

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO RODRIGUEZ CAMAT AND WILFREDO TANYAG DEL ROSARIO, ACCUSED-APPELLANTS.

G.R. No. 112262. April 02, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants Armando Rodriguez Camat, alias 'Amboy Camat,' and Wilfredo Tanyag del Rosario, alias "Willie," were charged in Criminal Case No. 19841 of the Regional Trial Court of the then Municipality of Makati, Branch 147, with the so-called special complex crime of robbery with homicide and frustrated homicide committed in Paranaque, Metro Manila.

The information therefor, filed on October 21, 1985 with the approval of the Provincial Fiscal of Rizal, alleges:

That on or about the 1st day of September, 1985, in the Municipality of Paranaque, Metro Manila, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, with intent of gain and without the consent and against the will of Gonzalo Penalver and Nelson Sinoy, and by means of force, threats, violence and intimidation employed upon the persons of said Nelson Sinoy and Gonzalo Penalver, did then and there willfully, unlawfully and feloniously divest the said Gonzalo Penalver of his one (1) Black leather clutch bag containing plier(s), test valve, longnose and one (1) Sanwa Electric tester, valued at P150.00, with the total amount of P150.00, to the damage and prejudice of the said Gonzalo Penalver, in the aforementioned amount of P150.00; that on the occasion of the said Robbery (Hold-Up) immediately thereafter, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously stab said Nelson Sinoy, thereby inflicting upon the latter serious and mortal stab wounds, which directly caused his death; that as a further consequence, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously stab said Gonzalo Penalver, thereby inflicting upon the latter serious and mortal stab wounds, which ordinarily would cause the death of said Gonzalo Penalver, thus performing all the acts of execution which would produce the crime of Homicide, as a consequence, but nevertheless did not produce it by reason of cause or accident independent of the will of the said accused, that is due to the timely and able medical assistance rendered to the said Gonzalo Penalver, which prevented his death.[1]

At their arraignment, appellants pleaded not guilty to the crime charged. After due hearing, the lower court rendered judgment[2] on June 19, 1987 finding both appellants guilty beyond reasonable doubt of the crime of robbery with homicide and frustrated homicide, sentencing them to serve the penalty of reclusion perpetua, and ordering them to indemnify the heirs of Nelson Sinoy in the amount of P30,000 and Gonzalo Penalver in the sum of P10,000.00.

Hence, this appeal, with appellants assigning in their joint brief a single error submitting that the trial court gravely erred in finding them guilty beyond reasonable doubt of the crime of robbery with homicide and frustrated homicide.[3]

The factual findings of the court a quo are sustained by the evidence on record, and we reproduce the same:

About 9:00 o'clock in the evening of September 1, 1985, Nelson Sinoy and Gonzalo Penalver, both members of the Philippine Marine(s) stationed at Fort Bonifacio, Makati, Metro Manila, were walking along Quirino Avenue, Paranaque, Metro Manila. They had just come from Camp Claudio where they attended a birthday party. They were in civilian clothes.

While walking along Quirino Avenue, they noticed two persons trailing them closely, about ten meters away. The place was well-lighted. Gonzalo Penalver was carrying a clutch bag, containing a Sanwa electric tester (Exhibit 1). They crossed the street ostensibly to avoid the two men following them.

On(e) of them, Wilfredo del Rosario rushed to Nelson Sinoy and kicked the latter. Armando Camat followed del Rosario and pulled out a knife and stabbed Nelson Sinoy. Gonzalo Penalver kicked Camat who in turn stabbed the former, hitting him at the right rib. When Penalver kicked Camat he became outbalanced. Wilfredo del Rosario then grabbed the clutch bag from him (Penalver).

Realizing they were at the losing end, Sinoy and Penalver ran away. With the aid of somebody who identified himself as a policeman, they were brought to the San Juan de Dios Hospital.

