

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO GALLARDO Y GANDER, ALFREDO COLUMNA Y CORREA, AND JESSIE MICATE Y ORTEZA,[1] ACCUSED-APPELLANTS.

G.R. No. 113684. January 25, 2000

Ponente: PARDO, J.

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PARDO, J.:

The Constitution enumerates the basic rights of a person under investigation.

"Sec. 12(1). Any 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. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."[1]

x x x

The case before the Court is an appeal by accused-appellants from the decision[2] of the trial court finding them guilty of murder for the treacherous killing of Edmundo Orizal and sentencing each of them to reclusion perpetua and to pay in solidum the heirs of Edmundo Orizal in the sum of P50,000.00 as indemnity for death and P150,000.00 as moral damages.

On November 7, 1991, on the basis of the sworn confessions of the accused, the Provincial Prosecutor of Cagayan filed with the Regional Trial Court, Tuguegarao, Cagayan an information charging the accused with murder, committed as follows:

"That on or about July 28, 1991, in the municipality of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Armando Gallardo y Gander, Alfredo Columna y Correa and Jessie Micate, armed with guns, confederating and conspiring together and helping one another with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Edmundo Orizal, inflicting upon him several gunshot wounds on the different parts of his body which caused his death.

"Contrary to law."

"Tuguegarao, Cagayan, November 7, 1991.

"(Sgd.) ALEJANDRO A. PULIDO, NPS III
"Provincial Prosecutor"[3]

On December 2, 1991, all three accused entered a plea of not guilty.[4] Trial ensued.

The prosecution's evidence established the following facts:

On July 28, 1991, the lifeless body of Edmundo Orizal was found in the rest house of Ronnie Balao in Balzain, Tuguegarao, Cagayan. In an autopsy performed by Dr. Edmundo Borja, Tuguegarao Municipal Health Officer,

the victim was found to have sustained seven (7) gunshot wounds in the chest, abdomen, back, left and right thighs, and two (2) grazing wounds on the left arm and back.[5]

Investigation by the Tuguegarao police station identified the suspects in the murder of Edmundo Orizal as Armando Gallardo y Gander, Alfredo Columna y Correa, and Jessie Micate y Orteza. The police received information that the suspects were detained at the Camalaniugan Police Station because of other criminal charges. So elements of the Tuguegarao police went to the Camalaniugan Police Station in August 1991 to fetch the suspects. Only Armando Gallardo and Alfredo Columna alias Fermin were in the custody of the Camalaniugan Police Station.

The two suspects Armando Gallardo and Alfredo Columna were brought to the Tuguegarao Police Department. On August 18, 1991, they were investigated by Police Investigator SPO4 Isidro Marcos, and they gave statements admitting that they, together with Jessie Micate, killed Edmundo Orizal.

During the investigation, the dialect used was Ilocano, the native tongue of the accused, and during the taking of the statements, Atty. Rolando Velasco assisted them. Judge Vilma Pauig was present. She administered the oath on the jurat of the statements. Accused-appellants signed their statements admitting the killing of Edmundo Orizal.

According to accused-appellants, they planned and executed the killing of Edmundo Orizal, as follows:

At about 10:00 in the morning of July 26, 1991, Pat. Dennis Molina, accused-appellants Armando Gallardo and Alfredo Columna, together with Jessie Micate and Asoy (Nelson) Hidalgo, met at the house of Alfredo Columna in Ziminilla (Camalaniugan, Cagayan). Pat. Molina conveyed to the group the desire of Congressman Domingo Tuzon that Edmundo Orizal be killed because the latter was planning to ambush him and grab his land. Edmundo Orizal was a strong campaigner and a bodyguard of retired Gen. Prospero Olivas, who was running for mayor of Camalaniugan (against the congressman's re-electionist wife). Pat. Molina told the group that if they accepted the job and succeeded in their mission, Congressman Tuzon would work for their acquittal in all their criminal cases, and would give cash rewards.

The accused-appellants accepted the job and the following day, on July 27, 1991, they, together with Jessie Micate, Asoy Hidalgo and Pat. Molina, set out to accomplish their mission. Pat. Molina accompanied them to Dugo, Camalaniugan at Where Else Beauty Salon where Pat. Molina showed them their weapons: a .38 cal. and .45 cal. handguns and a folded carbine, placed inside a box.

