

PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. ARNEL ORACOY AND NILO PLARISAN (AT LARGE), ACCUSED, ARNEL ORACOY, ACCUSED-APPELLANT.

G.R. No. 106537. July 27, 1993

Ponente: NOCON, J.

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NOCON, J.:

The lifeless body of Joel Vailoces, a helper of the Equatorial Security Agency owned by Santiago Sierra was found in the farm of the latter in Sitio Tagaytay, Pardo, Cebu. Written on the left palm of the deceased in blue ballpen were the following: "Arnel Oracoy, bata-bata" Discovered missing were two (2) shotguns belonging to Equatorial Security Agency.

Proceeding from this lead, the police investigators conducted an inquiry and proceeded to the house of Arnel Oracoy at To-ong, Pardo, Cebu which was about four to five kilometers from the farm of Sierra. They invited him to the police station where the latter executed an extrajudicial confession admitting the crime and identifying Nilo Plarisan as his co-profligate in the commission thereof.

In an information dated April 4, 1990, the above accused, Arnel Oracoy and Nilo Plarisan were charged of the crime of Robbery with Homicide committed as follows:

"That on or about the 1st day of April, 1990 at about 5:00 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, armed with a piece of steel bar and bolo, with deliberate intent, with intent to kill, did then and there attack, assault and slashed the neck of one JOEL VAILOCES; and inflicting upon him the following injuries:

'HEMORRHAGE, ACUTE, SEVERE, SECONDARY TO CUT--THROAT WOUND.'

which injuries caused the instantaneous death of the latter and with intent of gain take and carry away two (2) shot guns, belonging to Equatorial Security Agency to the damage and prejudice of the latter in the amount of P8,000.00 each shot gun.

CONTRARY TO LAW."^[1]

With the assistance of counsel, accused Oracoy pleaded "NOT GUILTY" to the charge. The other accused, Nilo Plarisan was never apprehended and had remained at large.

Trial ensued and in a decision dated February 25, 1992, the trial court Presiding Judge German G. Lee, Jr. rendered judgment finding accused Oracoy guilty beyond reasonable doubt of the crime of Robbery with Homicide, the dispositive portion of which states:

"WHEREFORE, in view of the foregoing evidences, arguments and considerations, this Court hereby holds and finds the accused Arnel Oracoy, guilty beyond reasonable doubt of the crime of robbery with homicide as

penalized under Article 294 Par. 1 as he is hereby sentenced to reclusion perpetua with all accessory penalties and to indemnify the heirs of Joel Vailoces in the sum of P50,000.00 and to pay moral damages of Fifty Thousand and exemplary damages of P20,000.00.

IT IS SO ORDERED.

Cebu City, February 25, 1992.”[2]

Dissatisfied therefrom, accused interposed the present appeal with the following assignment of errors:

“1. THE TRIAL COURT ERRED IN RELYING ON THE CIRCUMSTANTIAL EVIDENCE OF THE STATE.

“2. THE TRIAL COURT ERRED IN ADMITTING THE EXTRAJUDICIAL CONFESSION OF ACCUSED DESPITE THE FACT THAT: IT WAS OBTAINED BY MEANS OF FORCE, THREATS AND INTIMIDATION; NO COMPLIANCE WITH THE MIRANDA WARNINGS; ASSISTANCE OF LAWYER NOT CHOICE OF ACCUSED; CONTAINED ERASURES AND SUPER-IMPOSITION; AND WRITTEN IN ENGLISH.

“3. THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED.”[3]

The facts established by the prosecution at the trial below show that at about 8:00 o'clock in the evening of April 1, 1990, Cpl. Doroteo Mantos, a member of the Cebu PC-INP assigned to the homicide section received a report of a dead body found in the farm of Santiago Sierra in Sitio Tagaytay, Pardo, Cebu. Together with Patrolman Alex Dacua, Pfc. Efren Racaza and Patrolman Ferdinand Tumakay, he responded to the alarm and proceeded to the scene. They were met by Sotero de la Cerna, an employee of Santiago Sierra, who handed them a bloodied bolo and led them to the place wherein the lifeless body of Joel Vailoces was found. They examined the same and found his neck slashed. At one fathom distance from the dead body, they found a steel bar measuring 1/2 inch by 3 feet long. They saw a ballpen close to the deceased's right hand and upon further examination they discovered the words, "Arnel Oracoy, bata-bata" scribbled on the deceased's left palm.

