

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL CABINTOY Y INTONG AND CELSO FERNANDO Y ANO, ACCUSED-APPELLANTS.**

*G.R. No. 107534. August 21, 1995*

Ponente: FELICIANO, J.

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**FELICIANO, J.:**

Appellants Raul Cabintoy and Celso Fernando, together with one Fernando Garcia who is still at large, were charged with the crime of robbery with homicide committed on the evening of 24 May 1991 against the person of Wilfredo Diaz, who was then driving a 5-J Taxi along Gen. Luna Street, Guitnangbayan I, San Mateo, Rizal.

Both appellants pleaded not guilty to the charge during the arraignment, and the case proceeded to trial.

The evidence for the prosecution discloses that on 24 May 1991 at around 11:50 in the evening, P/Pfc. Richard P. Salvador, Chief of the Investigation Section of the San Mateo Police, received information that robbery with homicide had been committed in General Luna Street in front of the Catholic Cemetery in Barangay Guitnangbayan, San Mateo, Rizal. He was also informed that the victim was one Wilfredo Diaz, a taxi driver, who was brought to the nearest hospital but pronounced dead upon arrival.

Pfc. Salvador and Pfc. Año conducted an ocular inspection at the scene of the crime and saw the 5-J taxi lying on its right side. Bloodstains were scattered inside the 5-J taxi and the rear windshield of the taxi was smashed. They recovered a knife, presumably used during the commission of the crime, and a pair of slippers inside the taxi. The knife recovered is a kind of knife commonly used by butchers. They also found a trail of blood from the scene of the crime up to Resurrection St. going towards Daang-Bakal; hence, they surmised that one of the suspects had been injured during the incident.[1] Accordingly, Pat. Cariño together with Pat. Guillermo were directed to go to different hospitals on the premise that one of the suspects might have been wounded. This investigative effort carried out on the morning of 25 May 1991 yielded no results.[2]

Meanwhile, on the same morning of 26 May 1991, P/Pfc. Richard Salvador went to the San Mateo, Rizal slaughter house located near the public market in Brgy. Guitnangbayan to inquire about the knife found inside the taxi. Pfc. Salvador questioned the butchers therein and showed them the knife. Three (3) butchers identified the knife as one used frequently by a person named "Amang" or Celso Fernando, who also worked as a butcher in the same slaughter house. Pfc. Salvador proceeded then to the residence of Celso Fernando or alias "Amang" in Tubo NAWASA, Brgy. Guitnangbayan, and asked about "Amang's" whereabouts. The neighbors and relatives informed him that "Amang" was at work in the slaughter house. Pfc. Salvador returned to the station and discussed the evidence the police had gathered.

In the morning of 26 May 1991, Pfc. Salvador was informed by a police informer that the suspects were in a construction site in Dapitan, Sampaloc, Manila. He immediately formed a police team to track down and if possible, to arrest the accused. The team proceeded to the Manila police station which had jurisdiction over the area and coordinated with them. The police were able to arrest accused-appellants Cabintoy and Fernando in

Dapitan St., Sampaloc, Manila and brought them to the San Mateo Police Station.[3]

P/Pfc. Richard Salvador testified in court that accused-appellants were informed of their constitutional rights in the presence of counsel, Atty. Benjamin Pozon of the Public Attorney's Office (PAO), on 26 May 1991. On the same day, each appellant executed a waiver of the right to counsel signed in the presence of Atty. Pozon. Thereafter, appellant Raul Cabintoy executed a sworn statement admitting his participation in the crime and implicating Celso Fernando and one Fernando Garcia. When this written confession was executed, Atty. Pozon was present. When Celso Fernando made his confession he was not represented by a lawyer, but Atty. Pozon was still there because he was curious about the case.[4]

Both P/Pfc. Salvador and Pat. Cariño testified at the trial that at the time of the arrest, Cabintoy had a wound on the left thigh. When asked about his thigh wound, Cabintoy verbally admitted that he sustained this wound during the incident.[5] Even before the two (2) appellants were formally investigated, they verbally admitted their participation in the crime. Celso Fernando acknowledged ownership of the knife recovered at the scene of the crime. These admissions were, however, made before appellants were informed of their rights.[6]

On the other hand, appellants deny that they had committed the crime and allege that the extrajudicial confessions were not voluntarily nor validly executed.

