

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERSON TAN Y VERZO, ACCUSED-APPELLANT.

G.R. No. 117321. February 11, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

May the confession of an accused, given before a police investigator upon invitation and without the benefit of counsel, be admissible in evidence against him?

Accused-appellant Herson Tan, along with Lito Amido, were charged with the crime of highway robbery with murder before the Regional Trial Court, Branch 62, of Gumaca, Quezon Province, under an information^[1] dated February 8, 1989, which reads as follows:

“That on or about the 5th day of December 1988, along the Maharlika Highway at Barangay Tinandog, Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, armed with bladed and pointed weapons, with intent to gain, by means of force, violence, threats and intimidation, did then and there wilfully, unlawfully and feloniously take, steal and carry away from one Freddie Saavedra, a Honda TMX motorcycle with a sidecar bearing Plate No. DW 9961 valued at THIRTY THOUSAND PESOS (P30,000.00) Philippine currency, belonging to the said Freddie Saavedra, to the damage and prejudice of the latter in the aforesaid amount; and that on the occasion of said robbery and by reason thereof, the said accused, with intent to kill, with evident premeditation and treachery, and taking advantage of their superior strength and in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon said Freddie Saavedra, thereby inflicting upon the latter multiple stab wounds on the different parts of his body, which directly caused his death.

Contrary to law.”

On arraignment, the accused pleaded not guilty to the charge.

The relevant facts established by the prosecution are as follows:

On December 5, 1988, at about 7:00 o’clock p.m., tricycle driver Freddie Saavedra went to see his wife, Delfa, at Our Lady of Angels Academy in Atimonan, Quezon, where the latter is a third year high school student, to inform her that he will drive both accused to Barangay Maligaya. It was the last time, however, that Freddie was seen alive. When the latter failed to return that evening, Delfa, as early as 4:30 o’clock a.m. of December 6, 1988 inquired on his whereabouts from relatives and friends. In the course of such inquiry, a certain Arnel Villarama revealed that the lifeless body of her husband was discovered on the diversion road at Barangay Malinao in Atimonan. Forthwith, they proceeded to the said place and found him sprawled on the ground with fourteen stab wounds in different parts of his body.

Meanwhile, relying on the information that an abandoned sidecar of a tricycle was sighted at Barangay Malinao, Lucena Philippine National Police (PNP) led by Lt. Carlos Santos proceeded to the scene of the crime and

recovered a blue sidecar which they brought back with them to their headquarters. Subsequently, Lt. Santos, Cpl. Numeriano Aguilar and Pat. Rolando Alandy invited appellant in connection with the instant case and with respect to two other robbery cases reported in Lucena City. During their conversation, appellant allegedly gave an explicit account of what actually transpired in the case at bar. He narrated that he and co-accused Amido were responsible for the loss of the motorcycle and the consequent death of Saavedra. Moreover, he averred that they sold the motorcycle to a certain Danny Teves of Barrio Summit, Muntinlupa for a sum of P4,000.00. With the help of appellant as a guide, the Lucena PNP immediately dispatched a team to retrieve the same.

After admitting that it was purchased from both the accused and upon failure to present any document evidencing the purported sale, Teves voluntarily surrendered it to the police who turned it over, together with the sidecar, to the Atimonan Police Station for safekeeping.

Lt. Carlos, on cross-examination, testified that when he invited appellant to their headquarters, he had no warrant for his arrest. In the course thereof, he informed the latter that he was a suspect, not only in the instant case, but also in two other robbery cases allegedly committed in Lucena City. In the belief that they were merely conversing inside the police station, he admitted that he did not inform appellant of his constitutional rights to remain silent and to the assistance of counsel; nor did he reduce the supposed confession to writing.[2]

Appellant, on the other hand, alleged that he had no participation in the offense charged and contended that his only involvement in the matter was the referral of accused Amido to Teves. He recounted that sometime in December 1988, Amido sought him at his house and told him that the motorcycle he was riding on was being offered for sale. Upon proof shown that it was indeed registered under Amido's name, he accompanied the latter to Manila on board the said motorcycle and they approached Antonio Carandang. The latter, thereafter, brought them to a certain Perlita Aguilar and Danilo Teves with whom the sale was finally consummated. He allegedly received P150.00 as his commission.

Amido presented alibi as his defense. He alleged that although a tricycle driver by occupation, he was at Barangay Malusak, Atimonan on the day in question, some seven kilometers from the town, busy assisting in the renovation of his mother's house. He narrated that the victim was his friend and, therefore, he could not have participated in the gruesome death of the latter.

In a decision dated April 21, 1994, the trial court convicted appellant, the dispositive portion of which reads:

"WHEREFORE, premised in the foregoing considerations, this Court finds Herson Tan GUILTY beyond reasonable doubt of the crime of Highway Robbery with Murder and hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA. He is further ordered to indemnify the family of the deceased in the amount of Thirty Thousand Pesos (P30,000.00).

Due to insufficiency of evidence, Lito Amido is hereby ACQUITTED of the charges against him and the Provincial Warden of Quezon, Provincial Jail, Lucena City, is hereby ordered to release from custody the person of said Lito Amido, unless he is being detained thereat for some other lawful cause.

