

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICKY HIJADA Y VILLANUEVA, DANILO ALCERA Y ALFON AND RODELIO VILLAMOR Y RABANES, APPELLANTS.

G.R. No. 123696. March 11, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

Appellants Ricky Hijada y Villanueva (Ricky), Danilo Alcera y Alfon (Dante) and Rodelio Villamor y Rabanes (Rodel) were charged with the crime of Robbery with Multiple Homicide before the Regional Trial Court of Quezon City,[1] under the following information:[2]

The undersigned accuses RICKY HIJADA Y VILLANUEVA @ RICKY, DANILO ALCERA Y ALFON @ DANTE and RODELIO VILLAMOR Y RABANES @ RODEL of the crime of ROBBERY WITH MULTIPLE HOMICIDE committed as follows: That on or about the 14[th] day of September, 1992 in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to gain and by means of violence and intimidation against persons, did then and there, willfully, unlawfully and feloniously rob the residence of FILONILA TUPAZ located at No. 32 Pantaleona Street, Don Jose Subd., Brgy. Commonwealth, Quezon City in the following manner, to wit: on the date and place aforementioned, accused, pursuant to their conspiracy, went to the residence of said FILONILA TUPAZ and then and there hogtied FILOMENA GARCIA and ROSEMARIE DIAZ and thereafter carted away the following personal properties, to wit:

- Six (6) blank Checks of BPI
- Two (2) Units Vacuum cleaner (Red & blue)
- One (1) White garnet necklace
- Two (2) pcs. Gold filled necklace
- One (1) Cal. .38 revolver, 2 inches barrel, paper weight, bearing SN-510960 with six (6) live ammunitions
- One (1) brown holster for snub-nose cal. .38
- Assorted coins of different denominations amounting to P36.00
- One (1) unit tire gauge

of still undetermined value and belonging to said FILONILA TUPAZ, and on the occasion of said robbery, the accused pursuant to their conspiracy, did then and there willfully, unlawfully and feloniously stab FILONILA TUPAZ, FILOMENA GARCIA and ROSEMARIE DIAZ, thereby inflicting upon them serious and grave wounds which were the direct and immediate cause of their death, to the damage and prejudice of the heirs of said FILONILA TUPAZ, FILOMENA GARCIA and ROSEMARIE DIAZ in such amount as may be awarded to them under the provisions of law.

Evidence for the Prosecution

SPO1 Rolando Aguilar[3] testified that he was the police investigator who took the statement of Dante on September 19, 1992. Rolando Aguilar said that before taking down Dante's statement, he duly informed the latter of his constitutional rights to remain silent and to have counsel present. Dante signified that he was waiving these rights and executed a document to this effect. Thereafter, Dante gave a statement confessing to having robbed the house of Filonila Tupaz. He also implicated Ricky and Rodel as having taken part in the robbery and pointed to Ricky as the person who killed the three victims.

Rolando Aguilar, however, admitted that both the waiver and the confession were not signed in the presence of counsel as required by the Constitution, although there were a number of media men who witnessed the whole interrogation proceedings.

Furthermore, Rolando Aguilar identified the items that were found in the possession of appellants upon their arrest, which included those purportedly taken from the house of Filonila Tupaz, as well as the weapon allegedly used in stabbing the victims. He also identified pictures taken from the crime scene.

SPO4 Juan S. Aguilar[4] testified that he was the head of the investigation team which apprehended appellants. He said that on September 17, 1992, Rolando Aguilar handed to him a cartographic sketch of one of the suspects. He then showed the sketch to an informant who positively identified the person in the drawing as Ricky.

Through another informant, the police were able to obtain the address of Ricky in Marikina. They proceeded to that address where they met Jeffrey Ambrosio who told them that he knew something about the crime and was willing to cooperate on the condition that he be first placed under arrest and brought to the police station so that his neighbors won't see that he spoke to the police.

In the police station, Jeffrey Ambrosio said that Ricky attempted to recruit him for the robbery. Jeffrey Ambrosio also gave the addresses of Dante and Rodel whom he identified as participants in the robbery. The police and Jeffrey Ambrosio went first to the residence of Rodel in Capitol Hills, Quezon City where they chanced upon Dante and Rodel leaving the house. A brief chase then ensued that ended in the apprehension of the said two appellants.

