

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FORDITO RUELAN Y VILLABER, ACCUSED-APPELLANT.

G.R. No. 106152. April 19, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court of Davao City, Branch 13, convicting the accused, Fordito Ruelan, of the crime of MURDER and imposing on him the penalty of "life imprisonment."

The information reads:

"That on or about August 18, 1988, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, using an axe did then and there willfully, (sic) unlawfully and feloniously attack and assault Rosa Jardiel, inflicting a hack wound on the head and forehead of the victim, which caused her death, to the damage of the heirs of the victim.

"Contrary to law."[1]

Upon arraignment on November 7, 1988, the accused assisted by counsel, pleaded "NOT GUILTY." Trial on the merits ensued and a decision was subsequently rendered on August 16, 1991, the dispositive portion of which reads:

"WHEREFORE, finding the accused guilty as charged, he is hereby sentenced to suffer imprisonment for life, and to indemnify the heirs of the victim in the amount of P200,000.00.

"SO ORDERED."[2]

The facts established by prosecution's evidence are summarized in the People's brief as follows:

"On August 4 1988, Spouses Ricardo and Rosa Jardiel hired appellant as a store helper at their store located in Bankerohan Public Market, Davao City (TSN, January 24, 1989, p. 3). Appellant helped Jardiel spouses in selling and delivering rice to various customers. He stayed in the couple's residence but he had a separate quarters for sleeping.

"On August 18, 1988, at around 4:00 a.m., Ricardo Jardiel was aroused by the closing of the bedroom door and he saw his wife Rosa Jardiel leaving his room. Ricardo Jardiel stood up and followed his wife who went towards the gate of the house. Rosa Jardiel was joined by appellant since they would open the store in Bankerohan Public Market (Exhibit 'G'; TSN, January 24, 1989, p. 4). Rosa Jardiel talked to appellant and ordered him to bring an axe which would be used in repairing some fixtures in the store. Appellant followed her order and took an axe and a sack (TSN, February 5, 1990, p. 11). When they were about to leave the premises, Rosa Jardiel's house dog got loose and went out towards the street. Rosa Jardiel got angry and scolded appellant while she walked ahead of him along Tulip Drive going to McArthur Highway (ibid. p. 5). Appellant pleaded Rosa Jardiel to stop berating him but Rosa Jardiel did not heed to his request. Appellant got fed up and with the use of his axe, he struck Rosa Jardiel behind her right ear causing her to fall face down.

Thereafter, appellant dragged Rosa Jardiel to a grassy portion at the side of the street and then immediately left the place (Exhibit G).

"At around 5:00 o'clock a.m., the Talomo Patrol Station received a report from Metrodiscom Central that an incident occurred in Tulip Drive, Matina (TSN, September 25, 1989, p. 2). Lagmay and Zozobrado with four (4) other policemen were dispatched to investigate the incident. When the group arrived at the scene, they saw the lifeless body of Rosa Jardiel lying on the grass beside the street. Three (3) to five (5) meters away from the body of the victim, the group recovered an axe and a sack with blood stains.

"After the investigation, the group proceeded to the residence of the victim about three hundred (300) meters away from the scene of the crime. They found out that the steel gate of the Jardiel residence had blood stains on the upper portion as well as on its handle (TSN, September 25, 1989, pp. 3, 9). Afterwards, the group went towards appellant's quarters but appellant was not around. Except for appellant's yellow t-shirt with blood stains, the group noticed that appellant's personal belongings were missing.

"On the same day, at around 9:30 a.m., Dr. Jose Ladrado of the Office of City Health conducted an autopsy of the cadaver of the victim (TSN, April 17, 1989, p. 3). Dr. Ladrado's Medico-legal Necropsy Report shows that the victim suffered lacerated wound on the left eyebrow and hack wound behind the right ear that fractured the victim's skull (ibid, p. 4). Dr. Ladrado stressed that the victim was first struck behind the right ear that caused her to fall face down. And due to victim's fall, her head hit the pavement causing lacerated wound on her left eyebrow. Dr. Ladrado further testified that the assailant could have used a heavy sharp-edge instrument similar to an axe (ibid, p. 6).

"On August 20, 1988, the Talomo Police Station received a report from Pfc. Gumilang of Kiblawan Police Station that appellant had already surrendered. Immediately Adonis Zozobrado, Lagmay and Boiser were dispatched to bring appellant to the police station. (TSN, September 25, 1989, p. 4) When the policemen arrived at Kiblawan Police Station, they learned that appellant was in the custody of the Barangay Captain. They went to the Barangay Captain but the latter told them that appellant had gone home. The policemen proceeded to appellant's residence but they could not find appellant.

