

JOEL M. SANVICENTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 132081. November 26, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner was charged with homicide for the killing of one Dennis Wong y Chua. On June 11, 1995, at around 5:30 p.m., petitioner fatally shot the victim outside the Far East Bank along Katipunan Avenue, Loyola Heights, Quezon City after the latter allegedly attempted to rob him of a large amount of cash which he had just withdrawn from the automatic teller machine.[1]

Responding policemen found the lifeless body of the victim at the parking space in front of the Far East Bank and Trust Company Branch along Katipunan Road, Loyola Heights, Quezon City. Recovered at the scene were five empty caliber .45 shells, two live caliber .45 bullets and an ATM card in the name of Violeta Sanvicente.[2]

On June 13, 1995, police authorities located petitioner's car in Barrio Malapit, San Isidro, Nueva Ecija and took custody thereof.

Petitioner's counsel, Atty. Leonardo A. Valmonte, turned over to Police Station 9 petitioner's .45 caliber Mark IV pistol bearing Serial No. 5504095. He also wrote a letter addressed to P/Major Antonio Diaz, Station Commander of PNP Station 9, CPDC, Anonas Road, Quezon City which reads as follows:

This is in connection with the alleged death of one Dennis Wong that occurred in Katipunan Ave., Q.C., in the afternoon of June 11, 1995.

According to my client, Joel Sanvicente, on said date, place and hour above he just withdrew from the Far East Bank and Trust Co., Katipunan branch a large amount of cash. On his way out of the bank, said victim immediately attacked him to grab the money he has just withdrew (sic). My said client pulled out his gun (duly licensed with Permit to Carry) and fired a warning shot upwards. Still the deceased continued his attack and grabbed his gun. After a brief struggle, my client was forced to shoot the deceased in the defense of his person and money. My client will submit a formal statement during the proper preliminary investigation, if needed.

On June 13, 1995, my client's car (Mercedes Benz with plate no. TFU 736) was taken by your operatives led by Capt. Alejandro Casanova and [is] now in your custody.

In view of the untoward incident, my client suffered serious anxiety and depression and was advised to undergo medical treatment and confinement at the Delos Santos Hospital in Rodriguez Ave., Q. C. My client would have no objection if you assigned police escort/guard under your supervision pending his confinement.

For all intense (sic) & purposes, this letter shall serve as a voluntary surrender, without admission of guilt on the part of my client.[3]

At his arraignment, petitioner pleaded not guilty.[4]

During the trial, the prosecution presented Ballistics Report No. B-046-95, stating that slugs recovered from the crime scene, on the one hand, and cartridge cases fired from petitioner's caliber .45 Mark IV pistol, on the other hand, were fired from the same firearm.[5] The Medico-Legal Officer who conducted the autopsy on the deceased failed to appear at the trial. In order to dispense with her testimony, petitioner admitted the due execution and genuineness of the medico-legal report. After trial, the prosecution filed its Formal Offer of Exhibits,[6] which included the above-quoted letter of petitioner's counsel to P/Maj. Antonio Diaz, marked as Exhibit LL. The trial court admitted all the prosecution's exhibits in its Order dated August 27, 1996.[7]

Meanwhile, petitioner begged leave to file a demurrer to evidence, which was granted by the trial court.[8] Hence, on August 29, 1996, petitioner filed a Motion To Dismiss (On Demurrer to Evidence),[9] based on the following grounds: (1) the lack of positive identification of the accused is a fatal omission warranting dismissal; (2) prosecution's evidence are totally hearsay/incompetent, hence, inadmissible and the guilt of the accused was not proven by positive evidence beyond reasonable doubt.

On October 7, 1996, the trial court issued an Order dismissing the case together with the civil aspect thereof for insufficiency of evidence.[10]

The prosecution filed a motion for reconsideration,[11] which was denied on the ground, among others, that with the dismissal of the case double jeopardy had set in.[12]

The prosecution filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 43697. In a Decision dated July 25, 1997,[13] the appellate court nullified the October 7, 1996 Order of the trial court. Petitioner's motion for reconsideration[14] was likewise denied in a Resolution dated January 2, 1998.[15]

Hence, the instant petition.