Celso Fernando testified that on 24 May 1991, he reported at the slaughter house at around 10:30 in the evening. He left the place at 6:00 a.m. the next day and proceeded to the public market. There was no untoward incident on that day of 24 May 1991. The following day, or on 25 May, he was also at the slaughter house from 10:00 in the evening until morning of next day. Thereafter, at around nine o'clock in the same morning (26 May), he went to Dapitan Street in Sampaloc to visit Raul Cabintoy and there they were both arrested by Pat. Cariño and company. They were then brought to the San Mateo Police Station. Later that same day, and without the assistance of a lawyer, Celso Fernando signed a written confession presented to him by the police. He had been able to read only the beginning of the confession when the police insisted that he sign it. On cross-examination, Celso Fernando testified that he did not know anything about the knife recovered by the police. He had reached Grade V only at elementary school and could read a little. The police asked him if he wanted to be assisted by a lawyer only on 27 May 1991, the same day they were brought before Atty. Pozon of the PAO.[7]

Raul Cabintoy, for his part, testified that on 24 May 1991, he was in the construction site of Dapitan, Sampaloc, Manila, where he was working. There were no untoward incidents that happened on the 24th or on the 25th of May, 1991. On 26th of May, Celso Fernando visited him in the construction site and in the afternoon while they were sleeping, the policemen came and arrested them. Upon arrival at the San Mateo Police Station, they were put in jail and his co-inmates forced him to admit committing the offense with which he was charged. When he was brought outside the cell, he was also forced by the police to admit he had committed the crime. Cabintoy claimed that the policemen mauled him, although he exhibited no signs of injuries upon his body. He was not assisted by counsel when he signed the extrajudicial confession. They were asked to sign the waiver of the right to counsel in the afternoon of 26 May 1991 and then after signing it, they were brought to the office of Atty. Pozon, where the latter signed the document. Atty. Pozon explained the document to them and asked them if they still needed a counsel although they (accused-appellants) "cannot do anything anymore" because they had already signed the document. Cabintoy denied that he had a wound on his left leg at the time of the arrest. He was reading and signing the confession at the same time, and because he was very confused at the time, he could not fully understand the contents of the document.[8]

The court a quo rendered a decision[9] finding both accused Raul Cabintoy and Celso Fernando guilty of the crime of robbery with homicide.

Accused-appellants Raul Cabintoy and Celso Fernando are now before this Court, asserting that the trial court had erred in giving credence to their extrajudicial confessions and, accordingly, in finding them guilty beyond reasonable doubt of the special complex crime of robbery with homicide.

The record of this case reveals that there were no eyewitnesses to the crime imputed to Cabintoy and Fernando. The Court also notes that the trial court, in its questioned judgment of conviction, took into account the extrajudicial confessions of accused-appellants:

"As no eyewitness was presented by the prosecution but there was a [sic] written confession[s] by both accused Raul Cabintoy and Celso Fernando, the admissibility of such confession[s] determines [sic] the faith [sic] of both accused. x x x

This Court never doubted the voluntariness, truthfulness and exactness of the written confessions of both accused Raul Cabintoy and Celso Fernando. The claim[s] of both accused when they testified, that they were threatened or forced to sign the confession[s] are the usual excuses of an [sic] accused who recanted their confessions after realizing the gravity of their offense and the penalty that might be imposed on the crime they have committed."

The main issue in this appeal, therefore, is the admissibility of the two confessions executed by appellants during their custodial investigation by the San Mateo Police. The prosecution claims that prior to the taking of the extrajudicial confessions, both appellants signed written waivers of their constitutional rights to remain silent and to be assisted by counsel, in the presence of Atty. Pozon of the PAO.

After carefully examining the record of this case, the Court finds that these waivers were signed by Atty. Pozon on the 27th of May, 1991 as indicated by the date written by Atty. Pozon himself beside his signature.[10] There is no dispute, on the other hand, that the confessions of appellants were executed in the evening of the 26th of May, 1991.[11] These facts tend to confirm the testimonies of accused-appellants that they were brought before Atty. Pozon after they had already signed the extrajudicial confessions, and belie the assertion of the prosecution that the waivers were signed ahead of the confessions on the same evening of the 26th of May, 1991. The purported waivers, it should be noted, are set out in the same documents setting out the respective confessions of the two (2) appellants.

