

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. OSCAR ALCANZADO, APPELLANT.

G.R. No. 138335. May 20, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision[1] dated April 5, 1999 issued by the Regional Trial Court (Branch 66) of Makati City (RTC for brevity) in Criminal Case No. 98-1634, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused OSCAR ALCANZADO y ORQUEZA GUILTY beyond reasonable doubt of MURDER, with the qualifying circumstance of treachery, and the Court hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the unidentified victim the sum of P50,000.00 as moral damages.

SO ORDERED.

Makati City, Metro Manila, April 5, 1999.[2]

However, a careful examination of the records reveals that the assailed decision will have to be set aside and the records remanded back to the RTC for reception of evidence for the defense.

Appellant pleaded not guilty during his arraignment on July 30, 1998. Trial on the merits ensued. The prosecution rested its case on October 13, 1998.[3] Upon motion of appellant, the RTC issued an Order dated November 10, 1998 allowing appellant to file a demurrer to evidence.[4] On November 19, 1998, appellant filed his Demurrer to Evidence[5] which was opposed by the prosecution.[6] On April 22, 1999, the RTC promulgated herein assailed decision convicting appellant.[7]

The RTC committed a very serious error in promulgating a decision after denying the demurrer to evidence filed by appellant upon prior leave of court, without first giving appellant the opportunity to present his evidence.

Section 15, Rule 119 of the Rules of Court provides:

SEC. 15. Demurrer to evidence. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused filed such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Contrary to the RTC's assertion in its decision that the demurrer to evidence was denied,[8] the records of the case do not reveal that there was any prior order denying appellant's demurrer to evidence before the rendition of the assailed judgment. Evidently, the trial court violated the aforementioned provisions of Section 15, Rule 119.

Appellant had filed a motion for leave to file a demurrer to evidence which was granted by the RTC and therefore upon denial of his demurrer, if indeed it was denied, the trial court should have given appellant the opportunity to present his evidence. Equally astonishing is the fact that appellant's counsel did not raise said irregularity as an issue in the RTC or in this Court. In effect, appellant has not been accorded due process.

Due to the procedural unfairness and complete miscarriage of justice in the handling of the proceedings in the RTC,[9] a remand of the case for reception of defense evidence is warranted. The constitutional right of the accused to be heard on his defense has been violated.[10]

So that appellant may be spared from further delay, the Court deems it necessary to treat the herein assailed judgment as a mere resolution denying the demurrer to evidence and ascertain whether the RTC has committed grave abuse of discretion in not granting the same.

The RTC made the following findings of fact and law, viz:

In brief, the evidence for the prosecution show that on the early morning of June 17, 1998, the Barangay Tanods of Bel-Air, while on duty, which is adjacent to TGIF American Bar, heard two (2) shots; when they investigated they found a dead body of the victim with two (2) gunshot wounds inside the storeroom of TGIF being guarded by the accused. The accused, who was the security guard of the TGIF, surrendered his service firearm (Exhibit "D") to policeman Bagon which was found to have spent two (2) spent shells. The ballistic report states that the two (2) spent shells were fired from the gun surrendered by the accused to policeman Bagon.

The accused opted to file demurrer to evidence which was denied by the Court, instead of testifying and could have explained what really happened and why he surrendered his service firearm.

The Court finds the presence of a qualifying circumstance of treachery, when the accused fired at the victim one on his shoulder and another at his head in close range (TSN dated October 13, 1998, p. 36).[11]

There was no eye-witness to the shooting incident. The RTC relied principally on the admission of appellant to the police officer that he shot the unknown victim when he surrendered his service firearm.

In his demurrer to evidence, appellant pointed out the following:

- There is no evidence that the firearm marked and offered as Exhibit D belonged or was assigned to the accused.
- There is no evidence that the accused had recently fired a gun in the early morning of June 17, 1998.
- There is no evidence that the firearm marked and offered as Exhibit D was the same firearm that killed the unknown victim in this case.
- There is reasonable doubt that the body examined by the medico-legal witness was the same body recovered from the scene of the killing.
- The extrajudicial admission made by the accused to the police officer and his alleged voluntary surrender of the .38 caliber revolver cannot be admitted in evidence against the accused for having been obtained in violation of his constitutional rights.
- Without any admission on the part of the accused or an unbroken chain of incriminating circumstances, the accused is entitled to acquittal since the prosecution failed to prove his culpability for the death of the unknown victim here beyond a reasonable doubt.[12]

Considering that the first four items as above enumerated involve questions of fact, the Court will not pre-empt the RTC in rendering its findings of fact after it shall have received the defense evidence as well as rebuttal and

sur-rebuttal evidence, if parties find it necessary.