They questioned Sotero de la Cerna if he knew Arnel Oracoy. They learned from him that the latter was formerly employed by Sierra but was dismissed for mishandling the fighting cocks of Sierra. Together with de la Cerna, they proceeded to the house Of Arnel Oracoy at Sitio To-ong, Pardo, Cebu that same night and picked him up. Oracoy at the time was with a friend, Joel Jomuad. In the course of the investigation, Arnel Oracoy admitted to the police that he and a certain Nilo Plarisan had planned to enter the farm of Sierra in order to steal two shotguns. In executing their plan, Nilo unlocked the gate, entered first and suddenly struck Joel Vailoces at the back of his neck. When Vailoces fell down, Nilo took a bolo and slashed his neck. They proceeded to the sleeping quarters where the two shotguns were kept, took them and went downward to the bushes, entered a cave located at the hilly portion near Sitio Canduhad and placed the shotguns underneath a stone. At about 4:00 a.m. of April 2, 1990, the police proceeded to the place where Oracoy said he hid the shotguns. True enough, the two shotguns with Serial Nos. 1034847 and 1038935 were recovered. Then they proceeded to Nilo Plarisan's place but did not find him there. When Oracoy volunteered to give his statements in the form of an affidavit, they provided him with a counsel from the Citizen's Legal Assistance Office.

Dr. Jesus P. Cerna, the Police Medico Legal Officer, testified that on April 2, 1990, he examined the dead body of Joel Vailoces. He recorded only one fatal wound on the throat which completely cut the trachea and the esophagus, it also cut the nerves to the brain such as the phrenic, carotid and jugular veins but the vagus vein was intact. He opined that this 10 x 6 cm. wound, edges clean, cut below neck mid anterior portion could have been inflicted by a sharp bladed instrument like a bolo. He concluded that the cause of death was hemorrhage secondary to the cut wound. On re-direct, he affirmed that the victim could still possibly write on his palm as his

spinal cord was not injured and his performance of voluntary acts was not impaired.

The defense presented accused Arnel Oracoy himself. He testified that he is 22 years old, single, a construction worker of San Roque, Ginatilan, Cebu, and an elementary school graduate with Visayan as the medium of instruction. He said he arrived in Cebu City at 2:00 p.m. on April 1, 1990 with a friend, Joel Jomud, having left Ginatilan, Cebu at 8:30 a.m. He admitted having been employed by Santiago Sierra but only for seven months because the salary of P20.00 a day was very low. He made representations with Sierra for an increase in salary but instead of granting his demand, he was fired so he went back to Ginatilan, Cebu and engaged in fishing. On that fateful day of April 1, 1990, he decided to go to Cebu City to look for a job. By chance, he met Joel Jomud and went with him to the latter's boarding house. By nighttime, they planned on sleeping at a friend's house. Along the way, however, they were met by the police who arrested him while Joel Jomud was dropped off on reaching the road to Pardo. He was not given food that evening and even on the following day. They poked a gun at him and threatened to kill him if he did not sign a prepared affidavit. Fearing for his life, he signed the affidavit without reading its contents on top of the hood of a police car where it was totally dark. He denied that the Miranda warnings were read to him nor was he told that he has a right to counsel; that Atty. Nelson Plarisan assisted him as he never saw him; that he never knew Nilo Plarisan, his alleged co-accused and the victim, Joel Vailoces. He likewise denied that cock handlers are called "bata-bata." In short, accused-appellant denied being involved in the killing of Joel Vailoces and in accompanying the police to where the shotguns were hidden.

Joel Jomud, his friend, corroborated substantially the foregoing averments except for the fact that they arrived in Cebu City between 12:00 and 12:30 p.m., took lunch, rested for a while and then Oracoy asked permission to go to Colon Street to look for a job. The latter was back at about 4:00 p.m. They left again at about 5:00 p.m. to go to the house of Imeldo Olivares who promised to help accused looked for a job when they were intercepted by the police.