From the foregoing, one is led to the inevitable conclusion that at the time the questioned confessions were executed, there were no prior valid waivers of their constitutional rights by Cabintoy and Fernando. This defect alone is sufficient to render the confessions inadmissible in evidence against accused-appellants. Moreover, the confessions do not indicate that both accused were represented by counsel during the investigation. The settled rule is that an uncounselled extrajudicial confession without a valid waiver of the right to counsel — i.e., in writing and in the presence of counsel — is inadmissible in evidence.[12]

We are aware that the trial court noted that the confessions are interlocking and replete with minor details indicating that they were voluntarily given. This Court, however, has ruled before in a number of cases that even if the confession of the accused were "gospel truth," if it was made without the assistance of counsel and without a valid waiver of such assistance, the confession is inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.[13]

The question may be raised whether the waivers, though in fact executed on 26 May 1991 by Cabintoy and Fernando, could be deemed to have been subsequently validated by the signature of Atty. Pozon of the PAO the next day, 27 May 1991. We must answer this question in the negative. There is nothing in the record to indicate that Cabintoy and Fernando intended to validate retroactively their uncounselled waiver and confession when they were brought into the office of Atty. Pozon of the PAO at the time Atty. Pozon signed the confession document. To the contrary, the two (2) appellants here explicitly rejected their extrajudicial confessions when they testified

before the trial court; such rejection makes it very difficult to assume any intent to own and adopt retroactively their extrajudicial confessions. Any suggestion that an uncounselled confession and waiver were subsequently validated by the later signature of counsel for the accused, must be taken with extreme care lest the constitutional right involved be eroded into an empty formality.

We conclude, not without reluctance, that the extrajudicial confessions of Cabintoy and Fernando must be regarded as inadmissible in evidence. It follows that the conviction of appellants by the trial court must stand or fall on the basis of other evidence of record.

The Solicitor General avers that there exists other evidence of record to warrant the affirmance of appellants' convictions:

"Firstly, the credible testimonies of the arresting policemen in open court clearly reflect that:

a) the ownership of the knife found at the scene of the crime inside the 5-J taxi of the victim was traced to Celso Fernando [tsn, 8/27/91, pp. 8-12]. Three butchers who were co-workers of Fernando at the San Mateo slaughterhouse identified the knife as that owned and used by him at said slaughterhouse.

b) Pfc. Edilberto Cariño testified that at the time of the arrest of appellants, he personally noted the existence of a wound on the leg of Cabintoy, confirming the policemen's earlier suspicion in the course of their official investigation that one of the robbers sustained a wound at the hands of the victim. Pfc. Cariño testified that Cabintoy verbally admitted that he sustained the said wound when the victim hit him with a screwdriver in the course of the robbery/hold-up [tsn, 8/6/91, pp. 8-10].

c) Pfc. Cariño testified that both Fernando and Cabintoy, at the time of their arrest, verbally admitted to the arresting policemen their participation in the crime, and that it was Cabintoy who stabbed the victim [Ibid.].

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In this case, the credible testimonies of the public officers aforecited confirm the existence of the two incriminating circumstances, i.e., the wound on the leg of appellant Cabintoy and the ownership by appellant Fernandez of the knife recovered from the crime scene. These, taken together, point unerringly to appellant's guilt [People vs. Agan, 181 SCRA 856]."[14]

The Court is not persuaded. Contrary to the claim of the Solicitor General, the knife found at the scene of the crime was not adequately proved to be owned by Celso Fernando. The testimony of Pfc. Salvador that in the course of his investigation, three (3) butchers had identified the subject knife as frequently used by appellant Fernando, is not sufficient to prove such ownership, such evidence being merely hearsay in nature.[15] Clearly, Pfc. Salvador had no personal knowledge of the ownership or use by appellant Fernando of the subject knife. Not one of Celso Fernando's three (3) fellow butchers who had allegedly identified the said knife as belonging to Fernando, testified in court. Hence, Fernando was deprived of his right to confront his fellow butchers and to cross-examine them for their truthfulness. The hearsay character of evidence commonly affects the intrinsic weight and credibility of such evidence.[16]

The verbal admissions allegedly made by both appellants of their participation in the crime, at the time of their arrest and even before their formal investigation, are inadmissible, both as violative of their constitutional rights and as hearsay evidence. These oral admissions, assuming they were in fact made, constitute uncounselled extrajudicial confessions within the meaning of Article III, Section 12 of the Constitution.