The police recovered from Dante and Rodel a necklace and a traveling bag. Inside the traveling bag were a .38 revolver, some religious chains, 36 pieces of coins with different denominations, six booklets of blank checks, assorted goods and their baon. Most of those items were later identified as the victims' stolen belongings.

According to Juan Aguilar, after being arrested, Dante and Rodel voluntarily disclosed that they were on their way to 8[th] Street in New Manila to meet Ricky. The police immediately proceeded to the aforesaid location, spotted Ricky walking along 8[th] Street and placed him under arrest. The police recovered from Ricky one necklace and six rounds of live ammunition.

Ricky was thereafter brought to his residence in Tondo where he surrendered a bladed weapon stained with blood. They returned to New Manila, to the house of Ricky's parents, where Ricky's father surrendered to the police two vacuum cleaners, allegedly taken from the house of Filonila Tupaz.

SPO1 Orlando Gacote,[5] who was part of the team led by Juan Aguilar, testified substantially to corroborate the latter's testimony.

Mrs. Trinidad Albarracin,[6] sister of Filonila Tupaz and niece of Filomena Garcia, identified the items recovered from appellants as those belonging to the victims.[7] She also testified that Ricky was once hired by Filonila Tupaz to fix the roof of the latter's house.

Alvin Monares[8] was the witness who gave a physical description of Ricky, on which the police based the suspect's cartographic sketch. He testified that he was employed as a painter-helper by the neighbor of Filonila Tupaz. On two occasions during the month of July, he saw Ricky on the rooftop of the house of Filonila Tupaz. He also declared that in the morning of September 14, 1992, at around 8:30, he saw all three appellants outside the residence of Filonila Tupaz, with Ricky standing in front of the house while Dante and Rodel sat beside a gutter.

Dr. Emmanuel Aranas,[9] a doctor of the Philippine National Police Crime Laboratory, testified that he examined the two knives that were turned over to him by Rolando Aguilar. He reported that one knife was found to be stained with human blood while the other resulted in negative findings.

Jeffrey Ambrosio[10] was a former co-worker of Ricky, Dante and Rodel at a construction site. He testified that on September 12, 1992, he was in the company of appellants mixing cement from 8:00 a.m. until 5:00 p.m. At 5:00 p.m., appellants went the house of Rodel, which was just a meter away from the construction site, to drink gin. He, on the other hand, decided to work overtime.

After about an hour, Jeffrey Ambrosio joined appellants and had a shot of gin. He heard the three planning to enter the house of a certain Tupaz where only two old ladies and a child resided. He said that he was invited to join their scheme, but he declined the proposal and immediately left.

It was in the morning of September 15, 1992 that he saw the three appellants again. When asked by the prosecution if he observed anything unusual about them, he stated that he saw Ricky wearing a white shirt stained with blood.

Jeffrey Ambrosio further testified that a few days later, Juan Aguilar came to see him to inquire if he had any knowledge about the crime that occurred in the house of Tupaz. He answered that he knew something about it and so he was brought to the police station for questioning.

Evidence for the Defense

Victor Hijada[11] is the father of Ricky. Briefly, he testified that on September 18, 1992, at about 5:00 a.m., he was awakened by his wife who told him that there were armed men inside their house looking for Ricky. He then met with these men and protested regarding their presence in his house. The men told him that they were looking for Ricky because of his participation in the robbery at the house of Filonila Tupaz. Victor Hijada informed the armed men that Ricky does not live with them anymore. Nevertheless, the men continued searching for about twenty minutes but failed to find anything. He further testified that they failed to show any document of their authority to enter and search his house.

Appellant Dante[12] testified that he was in Laguna on September 14, 1992 and left for Manila only on September 18, 1992. Dante went to see Rodel to inquire about any job available for him. Upon arriving at the residence of Rodel, he first went to the kitchen to eat. Later, he saw a group of armed men arrive. After talking to Rodel, the armed men started beating up Rodel. When Dante approached them in order to intercede, he too was beaten up. He said that the armed men were asking them for the whereabouts of a certain Bianong Bulag, whom they did not know.

In addition, he denied knowing Ricky prior to his arrest on September 18, 1992 and further claimed that he was never assisted by counsel all throughout his investigation.

Ricarda Alcera[13] is the mother of Dante. She testified that on September 14, 1992 her son was in Laguna farming and harvesting rice. She further claimed that Dante stayed in Laguna until September 18, 1992 when he

left to visit his uncle in Quezon City.

