed. At that time, his co-accused Edison Banculo was in the same house. He controverted the statement of Prosecution Witness Edwin Cortes that he was one of those who had killed Aparejado. He further denied having known the victim or the latter's wife prior to his murder. He also stated that at the time of his arrest, the arresting officer was not armed with a warrant. Although he admitted having signed his alleged sworn statement presented by the prosecution, he claimed that he was forced to do so after having been physically abused by Policeman Wencell Esquilona.[27]

The adoptive mother of Accused Banculo and Laurio, Celia Laydo Entines, testified that she and the two went gold-panning in her land at Baliti (or Balite), Aroroy, Masbate on June 20, 1988 at daytime. About 7:00 o'clock in the evening, they all went to sleep and woke up about 5:00 o'clock the following morning. To her knowledge, her two adopted sons did not leave the house that night.[28]

Two other witnesses were presented, corroborating the alibi of Cortes and Esquilona, Jr., and also attesting to their good character.

Ruling of the Trial Court

In discrediting Accused-appellant Noli Salcedo's sole defense of alibi, the court a quo reasoned thus:

"Accused Noli Salcedo has been clearly and positively identified by lone witness Edwin Cortes. His alibi therefore, that he was in Manila at the time the heinous crime was perpetrated, cannot be sustained. Moreover, after examining the evidence in support of his defense, the Court finds that his alibi has the aspect of fabrication.

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"When asked by the prosecution the firm or the name of his employer where he was working in Manila, he could not remember the construction firm neither the name of his employer. This is highly impossible, considering the fact that he reports to work daily. While he may in the remote probability forget one, he could not forget both."[29]

With respect to the other accused, the trial court explained their complicity this wise:

“It is to be remembered that Edwin Cortes, witness for the prosecution knew only Noli Salcedo and Bolodoy Calderon of the eight (8) who came to his house. x x x

“The other accused were merely referred to by the witness as companions of Noli Salcedo and Bolodoy Calderon. That he was able to pinpoint the other accused in Court is understandable considering that when the above-named accused were under custodial interrogation, he was present. Under such circumstances, he could well remember the faces of the six (6) accused for purposes of implicating them.

“Their participation in the criminal act appears to be limited to being present in the premises where the acts of co-defendants who, other than being present, giving moral support to the principal accused, cannot be said to constitute direct participation in the acts of execution and their presence and company were not necessary and essential to the perpetration of the murder in question. Such co-defendants may only be considered guilty as accomplices x x x.”[30]

However, the trial court noted that the inclusion of Accused Romarico (Paco) Manlapaz, Reynaldo Cortes and Teodulo Esquilona, Jr. in the charge was based solely on the extrajudicial confessions of Edison Banculo, Juan Sual, Jr. and Danilo Laurio which, absent independent proof of conspiracy, were not admissible evidence against alleged co-conspirators[31] under Section 27, Rule 130 of the Rules of Court. Thus, a judgment of acquittal was rendered in favor of Manlapaz, Cortes and Esquilona, Jr.

The full dispositive portion of the questioned Decision reads as follows:

“WHEREFORE, the Court finds accused NOLI SALCEDO guilty beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the victim in the amount of FIFTY THOUSAND (P50,000.00) PESOS.

“Accused Edison Banculo, Juan Sual Jr. and Danilo Laurio as Accomplice (sic) in the crime of Murder, they are hereby sentenced to suffer Indeterminate Penalty of EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of Reclusion Temporal, as maximum, in the absence of any mitigating circumstance.

“All instruments seized from the accused are hereby confiscated in favor of the government, to wit:

Exh. ‘I’ - lantaka (homemade gun) long barrel;

Exh. ‘L’ - armalite revolver, Smith and Wesson, US made;

Exh. ‘L-1, L-2, L-3, L-4’ - live ammos; and

Exh. ‘L-5 and L-6’ - empty shells.

“In the service of their sentence, accused Edison Banculo, Juan Sual Jr. and Danilo Laurio shall be given the full credit of their detention.

“Accused Teodulo Esquilona, Jr., Reynaldo Cortes and Paco Manlapaz are hereby ACQUITTED.

“Let an alias warrant of arrest be issued for the apprehension of the other accused who remain at large up to the present, namely: Gemo Ibañez, Bolodoy Calderon, Gil Rapsing, Jose Fernandez, Noe Albao, Ely Rapsing and Norie Huelva.”[32]

Issues

In their appeal before us, accused-appellants aver that the trial court erred in not acquitting them on the ground of reasonable doubt and in not giving due credit to their defense of denial and alibi.[33] They claim that the prosecution failed to present clear and conclusive proof of conspiracy and of the presence of all elements of the

crime (without, however, specifying which element was not proved). Thus, although alibi is an inherently weak defense, faced with the “improbabilities and uncertainties of the prosecution’s evidence, it suffices to raise reasonable doubt as to the accused’s responsibility.”

