

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORO BONOLA Y DELA CRUZ, JOVEN FULGADO (AT LARGE), AND ALIAS DIDOY (AT LARGE), ACCUSED, TEODORO BONOLA Y DELA CRUZ, ACCUSED...

G.R. No. 116394. June 19, 1997

Ponente: PUNO, J.

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PUNO, J.:

Appellant TEODORO BONOLA Y DELA CRUZ was convicted of robbery with homicide by the Regional Trial Court of Malolos, Bulacan (Branch XVI).[1] He was sentenced to suffer the extreme penalty of death. He pleads for his acquittal on the grounds that his extrajudicial confession was obtained without the assistance of counsel and the circumstantial evidence against him cannot support his conviction.

The Amended Information[2] against appellant Teodoro Bonola, Joven Fulgado,[3] a certain alias "Didoy", and accessory-after-the fact Rodolfo Muñoz y Mamaril, states:

"That on or about the 12th day of November, 1979, in the municipality of Guiguinto, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Teodoro Bonola y dela Cruz, together with Joven Fulgado and one (1) alias Didoy who are still at large, armed with a knife and a crowbar, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of violence, threats and intimidation enter the house of spouses Flaviano Justiniano and Illuminada Brigino, and once inside, take, rob and carry away with them the following properties, to wit:

Cash money (sic) amounting to ---- P20,000.00

Seiko Lady's wrist watch ----- 500.00

Two (2) pairs of diamond earrings-- 5,000.00

Two (2) pcs. lady's ring (diamond)- 10,000.00

One (1) lady's ring (diamond) ----- 1,800.00

One (1) diamond necklace ----- 3,000.00

One (1) tamborine necklace ----- 600.00

Seiko men's wrist watch ----- 600.00

One (1) diamond men's ring ----- 12,000.00

One (1) diamond men's ring

with little diamond ----- 10,000.00

with a total value of P63,500.00, belonging to the said spouses Flaviano Justiniano and Illuminada Brigino, to the damage and prejudice of the latter in the said sum of P63,500.00; that simultaneously or during the commission of the robbery, the said accused Teodoro Boñola y dela Cruz conspiring with his other co-accused, with intent to kill the said spouses, did then and there wilfully, unlawfully and feloniously attack, assault, stab and hack with the said knife and crowbar, they were then provided, the said spouses, hitting the latter on the different parts of their bodies, thereby inflicting upon them serious physical injuries which directly caused the death of the said spouses Flaviano Justiniano and Illuminada Brigino; and that subsequent to the commission of the crime and with full knowledge thereof but without having participated therein as principal or as an accomplice, the said accused Rodolfo Muñoz y Mamaril, did then and there wilfully, unlawfully and feloniously take part subsequent to its commission by profiting or assisting the said principals to profit by the effects of the crime, that is, concealing in his possession two (2) of the [sic] pieces of jewelry, one tamborine necklace and diamond lady's ring, with a total value of P3,600.00, which was allegedly given to him by one of the principal suspects, Joven Fulgado, knowing fully well that the said pieces of jewelry could not be made or owned by the latter, said accused Rodolfo Muñoz y Mamaril received and kept in his possession said pieces of jewelry which were recovered from him.

"Contrary to law.

"Malolos, Bulacan, February 8, 1982."

When arraigned, appellant and Rodolfo Muñoz pleaded 'not guilty'.^[4] The other accused remain at large. Trial ensued as against appellant and Muñoz.

The facts as established by the prosecution show that in the early morning of November 13, 1979, spouses Flaviano Justiniano and Illuminada Brigino^[5] were found dead inside the stockroom in their house in Pulong-Gubat, Guiguinto, Bulacan. They sustained multiple stab and hack wounds on different parts of their bodies. At the time of the incident, Flaviano was seventy-seven (77) years old while Illuminada was seventy-five (75) years old.