The defense also presented Dr. Rey Jabagat, 32, a physician at the Metro Cebu Community Hospital, Surgery Department. He testified that a person whose throat has been cut has still 30 seconds to one minute of consciousness but with the injuries sustained by the victim as described in his medical certificate, he is of the opinion that the injuries are fatal and the victim could no longer write with a ballpen as death would immediately ensue. The victim could have drowned from his own blood and immediately lapse into coma. He admitted, however, that death from fatal wounds sometimes depends on the physical or health condition of the victim.

Atty. Nelson Pañares, PAO lawyer, was presented by the prosecution as rebuttal witness. He told the court that on April 3, 1990, he was called to assist the accused herein. He recalled that on seeing the accused and asking him if he would agree to be represented by him, the accused answered in the affirmative. Thereafter, he informed the accused of his rights and he affirmed that Exhibit C, also Exhibit 1 of the defense, is his (Arnel Oracoy's) statement. He acknowledged having seen Oracoy sign his statement in his presence before he affixed his own. He explained that his family name was misspelled as Palmares so the police corrected it to Pañares after he gave his identification card.

On sur-rebuttal, accused denied having met or talked with Atty. Nelson Pañares. He reiterated that he signed the extrajudicial confession on top of the hood of a police car as he was forced to sign the same.

Confronted with these opposing versions of the prosecution and the defense, we examined the records of the case with great care and found no reason to disturb the conclusion of the lower court finding the accused-appellant guilty beyond peradventure of doubt.

While it is true that no one saw the killing, the following circumstantial evidence point to the accused-appellant as one of the perpetrators of the crime. Firstly, he admitted that he arrived in Cebu City on that fateful day of April 1,

1990. He had gone back to Ginatilan, Cebu after being fired, but suddenly he is in Cebu City near the vicinity of the crime. His presence therein renders a strong probability that he had something to do with the crime. Secondly, his name, together with the word, "bata-bata," which refers to a cock handler was found scribbled on the left hand of the deceased. There is no question that he was once an employee of Sierra tasked with the duty of taking care of the fighting cocks numbering about seventy-five. Why his name appears on the palm of the deceased raises a strong indication that it was written by the deceased himself to identify his assailant. However, accused-appellant failed to give any explanation as to why his name appears written in ballpen on the left palm of the deceased hand. Neither did he impute the presence of any ill-will or motive on the part of the people at the Sierra farm that could have impelled any of them to implicate him. Thirdly, the police could not have possibly recovered the stolen shotguns of Sierra had not the accused-appellant led them to the specific spot in the cave where he hid them. It has been held that recovery of the loot from the accused-appellant corroborates his extrajudicial confession.[4] Fourthly, the sworn statement of accused-appellant contains details of the manner in which the crime was committed, particularly the mention of the name of his confederate who went into hiding and the respective roles they played, which only he as a participant could have known and which information he supplied the police investigators.[5]

Thus, although there were no eyewitnesses to the killing and the robbery, the foregoing circumstances point to the accused-appellant as the malefactor. Rule 133, Section 5 of the Rules of Court states that there is sufficiency of circumstantial evidence when (1) there is more than one circumstance; (2) the facts from which the inference is derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[6]

Our existing jurisprudence has not laid down any rule regarding the quantity of circumstantial evidence which will suffice for any case. But a rule well ingrained in jurisprudence and followed through the years is that the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[7]

Accused-appellant's denial of his extrajudicial confession on the ground that the same was obtained by means of force, threats and intimidation and without compliance with the Miranda warnings is not convincing. There was no specification as to the detail and nature of the force, threat and intimidation employed on him. He only alleged that a gun was poked on him and threatened by the police investigators which included Pfc. Efren Racaza who faced a charge for murder, that he will be killed if he does not sign an affidavit. He did not elaborate. The above complaint does not constitute the force, threat or intimidation that vitiate the voluntariness and admissibility of an extrajudicial confession. Noteworthy, too, is the fact that he did not repudiate said confession at the earliest opportunity and did so only during trial. His failure to complain and institute any criminal or administrative action against his alleged intimidators indicates that his repudiation of his extrajudicial confession is only a last ditch effort to avoid the consequences of the crime.