However, the Court is constrained to resolve the question arising from the fifth and sixth claims of appellant, which is: Whether or not the admission made by appellant to the police officer is admissible in evidence. It is the only link that would positively connect appellant to the shooting of the victim, for the service gun may belong to him and it may have been used in the shooting of the victim, but the missing link is the ascertainment of whether he was the one who shot the victim. Without the testimony of the police officer that appellant had verbally acknowledged to him having shot the victim, the herein-before quoted circumstantial evidence enumerated by the RTC do not support the conviction of appellant beyond reasonable doubt.

Section 12 (1) and (3), Article III of the 1987 Constitution provides:

Section 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. The rights cannot be waived except in writing and in the presence of counsel.

...

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

The rights of the accused as provided therein may be invoked only when a person is under “custodial investigation” or is “in custody investigation”[13] which has “been defined as the “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way” [People vs. Caguioa, G.R. No. L-38975, January 17, 1980, 95 SCRA 2, 9 citing Miranda v. Arizona, 384 U.S. 436].

SPO1 Rolando Bagon, the police officer of Precinct 9, Makati City, who responded to the report of the shooting incident, testified as follows:

Q:

What time did you arrive there at TGI Friday’s Restaurant?

A:

When we arrived there it was at around 5:15 to 6:00.

Q: A.M.?

A: June 17, Sir.

Q: When you arrived there, what did you do, Mr. Witness?

A:

The barangay tanod present at that time pointed to us and turned over to us the alleged suspect who is the security guard of the said establishment then we went to the security guard and he voluntarily surrendered himself to us, together with the firearm, a .38 caliber.

Q: What did he tell you when he surrendered and gave to you his .38 caliber Mr. Witness?

...

WITNESS:

A:

That he allegedly hold (sic) a robber inside “while stealing” according to him a cash register of the bar and some assorted goods.

COURT:

Q: Who told you that?

WITNESS:

A : The security guard, the alleged suspect Sir.

FISCAL FLORES:

Q: What else did he tell you?

A: Nothing Sir, he fired his gun at the victim.

...

FISCAL FLORES:

Q:

After the said accused surrendered himself and his firearm, what else did you do at the said bar?

A:

Sir, we invited him to our precinct to shed light or to answer what he committed.[15] (Emphasis supplied).

and, on his cross-examination, he testified as follows:

Q:

Is it not true that when the accused Oscar Alcanzado in this case approached you, he was not evasive and that he voluntarily turned over the firearm and his person to you?

A:

Yes, Sir.[16]

The cross-examination of homicide investigator PO2 Rio S. Bucalan who proceeded to the shooting incident, revealed the following:

Q:

Mr. Witness, when you arrived at the scene of the incident in questioned in this case, is it correct to say that you conducted the investigation right there and then?

Witness:

A: Yes sir.

Atty. Alikpala:

And at that scene at that time was the accused in this case, Osca Alcanzado, is that correct?

Witness:

Yes sir.

. . .

Atty. Alikpala:

Mr. Witness, isn't it also true that at that time you conducted an investigation you spoke with the accused in this case?

Witness:

Yes sir.

Atty. Alikpala:

And when you spoke to the accused, did you tell him about his right to remain silent and his right to counsel?

Witness:

He is not still turn-over to me by the police officer.

. . .

Atty. Alikpala:

Mr. Witness, so at that time that you conducted your investigation, you spoke to the accused?

Witness:

Yes sir.

Atty. Alikpala:

And did you tell him about his right to remain silent and his right to counsel?

Witness:

In fact I don't know that he is the accused during my initial inquiry.

Atty. Alikpala:

But you knew that he was a Security Guard?

Witness:

Yes sir.