JOSE BERANIA is a farmer working for the Justinianos. He testified that on November 13, 1979, between 6:00 a.m. and 7:00 a.m., he dropped by the house of the Justinianos to get farm tools. Nobody answered when he called on the spouses. He entered the house through the kitchen door and proceeded to the stockroom to get the tools himself. He saw Illuminada sprawled on the floor in a pool of blood inside the stockroom. Startled, he ran and sought help from the couple's neighbors. In his hurry, he did not notice the bloodied and lifeless Flaviano about a meter away from Illuminada.^[6]

Neighbors Graciano Estrella and Nemencio Joaquin accompanied Berania back to the stockroom. On suggestion of Estrella and Joaquin, he reported the incident to the barangay captain of Pulong-Gubat. He also informed Illuminada's sister and the victims' daughter.^[7] When he returned to the scene of the crime, the police authorities of Guiguinto had already arrived.^[8]

Berania also testified that the day before or on November 12, 1979, at about 3:00 p.m., he took his snack at the victims' house. He noticed three (3) men hanging around outside the house of the victims. One of them was appellant Bonola. Appellant and his companions stood beside the fence and were looking at the house. Berania returned to the farm after taking his snack.^[9]

Later in the afternoon, at around 5:00 p.m., Berania returned the farm tools to the Justinianos. He again saw three (3) men, about 50 meters away from the victims' house, heading towards the direction of barrio Cut-cut. Before going home, he conversed for a while with Illuminada. Flaviano was in a neighbor's house. That was the last time he saw the couple alive.^[10]

PACIFICO MANALANSANG, a farmer and resident of Pulong-Gubat, testified that at about 7:00 p.m., that fatal day, he went to the store of the victims to buy kerosene.[11] When he arrived at the store, Flaviano was attending to three (3) customers who were sitting on a bench about one (1) meter outside the store. They were drinking beer. He failed to recognize the three (3) men because their heads were bowed and he was in a hurry to get home.[12]

DR. BENITO B. CABALLERO, Municipal Health Officer of Bocaue, Bulacan, conducted the postmortem examination of the victims. He testified that Illuminada sustained wounds on the lateral side of her face and on the head while Flaviano sustained eight (8) hack wounds and multiple stab wounds on the head, chest and abdomen. He opined that the victims were either hit by a hard object while lying on the ground or pushed against a wall. Illuminada died due to: "massive intracranial and extracranial hemorrhage, fracture temporal and scipite-temporal bone due to hacking wound and massive internal hemorrhage puncturing the right lungs; multiple stab (wounds) in the chest". Flaviano died due to: "massive internal and external hemorrhage secondary to multiple stab (wounds) in the chest and abdomen, puncturing heart, liver, lungs and small intestines, xxx fracture skull (frontal bone) secondary to hacking wound." [13]

PFC. TOMAS DE ARMAS of Guiguinto Police Station investigated the incident. He found a crowbar and a broken knife at the scene. He said that the couple's bedroom beside the stockroom was turned topsy-turvy. The cabinet drawers were open and empty.[14]

ROSITA JUSTINIANO-LEGASPI, daughter of the victims, testified that she inspected her parents' room shortly after the killing was discovered. Their clothes and personal belongings were scattered on the floor. Several pieces of jewelry bought by her parents over the years, valued at P43,500.00, were missing. Also lost was the amount of P20,000.00 allotted by her parents for farming.[15]

P/SGT. ARMANDO MORELOS led the team that arrested appellant on November 21, 1979. Appellant was selling fishballs at the public market of Marikina when the police took him into custody. Wilfredo Lorilla,[16] a resident of Pulong-Gubat and whose house was about (30) meters away from the victims, helped the police locate and identify the appellant.[17] Inside the Marikina police station, the police interrogated appellant until he verbally admitted his participation in the crime. He revealed that Joven Fulgado and a certain alias Didoy also took part in the crime. He also disclosed that Joven gave the stolen pieces of jewelry to spouses NENITA FULGADO MUÑOZ and RODOLFO MUÑOZ y MAMARIL. He led them to the residence of said spouses in Calipi St., Calumpang, Marikina.[18] While in Marikina, Sgt. Morales did not ask the accused if he wanted to be assisted by counsel.[19]

