

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL MARRA Y ZARATE, ALLAN TAN, ALIAS “ALLAN YAO,” PETER DOE, PAUL DOE AND TOM DOE, ACCUSED. SAMUEL MARRA Y ZARATE, ACCUSED-...

G.R. No. 108494. September 20, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

In an information filed before the Regional Trial Court, Branch 43, Dagupan City, Samuel Marra y Zarate, John Doe, Peter Doe, Paul Doe and Tom Doe were charged with the crime of murder for the fatal shooting of one Nelson Tandoc on March 7, 1992.[1] On June 4, 1992, an amended information was filed wherein Allan Tan, alias "Allan Yao," was indicted as an accused instead of John Doe.[2] A warrant of arrest was thereafter issued against Allan Tan[3] but the same was returned unserved,[4] hence trial proceeded with regard to herein accused-appellant Samuel Marra alone.

Duly assisted by counsel, appellant pleaded not guilty upon arraignment on May 15, 1992.[5] After trial on the merits, judgment was rendered by the court below on October 8, 1992 finding appellant guilty beyond reasonable doubt of the crime charged, attended by the aggravating circumstance of nighttime, and sentencing him to suffer the penalty of reclusion perpetua. He was further ordered to pay the heirs of Nelson Tandoc the sums of P50,000.00 as death indemnity, P50,000.00 as actual damages, P100,000.00 as moral damages, and the costs.[6]

The prosecution's eyewitness, Jimmy Din, positively identified appellant as the triggerman in the killing of Nelson Tandoc. Din recounted that at around 2:00 A.M on March 7, 1992, he and his friend, Nelson Tandoc, were conversing with each other in front of Lucky Hotel located at M. H. del Pilar Street, Dagupan City, which was owned by the witness' father and of which he was the administrator. He noticed a man pass by on the opposite side of the street. The man made a dirty sign with his finger and Din informed Tandoc thereof. The man repeated his offensive act and called them by waving his hands. Infuriated, they followed the man until the latter stopped in front of the Dunkin' Donuts store at the corner of Arellano and Fernandez streets. They demanded an explanation from the man but they were not given any.[7]

At that instant, two men arrived and one of them inquired what was going on. Tandoc informed him that they were just demanding an explanation from the man. Din was surprised when Tandoc unexpectedly slapped one of the two men. A brawl ensued, with Tandoc clashing with the two men while Din exchanged blows with the man who made the dirty finger sign. After the fisticuffs, their three opponents ran away in a westward direction.[8]

Tandoc and Din then decided to walk back to the hotel. When they were about to enter the place, they noticed that the men with whom they just had a fight were running towards them. Sensing danger, they ran inside the annex building of the hotel and immediately secured the lock of the sliding outer door. They entered a room and waited until they felt that the situation had normalized. After ten to fifteen minutes, thinking that the men were no longer in the vicinity, they left the room. Having decided to go home, Tandoc opened the sliding door. All of a sudden,

Din saw appellant, who at that time was wearing a security guard's uniform, shoot Tandoc with a revolver. There was a fluorescent bulb installed at the front of the hotel which enabled Din to identify the assailant. Tandoc was shot in the middle of the chest and he fell down. Then, Din saw four to five men scamper away from the scene.[9]

Aware of his injury, Tandoc told Din, "Tol, I was shot." The latter tried to chase appellant and his companions but he failed to catch up with them. Din and his wife then brought Tandoc to the Villaflor Hospital. The victim was taken to the emergency room but he expired an hour later.[10]

At about 3:45 A.M. of March 7, 1992, SPO3 Reynaldo de Vera of the Dagupan City Police Station received a report about a shooting incident at the annex building of the Lucky Hotel. He proceeded to the crime scene along with SPO4 Orlando Garcia, SPO3 Mauricio Flores and SPO3 Noli de Castro. Upon their arrival about five minutes later, they were informed by the wife of Jimmy Din that the victim had been brought to the Villaflor Hospital. They proceeded to the hospital where Din informed them that he could recognize the man who killed Tandoc and that the killer was, at that time, wearing the polo shirt of a security guard's uniform.[11]