As evidenced by the extrajudicial confession itself, he was apprised in accordance with Section 12 (1), Article III of the Constitution[8] that he has the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. Accused-appellant cannot deny that he had a legal counsel, PAO lawyer Nelson Pañares during the investigation proper. Atty. Pañares categorically declared in court that he assisted accused-appellant during said investigation. He had no reason to perjure himself and violate his oath as a lawyer. Needless to state, his presence therein effectively insured that no force, threat or intimidation was employed to compel accused-appellant to sign his confession and that everything written therein, although written in the English language, was properly explained to him. Anent the claim of accused-appellant that the name of

Atty. Pañares was only superimposed, as the original lawyer chosen by the police investigators probably did not accede to affixing his name to a confession he did not witness, Atty. Pañares sufficiently explained the same saying that the superimposition was merely the result of the misspelling of his name.

It is interesting to note that accused-appellant's confession pointed to the other accused as the more guilty party. This is an indication that the same was not just fabricated by the police as insinuated by him. The exculpatory tone of the confession is an index of its voluntariness.[9]

Moreover, a scrutiny of the evidence of the accused-appellant shows that in the morning of April 1, 1990, he and Joel Jomud boarded a bus at Ginatilan, Cebu and arrived at Cebu City at about 2:00 o'clock in the afternoon to look for a job. In the evening of the same date, accused-appellant claims that on his way to Pardo he was arrested by the police. He left out the details of what he did from the time of their arrival in Cebu up to the time when he was picked up by the police.

The testimony of Joel Jomud likewise leaves much to be desired. Besides the inconsistency as to their time of arrival in Cebu City, which according to Jomud was between 12:00 and 12:30 p.m., he declared that after eating lunch at the terminal, accused-appellant left on his own to look for a job and returned at around 4:00 o'clock p.m. Joel Jomud himself could not account on the whereabouts of his friend in the afternoon of said fateful day.

The defense evidence, therefore, miserably failed to establish an alibi. In order to prosper, alibi must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission.[10] Evidently, the defense evidence did not in any way preclude the possibility that he committed the crime.

In the final analysis, the crux of the matter in this case boils down to the question of credibility. It is well-settled that it is the trial court that can best ascertain the credibility of witnesses. In a long line of cases, we have held, and hereby reiterate in this case, that the assessment of the credibility of witnesses is within the province of the trial court as it is in a better position to decide the matter having had the opportunity to observe the behavior, demeanor, conduct and attitude of the witnesses at the trial.[11]

WHEREFORE, the appealed decision of the Regional Trial Court of Cebu, Branch 15 at Cebu City, in Criminal Case No. CBU-18133 is hereby AFFIRMED in toto.

SO ORDERED.

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

[1] Rollo, p. 23.

[2] Rollo, p. 34.

[3] Rollo, p. 41.

[4] *People v. Gamit*, G.R. No. 55029, June 29, 1982, 114 SCRA 870.

[5] *People v. Layuso*, G.R. No. 69210, July 5, 1989, 175 SCRA 46; *People v. Damaso*, G. R. Nos. 41490-92, October 18, 1990, 190 SCRA 595.

[6] *People v. Cariño, et al.*, G.R. Nos. 92144-49, December 18, 1992.

[7] *People v. Ludday*, 61 Phil. 216, quoting 12 Cyc., 488.

[8] This section was inspired by the case of *Miranda v. Arizona*, 384 U.S. 436 and applied in this jurisdiction, pursuant to *Magtoto v. Manguera*, G.R. No. L-37201-02, 63 SCRA 4 (1975), to confessions extracted after the ratification of the 1973 Constitution.

[9] *People v. Balane*, G.R. Nos. L-48319-20, 123 SCRA 614 (1923); *People v. Alvarez*, G.R. No. 88451, 201 SCRA 364 (1991).

[10] *People v. Lacao, Sr.*, G.R. No. 95320, 201 SCRA 317 (1991).

[11] *People v. Evarado*, G.R. No. 100724, December 1, 1992.

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