NENITA MUÑOZ, auntie of accused Joven Fulgado, also testified for the prosecution. She confirmed that her nephew visited her at her residence in Marikina and left some items wrapped in a piece of paper for safekeeping. Joven left without telling them his whereabouts but he promised to retrieve the wrapped items upon his return. She turned over the wrapped items to Sgt. Morelos. The wrapped items-- a tamborine necklace and a lady's diamond ring-- were later identified as part of the pieces of jewelry stolen from the victims.[20] From Marikina, the police authorities brought appellant to the Guiguinto police station for further investigation.

PAT. EFREN DELA CRUZ took the extrajudicial confession of the appellant which was given on November 22, 1979, the day after his arrest. De la Cruz testified that he informed appellant of his constitutional rights, including his rights to remain silent and to counsel. Appellant allegedly waived his rights and gave his uncounselled confession. The investigation was conducted in Tagalog, a dialect known to appellant. Nonetheless, a policewoman acted as a Visayan interpreter to assist him in understanding difficult Tagalog words. Appellant signed his confession after it was read to him by the investigator.[21] Appellant's "Salaysay", dated November 22, 1979, was sworn to before former municipal judge ARTURO E. CRUZ.[22] Judge Cruz verified from the

appellant the truthfulness and voluntariness of the statement. Thereafter, Judge Cruz directed appellant to sign his statement a second time.[23]

Jose Berania was summoned by the Guiguinto police one week after the arrest of appellant. Berania positively identified appellant from a police line-up as one of the three (3) men he saw near the house of the victims several hours before the robbery-slaying incident.[24]

Appellant denied any participation in the crime. A native of Tacloban City, appellant was nineteen (19) years old at the time of the incident. He is unschooled. He does not know how to read and he could barely write his name. He speaks "waray" and a little Tagalog. He spent sometime in his uncle's house in Pulong-Gubat.[25]

Appellant claimed he was not in Pulong-Gubat on November 12, 1979 because he was at the public market of Marikina the whole day, from 6:00 a.m. to 10:00 p.m. He denied knowing co-accused Joven Fulgado and alias Didoy, prosecution witnesses Jose Berania and Nenita Fulgado, and the victims.[26]

Allegedly, he stayed in Pulong-Gubat from August 1979 to October 1979 and has not returned since. From Pulong-Gubat, he moved to Marikina selling "samalamig" and "scramble" at the public market. He was barely three (3) weeks in Marikina when the Guiguinto policemen arrested him on November 21, 1979. He was handcuffed and taken to the municipal hall of Marikina.[27] He was mauled and forced to admit his participation in the crime. He denied accompanying the team of Sgt. Morelos to the residence of spouses Nenita and Rodolfo Muñoz in Calumpang. He said he does not know where Calumpang is. From Marikina police station, he was transferred to Guiguinto police station. Again, he was tortured. He confessed when he could no longer take the maltreatment.[28]

Appellant alleged he was not informed of his constitutional rights to remain silent and to counsel. The statement was not read to him when he signed it. He took his oath before Judge Cruz who made him sign his extrajudicial confession a second time. He was made to believe that it was for the purpose of transferring him to the provincial jail and expediting the termination of the case against him. He did not disclose the maltreatment to the judge or to anyone. While in detention, he notified the police that he has an uncle (Narciso Bonola) in Pulong-Gubat. The police did not fetch his uncle.[29]

NARCISO BOÑOLA, uncle of appellant, testified that he knew the victims because his house is about one-half (1/2) kilometer away from the victims' house. He said appellant stayed with him during the planting season from June 1, 1979 until June 24, 1979. Appellant left after three (3) weeks because he did not like farm work. He often scolded appellant. Narciso claimed he did not see appellant in Pulong-Gubat on November 12, 1979. Later, he learned that appellant was involved in the robbery-slaying incident. He was afraid to visit his nephew at the municipal jail of Guiguinto because the case is not an ordinary one.[30]

After trial, the court acquitted Rodolfo Muñoz for insufficiency of evidence. However, appellant was found guilty of robbery with homicide. He was meted the penalty of death. He was also ordered to pay the legal heirs of victims Illuminada and Flaviano the amount of P30,000.00 as indemnity for their death; P50,000.00 for moral damages; P64,000.00 for actual damages; P30,000.00 for exemplary damages, plus the costs.[31] The judgment of conviction was promulgated on March 14, 1985.