The Solicitor General views Appellant Salcedo’s alibi as futile because he failed to prove that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Further, the prosecution eyewitness’ positive identification of him as one of the culprits pulverizes his already weak defense. The state counsel recommends, however, the acquittal of Appellants Banculo, Sual, Jr. and Laurio on the ground that their extrajudicial confessions were executed without the assistance of counsel and are, hence, inadmissible in evidence. He further states that since the only evidence implicating them in the crime are these uncounselled confessions, the constitutional presumption of innocence must be resolved in their favor.[34]

The Court’s Ruling

After a careful scrutiny of the records, we find the recommendation of the Solicitor General justified. Thus, we partially grant this appeal insofar as the conviction of Appellants Juanito Sual, Jr., Edison Banculo and Danilo Laurio is concerned. However, with regard to Appellant Noli Salcedo, in the face of the clear and categorical testimony of Prosecution Witness Edwin Cortes who related in minutiae the extent of Salcedo’s participation in the vicious slaughtering of the hapless victim, his conviction must stand.

First Issue: Sufficiency of Prosecution Evidence

Against Appellants Banculo, Sual, Jr. and Laurio

Appellants Banculo, Sual, Jr. and Laurio deny complicity in the murder of Aparejado and refute the voluntariness of the execution of their purported confessions. The three claim to have been physically maltreated by the apprehending officer and forced to sign the statements prepared by the police investigator. The trial judge, however, gave no credit to their allegations of maltreatment, and further ruled against the objections of the defense counsel to the admissibility of appellants’ statements on the ground that they had been taken without the assistance of counsel.

Significantly, the absence of counsel at the time of the investigation of the three above-named appellants was confirmed by the police investigator himself, thus:

“Q (When) Danilo Laurio signed the waiver, was he assisted by counsel?

A No, sir.

Q How about Juanito Sual, when he signed Exhibit F, his waiver, when he signed the waiver on Exhibit F, was he assisted by his counsel?

A No, sir.

Q When he signed the entire body of your investigation was he also assisted by counsel?

A No, sir.

Q How about Edison Banculo when he signed the waiver, was he assisted by counsel?

A He was not assisted.

Q When he signed the entire investigation that you made?

A Yes, sir.”[35]

Under these circumstances, this Court is left with no choice but to exclude the sworn statements of Laurio, Sual, Jr., and Banculo from the evidence against them. We recently had occasion to discourse on the inviolability of the constitutional rights of a person under custodial investigation and we find our pronouncement in *People vs. Parel*

once more worth repeating:

“Under Sec. 12, par. 1, Art. III, of the 1987 Constitution, any person under custodial investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. The right to be informed carries with it the correlative obligation on the part of the investigator to explain, and contemplates effective communication which results in the subject understanding what is being conveyed. Since what is sought to be attained is comprehension, the degree of explanation required will vary and depend on education, intelligence and other relevant personal circumstances of the person being investigated. In further ensuring the right to counsel of the person being investigated, it is not enough that the subject be informed of that right; he should also be asked whether he wants to avail himself of the same and should be told that he can hire a counsel of his own choice if he so desires or that one will be provided him at his request. If he decides not to retain a counsel of his choice or avail himself of one to be provided him and, therefore, chooses to waive his right to counsel, such waiver, to be valid and effective, must be made with the assistance of counsel. That counsel must be a lawyer.

“Even assuming that in the instant case the extrajudicial confession made by appellant spoke the truth and was not extracted through violence or intimidation, still the failure of the police investigators to inform appellant of his right to remain silent, coupled with the denial of his right to a competent and independent counsel or the absence of effective legal assistance when he waived his constitutional rights, rendered the confession inadmissible under Sec. 12, par. 3, Art. III, of the 1987 Constitution.”[36] (Underscoring supplied.)

In *People vs. Januario*,[37] we reemphasized our unwavering commitment to safeguard our people’s rights, particularly the right to counsel of persons under custodial investigation, as follows:

“The 1987 Constitution was crafted and ordained at a historic time when our nation

was reeling from ghastly memories of atrocities, excesses and outright violations of our people’s rights to life, liberty and property. Hence, our bill of rights was worded to emphasize the sanctity of human liberty and specifically to protect persons undergoing custodial investigations from ignorant, overzealous and/or incompetent peace officers. The Constitution so dearly values freedom and voluntariness that, inter alia, it unequivocally guarantees a person undergoing investigation for the commission of an offense not only the services of counsel, but a lawyer who is not merely (a) ‘competent’ but also (b) ‘independent’ and (c) ‘preferably of his own choice’ as well.”