Appellant Rodel's[14] testimony substantially corroborated the testimony of Dante that in the morning of September 18, 1992, a group of armed men came to his house asking him about a person by the name of Bianong Bulag. When he told them that he does not know that person, the armed men started beating him up. Dante tried to intervene, but he was also beaten up.

He and Dante were then brought to a talahiban[15] where the armed men tried to make them confess to the killing that occurred in the house of Filonila Tupaz. When they denied any participation in the said crime, they were brought to the police station and again subjected to torture. Rodel said that after three days of torture, he was forced to admit the crime. Rodel declared, however, that less than two months later, he executed a document repudiating this confession. Rodel also testified that he saw Ricky only for the first time that day in the police station.

Appellant Ricky[16] testified that he was in Bicol from September 1, 1992 until September 16, 1992. He stated that he left for Manila sometime on September 19, 1992 because his child was sick and needed to be brought to the hospital. Thereafter, he went to see his father in New Manila so that he could borrow some money for his child's medicine.

He recounted that, while walking along 8[th] Street in New Manila, two owner-type jeeps stopped in front of him. He was forced to board one of the jeeps and was brought to an old house. He was then tortured and accused of being a killer. Thereafter, he was taken to the police precinct where he was confined for four days and underwent continuous interrogation.

Teresita Pena[17] is the mother-in-law of Ricky. She testified that Ricky was in Bagamanoc, Catanduanes from September 1, 1992 up to September 16, 1992, which was the day Ricky left for Manila. To corroborate her claim, Teresita Pena presented a certification[18] issued by the barangay captain of their residence attesting to the presence of Ricky in Catanduanes on those dates.

After all the evidence was presented, the trial court rendered its decision on January 16, 1996, with the following dispositive portion:[19]

WHEREFORE, and after a careful study of the evidence for the prosecution and the defense, this Court is of the opinion, and so holds, that the guilt of accused RICKY HIJADA y VILLANUEVA @ Ricky, DANILO ALCERA y ALFON @ Dante, and RODELIO VILLAMOR y RABANES @ Rodel appears duly proven beyond a reasonable doubt of the crime of robbery with multiple homicide and accordingly hereby sentences all said accused to suffer the extreme penalty of DEATH, with the accessories of article 40 of the Revised Penal Code; each to indemnify the respective heirs of the deceased Filonila M. Tupaz, Filomena P. Garcia and Rosemarie C. Diaz in the sum of Fifty Thousand Pesos (P50,000.00); and to pay the proportionate costs.

SO ORDERED.

Two Appellant's Briefs were filed. One was filed by Atty. Rolando L. Villones for all appellants, which presented the following assigned errors for consideration:[20]

- THE COURT A QUO ADMITTED AND CONSIDERED EVIDENCE THAT MAY BE CONSIDERED AS "FRUIT OF THE POISONOUS TREE."
- THE COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT.
- THE COURT ERRED IN METING OUT THE EXTREME PENALTY OF DEATH.

The other brief, filed by the Public Attorney's Office for Dante, assigned the following errors:[21]

- THE COURT A QUO GRAVELY ERRED IN RELYING ON THE EXTRAJUDICIAL CONFESSION OF ACCUSED-APPELLANT DANILO ALCERA (EXHIBIT "A") NOTWITHSTANDING THE FACT THAT IT IS INADMISSIBLE IN EVIDENCE.
- THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT DANILO ALCERA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH MULTIPLE HOMICIDE.
- ON THE ASSUMPTION THAT ACCUSED-APPELLANT DANILO ALCERA COMMITTED THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN IMPOSING THE DEATH PENALTY IN THE CASE AT BAR.

Both briefs have assigned substantially similar errors. Hence, the Court will resolve them jointly.

The admissibility of the prosecution's evidence

Appellants argue that the extrajudicial confession of Dante is inadmissible in evidence because it was secured in violation of his constitutional rights. They point to the fact that his extrajudicial confession was made without the assistance of counsel. Although the police claimed that Dante had waived his constitutional rights, they argue that the waiver was invalid because it was not made in the presence of counsel, as shown from the testimony of Rolando Aguilar:[22]

Court:

Proceed

Q.

After informing them of their constitutional right ... what did Danilo Alcera do?

A.

He signed that he was willing to make a voluntary waiver, Your Honor.

Q.