On August 9, 1994, the complete records of Criminal Case No. 3653-M were transmitted to this Court for automatic review. Appellant contends:

"I

"THE TRIAL COURT ERRED IN NOT DECLARING AS INADMISSIBLE IN EVIDENCE (HIS) EXTRAJUDICIAL CONFESSION xxx.

"II

"THE TRIAL COURT ERRED IN CONVICTING (HIM) OF THE CRIME CHARGED DESPITE THE UTTER FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

We find the appeal impressed with merit.

The crime at bar was committed in 1979. In force at the time appellant gave his extrajudicial confession was Section 20 of Article IV of the 1973 Constitution, viz:

"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." (emphasis ours)

In light of this constitutional proscription, we hold that appellant's extrajudicial confession is inadmissible in evidence. The doctrine on waiver of the rights of an accused to remain silent and to counsel has evolved over the years, particularly upon the effectivity of the 1973 Constitution.[32] In *People vs. Morales*[33] and, later, in *People vs. Galit*,[34] this Court laid down the procedure to be followed when a suspect is taken into custody for investigation, to wit:

"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 responsibility 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 laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence." (emphasis supplied)

In line with *Morales* and *Galit*, we held in *People vs. Decierdo*[35] that uncounselled confessions are inadmissible in evidence. We elucidated that when the accused is not assisted by counsel, his statement, in contemplation of the law, becomes "involuntary" even if it were otherwise voluntary, in a technical sense. In *People vs. Dacoycoy*[36] and *People vs. Pecardal*,[37] we categorically ruled that a waiver of the constitutional right to counsel shall not be valid when the waiver is made without the presence and assistance of counsel.

In the case at bar, appellant was not represented or assisted by counsel at the time he waived his custodial rights as a suspect in a crime. The pertinent part of appellant's "Salaysay", states:

"PALIWANAG: G. Teodoro Boñola, nais kong ipaalam sa iyo na ikaw ay nasa ilalim ng pagsisiyasat tungkol sa kasong PAGNANAKAW NA MAY KASAMANG PAGPATAY (ROBBERY WITH DOUBLE HOMICIDE). Sa ilalim ng ating saligang batas, ikaw ay may karapatang manahimik o magsawalang kibo ukol sa bagay na ito. Maaari ka ring sumangguni muna sa isang abogado sa iyong sariling pili, upang makatulong sa iyo sa pagsisiyasat na ito. At kung nais mo ang alalay ng isang abogado subalit hindi mo kaya ang upa dito,

ikaw ay aming pagkakalooban. May karapatan ka ring humiling na ipagpaliban ang imbestigasyong ito. Hindi ka maaaring pilitin, takutin para lamang magpahayag ng iyong nalalaman lalo na't kung ito ay labag sa iyong kalooban.

"Tanong: Naiintindihan mo ba ang iyong mga karapatan na aking ipinaliwanag sa iyo?

"Sagot: Opo.

"T: Matapos mong malaman at maunawaan ang iyong mga karapatan sa ilalim ng ating umiiral na batas, ikaw ba ay nakahandang magbigay ng isang malaya at kusang loob na salaysay na ang iyong sasabihin ay pawang katotohanan lamang at ito ay maaaring gamiting ebidensiya laban sa iyo sa harap ng Hukuman?

"S: Opo.

"T: Hindi mo na ba kailangan ang tulong ng isang abogado?

"S: Hindi na po basta sasabihin ko lang ang tutuo.