They decided to proceed to an eatery called "Linda's Ihaw-Ihaw." Seeing the security guard of a nearby bus company, they inquired from him if he knew of any unusual incident that happened in the vicinity. The guard said that he saw the guard of "Linda's Ihaw-Ihaw," together with some companions, chasing two persons running towards M. H. del Pilar Street. He further added that the man was wearing a polo shirt of a security guard's uniform. Asked where that particular guard might be, he pointed to a man eating inside the eatery nearby. The man eating was not in a security guard's uniform.[12]

They approached the man and inquired whether he was the security guard of "Linda's Ihaw-Ihaw," which the latter answered in the affirmative. After a series of questions, they learned that he was Samuel Marra, that his tour of duty was from 7:00 P.M. of a preceding day to 6:00 A.M. the following day, that he was still on duty at around 2:30 in the morning of March 7, 1992, and that the firearm issued to him was in his house. Upon their request to see the firearm, they proceeded to Marra's residence at Interior Nueva Street.[13]

When they arrived, Marra took a .38 caliber revolver from inside an aparador and handed it to De Vera. De Vera also found five live bullets and one spent shell. Smelling gunpowder from the barrel of the gun, De Vera asked Marra when he last fired the gun but the latter denied ever having done so. Abruptly, De Vera asked him point-blank why he shot Tandoc. Marra at first denied the accusation but when informed that someone saw him do it, he said that he did so in self-defense, firing at the victim only once. Tandoc allegedly had a samurai sword with him at the time of the incident. However, persistent efforts on the part of the policemen to thereafter locate said bladed weapon proved futile. Marra also admitted that prior to the incident, he chased the victim and Din. The officers then took Marra to the police station where he was detained.[14]

Meanwhile, De Vera went to Villaflor Hospital from where he fetched Din and brought him to the police station. There, Din definitely identified Marra as the assailant. During the investigation, De Vera also found out that Marra had no firearm license.[15]

Dr. Tomas G. Cornel, Assistant City Health Officer of Dagupan City, testified that he conducted an autopsy on a certain Nelson Tandoc. He found a gunshot wound on the victim with the point of entry at the left side of the anterior chest wall and the point of exit at the lower left portion of the right shoulder.[16]

Prosecutor Gregorio Gaerlan, stepfather of the victim, testified on the funeral, burial and other expenses incurred by the family. He declared that they paid Funeraria Quiogue P25,000.00 for its services; Villaflor Hospital, P2,875.00 for the confinement of Tandoc; St. John Memorial Cathedral, P350.00; Eternal Garden, P3,000.00 for the interment fee and P150.00 for the rent of the tent during the burial; and that they spent P2,300.00 for the video

tape expenses and P11,800.00 for food and drinks during the wake.[17]

Understandably, appellant gave a different version of the incident. Marra declared in court that he used to work as a security guard at "Linda's Ihaw-Ihaw" from seven o'clock in the evening to six o'clock in the morning of the following day. On March 6, 1992, he reported for duty at seven o'clock that evening as was his usual practice. At around four o'clock dawn of the following day, he went home to change his clothes. He proceeded to the Five Star Bus Terminal which was adjacent to "Linda's Ihaw-Ihaw." He saw Neneng, the cashier of said eatery, and together they ordered arroz caldo. Later, at about 5:00 A.M., he was approached by four policemen who inquired if he was a security guard. He answered in the affirmative. He was also asked about his sidearm. When he answered that it was at his residence, they all went to his house to look for it. After he handed over the firearm to the policemen, he was brought to the city hall where he was detained.[18]

Under cross-examination, he insisted that when he handed the gun to the policeman, there were five live bullets, and not four live bullets and one empty shell as claimed by the prosecution. Prior to the incident, he had never met Jimmy Din nor does he know of any cause why Din would harbor any ill feelings against him.[19]

After a careful scrutiny of the records and an objective evaluation of the evidence, the Court is not disposed to reverse the judgment of the lower court, the decision of the latter being amply supported by the established facts and fully sustained by the applicable law.