In signing ... was he assisted by counsel?

A.

No, Your Honor.

The Office of the Solicitor General, however, posits that while confessions extracted without the assistance of counsel are useless in a court of law, there are instances where the constitutional procedures do not apply. In *People v. Cabiles*,^[23] for instance, the Court admitted into evidence an uncounselled verbal confession of an accused to the victim. In *People v. Andan*,^[24] the conviction of the accused for rape with homicide was affirmed based on an uncounselled confession to the mayor and the news reporters. The Court therein considered the confession as one that was made to a confidant and not to a law enforcement officer and, thus, not deemed in

response to any interrogation. In *People v. Domatay*,^[25] the Court held that the accused's confession to a radio reporter is not covered by the prohibition because the bill of rights are primarily addressed to the State and does not concern itself with the relation between private individuals. Lastly, in *People v. Faco*,^[26] it was held that uncounselled statements made to a policeman, not as a police officer but as a trusted confidant of the accused, are admissible.

The Court finds appellants' argument meritorious.

The right to counsel during custodial investigation is guaranteed by no less than Section 12 (1) of Article III of the Constitution:^[27]

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.

In the present case, when Dante was brought to the police station, he was already a suspect and was, therefore, under custodial investigation. He was, thus, entitled to the rights guaranteed by the constitution.^[28] Though he waived these rights in writing, such was not made in the presence of counsel, as admitted by the police. This makes the waiver invalid and the confession inadmissible.

The cases cited by the Solicitor General do not apply. In those cases the accused made verbal admissions before private persons or before persons acting in their private capacity. Here, Dante was made to execute a written extrajudicial confession, upon the instructions of his police interrogators, which confession is being entered into evidence.

While the Court finds the extrajudicial confession to be inadmissible, the rest of the evidence obtained after appellants' arrests should remain on record. Appellants claim that they were arrested without any valid warrant of arrest or search warrant. Although this lapse in procedure was admitted by the police,^[29] appellants can no longer impugn the validity of their arrest or the search that they were subjected to, for it has been consistently ruled by the Court that any objection against an arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused should be made at or before the arraignment. Otherwise, the objection is deemed waived.^[30]

Appellants herein have entered their "plea of not guilty" and the records are devoid of any objection that was ever raised by them prior to arraignment and trial. As a natural consequence, the searches conducted on appellants, being an incident to the arrests, should be upheld.^[31]

Guilt of Appellants

The perpetrators of the crime saw to it that no one was left alive who could testify against them. Hence, no eyewitness could be presented who would directly link appellants to the crime. Nevertheless, the Court has held that 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 reasonable doubt.^[32]

After a carefully reading of the entire records of the case, the Court finds that the foregoing conditions have been satisfied. The following are the factual circumstances correctly found by the trial court to be duly established:

- Appellants had planned to rob the house of Filonila Tupaz two days before the crime was committed.
- Appellants were seen in front of the house of Filonila Tupaz in the morning of September 14, 1992, the day

the crime was committed.

- Ricky was seen the day following the commission of the crime wearing a blood-stained shirt.
- The stolen items were recovered from the possession of appellants.

Appellants failed to show any strong or cogent reason to convince the Court to disregard the trial court's findings. They have assailed as incredible the testimonies of the prosecution witnesses. But against these bare assertions is the settled rule that the findings and conclusions of the trial court on the credibility of witnesses enjoy a badge of respect, absent any showing of palpable mistake or grave abuse of discretion.[33]

As for the defense of alibi, appellants were positively identified by Alvin Monares as loitering in front of the house of Filonila Tupaz that same morning when the crime was committed. It is standing doctrine that alibi cannot prevail over the positive identification of the accused by a credible witness.[34]

Proper Penalty

While the Court considers the guilt of appellants to have been duly proven, the trial court erred in imposing upon them the supreme penalty of death.

The crime of Robbery with Homicide is a special complex crime punishable under Article 294 of the Revised Penal Code with reclusion perpetua to death. However, at the time the crime was committed, on September 14, 1992, the death penalty could not be imposed in view of Article III, Section 19(1) of the Constitution.