In reversing the trial court's Order dismissing the criminal case against petitioner, the Court of Appeals found that the trial court committed grave abuse of discretion in preventing the prosecution from establishing the due execution and authenticity of Exhibit LL which, it claimed, "positively identified petitioner as the perpetrator of the crime charged." [16]

Under Rule 119, Section 23 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. In resolving accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt.[17]

The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion.[18] Significantly, once the court grants the demurrer, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy.[19] This constitutes an exception to the rule that the dismissal of a criminal case made with the express consent of the accused or upon his own motion bars a plea of double jeopardy.[20] The finality-of-acquittal rule was stressed thus in *People v. Velasco*: [21]

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into the "humanity of the laws and in jealous watchfulness over the rights of the citizens, when brought in unequal contest with the State xxx." [22] Thus Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty." [23]

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is “part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction.”[24] The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for “repose”, a desire to know the exact extent of one’s liability.[25] With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury’s leniency, will not be found guilty in a subsequent proceeding.[26]

Given the far-reaching scope of an accused’s right against double jeopardy, even an appeal based on an alleged misappreciation of evidence will not lie.[27] The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case,[28] or where the trial was a sham.[29] However, while certiorari may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[30]

In the instant case, petitioner filed a demurrer to evidence after the prosecution adduced its evidence and rested its case. The trial court subsequently dismissed the case after finding that the evidence presented by the prosecution was insufficient to support the charge against petitioner. The prosecution, which relied primarily on Exhibit LL as the basis for the indictment against petitioner, however, contested the dismissal of the case allegedly because the trial court prevented it from further identifying the genuineness and due execution of said document “in the manner that it wanted.”[31]

The crux of the problem lies in the confusion between the due execution of a piece of documentary evidence vis-à-vis the truth of its contents. Likewise at the core of the dilemma is the fundamental distinction between an admission and a confession. The prosecution maintains that the letter, Exhibit LL, constituted a confession and argues thus: “What better evidence is there to positively identify the perpetrator of the crime than the confession of the petitioner himself, freely and voluntarily given, assisted by counsel?”[32] According to the prosecution, this “extrajudicial confession constitutes the strongest evidence of guilt.”[33]

An admission is defined under Rule 130, Section 26 of the Rules of Court as the act, declaration or omission of a party as to a relevant fact. A confession, on the other hand, under Rule 130, Section 33 is the declaration of an accused acknowledging his guilt of the offense charged or any offense necessarily included therein.

More particularly, a confession “is a declaration made at any time by a person, voluntarily and without compulsion or inducement stating or acknowledging that he had committed or participated in the commission of a crime. The term admission, on the other hand, is usually applied in criminal cases to statements of fact by the accused which do not directly involve an acknowledgment of the guilt of the accused or of criminal intent to commit the offense with which he is charged.”[34]

In short, in a confession, an accused acknowledges his guilt; while there is no such acknowledgment of guilt in an admission.[35] Only recently in *People v. Licayan*,[36] the Court distinguished “confession” and “admission” in this wise:

A confession is an acknowledgment in express terms, by a party in a criminal case, of his guilt of the crime charged, while an admission is a statement by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts, to prove his guilt. In other words, an admission is something less than a confession, and is but an acknowledgment of some fact or circumstance which in itself is insufficient to authorize a conviction, and which tends only to establish the ultimate fact of guilt. (Emphasis

ours) [37]

There is no question that the letter dated June 14, 1995 is an admission, not a confession, because of the unmistakable qualification in its last paragraph that –

For all intense (sic) & purposes, this letter shall serve as a voluntary surrender, without admission of guilt on the part of my client. . . (Emphasis and italics supplied).

With the foregoing distinctions in mind, the trial court correctly rejected the prosecution's motion to have Exhibit LL further identified "in the manner that it wanted,"[38] i.e., through the proposed testimony of petitioner's counsel, Atty. Valmonte, who incidentally refused to testify. Aside from covering a subject which squarely falls within the scope of "privileged communication", it would, more importantly, be tantamount to converting the admission into a confession.

