

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABAS RAQUEL, VALERIANO RAQUEL AND AMADO PONCE, ACCUSED, SABAS RAQUEL AND VALERIANO RAQUEL, ACCUSED-APPELLANTS.

G.R. No. 119005. December 02, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

The court a quo found herein accused-appellants Sabas Raquel and Valeriano Raquel, as well as accused Amado Ponce, guilty of the crime of robbery with homicide and sentenced them to suffer the penalty of reclusion perpetua, to pay the heirs of Agapito Gambalan, Jr. the sum of P50,000.00 as indemnity for his death, and the amount of P1,500.00 representing the value of the stolen revolver.[1] The Raquel brothers now plead for their absolution in this appellate review.

In an information dated August 27, 1986, the aforementioned accused were indicted for robbery with homicide before the Regional Trial Court of Kabacan, Cotabato, Branch 16,[2] allegedly committed on July 4, 1986 in Barangay Osias of the Municipality of Kabacan.

Upon arraignment thereafter, all the accused pleaded not guilty. While trial was in progress, however, and before he could give his testimony, accused Amado Ponce escaped from jail.[3]

The factual antecedents of the case for the People, as borne out by the evidence of record and with page references to the transcripts of the court hearings, are summarized by the Solicitor General in the appellee's brief:

"At midnight of July 4, 1986, tragedy visited the peaceful lives of spouses Juliet and Agapito Gambalan, Jr. Thinking of a neighbor in need, Agapito attended to the person knocking at the backdoor of their kitchen. Much to his surprise, heavily armed men emerged at the door, declared a hold-up and fired their guns at him. (pp. 4-6, TSN, January 25, 1988)

Juliet went out of their room after hearing gunshots and saw her husband's lifeless (sic) while a man took her husband's gun and left hurriedly. (p. 7, *ibid.*)

She shouted for help at their window and saw a man fall beside their water pump while two (2) other men ran away. (p. 9, *ibid.*)

George Jovillano responded to Juliet's plea for help. He reported the incident to the police. The police came and found one of the perpetrators of the crime wounded and lying at about 8 meters from the victim's house. He was identified as Amado Ponce. (pp. 5-7, TSN, October 21, 1987; pp. 8-9, TSN, March 21, 1988)

Amado Ponce was first treated at a clinic before he was brought to the police station. (p. 27, *ibid.*)

Amado Ponce revealed to P/Sgt. Andal S. Pangato that appellants Sabas and Valeriano Raquel were the perpetrators of the crime and that they may be found in their residence. However, the police failed to find them there since appellants fled immediately after the shooting incident. (pp. 12-14, *ibid.*)

Appellants were later on apprehended on different occasions. (pp. 5-6, TSN, April 2, 1991)" [4]

Upon the other hand, appellants relied on alibi as their defense, on the bases of facts which are presented in their brief in this wise:

"Accused Valeriano Raquel testified that on July 2, 1986, with the permission of his parents he left Paatan, Kabacan, Cotabato and went to Tunggol Pagalungan, Maguindanao. He stayed in the house of his sister-in-law, the wife of his deceased brother. Together with Boy Madriaga and Corazon Corpuz, he harvested palay on July 3 and 4. On July 5, while he was still asle(ep), police authorities accompanied by his father arrested him and brought him to the municipal jail of Kabacan, Cotabato. He already heard the name of accused Amado Ponce, to be an owner of a parcel of land in Paatan.

On cross-examination, he admitted that their house and that of Gambalan are located in the same Barangay. Before July 4, he entertained no grudge against victim Agapito Gambalan. (TSN, April 2, 1991, pp. 2-20)

Antonio Raquel, 64 years old, testified that on July 2, 1986 he was at home when his son Valeriano Raquel told him that he was going to Tunggol, Pagalungan, Maguindanao to harvest palay. On (the) same date, his other son, Sabas Raquel, also asked his permission to leave since the latter, a soldier, was going to his place of assignment at Pagadian. On July 5, 1986, several policemen came over to his house, looking for his two (2) sons. He gave them pictures of his sons and even accompanied them to Tunggol where they arrested his son Valeriano. (TSN, April 3, 1991, pp. 3-26)