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“The Court understands the difficulties faced by law enforcement agencies in apprehending violators of the law x x x. It sympathizes with the public clamor for the bringing of criminals before the altar of justice. However, quick solution of crimes and the consequent apprehension of malefactors are not the end-all and be-all of law enforcement. Enforcers of the law must follow the procedure mandated by the Constitution and the law. Otherwise, their efforts would be meaningless. And their expenses in trying to solve crimes would constitute needless expenditures of taxpayers’ money.

“This Court values liberty and will always insist on the observance of basic constitutional rights as a condition sine qua non against the awesome investigative and prosecutory powers of government.”

The constitutionally infirm confessions of appellants, therefore, cannot be given any iota of consideration. And without such statements, the remaining prosecution evidence is sorely inadequate to prove the participation of Banculo, Sual, Jr. and Laurio in the crime. The lone prosecution eyewitness, Edwin Cortes, tried to implicate all the accused by describing the kind of weapon each had been armed with during the night of the incident.[38] His statements relative thereto are, however, suspect. In the rest of his testimony, he referred to the accused, other

than Salcedo, merely as Salcedo's "companions." On a specific question proffered by the public prosecutor, Cortes admitted not knowing the identities of the other accused, thus:

“Q Do you want to impress to this Honorable Court that you do not know the rest of the accused at the time when this victim was killed?

A Yes, sir.”[39]

Even during his earlier investigation by the police, he had already claimed not to have recognized the other assailants. The relevant part of his sworn statement is as follows:

Q How many persons all in all did you see?

A Eight.

Q Of these eight persons were you able to recognize any one of them?

A Yes, sir.

Q Who are they?

A Noli Salcedo and Bolodoy Calderon.

Q How about the six, do you know them?

A I do not know them.”[40]

Without knowing the other accused at the time of the incident, it is quite unbelievable that the witness could recall exactly what kind of weapon each carried that night. No sufficient and credible evidence is in the records to overturn another constitutional right of the accused: the right to be presumed innocent of any offense until the contrary is proved beyond reasonable doubt. Every circumstance favoring their innocence must be taken into account and proof against them must survive the test of reason.[41] Under the above circumstances, the prosecution failed to adduce that quantum of evidence required to warrant a conviction. Hence, the three appellants deserve an acquittal.[42]

Against Appellant Salcedo

We cannot hold the same for Appellant Salcedo. He was positively and consistently identified by Witness Edwin Cortes as the principal culprit. Upon the group's arrival at the witness' house, it was Salcedo who shouted for Cortes and Aparejado to get down from the house. He was the one who gave orders for them to lie down on the ground, to be hogtied and to proceed to the other side of the creek.[43] The witness was categorical in declaring that it was Salcedo who shot Aparejado twice and hacked him after that. He testified:

Q When you were already lying flat on the ground near that creek what happened?

A Noli Salcedo shot Honorio Aparejado.

Q Was Honorio Aparejado hit?

A Yes, sir.

Q How far were you when you saw Honorio Aparejado ... Noli Salcedo when he shot Honorio Aparejado?

A Just near, about two meters.

Q How were you able to see that it was Noli Salcedo who shot Honorio Aparejado when it was nighttime?

A I could recognize his voice and his physical built.

Q Was there a light at that time?

A Yes, sir.

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Q How many times did Noli Salcedo shoot Honorio Aparejado?

A Two times.

Q Then after shooting Honorio Aparejado, what else transpired?

A He was hacked.

Q Do you want to tell us that Honorio Aparejado was again hacked?

A Yes, sir.

Q By whom?

A The companions of Noli Salcedo.

Q How about Noli Salcedo, did he hack Honorio Aparejado?

A Yes, sir.

Q How many times?

A Only once.”[44]

His testimony essentially affirmed his statements during the police investigation, thus:

“QUESTION Last June 20, 1988 at about 8:00 o’clock in the evening where were you?

ANSWER I was in my house at Gabi, Baleno, Masbate.

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Q While you were in your house on that date and time, do you remember of (sic) any unusual incident that happened?

A Yes sir.

Q Tell us what happened.

A During that date and time several persons arrived and told us to go down.

Q How many persons all in all did you see?

A Eight.

Q Of these eight persons were you able to recognize any one of them?

A Yes sir.

Q Who are they?

A Noli Salcedo and Bolodoy Calderon.