Nelson Sinoy died at the San Juan de Dios Hospital despite the efforts of Dr. Vittorio Pantig to save him. Dr. Pantig conducted an exploratory lapar(o)tomy on the abdomen of Nelson Sinoy and found massive bleeding in the abdominal cavity, and partial damage to the kidney, pancreas and the diaphragm. He tried to control the bleeding but despite blood transfusion, the blood pressure of the patient went down to zero.

Gonzalo Penalver was transferred to the AFP Medical Center on September 2, 1985 after his wound was already sutured at the San Juan de Dios Hospital. At the AFP Medical Center, Dr. Benedicto Mina took care of the patient. He gave blood transfusion to the patient. The patient was discharged from the hospital only on March 15, 1986.[4]

In traversing the criminal charge, appellants interposed the defense of alibi and denied any participation in the commission of the felony.

Appellant Armando R. Camat claimed that at around 7:00 to 8:30 in the evening of September 1, 1985, he was already in his house located at Bagong Silang Street, Baclaran, Paranaque resting and preparing to sleep for the night. He testified that he was at the "saklaan" working as a card dealer from 5:00 P.M. to 7:00 P.M. of that day.[5]

This testimony of appellant Camat. was corroborated by his mother-in-law, Filomena Macabangon, who stated that she is certain Camat was at their house at around 7:00 P.M. to 8:00 P.M. on September 1, 1985 as the said appellant and his family lived with her and her other children at Bagong Silang Street.[6]

For his part, appellant Wilfredo T. del Rosario contended that from 5:00 A.M. to 7:00 P.M. of September 1, 1989, he and his wife were at their stall selling vegetables along a sidewalk of Quirino Avenue in Baclaran. He went home at 7:00 o'clock in the evening and never left their house located at Sanchez St., Baclaran, Paranaque because he was very tired that day.[7]

Magdalena del Rosario, mother of appellant Del Rosario supported the story of the latter by testifying that she saw her son vending vegetables up to 7:00 P.M. and that he have never left the house after 7:00 o'clock in the evening of September 1, 1989.[8]

Both appellants claim that they did not know each other prior to the date of the commission of the crime and that they met each other only after they were arrested and brought to the police precinct.[9]

Patrolman Odeo Cariño, to whom the case was assigned for investigation on September 2, 1985, stated on the witness stand that appellant Camat orally admitted to him his (Camat's) participation in the killing of the soldier during interrogation at the police precinct.[10] In addition, Camat also allegedly gave the names of Wilfredo del Rosario and one Roland as his co-conspirators in the crime charged, and alluded to appellant Del Rosario as the one who actually stabbed Sinoy.[11]

With this information, Patrolman Cariño and another policeman traced the whereabouts of Del Rosario and, when they found him, they invited him for questioning. In the police station, appellant Del Rosario allegedly confessed to Patrolman Cariño his involvement in the crime and informed the latter that the electric tester could be recovered from his relatives.[12]

The investigation of the case centered upon Camat only after the latter was pointed to by a vendor who allegedly saw what happened during the night of September 1, 1985; As fate would have it, Camat was arrested by Parañaque policemen on October 11, 1985 for acts of lasciviousness, upon the complaint of his sister-in-law. Since Camat fitted the description given earlier by the eyewitness to the investigating policemen, Patrolman Cariño fetched the vendor to verify the identity of Camat. At the police station, said witness recognized and identified Camat as the one who killed Sinoy. On the witness stand, Patrolman Cariño refused to give the identity of the anonymous vendor-witness who was allegedly afraid of the accused, but the policeman promised that he would present said witness if ordered to do so by the court.[13]

In support of their lone assignment of error, appellants insist that the trial court cannot rely on the extrajudicial confession of appellant Camat as a basis for their conviction because such confession was obtained during custodial investigation in violation of their constitutional rights. Correlatively, appellants aver that the lower court also erred in making an inference of guilt from the extrajudicial confession of appellant Del Rosario wherein the latter supposedly gave to the investigating policeman the name of his relative in possession of the electric tester.[14]

The rights invoked by appellants are premised upon Section 20, Article IV of the 1973 Constitution¹⁵ then in force, and which provided:

SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.