T/Sgt. Natalio Zafra, of the 102 Brigade, Aurora, Zamboanga, testified that on July 4, 1986, he was assigned in the 2nd Infantry Battalion, First Infantry Division, Maria Cristina, Iligan City. Sabas Raquel was under his division then, and was on duty on July 4, 1986. (TSN, Nov. 6, 1992, pp. 2-20)."[5]

On August 10, 1993, the trial court, as stated at the outset, rendered judgment finding all of the accused guilty beyond reasonable doubt of the crime charged and sentenced them accordingly.[6]

Not satisfied therewith, herein appellants filed a notice of appeal wherein they manifested that they were appealing the decision to the Court of Appeals.[7] The lower court ordered the transmittal of the records of the case to the Court of Appeals.[8] In view of the penalty imposed, the Court of Appeals properly forwarded the same to us.[9]

Before us, the defense submits a lone assignment of error, i.e., that the trial court erred in convicting accused Sabas Raquel and Valeriano Raquel of the crime charged, despite absence of evidence positively implicating them as the perpetrators of the crime.

We find such submission to be meritorious. A careful review and objective appraisal of the evidence convinces us that the prosecution failed to establish beyond reasonable doubt the real identities of the perpetrators of, much less the participation of herein appellants in, the crime charged.

The lone eyewitness, Juliet Gambalan, was not able to identify the assailants of her husband. In her testimony on direct examination in court she declared as follows:

"Q:

You said you shouted right after the incident and pip (sic) at the window, did you see any when you pip (sic) at the window?

"A:

Yes, sir.

"Q:

What did you see if you were able to see anything?

"A:

I saw a person who fell down beside the water pump and I saw again two (2) persons who were running away, sir.

"Q:

Were you able to identify this persons who fell down near the jetmatic pump and two (2) persons running away?

x x x

"Q:

Now, you said somebody fell down near the jetmatic pump, who is this person?

"A:

I do not know sir. I have known that he was Amado Ponce when the Police arrived."[10] (Italics ours.)

On cross-examination she further testified:

Q:

For the first time when you shouted for help, where were you?

A:

I was at the Veranda sir and I started shouting while going to our room.

Q:

In fact you have no way (of) identifying that one person who was mask(ed) and got the gun of your husband because he was mask(ed), is that not right?

A:

Yes, sir.

Q:

In fact, you saw only this one person got inside to your house and got this gun?

A:

Yes, sir.

Q:

And this Amado Ponce cannot be the person who have got this gun inside?

FISCAL DIZON:

Already answered.

She was not able to identify, your Honor.

Q:

You only saw this Amado Ponce when (h)e was presented to you by the police, is that right?

A:

Yes, sir.[11]

x x x

Q:

You testified in direct testimony you pip (sic) in jalousie after you shouted for help and you saw two (2) person(s) running, is that right?

A:

Yes, sir.

Q:

Now, you saw these persons running on the road, is that not right?

A:

I saw them running sir going around.

Q:

These two (2) persons were running going around?

A:

They were running towards the road.

ATTY. DIVINO:

Going to the road.

Q:

And you cannot identify these two (2) persons running towards the road?

A:

No, sir.[12](Emphases supplied.)

Even the corroborating witness, George Jovillano, in his testimony made no mention of who shot Agapito Gambalan. In fact, in his sworn statement executed in the Investigation Section of the Kabacan Police Station on July 5, 1986, he declared that:

"19 Q: By the way, when you saw three persons passing about 5 meters away from where you were then drinking, what have you noticed about them, if you ever noticed any?

"19 A: I noticed that one of the men ha(d) long firearm which was partly covered by a maong jacket. The other one wore a hat locally known as 'kipis' meaning a hat made of cloth with leaves protruding above the forehead and seemed to be holding something which I failed to recognize. The other one wore a shortpant with a somewhat white T-shirt with markings and there was a white T-shirt covering his head and a part of his face as he was head-down during that time.