Atty. Alikpala:

And so could you tell us what happened when you talked to him?

Witness:

. During the initial inquiry he claimed that . . . he verbally claimed that he shot the victim because of self-defense

. . .

COURT:

He claimed that he shot the victim?

Witness:

Yes, Your Honor.

Atty. Alikpala:

And this was in the course of your investigation, correct?

Witness:

Yes sir.

Atty. Alikpala:

And the accused in this case, did not execute any written waiver of his right to remain silent, is that correct?

Witness:

No sir.

Atty. Alikpala:

And also the accused in this case did not execute any written waiver of his right to counsel, is that correct?

Witness:

No sir.

COURT:

What do you mean no?

Witness:

He did not execute, sir.

Atty. Alikpala:

And it is also correct that the time he was talking to you there was no lawyer present assisting the accused, is that correct?

Witness:

Yes sir.[17]

Under the above circumstances, the Court finds that while the admission made by appellant to PO2 Bucalan may not be admitted in evidence considering that the alleged verbal admission made by appellant before him as homicide investigator was made without appellant being informed of his right to remain silent and right to counsel and after appellant had been established as the suspect by the police officers who had arrived at the scene of the crime before PO2 Bucalan came.

However, the Court cannot disregard the testimony of SPO1 Bagon who, together with his co-police officers, responded to the call of the barangay tanod and immediately upon his arrival, appellant spontaneously told him that he had shot the victim. This particular admission was made when appellant has not been taken into custody

by the police officers and therefore admissible in evidence. The constitutional procedures on custodial investigation do not apply to a spontaneous statement not elicited through questioning by the authorities but given in an ordinary manner whereby the accused readily admitted having committed the crime.[18]

Consequently, for purposes of determining whether the demurrer to evidence should have been granted, the connection between the service gun and appellant as the perpetrator of the shooting, without any countervailing evidence, had been sufficiently established. Thus, the RTC did not commit any grave abuse of discretion in denying the demurrer to evidence BUT it committed grave abuse of discretion in outrightly convicting appellant of the crime of murder and sentencing him to suffer reclusion perpetua when appellant has not been given the opportunity to adduce evidence in his defense, pursuant to Section 15, Rule 119 of the Rules of Court.

Further, the attendant justifying, mitigating or aggravating circumstance such as self-defense, treachery and voluntary surrender could only be ascertained fully after the defense evidence, rebuttal and sur-rebuttal, if any, shall have been adduced and evaluated by the RTC in the rendition of its judgment on the case.

Had Presiding Judge Rosario, Jr. not compulsorily retired from the Judiciary, he could have been admonished to be more circumspect in the performance of his duties.

WHEREFORE, the petition is GRANTED. The decision dated April 5, 1999 of the Regional Trial Court (Branch 66), Makati City is SET ASIDE for being null and void. Let the records of Criminal Case No. 98-1634 be remanded to said trial court for reception of defense evidence and further proceedings. The presiding judge is directed to conduct the trial of the case and render judgment thereon with immediate dispatch.

SO ORDERED.

Quisumbing, (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Judge Eriberto U. Rosario, Jr..

[2] Rollo, p. 54.

[3] TSN, October 13, 1998, pp. 56-60.

[4] Records, p. 72.

[5] Id., p. 77.

[6] Id., p. 101.

[7] Id., p. 113.

[8] Id., p. 106.

[9] *People vs. Molina*, 372 SCRA 378, 389 (2001).

[10] *People vs. Yambot*, 343 SCRA 20, 38 (2000).

[11] Rollo, pp. 53-54.

[12] Rollo, p. 51.

[13] *Sebastian, Sr., vs. Garchitorena*, 343 SCRA 463, 470 (2000).

[14] *People vs. Loveria*, 187 SCRA 47, 61 (1990).

[15] TSN, October 1, 1998, pp. 10-14.

[16] *Id.*, p. 21.

[17] TSN, October 8, 1998, pp. 26-27, 29-30, 31-35.

[18] *People vs. Hermoso*, 343 SCRA 567, 579 (2000), citing *People vs. Andan*, 269 SCRA 95 (1997) and *People vs. Marra*, 236 SCRA 565 (1994).

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