

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MOISES BACAMANTE Y ORDANIZA, ACCUSED-APPELLANT.

G.R. No. 103627. September 05, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

On 29 January 1986, Moises Bacamante y Ordaniza was charged with robbery with homicide in an Information which reads:

"That on or about December 19, 1985, at nighttime purposely sought to better accomplish his criminal designs, in the City of Manila, Philippines, the said accused conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and by means of violence against or intimidation upon the person of Chua Huat, owner/proprietor of Chua Huat Enterprises located at 1271-73 Pedro Gil St., Paco, this City, and/or using force upon things, take, rob and carry away money/merchandise in the approximate amount of P5,000.00, belonging to said Chua Huat, against his will, to the damage and prejudice of said owner in the aforesaid amount of P5,000, Philippine Currency; that by reason or on the occasion of said robbery and for the purpose of enabling him to take, rob and carry away the articles abovementioned, the herein accused, in pursuance of his conspiracy with others still unidentified, did then and there wilfully, unlawfully and feloniously, with intent to kill, assault and use personal violence upon said Chua Huat by stabbing him on the head, chest and other parts of the body, thereby inflicting upon the latter mortal wounds which directly caused the death of said Chua Huat.

Contrary to law."^[1]

Accused-appellant pleaded not guilty when arraigned on 4 April 1986 and after trial, the Regional Trial Court, Br. 18, Manila rendered a decision* dated 28 October 1991, the dispositive part of which reads:

"WHEREFORE, this Court finds the accused guilty beyond reasonable doubt of the crime of robbery with homicide with the aggravating circumstances of abuse of confidence; nighttime and evident premeditation, and hereby sentences him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law, and to pay the costs.

SO ORDERED."^[2]

The undisputed facts of this case are as follows:

1. Accused-appellant Moises Bacamante y Ordaniza worked as an all-around serviceman at Chua Huat Enterprises, a hardware store located at No. 1271-73 Pedro Gil St., Paco Manila, owned by the victim Chua Huat.
2. The victim, his wife and an adopted son Fernando Ngo lived at 1560 Paz St., Paco, Manila. The back entrance of the hardware store is just across the street from said residence.
3. At around 8:30 in the evening of 19 December 1985, smoke was seen coming from the Chua Huat hardware

store.

4. A woman-vendor who saw the smoke informed the Chua residence of the fire and Fernando Ngo immediately proceeded to the hardware store. Upon entering, Fernando called out for his father, Chua Huat who was working late inside his store.

5. Fernando found his father on the ground floor of the store lying in a pool of his own blood and upon nearing the body, he smelled paint thinner which had been poured on the dead body and around the area of the store.

6. Fernando also discovered an ax with dried blood about two (2) meters away from the victim's body. He found three (3) electric flat irons connected to electric outlets and placed on top of cans of paint thinner. The flat irons which were very hot caused the smoke which the woman-vendor spotted from outside of the store. Ngo also testified that money amounting to P10,000.00 was missing from the store's cash register and vault.

7. The death of the victim Chua Huat was found to have been caused by multiple stab and puncture wounds which penetrated the lungs and heart and lacerated wounds on the head.[3]

8. On the morning of 20 December 1985, all the employees of Chua Huat Enterprises reported for work except accused?appellant Moises Bacamante.

9. On the basis of investigations conducted by members of the Western Police District (WPD) particularly Pfc. Rodolfo Kalaquian, who was a close friend and "kumpadre" of the victim, accused Moises Bacamante became a suspect in the crime.

10. On 23 January 1986, a police team from the WPD, consisting of Kalaquian, Pfc. Allen Aguilar and Pfc. Regalado, was dispatched to Barrio Lingkod, Maribojoc, Bohol province, the hometown of accused. In the morning of 24 January 1986, the WPD team and some local policemen proceeded to the house of accused in Barrio Lingkod. Upon seeing the police team, accused Moises Bacamante ran to the back of his house, and when Pfc. Kalaquian fired warning shots, he ran further to a grassy area beyond his house. The police team later convinced the parents of accused to let their son surrender to them. When accused voluntarily surrendered, the WPD team took him to Manila. The accused's brother Teotimo was allowed to accompany him to Manila.

11. On 25 January 1995, accused Moises Bacamante executed a statement admitting his guilt. The statement was signed by Pfc. Salvador Fradejas of the WPD Homicide Section and Teotimo Bacamante as witnesses.

The appeal brief filed by accused's counsel de parte assigns the following alleged errors of the trial court:

"The lower court gravely erred in convicting accused on the basis of inadequate and insufficient circumstantial evidence presented.

The lower court gravely erred in not considering the constitutional right of the accused to counsel of his choice during custodial investigation.