At around 2:00 in the afternoon of the same day, in the house of Dadoy Micate, Pat. Molina gave the .38 cal. revolver to Armando Gallardo, the .45 cal. pistol to Alfredo Columna, and the folded carbine to Jessie Micate. Then, Pat. Molina instructed the three accused to look for Edmundo Orizal and kill him.

The three boarded a tricycle and proceeded to Edmundo Orizal's boarding house at Caritan, Tuguegarao, Cagayan. Edmundo was not there. He was at that time in the house of Aping in Lecaros Street, Centro, Tuguegarao. The three went to that place. At the place of Aping, accused Gallardo engaged Edmundo in a conversation while all of them drank San Miguel beer. In the course of their conversation, and probably to get the trust of Edmundo Orizal, accused Gallardo told him that he had already killed Inyong Orteza, whom Edmundo Orizal wanted dead.

At around 5:00 p. m., the group moved over to the rest house of Ronnie Balao in Balzain, Tuguegarao. Edmundo ordered Armando Gallardo to get his M-14 armalite rifle from Ronnie Balao. However, Ronnie Balao did not give the firearm, but went with Armando to the rest house to talk to Edmundo. After talking to Edmundo and Armando, Ronnie Balao went home.

Meanwhile, Edmundo Orizal, the two accused-appellants and Jessie Micate were conversing. Edmundo was convincing accused-appellants and Jessie Micate to join him as bodyguards of Gen. Olivas during the election campaign. At this point, Jessie Micate leveled his carbine at Edmundo and successively fired at him. Alfredo Columna drew his .45 cal. pistol and shot Edmundo Orizal five times. This was followed by Armando Gallardo who shot Edmundo once with his .38 cal. revolver. The three accused fled, and went to the house of Dadoy Micate in Caggay (Tuguegarao, Cagayan), where Pat. Molina was waiting for them. They informed Pat. Molina that the mission was accomplished.

Early the next morning, July 28, 1991, the three accused and Pat. Molina boarded a Manny Trans bus and proceeded to Camalaniugan. They stopped at Dugo, Camalaniugan and proceeded to the house of Congressman Tuzon to report the killing.

Congressman Tuzon was out of his house attending the town fiesta of Buguey (Cagayan). When he arrived, Pat. Molina informed him that Edmundo Orizal is dead. Congressman Tuzon was very happy and promised them that he would work for their acquittal in their pending cases and after confirming the death of Orizal he would give them their cash rewards.[6]

Nelson Hidalgo, a friend of Manuel Columna, Jr., testified that on July 26, 1991 at around 4:30 in the afternoon at the house of Manuel Columna, Jr., he was asked by the accused to join them in their mission to kill Edmundo Orizal.

In that meeting, Nelson Hidalgo resolved to join the group, but while on his way home from the meeting, he met his bosom friend Reynald Micate. He told the latter about their plan to kill Edmundo Orizal. Reynald Micate advised him not to participate in the killing for it would just add to his other criminal cases. Nelson Hidalgo heeded the advice of his bosom friend. Consequently, realizing that because of his knowledge of the plan to kill Edmundo Orizal, he would be a target for elimination so that the plan would not be revealed to anyone, he left Camalaniugan, and went to Buguey, then Aparri and finally, to Manila. It was only after three months that he returned to Camalaniugan and learned that Edmundo Orizal was killed.

On August 18, 1993, accused on their part filed with the trial court a demurrer to evidence, arguing that the prosecution failed to establish that the signed statements of the accused were procured in violation of Article III Section 12 (1) of the Constitution. On September 10, 1993, the trial court denied the demurrer and stated that the court would want to know controverting evidence that the defense may give to intelligently decide the issues of the case.

Accused Armando Gallardo and Alfredo Columna testified in their defense. They gave a common version. In the words of the trial court, here is what they alleged:

"On August 18, 1991, elements of the Tuguegarao Police Station went to Camalaniugan to fetch accused Armando Gallardo and Alfredo Columna who were detained at the Camalaniugan Municipal Jail in connection with other criminal cases. These two accused were brought to the Tuguegarao Police Station to be questioned on the killing of Edmundo Orizal.

"Arriving in Tuguegarao the same day, Investigator Isidro Marco investigated said accused and took their statements at the Tuguegarao Police Station. The investigator, however, did not inform them of their constitutional rights.