"On August 24, 1988, Pat. Dora of Kiblawan Police Station accompanied appellant to Talomo Police Station and surrendered him to its station commander, P/Lt. Reynaldo Obrero. Accordingly, Obrero placed appellant under the custody of the police station (TSN, October 16, 1989, p. 4). However, they could not conduct any investigation because appellant wanted to seek the assistance of a lawyer (ibid, p. 5). There being no lawyer in the police station, Obrero, his driver and Lagmay brought appellant to the CLAO at Rizal Street, Davao City.

"At the CLAO, they met Luz Cortez, a lawyer on duty and who was assigned to assist appellant. Prior to the investigation, Atty. Cortez conferred with appellant and inquired if he had a counsel of his choice, and appellant replied in the negative (TSN, November 27, 1989, p. 4). Hence, Atty. Cortez acted as appellant's counsel.

"Atty. Cortez provided Lagmay with a typewriter as she sat beside the appellant and in front of Lagmay. Before the first question was propounded to appellant by Lagmay, Atty. Cortez apprised appellant, in his own dialect, of his constitutional rights (ibid, TSN, October 16, 1989, p. 7), that is to say: the right to remain silent and the right to have a lawyer of his own choice; and the right to be informed of such rights. Appellant signified that he knew his constitutional rights and that anything adduced during the investigation may be used against him in any proceeding (TSN, November 27, 1989, pp. 4, 6).

"Whenever a question was propounded by Lagmay, Atty. Cortez translated it in appellant's dialect with a concomitant (sic) warning that he had the right to remain silent. Despite several warnings, appellant answered all the questions in a straightforward manner. Appellant's answers were translated and reduced into writing by Lagmay with the supervision of Atty. Cortez. If Atty. Cortez was not satisfied with Lagmay's translation, she would correct it and give the proper translation (TSN, November 27, 1989, p. 6).

"After the investigation, Lagmay gave the typewritten statements to Atty. Cortez who examined the statements thoroughly and ordered her secretary to reproduce another copy. When the copy was reprinted, Atty. Cortez consulted appellant if he would sign his declaration admitting his guilt and appellant said 'yes' (TSN, October 16, 1989, p. 8; November 27, 1989, p. 11). Since Atty. Cortez was convinced that appellant knew his constitutional rights and his declarations were made of his own free will, she let appellant sign his extrajudicial confession. Thereafter, Atty. Cortez signed the sworn statement in the presence of appellant and Lagmay." [3]

The accused-appellant now assigns the following errors:

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED.

"THE TRIAL COURT ERRED IN SENTENCING THE ACCUSED-APPELLANT TO SUFFER IMPRISONMENT FOR LIFE.

"THE COURT ERRED IN GIVING MORE HEIGHT (SIC) ON THE ALLEGED CONFESSION OF THE ACCUSED WHICH WAS DENIED BY HIM FOR BEING TAKEN IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS." [4]

In assailing his conviction, herein appellant raises the following issues for review, to wit: (a) whether he can be found guilty beyond reasonable doubt of the crime charged based on the established facts, without the alleged written extrajudicial confession; (b) whether the trial court was correct in appreciating the presence of the three aggravating circumstances; and (c) whether the imposition of the penalty of "life imprisonment" by the trial court was proper.

It is the contention of appellant that his extrajudicial confession is inadmissible because he was never apprised of his constitutional rights to remain silent, to counsel, and to be informed of such rights. He claims that contents of his confession were fabricated and that he signed the document on the insistence of policeman Martin Lagmay, Jr. that it would be beneficial to him. He further alleges that the testimonies of the prosecution witnesses were false and were only made to cure the defects of his extrajudicial confession.

The basic thrust, therefore, of appellant's assignment of errors is the inadmissibility of his extrajudicial confession and the credibility of the prosecution witnesses.

The contention of appellant that his extrajudicial confession is inadmissible is untenable. Well-settled is the rule that a confession is presumed to be voluntary until the contrary is proved and the burden of proof is upon the person making the confession. [5] In this case, the presumption has not been overcome. Not only is the appellant's confession replete with details only he could have supplied, but the circumstances surrounding its execution belie his claim.