SO ORDERED."[3]

Appellant assails the finding of conviction despite failure of the prosecution to positively identify him as the culprit of the crime and to present clear and convincing circumstantial evidence that would overcome his innocence.

In light of the above facts and circumstances, the appealed decision is set aside and appellant acquitted on the ground that his constitutional rights were violated.

It is well-settled that the Constitution abhors an uncounselled confession or admission and whatever information

is derived therefrom shall be regarded as inadmissible in evidence against the confessant. Article III, Section 12, paragraphs (1) and (3) of the Constitution provides:

“x x x x x x x x

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.

x x x x x x x x

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible against him.”

Republic Act No. 7438 (R.A. No. 7438),[4] approved on May 15, 1992, reenforced the constitutional mandate protecting the rights of persons under custodial investigation, a pertinent provision[5] of which reads:

“As used in this Act, ‘custodial investigation’ shall include the practice of issuing an ‘invitation’ to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the ‘inviting’ officer for any violation of law.”

Custodial investigation involves any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. The rules on custodial investigation begin to operate as soon as the investigation ceases to be a general inquiry into an unsolved crime and begins to focus a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogations that tends itself to eliciting incriminating statements that the rule begins to operate.[6]

Furthermore, not only does the fundamental law impose, as a requisite function of the investigating officer, the duty to explain those rights to the accused but also that there must correspondingly be a meaningful communication to and understanding thereof by the accused. A mere perfunctory reading by the constable of such rights to the accused would thus not suffice.[7]

Under the Constitution and existing law and jurisprudence, a confession to be admissible must satisfy the following requirements: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.[8]

While the Constitution sanctions the waiver of the right to counsel, it must, however, be “voluntary, knowing and intelligent, and must be made in the presence and with the assistance of counsel.”[9] To reiterate, in *People v. Javar*,[10] it was ruled therein that any statement obtained in violation of the constitution, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession contains a grain of truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given.

The records of this case do not indicate that appellant was assisted by counsel when he made such waiver, a finding evident from the testimony of Lt. Santos on cross-examination, thus:

“Q Now, when you brought Herson Tan to the Headquarters, did you tell him that he is one of the suspects in the robbery slain (sic) that took place in Atimonan on December 5, 1988?

A Yes, sir, and he was also suspect to the robbery case which was investigated at Lucena Police Station. There were two (2) cases which were investigated on Herson Tan.

Q Now, so in addition to the Atimonan case, you also took Herson Tan to your custody in connection with another case that happened in Lucena?

A Yes, sir.

Q And you happened to have Herson Tan in your list as suspect in both cases because Herson was previously incarcerated at Lucena City Jail in connection with a certain case, is it not?

A Yes, sir.

Q Just for curiosity sake, you invited him in your headquarters, is that what happened in this case?

A Yes, sir.

Q And it just happened that without applying third degree to him he gave you that information?

A Yes, sir.

Q Did you notify him of his constitutional right to counsel before you propounded questions to him?

A No, sir, because we are asking question only to him.

Q Before propounding question or information you sought to elicit from him, did you inform him of his constitutional right not to testify against himself because he is a suspect in these two (2) cases?

A No, sir, because we were just conversing.[11] (Underscoring supplied)

The evidence for the prosecution shows that when appellant was invited for questioning at the police headquarters, he allegedly admitted his participation in the crime. This will not suffice to convict him, however, of said crime. The constitutional rights of appellant, particularly the right to remain silent and to counsel, are impregnable from the moment he is investigated in connection with an offense he is suspected to have committed, even if the same be initiated by mere invitation. "This Court values liberty and will always insist on the observance of basic constitutional rights as a condition sine qua non against the awesome investigative and prosecutory powers of government." [12]

What remains of the evidence for the prosecution is inadequate to warrant a conviction. Considering the circumstances attendant in the conduct of appellant's investigation which fell short of compliance with constitutional safeguards, we are constrained to acquit the appellant.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Gumaca, Quezon (Branch 62) is REVERSED and SET ASIDE. Appellant HERSON TAN y VERZO is hereby ACQUITTED of the crime charged and his immediate release from confinement is hereby ordered, unless there is any other lawful cause for continued detention. Costs de oficio.

SO ORDERED.

Narvasa, (Chairman), CJ., Kapunan, Francisco, and Purisima, JJ., concur.

[1] Rollo, pp. 9-10.

[2] TSN, July 5, 1989, pp. 13-15.

[3] Ibid., p. 42.

[4] Otherwise known as An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial

Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof.

[5] Section 2(f[b]).

[6] *People v. Marra*, 236 SCRA 565.

[7] *People v. de la Cruz*, G.R. No. 118866-68, September 17, 1997.

[8] *People v. Espanola*, G.R. No. 119308, April 18, 1997; *People v. Calvo*, G.R. No. 91694, March 14, 1997; *People v. Serzo Jr.*, G.R. No. 118435, June 20, 1997.

[9] *People v. Estevan*, 186 SCRA 34 (1990).

[10] 226 SCRA 103 (1993).

[11] TSN, July 5, 1989, pp. 13-14.

[12] *People v. Salcedo*, G.R. No. 100920, June 17, 1997, citing *People v. Januario*, G.R. No. 98252, February 7, 1997.

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