"After the respective statements had been typewritten, investigator Marcos neither read to nor allowed them to read the contents of their alleged statements. The investigator just told them to sign their so-called statements. Accused Gallardo signed the confessional statement because he was harmed by Marcos while accused Alfredo

Columna said that he signed said document because he was afraid he might be harmed."[7]

On November 29, 1993, the trial court rendered decision finding accused Armando Gallardo y Gander and Alfredo Columna y Correa guilty beyond reasonable doubt of murder qualified by evident premeditation and aggravated by treachery and sentencing each of them to reclusion perpetua and to pay in solidum the heirs of Edmundo Orizal P50,000.00 as the mandatory indemnity for death and P150,000.00 as moral damages. The court acquitted accused Jessie Micate y Ortega for lack of evidence.[8]

Hence, this appeal.

Accused-appellants Armando Gallardo y Gander and Alfredo Columna y Correa impute the following errors to the trial court:

- In admitting their extra-judicial confessions in evidence against them; and
- In finding that their guilt was proved beyond reasonable doubt.[9]

The appeal has no merit. The extra-judicial confessions of the accused were given after they were completely and clearly apprised of their Constitutional rights. A lawyer assisted them and a judge administered their oath. In his testimony, Atty. Rolando Velasco stated:

"Q. After you were introduced to the two suspects what happened?

"A. I interrogated first Gallardo and I told him whether he can understand tagalog and he said he can understand and I told him if he is willing to voluntarily give his statement to the police and he said "yes", and I said he has the right to give his statement and if he is going to give his statement his statement can be used against him in court and if he wants to get the services of a lawyer of his own choice or if he wants me to assist him and he readily accepted.

The same was done with accused Alfredo Columna.

"Q. How did you represent them in the investigation?

"A. I was present and I made sure that there was no force and intimidation made on the person of these two suspects by the police and the police who asked questions in Ilokano and the answer was in Ilocano by the suspects.

"Q. In so representing them in that investigation were you requested to sign the document?

"A. I voluntarily signed, sir.[10]

Judge Aquino of the Regional Trial Court, Tuguegarao, Cagayan, asked Atty. Velasco several questions particularly on the point of how the accused-appellants were informed of their Constitutional rights. He stated:

"Q. When you conferred with the accused before taking of their sworn statement you stated that you asked them whether they were forced or intimidated in making the statement?

"A. Yes, sir.

"Q. Did you happen to know the status of the accused at the time their statements were taken whether they are detention prisoners or not?

"A. There was no warrant of arrest issued they were just apprehended as suspects.

"Q. Please tell the court, did they complain to you about any harassment of any kind by the police at the time of their investigation?

"A. None, your honor.

"Q. You said you accompanied them, you were present when the oath was administered by Judge Pauig?

"A. Yes, the following day I was also called by the police to be present when the accused took their oath before

Judge Pauig.

"Q. You said you advised the accused before taking their sworn statement of their constitutional rights in Tagalog, why do you say that they understand Tagalog?

"A. Because they were answering in Tagalog, also, sir.

"Q. How was their Tagalog?

"A. Good Tagalog, sir.

"Q. Will you please tell in Tagalog the information the constitutional right of the accused?

"A. I told them "May karapatan kayong hindi magbigay ng salaysay sa pulis, may karapatan kayong magkaroon ng abogado na sarili ninyo kung magbigay kayo."

We have held that "while the initial choice of the lawyer in cases where a person under custodial investigation cannot afford the services of a lawyer is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the former's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer." [11]

In the case at bar, although Atty. Velasco was provided by the State and not by the accused themselves, the accused were given an opportunity whether to accept or not to accept him as their lawyer. They were asked and they immediately agreed to have Atty. Velasco as their counsel during the investigation. There is no requirement in the Constitution that the lawyer of an accused during custodial investigation be previously known to them. The Constitution provides that the counsel be a competent and independent counsel, who will represent the accused and protect their Constitutionally guaranteed rights.

Also, we have held that "to be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him but, rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false. The counsel, however, should never prevent an accused from freely and voluntarily telling the truth." [12]

We are, therefore, convinced that Atty. Velasco acted properly in accordance with the dictates of the Constitution and informed the accused of their Constitutional rights. Atty. Velasco assisted the accused and made sure that the statements given by the accused were voluntary on their part, and that no force or intimidation was used by the investigating officers to extract a confession from them.