In assailing the decision of the court below, the defense argues that "Jimmy Din x x x was not able to identify the assailant in a definite and believable manner." It goes on to state further that "Jimmy Din was inside the hotel when Nelson Tandoc was shot and his vision was o(b)structed by the door. Jimmy Din was also not familiar with the accused. Under the circumstances by which he allegedly witnessed the shooting, how could he identify clearly an assailant at the distance of 45 meters?"[20]

Appellant's counsel is only partly correct, having conveniently failed to mention other vital parts of Din's testimony. An impartial review of said testimony readily reveals that Din was indeed in a position to know the identity of the assailant. Firstly, Din knew for a fact that the persons he and Tandoc fought with near the Dunkin' Donuts store were the same men who chased them while they were on their way back to the hotel because he was able to take a good look at them. During the chase, he naturally turned around to look at the men who were running after them and who were at that time in front of the Balingit Trading store which was well-lighted.[21] It logically follows that they were the same persons who were waiting for them when they later came out of the hotel, and he was familiar with their identities because of their previous encounter.

Secondly, we do not agree with appellant that the door blocked the view of Din. Said door, partly made of plywood, had a spring hinge which makes it possible for the door to close by itself. However, at that time the spring hinge had been weakened by long and constant use such that it would take some time for it to close the door, thereby allowing Din sufficient opportunity to have an unobstructed view of the scene outside.[22]

Thirdly, Din was quite near the victim and appellant, which proximity enabled him to clearly see what really happened. He thus readily perceived the actual shooting at the time when Tandoc pushed the door open. At that precise moment, Din was at the left side of Tandoc and about four to five meters away from the assailant.[23]

Lastly, the place was brightly illuminated by a 20-watt fluorescent bulb installed on the outside wall in front of the hotel. Marra was only about three meters away therefrom. Such physical conditions would undeniably afford a clear view from inside the hotel of the immediate area outside and in front of the same where the incident took place.

The prosecution presented another vital witness in the person of Sgt. Reynaldo de Vera, whose testimony we shall

repeat here for easy reference. In capsulized form, De Vera narrated the sequence of events that happened after he and his companions went to the crime scene to conduct an investigation. Having received information that a man in a security guard's uniform was involved in the incident, they sought information from a security guard of a nearby bus terminal. Said security guard pointed them to Marra, who at that time was eating in a carinderia nearby. Informed by Marra that his gun was at his residence, they all went to Marra's residence to get the same. After receiving said firearm, De Vera asked appellant why he killed Tandoc but Marra initially denied any participation in the killing. Nevertheless, when confronted with the fact that somebody saw him do it, Marra admitted the act although he alleged it was done in self-defense. This testimony of De Vera as to the confession of Marra is of significant weight, but the admissibility thereof shall also be passed upon.

Section 12(1), Article III of the 1987 Constitution provides that "(a)ny 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. x x x." The critical inquiry then is whether or not Marra was under custodial investigation when he admitted the killing but invoked self-defense. We believe that he was not so situated.

Custodial investigation involves any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogations that lends itself to eliciting incriminating statements that the rule begins to operate.[24]

In the case at bar, appellant was not under custodial investigation when he made the admission. There was no coercion whatsoever to compel him to make such a statement. Indeed, he could have refused to answer questions from the very start when the policemen requested that they all go to his residence. The police inquiry had not yet reached a level wherein they considered him as a particular suspect. They were just probing into a number of possibilities, having been merely informed that the suspect was wearing what could be a security guard's uniform. As we held in *People vs. Dy*: [25] "What was told by the accused to Pat. Padilla was a spontaneous statement not elicited through questioning, but given in an ordinary manner. No written confession was sought to be presented in evidence as a result of formal custodial investigation.[26] The Trial Court, therefore, cannot be held to have erred in holding that compliance with the constitutional procedure on custodial investigation is not applicable in the instant case, x x x."

Accordingly, the testimony of Sgt. de Vera assumes a dominant dimension because it totally destroys the defense of denial cum alibi subsequently raised by appellant. In his answers to Sgt. De Vera, appellant expressly admitted that he shot Tandoc, albeit with an exculpatory explanation. This admission of Marra is in complete contrast to the statements he later made in open court.