"T: Anong grado ba ang iyong natapos sa pag-aaral?

"S: Hindi po ako nakapag-aral.

"T: Ikaw pala ay hindi nakapag-aral, nauunawaan mo ba ang mga itinanong ko sa iyo at mga ipinaliwanag?

"S: Opo, marunong po ako ng Tagalog."

(emphasis ours)

The evidence shows that the arresting policemen did not comply with the procedure laid down in Morales and Galit. Appellant was immediately placed under custodial investigation upon his arrest. Allegedly, he verbally admitted his complicity in the crime when interrogated by the police. His incriminating statements, however, were made without the presence and assistance of counsel. Pfc. Dela Cruz testified as follows:[38]

"(Atty. Mojado)

"Q: So, with the information that you received you decided to narrow down the suspect and the suspect was Bonola?

"(Pfc. Efren dela Cruz)

"A: Yes, sir.

"Q: And that was the reason why you went to Marikina to apprehend Boñola?

"A: Yes, sir.

"Q: And what time did you apprehend Boñola in Marikina?

"A: Around 9:00 o'clock in the morning, Sir.

xxx xxx xxx

"Court:

"Q: What month, day and year was that when you said in the morning, in front of the public market of Marikina?

"A: On November 21, 1979, at around 9:00 o'clock in the morning, Sir.

xxx xxx xxx

"Atty. Mojado:

"Q: And what was Bonola doing when you saw him?

"A: He was selling "bola-bola," Sir.

xxx xxx xxx

"Q: And when you saw Boñola, did somebody tell you it was really Boñola?

"A: Yes, sir.

"Q: After you were told that it was really Boñola, whom you have suspected and whom you have narrowed down as suspect, you began questioning him?

"A: Yes, sir.

"Q: And it was in the process of your questioning that you had Boñola admit he had participated in the crime?

"A: Yes, sir.

"Q: Where did you bring him from the market place?

"A: At the police station in the municipal hall of Marikina, Sir.

"Q: When you brought Boñola in the municipal hall of Marikina, do I get from you that you were never allowed to get him away from you?

"A: Yes, sir.

"Q: As a matter of fact, when you saw Bonola you immediately placed him under arrest?

"A: Yes, sir.

"Q: After that, you brought him to the municipal hall of Marikina. . .

I reform.

"Q: After the time you started questioning Boñola, you did not remind him of his constitutional rights?

"A: We informed him about his constitutional rights, Sir.

"Court:

"Q: What was the answer of the accused when you informed him about his constitutional rights?

"A: He told us that he will just tell us the truth, Sir.

"Atty.. Mojado:

"Q: You would like to tell us that it was you who apprised Boñola of his constitutional rights.

"A: Yes, Sir.

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"Atty. Mojado:

"Q: You made mention that "we investigated". By the way, who was the team leader?

"A: Sgt. Morelos, Sir.

"Q: You mean all of you were investigating Bonola at the same time?

"A: Yes, Sir. We, in the group, were asking him.

"Q: How many were you in the team?

"A: The four of us composed the team, Sir.

"Q: And it was at the investigation room of the municipal hall of Marikina?

"A: At the reception hall of the police station of Marikina, Sir.

"Q: Now, after this investigation, you said, at the municipal hall of Marikina, where did you proceed?

"A: We went to Calipi, Kalumpang, Marikina, the place which was pointed to us by Bonola as the residence of his companion Joven, Sir.

"Q: And after bringing him to Calipi, you brought him at Guiguinto?

"A: Yes, Sir.

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"Q: Now, you made mention that while at the municipal hall of Marikina, this Boñola allegedly admitted to the members of your team his participation, do I get you correctly?

"A: Yes, Sir.

"Q: When you conducted the investigation at the municipal hall of Guiguinto, Bulacan, Boñola also admitted to you?

"A: Yes, Sir.

"Court:

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"Q: This admission by Boñola at the municipal hall of Marikina, was it reduced in writing?

"A: No, Your Honor. It was only verbal.