Aside from Atty. Velasco, Judge Vilma Pauig also testified that when she administered the oath to the accused-appellants, she asked them whether they understood the contents of their statements and whether they were forced by the police investigators to make such statements. Accused-appellants answered in the negative. From the foregoing, it can therefore be established that accused-appellants were properly apprised of their rights and there was no violation of their Constitutional rights. [13]

Under rules laid by the Constitution, existing laws and jurisprudence, a confession to be admissible must satisfy all four fundamental requirements, namely: (1) the confession must be voluntary; (2) the confession must be made with the assistance of competent and independent counsel; (3) the confession must be express; and (4) the confession must be in writing. [14] All these requirements were complied with.

It would have been different if the accused were merely asked if they were waiving their Constitutional rights without any explanation from the assisting counsel. In this case, Atty. Velasco asked the accused if they were

aware of their rights and the lawyer informed them of their rights and asked them if they were giving their statements willingly after being informed of their rights. This is in compliance with the constitutional guarantee of the rights of an accused during custodial investigation.

There is no merit to the contention that the prosecution failed to establish the guilt of the accused beyond reasonable doubt. The testimony of prosecution witness Nelson Hidalgo remains uncontroverted. The defense was unable to produce any evidence to prove that Nelson Hidalgo was biased and not credible.

Well-entrenched in this jurisdiction is the rule that "the Court will not interfere with the trial court's assessment of the credibility of witnesses absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion." [15]

Consequently, the trial court correctly found accused-appellants Alfredo Columna y Gander and Armando Gallardo y Correa guilty beyond reasonable doubt of the treacherous murder of Edmundo Orizal.

We are however concerned with the statements of the accused that it was Congressman Tuzon who masterminded the killing of Edmundo Orizal. The order of inquest Judge Dominador L. Garcia dropping Congressman Tuzon and Pat. Molina from the criminal complaint for the reason that the confessions of the accused Gallardo and Columna were inadmissible against them under the *res inter alios acta* rule do not persuade us that former Congressman Tuzon and Pat. Molina were not liable as co-principals in the crime committed.

Concededly, the extra-judicial confessions of the accused Gallardo and Columna are not admissible against Congressman Tuzon and Pat. Molina. However, the interlocking confessions of the accused are confirmatory evidence of the possible involvement of former Congressman Tuzon and Pat. Molina in the crime. [16]

Consequently, we refer the case to the Department of Justice for investigation of the involvement of former Congressman Tuzon and Pat. Molina in the killing of Edmundo Orizal.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto. However, the award of moral damages is reduced to P50,000.00.

Let a copy of this decision be furnished to the Honorable, the Secretary of Justice, Department of Justice, Manila, for inquiry into the involvement of other persons in the crime.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[*] Acquitted.

[1] 1987 Constitution, Article III, Section 12 (1), (3).

[2] In Criminal Case No. 1961, Regional Trial Court, Branch 1, Tuguegarao, Cagayan, Decision, dated November 29, 1993, Judge Hilarion L. Aquino, now Associate Justice, Court of Appeals, Original Record, pp. 366-396.

[3] Rollo, p. 4.

[4] Original Record, Order, p. 83.

[5] Exh. "C", Original Record, pp. 2-3.

- [6] Original Record, Exh A-10 and B-11, pp. 350-362.
- [7] RTC Decision, Original Record, pp. 382-383.
- [8] RTC Decision, Rollo, pp. 13-42.
- [9] Brief for the accused-appellants, Rollo, p. 61.
- [10] TSN, June 14, 1993, pp. 5-7.
- [11] *People vs. Suarez*, 267 SCRA 136 (1997), citing *People vs. Parojinog*, 203 SCRA 673 (1991).
- [12] *Ibid*, p. 137, citing *People vs. Layuso*, 175 SCRA 47 (1989).
- [13] TSN, July 5, 1993, pp. 13-16.
- [14] *People vs. Deniega*, 251 SCRA 628, 637 (1995).
- [15] *People vs. Pelen*, G.R. No. 131827, September 3, 1999, citing *People vs. Sabalones*, 294 SCRA 751, 781 (1998).
- [16] Cf. *People vs. Argana*, 119 Phil. 573 [1964]; *People vs. Barlis*, 231 SCRA 426 [1994]; *People vs. Encipido*, 146 SCRA 478 [1986]; *People vs. Suarez*, 267 SCRA 119 [1997]; *People vs. 285 SCRA 595* [1998].

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