Atty. Luz Cortez, the CLAO (now PAO) lawyer who assisted the appellant, testified that before the investigation was conducted, she informed the appellant of his constitutional rights to remain silent, to counsel and to be informed of such rights. [6] In fact, Atty. Cortez even advised the appellant that any statement given by him in the investigation could be used against him in any proceeding in court. [7] Despite being informed of these rights, appellant executed the sworn statement admitting that he struck the victim, Rosa Jardiel, with an axe behind her right ear. The contents of the appellant's extrajudicial confession are as follows:

"PRELIMINARY: Mr. Fordito V. Ruelan, you are being informed that you are now under investigation in connection with the Murder case wherein you are principally the suspect. Before we ask you any question you must understand your legal right not to give statement if you do not wish to, any thing that you say maybe used as evidence against you in any proceeding, that you have the right to a counsel of your own choice, if you cannot afford a lawyer and you want one, a lawyer will be provided for you to assist you during investigation.

Is this clearly understood by you?

"ANSWER: Yes, sir.

"QUESTION: Now do you still wish to proceed with this investigation.

"ANSWER: Yes, sir.

"QUESTION: Having manifested your willingness to give statement in the presence of Atty. Luz T. Cortez, do you swear to tell the truth in this investigation?

"ANSWER: Yes, sir.

"1. Question: Please tell your name, age and other personal circumstances?

Answer : I am Fordito Ruelan y Villaber, 19 years old, married, farmer, elementary graduate, a native of Babak, Samal, on January 16, 1969, and presently residing at Pasig, Kiblawan, Davao del Sur.

"2. Q- Before or last three weeks where were you then?

A- I was working with the residence of Jardiel located at Tulip Drive, Matina, this City, as store assistant.

"3. Q- How long have you been working with the Jardiel family?

A- I just start working with them on August 4, 1988.

"4. Q- Do you know of any reason why are you now in this office of the CLAO?

A- I have been brought here for investigation, to be assisted by a CLAO lawyer, after I voluntarily surrendered to the POLICE authorities in connection with the killing of my employer, Rosa Jardiel.

"5. Q- Now, do you have any idea about the killing of your employer?

A- Yes, sir.

"6. Q- Who killed your employer?

A- I could have been the one, sir.

"7. Q- When and where did the incident occur?

A- At or about 3:30 A.M. on August 18, 1988 along Tulip Drive, Matina, this City.

"8. Q- Will you please narrate to me the circumstances of the incident that led to the death of your employer?

A- In that early morning I and Rosa Jardiel were bound for the store at Bankerohan, this City she told me to bring an axe to do some hammering in the store. As we came out of the gate the dog of my employer also went out towards the street. Because of this, as she usually did in the past, she scolded me and continued to berate at me while we were on our way to the highway. I requested her to stop uttering so many things but she kept on. I got fed up with her scolding and instantly, I struck her with the ax I was carrying, hitting her on the right head, then I dragged her to a portion at the side of the street and I immediately left the place.

"9. Q- Record shows from Talomo Patrol Station blotter disclosed that the victim brought along with during the incident a bag containing a cash money of undetermined amount and one caliber .32 which was discovered missing. Do you have any idea about the said losses?

A- I don't have any idea, sir.

"10. Q- I have nothing to ask from you for the moment, do you have something to say or add in your

statement?

A- No more, sir.

"11. Q- Are you willing to sign this statement of yours freely and voluntarily without being forced in the presence of your counsel, Atty. Luz T. Cortez?

A- Yes, sir."[8] (Emphasis ours)

The foregoing narration certainly bespeaks spontaneity and truth, the details contained therein given could only have been known by the confessant himself.

Based on the foregoing, there can be no other conclusion than that Ruelan's extrajudicial statement/confession is admissible in evidence and that the trial court correctly considered it in determining the guilt of the appellant. By voluntarily executing his extrajudicial confession after having been informed by Atty. Luz Cortez of his constitutional rights, and in the presence of and with the assistance of said counsel, appellant Ruelan effectively waived his right to remain silent.

Moreover, we affirm the judgment of conviction by the trial court on the basis of the testimonies of the witnesses presented by the prosecution. A trial court's findings of fact carry great weight and respect for it has the privilege of examining the deportment and demeanor of witnesses and, therefore, can discern if such witnesses are telling the truth or not.[9] With the evidence presented in the proceedings below, we do not see any reason why we should depart from the aforesaid rule and disturb the trial court's factual conclusions.

Another point raised by the appellant is that without his extrajudicial confession, the prosecution has no case against him. What the prosecution has, he claims, is circumstantial evidence.