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Q What happened after you were told to lay flat faced down?

A While we were lying down, Noli Salcedo shot Norie Aparejado.

Q Was Norie Aparejado hit?

A Yes sir.”[45]

Appellant Salcedo, instead of introducing evidence to show that the witness had evil motive in imputing the crime to him, even admitted that he knew of no reason why Edwin Cortes would testify falsely against him.[46] Consequently, Cortes’ positive and clear identification of Salcedo is sufficient to convict him. It has been repeatedly held that the testimony of a single witness, if credible and positive and satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict.[47]

Second Issue: Alibi

In the light of the prior discussion exculpating Appellants Banculo, Sual, Jr. and Laurio from the murder of Aparejado, we shall no longer discuss the sufficiency and worthiness of their alibi.

With respect to Appellant Salcedo, his defense of alibi, juxtaposed with the positive identification made by Witness Cortes, pales in probative value and is totally inadequate to justify an exoneration. Salcedo tried to establish that it was physically impossible for him to have been at the scene of the crime since he was supposedly working in Manila at that time. But when asked by the public prosecutor the name of his employer in Manila, he simply replied that he could not remember anymore.[48] As aptly observed by the trial court, it is highly impossible for one not to remember either the name of his employer or the firm where he had worked.[49] Salcedo did not even attempt to try to recall either name. This lends grave doubt as to the truthfulness of his defense. The inherent weakness of alibi as a defense was not overcome. Indubitably, it cannot prevail over the positive identification made by the prosecution witness.[50]

Treachery

Although the trial court stated that the killing was qualified by treachery, it did not explain what circumstances of treachery were present. Nonetheless, the facts established during trial unmistakably point to the presence of means, method or form employed by the accused which tended directly and specially to ensure the execution of the offense without risk to himself arising from the defense that the offended party might make. The Court is satisfied that these essential requirements of treachery were proven by clear and convincing evidence as conclusively as the killing itself.[51]

In the case before us, there were eight assailants, at least one of whom was armed with a gun and a bolo. It was sufficiently established by the prosecution that the victim had first been hogtied and then made to lie down facing the ground. And it was in such position that Salcedo fatally shot and hacked him. Obviously, the killing was attended by alevosia. Aparejado was rendered defenseless and absolutely with no means to repel or evade the attack.[52] This qualifies the killing to murder.

Damages

This Court observes that the trial court did not rule on the damages sought to be recovered by the widow of the victim. Lydia Aparejado testified that she incurred expenses for the embalmment, the coffin and funeral lot in the estimated amount of P5,000.00. Of such expenses, the Court can only give credence to those supported by receipts and which appear to have been genuinely incurred in connection with the death, wake and burial of the victim.[53] We scoured the records for any receipt in support of her claim but found none. Actual damages cannot, therefore, be granted to the victim's heirs. However, we affirm the civil indemnity in the amount of P50,000.00 given by the trial court. This is automatically awarded without need of further evidence other than the fact of the victim's death.

Anent moral damages, the victim's widow did state that she suffered headaches due to the death of her husband; with him gone, she worried about how to support her children. Moral damages, which include physical suffering and mental anguish, may be recovered in criminal offenses resulting in physical injuries[54] or the victim's death, as in this case. The amount of moral damages is left to the discretion of the court. Since the court a quo did not exercise such discretion, this Court may do so because an appeal in a criminal case opens the whole case for review. This Court now deems justified the award of moral damages in the amount of P50,000.00 to Lydia, the wife of Honorio Aparejado.

WHEREFORE, premises considered, the appeal is partially GRANTED. Appellants Edison Banculo, Juanito Sual, Jr. and Danilo Laurio are hereby ACQUITTED on reasonable doubt and are ordered RELEASED

immediately unless they are being detained for some other legal cause. The assailed Decision finding Noli Salcedo GUILTY beyond reasonable doubt of murder and imposing on him the penalty of reclusion perpetua as well as the payment of the sum of P50,000.00 as indemnity to the heirs of the victim, Honorio Aparejado y Fideles, is AFFIRMED. Furthermore, accused-appellant is also ordered to pay moral damages in the amount of P50,000.00 to the victim's wife, Lydia Aparejado. The other parts of the said Decision, insofar as they are not inconsistent with the foregoing, are hereby also AFFIRMED.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., and Melo, JJ., concur.
Francisco, J., on leave.

[1] Section 12(1), Article III of the 1987 Constitution provides:

“Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.”