"Q: Aside from the team that went to apprehend Boñola while you were in Marikina, were there other people around you when the accused admitted his participation?

"A: Many persons were around including the police officers of Marikina, Your Honor.

Sgt. Armando Morelos similarly testified as follows:[39]

(Atty. Mojado)

"Q: At the time you picked Boñola at Marikina, and you placed him under arrest and you started questioning him, did you for once, aside from informing him that he was a suspect in a crime that was committed in Guiguinto, Bulacan, did you not even call for one of his relatives while questioning him after you had picked him up?

xxx xxx xxx

(Sgt. Morelos)

"A: Because of the non-availability of his relatives in the area, I did not call for any, Sir.

"Q: How did you know that?

"A: Boñola is a stranger there in Marikina, Sir.

xxx xxx xxx

"Q: And you did not ask him if he wanted to be assisted by a lawyer?

"A: No, Sir.

(emphasis ours)

Sgt. Morelos' testimony on re-direct examination is as follows:[40]

(Atty. Arceo):

"Q: And another point: When you picked up Bonola and he revealed to you the names of his other companions in the commission of the crime, will you please tell us how did he tell you this?

"A: At the time we picked up Bonola after I had told him he was a suspect in the crime committed at Guiguinto, I asked him who was his companion in committing the crime, Sir.

"Q: And what did he tell you?

"A: He told me that it was a certain Didoy (sic) alias Joven, Sir.

"Q: How were you able to find the residence of Nenita Fulgado?

"A: We were led by Boñola, Sir.

"Q: What, if any, did you tell Nenita Fulgado when you arrived in her residence?

"A: I told her that Boñola had informed us that her nephew Joven Fulgado entrusted to her a ring and a necklace, Sir.

"Q: Aside from those things, did Teodoro Boñola also tell you any other things?

xxx xxx xxx

"A: Bonola told us that Joven Fulgado entrusted a ring and a necklace to Nenita Fulgado, Sir.

"Q: Did you not gather any other information.

"A: No more, Sir.

It is not material that appellant's confession came in verbal form. Section 20, Article IV of the 1973 Constitution does not distinguish between verbal and non-verbal confessions. So long as they are uncounselled, they are inadmissible in evidence.[41] What is sought to be avoided is "the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him." [42]

In the case at bar, the need for counsel is more pronounced. Appellant was nineteen (19) years old when arrested. He was unschooled, barely literate. He was a stranger to the niceties of the law, ignorant of the rituals of police investigation. It is difficult to believe he made an intelligent waiver of his right to counsel.

Be that as it may, the Solicitor General argues that there are enough circumstantial evidence linking appellant to the robbery-slaining incident, viz:

"First, appellant testified that he lived in Pulong-Gubat, Guiguinto, Bulacan with his uncle Narciso Bonola for three (3) months starting August 1979. (p. 21 TSN, March 30, 1984)

"Second, appellant was seen by Jose Berania and Wilfredo Lorilla on November 12, 1979, at the scene of the crime before the commission thereof. (p. 3, Decision; pp. 5-6, TSN, November 11, 1981)

"Third, at the time of appellant's apprehension, he voluntarily informed Pfc. Efren dela Cruz that he committed the crime together with a certain alias Didoy and Joven Fulgado. (p. 7, TSN, July 19, 1982)

"Fourth, appellant likewise informed Sgt. Armando Morelos that Joven Fulgado entrusted some of their stolen jewelries to his relatives Rodolfo Muñoz and Nenita Fulgado who were living in Marikina. (p. 13, TSN, November 11, 1981)

"Fifth, the police went to the said relatives of Joven Fulgado and recovered from them a part of the loot consisting of a diamond ring (Exhibit "K") and a necklace (tamborine) (Exhibit "K-1" and "K-2")

"Sixth, Nenita Fulgado revealed that on November 12, 1979, Joven Fulgado came to their house and gave her pieces of jewelry wrapped in a piece of paper for safekeeping. (pp. 6-7, TSN, January 8, 1982)"

Under Section 4 of Rule 133, circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

We hold that the totality of the circumstantial evidence against appellant cannot support his conviction.