Assuming arguendo that the prosecution's evidence is circumstantial, we find the same sufficient to convict.

Where the conviction of an accused is based on circumstantial evidence, it is essential for the validity of such conviction that: (a) there be 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.[10]

In the case at bench, the circumstantial evidence proven by the prosecution sufficiently satisfies the quantum of proof necessary to uphold a judgment of conviction. The following circumstances proven by the prosecution indubitably point to the accused-appellant as the perpetrator of the crime committed:

1. The fact that the victim was last seen by the victim's husband on the day she was killed in the company of the accused-appellant while they were on their way to the market.[11]
2. The fact that the accused-appellant was carrying an axe and a sack while they were walking along Tulip Drive.[12]
3. The fact that when the Talomo Patrol Station received a report that an incident occurred in Tulip Drive, Lagmay and Zozobrado together with four (4) policemen were dispatched to the scene of the crime. They saw the lifeless body of the victim. Five (5) meters away, they recovered an axe and a sack with blood stains.[13]
4. The fact that when the aforesaid group proceeded to the house of the victim, they found blood stains on the upper portion of the gate as well as on the handle.[14]
5. The fact that Dr. Jose Ladrido's Necropsy Report shows that the victim suffered a lacerated wound on the left eyebrow and a hack wound behind the right ear, the latter wound having been induced first.[15]

6. The fact that Pat. Dora of the Kiblawan Police Station accompanied appellant to the Talomo Police Station and surrendered him to the latter's Station Commander[16] for investigation.

Anent the second issue raised, appellant alleges that the trial court erred in appreciating the three (3) aggravating circumstances of treachery, abuse of superior strength and evident premeditation.

Save only for the aggravating circumstance of abuse of superior strength, the prosecution failed to prove the other aggravating circumstances alleged in the information.

In appreciating the qualifying circumstance of treachery, the following requisites must concur: first, that at the time of the attack, the victim was not in a position to defend himself; and second, the offender consciously adopted the particular means, method and form of attack employed by him.[17]

From the evidence adduced, the first requisite was proven. Dr. Ladrido testified that the victim suffered a hack wound behind her right ear that caused her to fall face down. As a consequence thereof, she suffered another wound on her left eyebrow. Accordingly, when the victim was attacked by the appellant, she was not in a position to defend herself. However, the second requisite was not proven. No evidence was offered to prove that the appellant made preparations to kill the victim. Records bear out that it was the victim who ordered the appellant to bring the axe before they left the house indicating that he had no plan to kill said victim.

Regarding the qualifying circumstance of evident premeditation, the prosecution must show (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that he had clung to his determination; and (c) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[18]

Here, the prosecution failed to present evidence when the appellant determined to kill the victim or any indication that he clung to such determination. As already mentioned above, appellant did not intend to nor planned to kill the victim. Hence, there was no sufficient lapse of time between the determination and execution of the crime charged so as to allow the appellant to reflect upon the consequences of his act.

To properly appreciate the aggravating circumstance of abuse of superior strength, the prosecution must prove that the assailant used purposely excessive force out of proportion to the means of defense available to the person attacked.[19] In the instant case, the appellant clearly took advantage of his superior strength as the victim was an elderly woman, 76 years old, frail and of small build while the appellant was then only 20 years old, of good stature and build and was armed with an axe with which to kill the victim.

However, the aggravating circumstance of abuse of superior strength cannot qualify the killing of the victim and raise it to the category of murder because the same was not alleged in the information. The rule in cases like this is clear. A qualifying circumstance like abuse of superior strength must be pleaded in the information for if it is not pleaded but proved, it shall only be considered as a generic aggravating circumstance in the imposition of the correct penalty.

Accordingly, for failure of the prosecution to prove the qualifying circumstances of treachery and evident premeditation, appellant cannot be convicted of the crime of murder. Instead, appellant should be held liable for the crime of homicide under Article 249 of the Revised Penal Code which carries a penalty of reclusion temporal. The aggravating circumstance of abuse of superior strength is therefore offset by the mitigating circumstance of voluntary surrender which was admitted by the prosecution. Thus, applying the Indeterminate Sentence Law, appellant should suffer a penalty of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