It can not be denied that the contents of Exhibit LL, particularly with regard to the details of the shooting communicated by petitioner to Atty. Valmonte, is privileged because it is connected with the business for which petitioner retained the services of the latter.[39] More specifically, said communication was relayed by petitioner to Atty. Valmonte in order to seek his professional advice or assistance in relation to the subject matter of the employment, or to explain something in connection with it, so as to enable him to better advise his client or manage the litigation.[40]

Pertinent to this is Section 24 (b) of Rule 130 of the Rules of Court, to wit:

SEC. 24. Disqualification by reason of privileged communication. – The following persons cannot testify as to matters learned in confidence in the following cases:

x x x x x x x x

(b) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity; x x x.

It is worthy to note that the prosecution did not summon petitioner himself to testify although he too was a signatory of Exhibit LL. Apparently, it was aware that petitioner could well invoke his right against self-incrimination and refuse to answer its questions. The prosecution then attempted to draw out what it could not constitutionally extract from his lawyer. Yet, and as stated previously, said Exhibit LL had earlier been admitted in evidence by the trial court in its Order dated August 27, 1996. What was objectionable was the prosecution's sole reliance on the document without proof of other facts to establish its case against petitioner because of its mistaken assumption that the same was a confession.

Significantly, the prosecution was neither barred nor prevented by the trial court from establishing the genuineness and due execution of the document through other means. Rule 132, Section 20 of the Rules of Court provides the following means of authenticating the document:

SEC. 20. Proof of private document. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

Thus, the due execution of a document can be proved through the testimony of: (1) the person/s who executed it; (2) the person before whom its execution was acknowledged; or (3) any person who was present and saw it executed and delivered or who, after its execution and delivery, saw it and recognized the signatures therein or by a person to whom the parties to the instrument previously confirmed the execution thereof.[41]

Thus, respondent could have called to the witness stand P/Maj. Antonio Diaz, the addressee of Exhibit LL, to identify the said document since it was supposedly delivered to him personally. Samples of the signatures appearing on the document which can be readily obtained or witnesses who are familiar with them could have also been presented. The prosecution did not. Neither did it subpoena P/Senior Inspector Alejandro M. Casanova, who prepared the detailed Police Report of the incident used as the basis of the inquest proceedings, nor were any eyewitnesses presented, notwithstanding that there appeared to be at least two eyewitnesses to the incident.

It must be borne in mind that in a criminal trial, it is the prosecution that determines the charges to be filed and how the legal and factual elements in the case shall be utilized as components of the information.[42] Stated differently, the determination of what evidence to adduce to bolster a successful prosecution of a criminal offense is the exclusive domain of prosecutorial discretion. Indeed, courts generally can not interfere with the prosecutor's discretion as to control over criminal prosecutions.[43] However, it is the court which ultimately determines whether such evidence is sufficient to sustain an indictment, thus, the care with which the prosecution must build up its case against the accused can not be gainsaid because, as has been stated time and again, in any criminal prosecution, the State must rely on the strength of its own evidence and not on the weakness of the evidence of the defense.[44]

Viewed vis-a-vis the foregoing lapses detailed above, the prosecution's insistence to have Exhibit LL admitted "in the manner it wanted" shows only too clearly a subtle but shrewd scheme to cover up for the foregoing procedural missteps and to cut evidentiary corners to build its case at the expense of the defense. This cannot be countenanced. An accused should not be prejudiced for the failure of the prosecution to discharge its burden of overcoming the constitutional presumption of innocence and to establish the guilt of the accused beyond reasonable doubt.[45] Indeed, if the prosecution fails to discharge the burden, then it is not only the accused's right to be freed, it is even more the court's constitutional duty to acquit him.[46]

If at all, the foregoing acts of the prosecution underscores just how careless and haphazard it had been in building up a case against the petitioner. For such, it has nothing but itself to blame if the trial court in assaying the proof it adduced found the same wanting. It will neither be allowed to sweep its procedural miscues under the rug, so to speak, on the pretext that it was denied due process when the trial court supposedly prevented it from presenting Exhibit LL. To be more precise, the trial court had admitted Exhibit LL in evidence but rejected the further admission of the document "in the manner that it wanted." Verily, the prosecution can not have its cake and eat it too.