The lower court gravely erred in basing conviction of the accused of [sic] his confession which is inadmissible in evidence."[4]

The circumstances relied upon by the trial court in convicting the accused are:

a. Paz Marasigan, a magazine stand vendor, testified that at around 8:30 in the evening of 19 December 1985, while she was at her magazine stall near the Chua Huat hardware store, she saw accused walk by. A few minutes later, she saw smoke coming out of the hardware store. She then requested a fellow vendor to inform the Chua household of the fire in the hardware store.

b. Fernando Ngo testified that in the afternoon of 19 December 1985, he saw accused cutting sets of flat iron electric cords of about two and one-half (2 1/2) meter lengths. Ngo stated that since the lengths were irregular, he asked the accused why he was cutting said lengths of electric cords. The accused told Ngo that a customer specifically asked for such lengths of electric cords. Ngo also stated that on the same day accused was supposed to work until 7:00 in the evening but he asked permission to leave at about 5:30 saying he had to meet a relative in Parañaque.

Ngo further testified that the lengths of the electric cords he earlier saw with accused, were similar to the cords connected to the flat irons later found at the crime scene.

c. Accused fled when he saw the police team headed for his house in Bohol. It was only when accused's parents were persuaded by the police team to ask their son to surrender that accused came out of his hiding place.

d. Accused executed an extra-judicial confession when he was taken to the WPD headquarters on 25 January 1986, admitting his guilt.

e. Accused failed to report back for work after the Christmas holidays. It was only on 24 January 1986 that the police team found him in his hometown in Bohol.

In this appeal, accused assails the admission in evidence of his extrajudicial confession, claiming that his constitutional rights to counsel, to remain silent and to be presumed innocent were violated. He argues that a certain Atty. Gilbert Zulueta, who was merely visiting the police station at the time and who, according to the extrajudicial statement, assisted him as counsel, never in fact effectively informed him of the consequences of the extrajudicial confession. Accused contends that he was forced to sign the extrajudicial confession since the police officers mauled him and even refused his request that his brother Timoteo be allowed to find a lawyer for him or contact their relatives. Accused also contends that the circumstantial evidence adduced by the prosecution precludes his conviction since the requisites under Rule 133, Section 4 of the Rules of Court were not satisfied.

We have carefully reviewed the quite voluminous transcripts of stenographic notes of this case. It is unfortunate that the brief for accused-appellant provided little help in reviewing this case since almost fifty-percent (50%) of the seventeen (17) page appellant's brief contains quotations from the transcripts devoid of adequate discussion of arguments for accused-appellant. The rest of the brief contains paragraphs, sentences or phrases lifted from cases decided by the Court as well as citations of decided cases followed by bare conclusions that appellant must be acquitted based on said cases. Indeed, the brief for accused-appellant leaves much to be desired, to say the least. It appears that accused-appellant's present counsel, who was not the lawyer who appeared for accused in the trial court, exerted less than the most diligent effort in going over the records of this case and in preparing the appellant's brief. This notwithstanding, the Court reviewed the entire records of this case to insure that the conviction of accused-appellant would be affirmed only if the prosecution had overcome the constitutional presumption of innocence by proof beyond reasonable doubt.

It appears from the records that at least two (2) other persons aside from appellant Bacamante became suspects during the investigations of this case. Edgar Resimilla, a former employee of the victim, was picked up by the police prior to accused-appellant. It was Resimilla who allegedly admitted participation in the crime but he supposedly pointed to Moises Bacamante as the mastermind. It is unclear from the records why Resimilla was later released and not charged together with Bacamante.

Pepito Guevarra, an occasional visitor of Fernando Ngo at the hardware store, was initially identified by the WPD as an accomplice of Bacamante.[5] Guevarra allegedly admitted stabbing the victim after Bacamante clubbed him from behind. Guevarra allegedly pointed to accused-appellant as the one who planned the commission of the

crime. Guevarra was also detained for investigation but, like Resimilla, he was later released for unexplained reasons and, like Resimilla, he was not charged together with Bacamante.

The alleged admissions of Resimilla and Guevarra were material in identifying accused-appellant as a suspect to the crime. It is apparent that the case for the prosecution was not well organized and prepared since the theory that at least three (3) persons committed the offense resulted in the filing of an information against accused-appellant Bacamante only and the prosecution was unable to gather evidence other than circumstantial.

On the issue of admissibility of appellant's extrajudicial confession, the testimonies of two (2) witnesses for the prosecution cannot be ignored.

Patrolman Salvador Fradejas of the WPD Homicide Station, testified that he was the one who was present when accused executed his extrajudicial confession. Fradejas stated that Atty. Gilbert Zulueta was requested to act as counsel for accused during the custodial investigation. It is to be noted however that Fradejas admitted that while accused was undergoing investigation and answering the questions propounded to him, Atty. Zulueta would "come and go" and that Atty. Zulueta was not at all times within hearing distance of accused but was merely "within the premises".[6]

Atty. Gilbert Zulueta himself admitted that he could not remember having informed accused of the constitutional presumption of his innocence.[7]

Given the above admissions by witnesses for the prosecution, the inadmissibility of the extrajudicial confession of accused Moises Bacamante is mandated under Sec. 12(1), Sec. 12(3) and Sec. 17, Article III of the Constitution which provide:

"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.

xxx xxx xxx

(3) Any confession or admission in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

xxx xxx xxx"

"Sec. 17. No person shall be compelled to be a witness against himself."