The aforequoted provision was interpreted and expounded upon in the case of *Morales, Jr. vs. Enrile, et al.*,^[16] wherein this Court laid down the procedure to be followed in custodial investigations, thus:

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7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means - by telephone if possible - or by letter or messenger. It shall be the duty of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.

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As interpreted in the jurisdiction of their origin, these rights begin to be available where the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, and the police carry out a process of interrogation that lends itself to eliciting incriminating statements.[17]

A reading of the challenged decision shows that the court below relied upon appellants' confessions to disaffirm their credibility and to impugn their denial of complicity in the commission of the felony. This the lower court cannot do because, absent any showing that appellants were duly advised of the mandatory guarantees under the Bill of Rights, their confessions made before Patrolman Cariño are inadmissible against them and cannot be used in support of their conviction.

As we have heretofore held, it is now incumbent upon the prosecution to prove during the trial that, prior to questioning, the confessant was warned of his constitutionally protected rights because the presumption of regularity of official acts does not apply during in-custody investigation.[18] Trial courts should further keep in mind that even if the confession of the accused is gospel truth, if it was made without the assistance of counsel, it is inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.[19]

As to the implication of Del Rosario in the extrajudicial confession of Camat, no reliance can be placed on the imputation therein because it violates the rule on *res inter alios acta* and does not fall under the exceptions thereto,[20] especially since it was made after the supposed homicidal conspiracy. An extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused. As against the latter, the confession is hearsay.[21]

However, even disregarding the extrajudicial confessions of appellants, the judgment of conviction rendered by the lower court stands and can be sustained. Worthy of consideration is the trial court's conclusion that "(a)lthough there is only one (1) eyewitness presented by the prosecution in the person of Gonzalo Penalver, the Court is of the opinion and so holds that the prosecution has satisfactorily proved the guilt of both accused beyond reasonable doubt." [22]

It is well settled that the testimony of a single eyewitness, if found convincing and trustworthy by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt.[23] We also see no reason to deviate from the trial court's observation that Penalver's testimony bore the attributes of truth, having been delivered in a candid and straightforward manner.

We have scrupulously examined the testimony of Penalver and we find the same to be categorical and candid, untainted by inconsistencies, contradictions or evasions. It creditably chronicles the material details in the commission of the crimes in question, and should accordingly be given full credence.

It bears repeating that findings of the trial court pertaining to the credibility of witnesses deserve great respect since it had the opportunity to hear and observe their demeanor as they testified on the witness stand and, therefore, it was in a better position to discern if such witnesses were telling the truth or not based on their deportment while testifying.[24]

Additionally, there was no evidence of any ulterior or evil motive on the part of Penalver that might have led him to give fabricated testimony against appellants. He, and even appellant Camat, declared in open court that they did not know each other before the gruesome incident happened on September 1, 1985.[25] Having no motive to testify falsely, his positive testimony is sufficient for conviction. When there is no evidence indicating that the principal witness for the prosecution was moved by improper motive, the presumption is that he was not so

moved, and his testimony is entitled to full faith and credit.[26]

We also take note of the fact that prosecution witness Penalver positively identified appellants as the persons who robbed him and killed Sinoy. He could not have been mistaken in identifying appellants as the scene of the crime was sufficiently illuminated and he even remembers that appellant Del Rosario was wearing faded camouflage clothing at the time of the robbery.[27] Thus, appellants' claim that witness Penalver failed to identify them[28] is without merit. His narration of the incident and his identification of the malefactors are direct and definite.