Moreover, we agree with the trial court that the letter marked as Exhibit LL is hearsay inasmuch as its probative force depends in whole or in part on the competency and credibility of some person other than the witness by whom it is sought to produce it.[47] The term as used in the law of evidence "signifies all evidence which is not founded upon the personal knowledge of the witness from whom it is elicited, and which consequently does not depend wholly for its credibility and weight upon the confidence which the court may have in him. Its value, if any, is measured by the credit to be given to some third persons not sworn as witnesses to that fact and consequently not subject to cross-examination." [48] In short, it is "the evidence not of what the witness knows himself but of what he has heard from others." [49] Thus, in one case we stated that "[w]hen evidence is based on what was supposedly told the witness, the same is without any evidentiary weight being patently hearsay." [50] In the case at bar, it is noteworthy that the statements in the letter were made by petitioner's counsel, who even

began his narration of the events with the phrase: “According to my client.”[51]

In holding that petitioner was identified as the person who committed the offense, the appellate court relied on the following circumstances: (1) he admitted responsibility therefor through Exhibit LL, which was signed by him and his counsel; (2) he surrendered even before the issuance of the warrant of arrest; (3) his gun was also surrendered to the police authorities by his counsel; (4) empty shells recovered at the scene of the crime matched his gun; and (5) the letter-referral of P/Senior Inspector Alejandro Casanova to Quezon City Prosecutor indicated that petitioner was under the custody of the policeman on detail supposedly to guard him at the hospital.[52]

With regard to the first circumstance, suffice it to state that, as has lengthily been discussed earlier, Exhibit LL is merely an admission and not a confession. In fact, petitioner specifically denied criminal intent therein. By and of itself it is insufficient to support a conviction unless it is considered in connection with other proof to establish the ultimate fact of guilt.

The second and third incidents actually support petitioner’s innocence because were he indeed guilty of the felony, he would not likely have surrendered even before the warrant was issued for his arrest. Courts go by the biblical truism that the “the wicked flee when no man pursueth but the righteous are as bold as a lion.”[53]

The fourth event merely proves the fact that the empty shells recovered from the crime scene were fired from the surrendered gun. It, however, does not answer the penultimate question of who actually pulled the trigger of the firearm.

Lastly, the appellate court’s reading of the letter-referral,[54] mentioning that petitioner had been placed under the custody of a policeman, was inaccurate. As explained by Atty. Valmonte in Exhibit LL, the policeman was actually requested for petitioner’s personal safety owing to the untoward incident which caused petitioner serious anxiety and depression, and for which he had to undergo treatment and confinement.[55]

All told, we find no grave abuse on the part of the trial court in dismissing the charges against petitioner.

WHEREFORE, in view of all the foregoing, the petition is GRANTED. The decision of the Court of Appeals dated July 25, 1997 and the Resolution dated January 2, 1998 in CA-G.R. SP No. 43697 are REVERSED and SET ASIDE.

SO ORDERED.

Vitug, (Acting Chairman), Carpio, and Azcuna, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Record, p. 11.

[2] Ibid., pp. 20 - 20-A.

[3] Id., p. 21.

[4] Id., p. 40.

[5] Id., p. 228.

[6] Id., pp. 217-259.

[7] Id., p. 284.

[8] Id., p. 292.

[9] Id., pp. 286-291.

[10] Id., pp. 308-310.

[11] Id., pp. 311-332.

[12] Id., pp. 361-362.

[13] Rollo, pp. 107-119.

[14] Ibid., pp. 120-141.

[15] Id., pp. 150-151.

[16] Id., p. 183; Comment, p. 11.

[17] Gutib v. Court of Appeals, 312 SCRA 365 [1999].

[18] Te v. Court of Appeals, 346 SCRA 327 [2000].

[19] Ong v. People, 342 SCRA 372, 387 [2000]; People v. City Court of Silay, 74 SCRA 247 [1976].