"20 Q: Did you recognize any of these men?

"19 A: No. Because they walked fast." [13] (Italics supplied.)

A thorough review of the records of this case readily revealed that the identification of herein appellants as the culprits was based chiefly on the extrajudicial statement of accused Amado Ponce pointing to them as his co-perpetrators of the crime. As earlier stated, the said accused escaped from jail before he could testify in court and he has been at large since then.

The extrajudicial statements of an accused implicating a co-accused may not be utilized against the latter, unless these are repeated in open court. If the accused never had the opportunity to cross-examine his co-accused on the latter's extrajudicial statements, it is elementary that the same are hearsay as against said accused. [14] That is exactly the situation, and the disadvantaged plight of appellants, in the case at bar.

Extreme caution should be exercised by the courts in dealing with the confession of an accused which implicates his co-accused. A distinction, obviously, should be made between extrajudicial and judicial confessions. The former deprives the other accused of the opportunity to cross-examine the confessant, while in the latter his confession is thrown wide open for cross-examination and rebuttal. [15]

The res inter alios rule ordains that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. An extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused. The reason for the rule is that, on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him. [16]

Although the above-stated rule admits of certain jurisprudential exceptions, [17] those exceptions do not however apply to the present case.

Firstly, except for that extrajudicial statement of accused Amado Ponce, there exists no evidence whatsoever linking appellants to the crime. In fact, the testimony of police Sgt. Andal S. Pangato that appellant Sabas Raquel was wounded and went to the clinic of Dr. Anulao for treatment using the name Dante Clemente, [18] was negated by Dr. Anulao himself who testified that he treated no person by the name of Danny Clemente. [19]

Secondly, this extrajudicial statement, ironically relied upon as prosecution evidence, was made in violation of the constitutional rights of accused Amado Ponce. This was unwittingly admitted in the testimony of the same Sgt. Andal S. Pangato who was the chief of the intelligence and investigation section of their police station:

Q:

During the investigation did you inform him (of) his constitutional right while on the process of investigation?

A:

No sir, because my purpose was only to get the information from him. . . . And after that I checked the information that he gave.

Q:

Of course, you know very well that the accused should be assisted by counsel?

A:

What I know is if when a person is under investigation you have in mind to investigate as to against (sic) him,

and you have to inform his constitutional right but if the purpose is to interrogate him to acquire information which will lead to the identity of the other accused we do not need to inform him.

Q:

Don't you know that under the case of PP vs. Galit, the accused should be (re)presented by counsel that is the ruling of the Supreme Court?

A:

I do not know if it is actually the same as this case.

Q:

But it is a fact that you did not even inform him (of) his right?

A:

No sir.

Q:

At the time when you asked him he has no counsel.

A:

No counsel, sir."[20]

Extrajudicial statements made during custodial investigation without the assistance of counsel are inadmissible and cannot be considered in the adjudication of the case. While the right to counsel may be waived, such waiver must be made with the assistance of counsel.[21] These rights, both constitutional and statutory in source and foundation, were never observed.

A conviction in a criminal case must rest on nothing less than a moral certainty of guilt.[22] Without the positive identification of appellants, the evidence of the prosecution is not sufficient to overcome the presumption of innocence guaranteed by the Bill of Rights to them.[23] While admittedly the alibi of appellants may be assailable, the evidence of the prosecution is probatively low in substance and evidentiarily barred in part. The prosecution cannot use the weakness of the defense to enhance its case; it must rely on the strength of its own evidence. In fact, alibi need not be inquired into where the prosecution's evidence is weak.[24]

It would not even have been necessary to stress that every reasonable doubt in criminal cases must be resolved in favor of the accused. The requirement of proof beyond reasonable doubt calls for moral certainty of guilt. In the instant case, the test of moral certainty was neither met nor were the standards therefor fulfilled.

WHEREFORE, on reasonable doubt, the appealed judgment is REVERSED and accused-appellants Sabas Raquel and Valeriano Raquel are hereby ACQUITTED of the offense charged, with costs de oficio.

SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Penned by Judge Fabiana Inserto-Tejada.