[2] *People vs. Duero*, 104 SCRA 379, 385-6, May 13, 1981; *People vs. Galit*, 135 SCRA 465, 472, March 20, 1985; *People vs. Simon*, 234 SCRA 555, 566, July 19, 1994; *People vs. Rodriguez*, 205 SCRA 791, 797, February 4, 1992; *People vs. Januario*, G.R. No. 98252, February 7, 1997, and many others.

[3] Republic Act No. 7438. Section 2 thereof provides:

“Sec. 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. --a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

“(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer (in) private with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

“(c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

“(d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.

“(e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise such waiver shall be null and void and of no effect.

“(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him

or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's 'immediate family' shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

"As used in this Act, 'custodial investigation' shall include the practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the 'inviting' officer for any violation of law."

[4] *People vs. Cabintoy*, 247 SCRA 442, 449, August 21, 1995; *People vs. Bandula*, 232 SCRA 566, 574-576, May 27, 1994; *People vs. Rodriguez*, supra.

[5] See *People vs. Balisteros*, 237 SCRA 499, 515-516, October 7, 1994; *People vs. Molas*, 218 SCRA 473, 481, February 5, 1993.

[6] Rollo, p. 6.

[7] Rollo, p. 24.

[8] Assailed Decision penned by Judge Gil P. Fernandez, pp. 7-8; Rollo, pp. 31-32.

[9] Exhibit "C"; records, p. 6.

[10] TSN, April 4, 1990, p. 3-10; records, pp. 356-363. See also, TSN, April 5, 1990, pp. 3-9; records, pp. 240-246.

[11] Exhibit "A"; records, p. 203.

[12] TSN, January 23, 1990, pp. 3-7; records, pp. 346-350.

[13] TSN, April 6, 1990, pp. 8-10; records, pp. 371-373.

[14] Also referred to as Juanito.

[15] Exhibits "E", "F" and "G"; records, pp. 11-16.

[16] TSN, October 16, 1990, pp. 2-16; records, pp. 269-283.

[17] Sometimes spelled as "Wencill" or "Wincell".

[18] TSN, December 7, 1990, pp. 13-18; records, pp. 325-331.

[19] Also referred to as "Cecelia" in the transcripts.

[20] Also spelled "Entenez".

[21] TSN, November 28, 1990, pp. 5-11.

[22] TSN, October 16, 1990, pp. 19-25; records, pp. 286-292.

[23] TSN, December 5, 1990, pp. 14-21; records, pp. 389-396.

[24] *Ibid.*, pp. 25-32; records, pp. 400-407.

[25] TSN, December 3, 1990, pp. 16-18; records, pp. 440-442.

[26] TSN, December 4, 1990, pp. 28-38; records, pp. 294-304.

- [27] Ibid., pp. 38-47; records, pp. 304-313.
- [28] TSN, December 7, 1990, pp. 2-11; records, pp. 314-323.
- [29] Assailed Decision, p. 4; Rollo, p. 28.
- [30] Ibid., p. 6; Rollo, p. 30.
- [31] Ibid., pp. 5-6; Rollo, pp. 29-30.
- [32] Ibid., pp. 7-8; Rollo, pp. 31-32.
- [33] Appellants' Brief, p. 1; Rollo, p. 55.
- [34] Appellee's Brief, pp. 16-18; rollo, pp. 94-96.
- [35] TSN, October 16, 1990, p. 10; records, p. 277.
- [36] G.R. No. 108733, September 16, 1996.
- [37] Supra.
- [38] TSN, April 4, 1990, pp. 4-5; records, pp. 357-358.
- [39] Ibid., p. 7; records, p. 360.
- [40] Exhibit "2"; records, p. 9.
- [41] People vs. Frago, 232 SCRA 653, May 31, 1994.
- [42] People vs. Januario and Canape, G.R. No. 98252, February 7, 1997.
- [43] TSN, April 4, 1990, pp. 5-6; records, pp. 358-359.
- [44] Ibid., p. 7; records, p. 360.
- [45] Supra note 37.
- [46] TSN, December 5, 1990, p. 31; records, p. 406.
- [47] People vs. Añonuevo, G.R. No. 112989, September 18, 1996.
- [48] TSN, December 5, 1990, p. 32; records, p. 407.
- [49] Assailed Decision, p. 4; rollo, p. 28.
- [50] People vs. Añonuevo, supra.
- [51] People vs. Silvestre, 244 SCRA 479, May 29, 1995.
- [52] People vs. Dalanon, 237 SCRA 607, October 14, 1994; People vs. Mendoza, 236 SCRA 666, September 22, 1994.
- [53] People vs. Rosario, 246 SCRA 658, 671, July 18, 1995.
- [54] People vs. Aliviado, 247 SCRA 300, 310, August 14, 1995.

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