In addition, the law provides that the declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein may be given in evidence against him and, in certain circumstances, this admission may be considered as part of the *res gestae*. In a similar situation involved in the aforecited case of *People vs. Dy*, this Court held:

"x x x the oral confession made by the accused to Pat. Padilla that 'he had shot a tourist' and that the gun he had used in shooting the victim was in his bar which he wanted surrendered to the Chief of Police (t.s.n., October 17, 1984, pp. 6-9) is competent evidence against him. The declaration of an accused acknowledging his guilt of the offense charged may be given in evidence against him (Sec. 29 [now Sec. 33], Rule 130). It may in a sense be also regarded as part of the *res gestae*. The rule is that, any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and

understood all of it. An oral confession need not be repeated verbatim, but in such a case it must be given in substance. (23 C.J.S. 196, cited in *People vs. Tawat*, G.R. No. 62871, May 25, 1985, 129 SCRA 431)." (Italics supplied.)

In any event, even without his admission, the case against appellant has been duly established by the other evidence of the prosecution, as earlier discussed. However, persistently arguing for an acquittal, the defense points out that when the police officers saw Marra, he was not in a blue uniform whereas Din testified that the person who shot Tandoc was wearing the polo shirt of a security guard's uniform. This is a puerile argument since appellant himself removed any lingering doubts on this point. He said that on ending his tour of duty at 4:00 A.M. of March 7, 1992, he decided to go home to change clothes, after which he went to "Linda's Ihaw-Ihaw" to eat. This explains why, at the time the police officers saw him, he was already in civilian clothes. The shooting had taken place earlier at around 2:00 A.M. At that time, Marra was still in his security guard's uniform, being then on duty.

However, while we agree that the crime committed by appellant was murder qualified by treachery, we reject the finding that the same was aggravated by nighttime. No evidence was presented by the prosecution to show that nocturnity was specially sought by appellant or taken advantage of by him to facilitate the commission of the crime or to ensure his immunity from capture.[27] At any rate, whether or not such aggravating circumstance should be appreciated, the penalty to be imposed on appellant would not be affected considering the proscription against the imposition of the death penalty at the time when the offense in the instant case was committed.

WHEREFORE, the judgment of the court a quo finding accused-appellant Samuel Marra y Zarate guilty of the crime of murder and imposing upon him the penalty and civil liabilities therein stated is hereby **AFFIRMED**.

SO ORDERED.

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

[1] Original Record, 1.

[2] *Ibid.*, 15.

[3] *Ibid.*, 29.

[4] *Ibid.*, 50.

[5] *Ibid.*, 11.

[6] Decision, 9-10; Original Record, 118-119; penned by Judge Crispin C. Laron.

[7] T.S.N., August 13, 1992, 3-8.

[8] *Ibid.*, *id.*, 8-9.

[9] *Ibid.*, *id.*, 10-15, 25.

[10] *Ibid.*, *id.*, 21-22, 26-27.

[11] *Ibid.*, July 21, 1992, 4-7; *ibid.*, July 23, 1992, 6-7.

[12] *Ibid.*, *id.*, 8-10; *ibid.*, *id.*, 4.

[13] *Ibid.*, *id.*, 10-13; *ibid.*, *id.*, 9.

[14] Ibid., id., 14-16, 23; *ibid.*, id., 16-20.

[15] Ibid., id., 23-24, 27.

[16] Ibid., July 2, 1992, 2, 4-5.

[17] Ibid., July 14, 1992, 8-9, 11-12.

[18] Ibid., September 3, 1992, 16-17, 20-29.

[19] Ibid., id., 31-32.

[20] Appellant's Brief, 7; Rollo, 44.

[21] TSN, August 18, 1992, 8-9.

[22] Ibid., id., 14, 18.

[23] Ibid., August 13, 1992, 15.

[24] *Escobedo vs. Illinois*, 378 U.S. 473 (1964).

[25] G.R. No. 74517, February 23, 1988, 158 SCRA 111.

[26] Citing *People vs. Taylaran*, G.R. No. L-49149, October 31, 1981, 108 SCRA 373.

[27] *People vs. Pasiliao, et al.*, G.R. Nos. 98152-53, October 26, 1992, 215 SCRA 163; *People vs. Bigcas, et al.*, G.R. No. 94534, July 20, 1992, 211 SCRA 631.

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