As noted from the dispositive portion of the assailed decision, the trial court imposed the penalty of "life imprisonment" for the crime of murder. Evidently, the said court failed to appreciate the substantial difference between Reclusion Perpetua under the Revised Penal Code and Life Imprisonment when imposed as a penalty by special law. These two penalties are different and distinct from each other. Hence, we would like to reiterate our admonition in the case of *People vs. Penillos*,^[20] likewise quoted under Administrative Circular No. 6-A-92 amending Administrative Circular No. 6-92 dated October 12, 1992 re: the correct application of the penalties of reclusion perpetua and life imprisonment, thus:

"As noted from the dispositive portion of the challenged decision, the trial court imposed the penalty of 'reclusion perpetua or life imprisonment'. Evidently, it considered the latter as the English translation of the former, which is not the case. Both are different and distinct penalties. In the recent case of *People vs. Baguio*, this Court held:

'The Code does not prescribe the penalty of "life imprisonment" for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special laws. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as "life imprisonment" which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration.'

"As early as 1948, in *People vs. Mobe*, reiterated in *People vs. Pilonas*, and in the concurring opinion of Justice Ramon Aquino in *People vs. Sumadic*, this Court already made it clear that reclusion perpetua, is not the same as imprisonment for life or life imprisonment. Every judge should take note of the distinction and this Court expects that, henceforth no trial judge should mistake one for the other."

Finally, anent the civil indemnity awarded to the heirs of the victim, the trial court erred in finding the appellant liable for two hundred thousand pesos (P200,000.00) because the same has no basis in fact and in law. Appellant's civil liability must only be limited to P127,000.00, broken down as follows, to wit:

(a) for the death of the victim P 50,000.00

(b) cash taken from the victim

(TSN, January 24, 1989, p. 8)

Philippine Currency P50,000.00

US Dollars \$1000 (1:27) 27,000.00 77,000.00

P127,000.00

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WHEREFORE, the judgment appealed from is hereby MODIFIED as follows: (a) appellant is found guilty of the crime of HOMICIDE and is hereby sentenced to a penalty of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum; and (b) appellant is ordered to indemnify the heirs of the victim in the amount of one hundred twenty seven thousand (P127,000.00) pesos.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Original Records, p. 1

[2] Decision, p. 19; Original Records, p. 88.

[3] Rollo, pp. 93-99

[4] Rollo, p. 43; Appellant's Brief, p. 4

[5] *People vs. Enanoria*, 209 SCRA 577 (1992); *People vs. Estevan*, 186 SCRA 34 (1990); *People vs. Solis*, 182 SCRA 182 (1990); *People vs. Talla*, 181 SCRA 133 (1990); *People vs. Dela Cruz*, 115 SCRA 184 (1982).

[6] TSN, November 27, 1989, p. 4.

[7] *Ibid.*

[8] Exhibits "G" and "3", "3-A"

[9] *People vs. Penillos*, 205 SCRA 546; *Villaflor vs. Court of Appeals*, 192 SCRA 680; *People vs. Tan*, 187 SCRA 385; *People vs. Corrales*, 182 SCRA 439; *People vs. Espinosa*, 180 SCRA 393; *People vs. Temblor*, 161 SCRA 623; *People vs. Capulong*, 160 SCRA 533; *People vs. Salufrania*, 159 SCRA 401; *People vs. Renejane*, 158 SCRA 258

[10] Section 5, Rule 133 of the Rules of Court; *People vs. Evardo*, 216 SCRA 159; *People vs. Tena*, 215 SCRA 43; *People vs. Villanueva*, 211 SCRA 602; *People vs. Tonog, Jr.*, 205 SCRA 772; *People vs. Tiozon*, 198 SCRA 368; *People vs. Bicog*, 187 SCRA 556; *People vs. Pajanustan*, 97 SCRA 699; *People vs. Modesto*, 25 SCRA 36

[11] TSN, January 24, 1989, p. 4.

[12] TSN, February 5, 1990, pp. 11-12

[13] TSN, September 25, 1989, p. 2

[14] TSN, September 25, 1989, pp. 3, 9

[15] TSN, April 17, 1989, p. 3

[16] TSN, October 16, 1989, p. 4

[17] Reyes, Revised Penal Code, Book I, pp. 409-410

[18] *People vs. Castor*, 216 SCRA 410, 421; *People vs. Antud*, 215 SCRA 190; *People vs. Balatucan*, 206 SCRA 81; *People vs. Martinez*, 96 SCRA 714; *People vs. Ardisa*, 55 SCRA 245

[19] *People vs. Canciller*, 206 SCRA 827

[20] *Supra*, pp. 546, 565-566

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