In the recent case of *People v. Lucero*,[8] the Court stated:

"We hold that when the Constitution requires the right to counsel, it did not mean any kind of counsel but effective and vigilant counsel."

The term "effective and vigilant counsel" necessarily and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.

The next issue to be settled is whether the remaining circumstantial evidence overcomes the presumption of innocence in favor of accused-appellant.

Circumstantial evidence is sufficient for conviction only if the following conditions concur:

- a) There is more than one circumstance;
- b) The facts from which the inferences are derived are proven;
- c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[9]

As previously discussed, the circumstances relied upon by the trial court were:

1. The testimony of Paz Marasigan that she saw accused-appellant Moises Bacamante near the victim's hardware store a few minutes before smoke was seen coming from the store.
2. Fernando Ngo's testimony that he saw accused-appellant cut electric cords on 19 December 1985, the lengths of which matched the cords used on the electric flat irons that were used to apparently set the hardware store on fire.
3. Accused-appellant fled upon seeing police officers approach his house in Bohol.
4. Accused-appellant's failure to return to work after the incident.

The combination of the above circumstances should constitute an unbroken chain which leads to only one fair and reasonable conclusion; that accused is guilty of the offense charged. Otherwise, if at least one theory based on these circumstances leads to proof of his innocence, the Court has to acquit the accused based on reasonable doubt. Indeed, it is preferred to free a guilty one based on reasonable doubt than to imprison an innocent man.

In the present case, each of the enumerated circumstances does not make strong links in the unbroken chain which justifies conviction based on circumstantial evidence.

It should be obvious that mere presence near the crime scene is not sufficient to establish an accused's guilt. It is to be noted that Paz Marasigan testified that she saw accused merely "pass-by" the vicinity of the hardware store. She did not state that accused came from or went towards the direction of the hardware store. Even accused admitted that after leaving the store at around 5:30 p.m. on 19 December 1985, he was within a few blocks of the store before he finally went home to pack his clothes and proceed to the airport where he hoped to catch an early morning flight as a "chance passenger".

That accused-appellant was seen cutting electric cords of similar lengths as those attached to the flat irons which caused the smoke inside the store, does not necessarily point to him as the felon. Of note is the testimony of Teresita Guy who stated that on one occasion, she heard Fernando Ngo address accused in the vernacular "Wala ka namang kinalaman sa pagkamatay ng papa ko, si Pepito Guevarra" (You had nothing to do with the death of my father, it was Pepito Guevarra). This remark of Ngo becomes significant when we consider that only Ngo testified to having seen accused cut lengths of electric cords of similar lengths to those used in the crime. Besides, there was no testimony that the cords allegedly cut by accused were of the same type as those connected to the flat irons. Only the lengths were similar, according to Ngo.

Accused's flight upon seeing the law enforcers likewise does not necessarily indicate his guilt. It should be remembered that the police officers were in civilian clothes and only Rodolfo Kalaquian was known to accused and the latter knew that Kalaquian was a close friend and "kumpadre" of the victim. It is not far-fetched to theorize that accused's initial reaction was one of natural fear of reprisal from Kalaquian and not one of guilt. Moreover, accused later agreed to go with the police team to Manila.

Accused's failure to return to work is easily explained by the fact that he was undeniably on Christmas vacation from 19 December 1985. There is nothing in the records to indicate that accused-appellant went into hiding. If he indeed committed the offense and he had information that he had become a suspect, it was quite illogical for him

to stay in his home in Bohol where he could easily be located and arrested.

We do not entirely discount the possibility that accused-appellant Moises Bacamante may have committed the crime but the mandate of the constitution allows conviction only when there is moral certainty of the accused's guilt. Such moral certainty is not present in this case.

WHEREFORE, based on the foregoing considerations and premises, the appealed decision is hereby SET ASIDE. Accused-appellant is ACQUITTED based on reasonable doubt and ordered RELEASED unless he is also detained for some other legal ground.

SO ORDERED.

Davide, Jr., Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 7.

* Penned by Judge Perfecto A. S. Laguio, Jr.

[2] Rollo, p. 38.

[3] TSN, 9 May 1986, pp. 3-6.

[4] Rollo, p. 88.

[5] Exhibit "K-1".

[6] TSN, 11 April 1986, pp. 30-31, 52-54.

[7] TSN, 28 April 1986, p. 25.

[8] G.R. No. 97936, 29 May 1995.

[9] Sec. 4, Rule 133, Rules of Court

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