The statements made by appellant pertaining to the stolen pieces of jewelry are inadmissible in evidence against him because these were taken in violation of his rights to counsel and to remain silent. Nor can the recovered

pieces of jewelry be used as evidence against the appellant. They are fruits of the poisonous tree.[43] The other circumstantial evidence cited by the Solicitor General cannot support appellant's conviction. We note that appellant was implicated in the crime because of the uncorroborated testimony of prosecution witness Berania that appellant was near the scene of the crime in the late afternoon of November 12, 1979. Berania claimed he knew appellant by face because the latter used to work as a palay weeder for Berania's uncle, Macario Joaquin, whose house is situated opposite the house of the victims.[44] Yet, when Berania was interviewed by Pfc. De Armas on the day the crime was discovered, Berania did not reveal that appellant was one of the three persons passing near the house of the victims. The description of the probable suspects, through the information relayed by Berania to Pfc. de Armas, is as follows:[45]

"7. Jose Berania, the person who discovered the incident alleged that he saw these three persons passing near the house of the victims looking at said house suspiciously and described them as follows: That one of them stands 5'8" in height, slim built, black complexion, army type haircut wearing a colored red checkered shirt and the other stands 5'3" in height, regular built with curly hair. This allegation was confirmed by one Pacifico Manalansang, another witness whom he saw drinking at the house of the victims."

Vital as it is, the omission was not explained by the prosecution during the trial. It was not also shown that the description of Berania tallied with the physical features of appellant. Even prosecution witness Pfc. Dela Cruz revealed that they were looking for another suspect before the name of appellant finally surfaced. Pfc. dela Cruz testified:[46]

"ATTY. MOJADO:

"Q: And were you able to locate that person who was allegedly seen at the house of the victim?

"A: No, Sir. We failed to locate that person until we came to know that the person whom we are looking for was not the person who perpetrated the crime.

"Q: And I suppose you still continued in making further inquiry?

xxx xxx xxx

"A: Yes, sir.

"Q: What do you mean by "Yes, sir."

"A: When we came to know that it was another person who perpetrated the crime, we looked for the person whose name was given to us.

"Q: And who was that person?

"A: Teodoro Bonola, sir.

"Q: And that was the reason why you went to Marikina?

"A: Yes, sir.

"Q: Do I understand from you that your first inquiry pointed to a different person?

"A: Yes, sir.

"Q: And after the name of Bonola was mentioned you tried to locate him?

"A: Yes, sir.

"Q: By the way, what was that information given to you that Bonola was pointed out as participant or had knowledge of the incident?

"A: It was told to us by the person whom we talked to that his nephew Bonola told him that he was involved in a crime of robbery where somebody died, sir.

"Q: So with the information that you received, you decided to narrow down the suspect and that suspect was

Bonola.

"A: Yes, sir."

Assuming, arguendo, that appellant was near the scene of the crime several hours before the killing, his presence cannot lead to a reasonable inference that he was one of the assailants of the victims.

IN VIEW WHEREOF, the decision of the Regional Trial Court of Malolos, Bulacan (Branch 43), in Criminal Case No. 3653-M, is REVERSED and SET ASIDE. Appellant TEODORO BONOLA y DELA CRUZ is hereby ACQUITTED of the crime charged due to reasonable doubt. His immediate release from confinement is hereby ordered, unless there is any other lawful cause for his continued detention. Costs de oficio.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

Francisco, J., on leave.

[1] Docketed as Criminal Case No. 3653-M.

[2] Dated February 8, 1982, Original Records, p. 192.

[3] Also referred to as Ruben Fulgado in the other parts of the records.

[4] Original records, pp. 29 and 215.

[5] Also referred to as Iluminada in some parts of the records.

[6] TSN, Jose Berania, April 28, 1980, pp. 10-13.

[7] Ibid., pp. 11-16.