Appellants also contend that the failure of the prosecution to present in court the police informer who allegedly pointed to appellant Camat in the police precinct deprived them of their constitutional right of confrontation.[29]

The right of confrontation is one of the rights of an accused enumerated in Section 19, Article IV of the 1973 Constitution[30] which provided that:

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. x x x

In a case decided in 1979,[31] the above provision was invoked by an accused in claiming that his extrajudicial confessions made prior to the effectivity of the 1973 Constitution[32] were illegally obtained because his constitutional right to counsel was disregarded. The Court, citing *People vs. Jose, et al.*,[33] clarified that the phrase "criminal prosecutions" in the said constitutional provision shall be interpreted to mean proceedings before the trial court, which in its most expanded concepts is from arraignment up to the rendition of the decision. It will also be observed that under both the 1964 Rules of Court, and the 1985 Rules on Criminal Procedure, the right of confrontation is specified as a right of the accused at the trial.[34] We accordingly reiterate that an accused's constitutional right to meet the witnesses face to face is limited to proceedings before the trial court. Accordingly, appellant's reliance upon this constitutional right is evidently misplaced as the same is available to him at the trial and not during a custodial investigation.

Appellants' apprehension that the unidentified witness may be someone who is harboring ill motives against appellant Camat will not subvert the case of the prosecution. It is the prerogative of each party to choose its own witnesses in accordance with its own assessment of the evidence it needs to prove its case.[35] If appellants felt that the vendor might have a grudge against Camat, there was nothing to prevent them from determining that fact on the witness stand by calling said vendor via compulsory process available to them both under the Constitution and the Rules of Court.

We agree with the lower court in discarding the stories of appellants which were designed to provide them their respective alibis coetaneous with the commission of the offense. Time and again, we have held that alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because it is easy of fabrication without much opportunity for checking or rebutting it.[36] For a defense of alibi to prosper, we have repeatedly stressed, it must not only be shown that the accused was not at the scene of the crime at the time of its commission but also that it was physically impossible for him to have been at the scene of the crime at that time.[37]

Appellants, from their own testimony in court, were present not only in the same municipality but in the same district where the crime was committed. We take judicial notice of the fact that Bagong Silang and Sanchez Streets are just a few meters away from Quirino Avenue and, therefore, it was not impossible for them to be present at the scene of the crime at the time it was perpetrated.

Also, alibi becomes less plausible as a defense when it is mainly established by the accused himself and his immediate relatives who, in the present case, are respectively appellants' mother and mother-in-law, because they would naturally be expected to make statements in his favor.[38] Furthermore, the positive identification of the malefactors made by witness Penalver negates appellants' submissions on their respective alibis.[39]

Regarding the designation of the offense for which appellants were convicted based on the criminal charge in the information, the present jurisprudential rule is that appellants should have been indicted only for the special complex crime of robbery with homicide under Article 294 of the Revised Penal Code. There is no crime of robbery with homicide and frustrated homicide. The term "homicide" in paragraph 1, Article 294 of the Revised Penal Code is to be understood in its generic sense, absorbing not only the act which results in death but also all other acts producing anything short of death, assuming that death occurs by reason or on the occasion of the robbery, and is designated as such regardless of the number of homicides and physical injuries committed.[40] Hence, the frustrated homicide aspect of the present charge is deemed merged in the special complex crime of robbery with homicide defined and penalized under the law.[*]

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with the MODIFICATIONS that appellants are declared guilty of the crime of robbery with homicide, and the civil indemnity for the death of Nelson Sinoy is hereby increased to P50,000.00 in consonance with the present jurisprudential policy.

SO ORDERED.

Romero, Puno and Mendoza, JJ., concur.

Torres, Jr., J., is on leave.

[1] Original Record, 1.

[2] Per Judge Teofilo L. Guadiz, Jr.

[3] Appellants' Brief, 1; Rollo, 40.

[4] Original Record, 215-216.

[5] TSN, February 6, 1987, 4; February 10, 1987, 2-3.

[6] Ibid., id., 2.

[7] Ibid., March 11, 1987, 2-3.

[8] Ibid., March 31, 1987, 2 & 3.

[9] ibid., February 6, 1987, 4; March 11, 1987, 2.