[20] Almario v. Court of Appeals, G.R. No. 127772, March 22, 2001; People v. Bans, 239 SCRA 48, 55 [1994]; People v. Gines, 197 SCRA 481 [1991]; People v. Quizada, 160 SCRA 516 (1988).

[21] 340 SCRA 207, 242 [2000].

[22] Citing U.S. v. Sanges, 144 U.S. 310.

[23] Citing 355 U.S. 1842, L Ed. 2d 199, 61 A.L.R. 2d 1119.

[24] Citing Stern, Government Appeals of Sentences: a Constitutional Response to Arbitrary and Unreasonable Sentences, 18 Am. Crim. L. Rev. 51, 69 [1980].

[25] Citing Paul Western, The Three Faces of Double Jeopardy: Reflections on Government Appeals of Criminal Sentences, 78 Mich. L. Rev. 1001, 1018, 1022 [1980].

[26] Comments, Tulane Law Review, The Proposed Federal Criminal Code and the Government's Right to Appeal Sentences: After the Supreme Court's Green Light –Dare We Proceed? [Vol. 56, No. 2, Feb. 1982, at p. 702].

[27] Palu-ay v. Court of Appeals, 293 SCRA 358 [1998]; People v. Velasco, supra.

[28] Gorion v. RTC of Cebu, Br. 17, 213 SCRA 138 [1992]; People v. Bocar, 138 SCRA 166 [1985]; Portugal v. Reantaso, 167 SCRA 712 [1988]; People v. Albano, 163 SCRA 511 [1988]; Saldaña v. CA, 190 SCRA 396 [1990]; People v. CA, 101 SCRA 450 [1980].

[29] Galman v. Sandiganbayan, 144 SCRA 43 [1986].

[30] People v. Sandiganbayan, et al., G.R. No. 140633, February 4, 2002, citing People v. Court of Appeals, 308 SCRA 687 [1999].

[31] Comment, pp. 12-13; Rollo, pp. 184-185.

[32] Comment, p. 20, Rollo, p. 192.

[33] Ibid., p. 20; p. 194, citing People v. Lachica, 132 SCRA 230 [1984].

- [34] Francisco V.J., Revised Rules of Court, Vol. VII, Part I, 1997 ed., p. 303, citing U.S. v. Corrales, 23 Phil. 362, 365-366 [1912].
- [35] People v. Sevilla, 339 SCRA 625, 652 [2000].
- [36] G.R. No. 144422, February 28, 2002.
- [37] Citing Wharton's Criminal Evidence § 337 (12[th] ed. 1955).
- [38] Comment, pp. 12-13, Rollo, pp. 184-185.
- [39] Francisco V.J., Revised Rules of Court, supra, p. 274.
- [40] Ibid., citing 58 Am. Jur. 270-271.
- [41] Republic v. Court of Appeals, 73 SCRA 148, 158 [1976].
- [42] People v. Pajo, 348 SCRA 492, 522 [2000], citing People v. Perez, 296 SCRA 17, 35 [1998].
- [43] Venus v. Desierto, 298 SCRA 196, 214 [1998], citing Crespo v. Mogul, 151 SCRA 462, 468 [1987].
- [44] People v. Clemente, 316 SCRA 789 [1999]; People v. Paloma, 279 SCRA 352 [1997].
- [45] People v. Comesario, 306 SCRA 400 [1999].
- [46] People v. Muleta, 309 SCRA 148 [1999].
- [47] Francisco V.J., Revised Rules of Court, supra, p. 513, citing 31 C.J.S. 919.
- [48] Ibid., citing Underhill Evidence, p. 68.
- [49] Id., citing Woodroffe's Law on Evidence, 9[th] ed. 512.
- [50] People v. Villaran, 269 SCRA 630, 637 [1997], citing People v. Del Rosario, 234 SCRA 246 [1994].
- [51] Record, p. 21.
- [52] CA-G.R. SP No. 43697 Decision, p. 9; Rollo, p. 115.
- [53] People v. Cañedo, 335 SCRA 81, 97 [2000].
- [54] Record, pp. 5-9.
- [55] Ibid., p. 21.

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