[2] Original Record, 2.

[3] Ibid., 100-101.

[4] Brief for Plaintiff-Appellee, 2-3; Rollo, 199-200.

[5] Appellants' Brief, 6-8; Rollo, 142-144.

[6] Ibid., 49-58.

[7] Ibid., 59.

[8] Ibid., 60.

[9] Ibid., 1.

[10] TSN, January 25, 1988, 8-10.

[11] Ibid., id., 35-36.

[12] Ibid., id., 40.

[13] Exhibit "A"; Original Record, 15.

[14] People vs. Ola, L-47147, July 3, 1987, 152 SCRA 1.

[15] People vs. Flores, et al., G.R. No. 71980, March 18, 1991, 195 SCRA 295.

[16] People vs. Tena, G.R. No. 100909, October 21, 1992, 21 SCRA 43; People vs. Pamon, G.R. No. 102005, January 25, 1993, 217 SCRA 501.

[17] The writer of this opinion has elsewhere compiled these exceptions as follows:

(a) If the co-accused impliedly acquiesced in or adopted said confession by not questioning its truthfulness (People vs. Orenciada, et al., 47 Phil. 970 [1924]), as where it was made in his presence and he did not remonstrate against his being implicated therein (People vs. Amajul, et al., L-14626-27, February 28, 1961, 1 SCRA 612):

(b) If the accused persons voluntarily and independently executed identical confessions without collusion, commonly known as interlocking confessions (People vs. Encipido, et al., G.R. No. 70091, December 29, 1986, 146 SCRA 478) which confessions are corroborated by other evidence (People vs. Argana, et al., L-19448, February 28, 1964, 10 SCRA 311; People vs. Provo, et al., L-28347, January 20, 1971, 37 SCRA 19; People vs. Mateo, et al., G.R. No. 65165, June 29, 1984, 130 SCRA 282); and without contradiction by the other co-accused who was present (People vs. Molleda, et al., L-34248, November 21, 1978, 86 SCRA 667);

(c) Where the accused admitted the facts stated by the confessant after being apprised of such confession (People vs. Narciso, L-24484, May 28, 1968, 23 SCRA 844);

(d) If they are charged as co-conspirators of the crime which was confessed by one of the accused and said confession is used only as a corroborating evidence (People vs. Linde, et al., L-10358, January 28, 1961, 1 SCRA 38; People vs. Simbajon, L-18073-75, September 30, 1965, 15 SCRA 83; People vs. Sta. Maria, L-19929, October 30, 1965, 15 SCRA 222; People vs. Cortez, et al., L-31106, May 31, 1974, 57 SCRA 309);

(e) Where the confession is used as circumstantial evidence to show the probability of participation by the co-conspirator (People vs. Condemena, et al., L-22526, May 29, 1968, 23 SCRA 910; People vs. Pareja, et al., L-21937, November 29, 1969, 30 SCRA 693; People vs. Vasquez, G.R. No. 54117, April 27, 1982, 113 SCRA 772);

(f) Where the confessant testified for his co-defendant (People vs. Villanueva, et al., L-12687, July 31, 1962, 5

SCRA 672); or

(g) Where the co-conspirator's extrajudicial confession is corroborated by other evidence of record (People vs. Paz, et al., L-1505-53, August 31, 1964, 11 SCRA 667; People vs. Agdeppa, et al., L-17489, December 24, 1969, 30 SCRA 782).

[18] TSN, March 21, 1988, 14-16.

[19] TSN, January 21, 1993, 4-5.

[20] TSN, March 21, 1988, 27-28.

[21] See People vs. Salangga, et al., G.R. No. 100910, July 25, 1994, 234 SCRA 407.

[22] People vs. Argawanon, et al., G.R. No. 106538, March 30, 1994, 231 SCRA 614.

[23] People vs. Salguero, et al., G.R. No. 89117, June 19, 1991, 198 SCRA 357.

[24] People vs. Salguero, et al., supra; People vs. Dural, et al., G.R. No. 84921, June 8, 1993, 223 SCRA 201.

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