[10] Ibid., May 9, 1986, 7-8.

[11] ibid., id., 3-4.

[12] Exhibit B; TSN, September 30, 1986, 2.

[13] TSN, May 9, 1986, 2-3, 5-7; September 30, 1986, 3-4.

[14] Appellants' Brief, 12, 14; Rollo, 51, 53.

[15] Similar provisions are found in Secs. 12 and 17, Art. III, 1987 Constitution.

[16] GR No. 61016, April 26, 1983, 121 SCRA 538; decidedly jointly with Moncupa, Jr. vs. Enrile, et al., G.R.

No. 61107.

[17] Escobedo vs. illinois, 378 U.S. 478 (1964).

[18] People vs. Tolentino, G.R. No. 50103, November 24, 1986, 145 SCRA 597.

[19] People vs. Pineda, G.R. No. 72400, January 15, 1988, 157 SCRA 71.

[20] Secs. 28-31, Rule 130, Rules of Court.

[21] People vs. Pamon, G.R. No. 102005, January 25, 1993, 217 SCRA 501; see also People vs. Ferry, et al., 66 Phil. 310 (1938).

[22] Original Records, 213.

[23] People vs. Catubig, et al., G.R. No. 71626, March 22, 1991, 195 SCRA 505; People vs. Lazo, et al., G.R. No. 75367, June 19, 1991, 198 SCRA 274.

[24] People vs. San Gabriel, G.R. No. 110103, August 4, 1994, 235 SCRA 80; People vs. Bongadillo, G.R. No. 96687, July 20, 1994, 234 SCRA 233; People vs. Ornoza, et al., G.R. No. 56283, June 22, 1987, 151 SCRA 495.

[25] TSN, April 23, 1986, 9; February 6, 1987, 4.

[26] People vs. Calope, et al., G.R. No. 97284, January 21, 1994, 229 SCRA 413; People vs. Belibet, et al., G.R. No. 91260, July 25, 1991, 199 SCRA 587.

[27] Exhibits A, A-1.

[28] Appellants' Brief, 15; Rollo, 54.

[29] Appellants' Brief, 13; Rollo, 52.

[30] Reproduced verbatim in Sec. 14 (2), Art. III, 1987 Constitution.

[31] People vs. Corachea, L-30101, July 16, 1979, 91 SCRA 422.

[32] The right to counsel during custodial investigation was not yet available then, per Magtoto vs. Manguera, etc., et al. (L-37201-02, March 3, 1975, 63 SCRA 4) and companion cases.

[33] L-28232, February 6, 1971.

[34] Sec. 1 (f), Rule 115.

[35] People vs. Llabres, G.R. Nos. 74294-96, August 4, 1993, 225 SCRA 86.

[36] People vs. Silong, et al., G.R. No. 110830, May 23, 1994, 232 SCRA 487.

[37] People vs. Silong, et al., supra; People vs. Saguban, G.R. No. 96287, April 25, 1994, 231 SCRA 744; People vs. Peralta, G.R. No. 67702, January 18, 1991, 193 SCRA 9.

[38] People vs. Paglinawan, G.R. No. 107804, June 28, 1994 233 SCRA 494; People vs. Sabellano, G.R. Nos. 93932-33, June 5, 1991, 198 SCRA 196; People vs. Solis, et al., G.R. No. 93629, March 18, 1991, 195 SCRA 405.

[39] See People vs. Calope, et al., supra; People vs. Barte, G.R. No. 103211, February 28, 1994, 230 SCRA 401; People vs. Paglinawan, supra.

[40] People vs. Servillon, G.R. No. 92154, September 12, 1994, 236 SCRA 385; People vs. Dimaano, et al., G.R.

No. 95231, June 15, 1992, 209 SCRA 819; People vs. Repuela, et al., G.R. No. 85178, March 15, 1990, 183 SCRA 244.

[*] The writer of this opinion reserves his views on this matter for expostulation when the proper case comes before the Court for deliberation.

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