[8] Ibid., pp. 17-18.

[9] Ibid., pp. 19-21.

[10] TSN, Jose Berania, April 28, 1980, pp. 21-25.

[11] The store is annexed to the victims' house.

[12] TSN, Pacifico Manalansang, May 28, 1980, pp. 7-10.

[13] Exhibits "G" and "H", Original Records, pp. 5-6;

[14] TSN, Pfc. Tomas de Armas, March 20, 1981, pp. 6-23.

[15] TSN, Rosita Legaspi, October 20, 1982, pp. 5-13.

[16] Lorilla did not testify in court.

[17] TSN, P/Sgt. Armando Morelos, October 2, 1981, pp. 15-18.

[18] TSN, P/ Sgt. Armando Morelos, October 2, 1981, pp. 21-22; Ibid., November 11, 1981, pp. 13-15.

[19] TSN, P/Sgt. Armando Morelos, November 11, 1981, p. 23.

[20] TSN, Nenita Munoz, January 8, 1982, pp. 7-10.

[21] TSN, Pfc. Efren dela Cruz, September 22, 1982, pp. 6-12.

- [22] Exhibit "M", Original Records, p. 13.
- [23] TSN, November 9, 1984, Judge Arturo Cruz, pp. 3-4.
- [24] Exhibit "A", Original records, p. 10.
- [25] Ibid., March 30, 1984, pp. 21-25.
- [26] TSN, Teodoro Bonola, March 30, 1984, pp. 17-20, 23.
- [27] TSN, Teodoro Bonola, March 28, 1984, pp. 5-7, 19; Ibid., March 30, 1984, pp. 20-21;
- [28] Ibid., March 28, 1984, pp. 9-14; Ibid., May 30, 1984, pp. 2-3.
- [29] TSN, Teodoro Bonola, March 28, 1984, pp. 25-29; Ibid., March 30, 1984, pp. 4-16; Ibid., April 13, 1984, pp. 6-8.
- [30] TSN, Narciso Bonola, June 22, 1984, pp. 5-17, 24.
- [31] See RTC Decision, dated March 14, 1985, Rollo, pp. 72-83; Penned by former Judge Gualberto J. De La Llana.
- [32] The 1987 Constitution further strengthened the rights of a person under custodial investigation. Section 12, paragraphs (1) and (3), Article III thereof provides:
- "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."
- xxx xxx xxx
- (3) Any confession or admission obtained in violation of this or the preceeding section shall be inadmissible in evidence.
- [33] No. L-61107, April 26, 1983, 121 SCRA 538.
- [34] No. L-51770, March 20, 1985, 135 SCRA 465.
- [35] No. L-46956, May 7, 1987, 149 SCRA 496.
- [36] G.R. No. 71662, May 8, 1992, 208 SCRA 583;
- [37] No. L-71381, November 24, 1986, 145 SCRA 647.
- [38] TSN, Pfc. Efren Dela Cruz, August 30, 1982, pp. 8-13.
- [39] TSN, Sgt. Armando Morelos, November 11, 1981, pp. 21-23.
- [40] TSN, Sgt. Armando Morelos, November 11, 1981, pp. 28-30.
- [41] Bernas, The 1973 Philippine Constitution, Cases & Materials, Part II, 1974, Ed., p. 745, citing Sessions of the 1971 Constitutional Convention held on November 25 and 27, 1972.
- [42] Galman vs. Pamaran, Nos. L-71208-09, August 30, 1985 and People vs. Sandiganbayan, et al., Nos. L-71212-13, August 30, 1985, 138 SCRA 294.
- [43] People vs. Alicando, G.R. No. 117487, December 12, 1995, 251 SCRA 293.

[44] TSN, Jose Berania, April 28, 1980, pp. 18-29.

[45] See Exhibit “D”, Initial Investigation Report dated November 13, 1979, Original Records, pp. 3-4.

[46] TSN, Pfc. Efren dela Cruz, August 30, 1982, pp. 6-8.

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