Subsequently, the penalty of reclusion perpetua to death for Robbery with Homicide was again imposed in 1993 with the enactment of Republic Act No. 7695.[35] The provisions of Republic Act No. 7695, however, cannot be applied retroactively, for that would violate Article III, Sec. 22 of the Constitution stating that no ex post facto law shall be enacted, as well as Article 21 of the Revised Penal Code.[36] Consequently, the single indivisible penalty of reclusion perpetua should be imposed on each of appellants.[37]

Furthermore, there is no crime of Robbery with Multiple Homicide under the Revised Penal Code. The crime is Robbery with Homicide notwithstanding the number of homicides committed on the occasion of the robbery[38] and even if murder, physical injuries and rape were also committed on the same occasion.[39]

This brings the Court to the civil liability. The Court sustains the indemnification ordered by the trial court to the heirs of the victims in the amount of P50,000 each.[40] In addition to the indemnity, each of appellants should also be ordered to pay the heirs of the victims P50,000 as moral damages, pursuant to Article 2219 of the Civil Code.[41] Appellants' aforesaid liability is solidary. As no evidence was presented regarding the actual damages, the Court awards none.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Quezon City, Branch 84, in Criminal Case No. Q-92-35539, is hereby MODIFIED. Appellants Ricky Hijada y Villanueva, Danilo Alcera y Alfon and Rodelio Villamor y Rabanes are found guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide and are sentenced to suffer the penalty of reclusion perpetua. Appellants are each further ordered to pay jointly and severally the heirs of Filonila M. Tupaz, Filomena P. Garcia and Rosemarie C. Diaz the amounts of P50,000 as civil indemnity and P50,000 as moral damages. No costs.

SO ORDERED.

Davide, Jr., C.J., Vitug, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.
Puno, J., on leave.

Panganiban, J., on official leave.

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- [1] Branch 84, Criminal Case No. Q-92-35539.
- [2] Rollo, pp. 6-7.
- [3] TSN, December 2, 1992, pp. 3-15; TSN, December 14, 1992, pp. 2-15.
- [4] TSN, January 13, 1993, pp. 4-13.
- [5] TSN, March 3, 1993, pp. 4-19.
- [6] TSN, April 21, 1993, pp. 14-20.
- [7] Exhibits “D,” “E,” “F,” “G,” “H,” “I,” “K” and “L.”
- [8] TSN, June 7, 1993, pp. 3-6.
- [9] TSN, June 14, 1993, pp. 2-6.
- [10] TSN, August 23, 1993, pp. 3-11.
- [11] TSN, February 14, 1994, pp. 2-5.
- [12] TSN, February 25, 1994, pp. 3-14.
- [13] TSN, April 18, 1994, pp. 2-4.
- [14] TSN, April 25, 1994, pp. 5-17.
- [15] “Talahiban” is a native word for tall grasslands.
- [16] TSN, May 23, 1994, pp. 2-7.
- [17] TSN, August 10, 1994, pp. 3-4.
- [18] Exhibit “3.”
- [19] Rollo, p. 43; Judge Teodoro P. Regino.
- [20] Id., p. 82.
- [21] Id., p. 168.
- [22] TSN, December 2, 1992, p. 4.
- [23] 284 SCRA 199 (1998).**
- [24] 269 SCRA 95 (1997).**
- [25] 307 SCRA 1 (1999).**
- [26] 314 SCRA 505 (1999).**
- [27] Ibid.
- [28] Supra, note 21.

- [29] TSN, March 3, 1994, p. 13; TSN, April 21, 1993, p. 7.
- [30] *People v. Gallarde*, 325 SCRA 835 (2000).
- [31] *People v. Lozada, et al.*, G.R. No. 141121, July 17, 2003.
- [32] *People v. Corre*, 363 SCRA 165 (2001).
- [33] *People v. Moran*, 241 SCRA 709, (1995); *People v. Lerio*, 324 SCRA 76 (2000).
- [34] *People v. Bartolome*, 323 SCRA 836 (2000).
- [35] Republic Act. No. 7659 took effect on December 31, 1993.
- [36] Art. 21. Penalties that may be imposed. – No felony shall be punishable by any penalty not prescribed by law prior to its commission.
- [37] Article 63, Revised Penal Code.
- [38] *People v. Pulusan*, 209 SCRA 353 (1998).
- [39] *People v. Mateo*, 179 SCRA 303 (1989); *People v. Pedroso*, 115 SCRA 599 (1982).
- [40] *People v. Yatco*, 379 SCRA 432 (2002)
- [41] *People v. Llavore*, G.R. No. 133892, August 12, 2003.

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