The only circumstance left, therefore, against the appellants is the wound that Raul Cabintoy allegedly had on his left leg at the time of his arrest, as testified to by P/Pfc. Salvador and Pat. Cariño and as reflected in the joint affidavit of the arresting policemen. This circumstance, however, does not measure up to proof beyond reasonable

doubt. In a long line of cases, this Court ruled that circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[17] In the case at bar, these requisites are not met.

Finally, the trial court in its appealed decision[18] noted that after the commission of the crime both accused fled and left their usual residences. Appellants, however, explained in open court that, at the time of their arrest, Raul Cabintoy was a stay-in worker in the construction site in Dapitan Street and that Celso Fernando was there because the latter was visiting the former at the time of their arrest. Thus, appellants cannot be regarded as conclusively shown to have fled from their residences and thereby to have indicated their guilt.

It is, of course, possible that appellants may in fact have committed the robbery with homicide with which they were charged. It is also unfortunate that the work done by police officers and the prosecution service leading to the arrest, trial and conviction of accused-appellants is rendered inutile for failure to observe the constitutional rights of persons under custodial investigation. The Court, however, has no choice on this matter; it is, just as police officers and public prosecutors are, bound by the provisions of the Constitution. More careful observance of such provisions by policemen and prosecutors is essential if wastage of executive and judicial resources is to be avoided.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 77, San Mateo, Rizal, in Criminal Case No. 1475 is hereby REVERSED and SET ASIDE and appellants are hereby ACQUITTED of the crime charged, the evidence lawfully before the trial court not being sufficient to establish their guilt beyond reasonable doubt. No costs.

**SO ORDERED.**

Romero, Melo, and Vitug, JJ., concur.

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[1] TSN, 27 August 1991, pp. 7-11.

[2] TSN, 6 August 1991, pp. 4-5.

[3] Id., pp. 12-15.

[4] Id., pp. 17-24.

[5] Id., p. 6; TSN, 13 August 1991, pp. 7-8.

[6] Id., p. 6; TSN, 13 August 1991, pp. 7-8.

[7] TSN, 30 January 1992, pp. 3-23.

[8] TSN, 18 February 1992, pp. 3-24.

[9] Penned by Judge Francisco C. Rodriguez, Jr., Regional Trial Court of San Mateo, Rizal, Branch 77.

[10] Exhibits "2" and "3", Original Records, pp. 108--109.

[11] Exhibits "E", "E-1", "F" and "F-1", Original Records, pp. 110-113.

[12] Section 12 (1) and (3), Article III, 1987 Constitution; see, e.g., *People vs. Dacoycoy*, 208 SCRA 583 [1992];

People vs. Rodriguez, 205 SCRA 791 [1992]; People vs. Gonzales, 189 SCRA 343 [1990].

[13] See People vs. Repe, 175 SCRA 422 [1989]; People vs. Penillos, 205 SCRA 546 [1992].

[14] Brief for the Appellee, pp. 10-12; Rollo, pp. 111- 113.

[15] The testimony of Pfc. Salvador reads in part as follows:

"Q: What investigation did you do?

A: We inquired with the butchers present therein and presented the knife, sir. If I remember it right, sir, three (3) butchers identified the knife [as] being used frequently by one named Amang or Celso Fernando.

Q: That was an information given to you by 3 butchers in the slaughter house?

A: Yes, sir." (TSN, 27 August 1991, pp. 11-12).

[16] In the case of People vs. Damaso (212 SCRA 547 [1992]), the Court made the following pronouncements:

"It is true that the lack of objection to a hearsay testimony results in its being admitted as evidence. But, one should not be misled into thinking that since these testimonies are admitted as evidence, they now have probative value. Hearsay evidence, whether objected to or not, cannot be given credence."

[17] People vs. Jalon, 215 SCRA 680 [1992]; People vs. Estrana, 215 SCRA 213 [1992]; People vs. Abuyen, 213 SCRA 569 [1992]; People vs. Villanueva, 211 SCRA 602 [1992]; People vs. Tonog, Jr., 205 SCRA 772 [1992].

[18] Supra., p. 10.

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