

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SANTIAGO PERALTA Y POLIDARIO (AT LARGE), ARMANDO DATUIN JR. Y GRANADOS (AT LARGE), ULYSSES GARCIA Y TUPAS, MIGUELITO DE LEON Y LUCIANO, ...

G.R. No. 145176. March 30, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The right of the accused to counsel demands effective, vigilant and independent representation. The lawyer's role cannot be reduced to being that of a mere witness to the signing of an extra-judicial confession.

The Case

Before the Court is an appeal from the August 21, 2000 Decision[1] of the Regional Trial Court (RTC) of Manila (Branch 18) in Criminal Case No. 92-112322. Appellants Ulysses Garcia y Tupas, Miguelito de Leon y Luciano, Librando Flores y Cruz and Antonio Loyola y Salisi, as well as their co-accused --Santiago Peralta y Polidario and Armando Datuin Jr. y Granados -- were convicted therein of qualified theft. The dispositive portion of the Decision reads:

“WHEREFORE, the accused, Santiago Peralta y Polidario, Armando Datuin, Jr. y Granados, Ulysses Garcia y Tupas, Miguelito De Leon y Luciano, Librando Flores y Cruz and Antonio Loyola y Salisi, are hereby convicted of the crime of qualified theft of P194,190.00 and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law, and to pay the costs. Moreover, all the accused are ordered to pay the Central Bank of the Philippines, now Bangko Sentral ng Pilipinas, actual damages in the sum of P194,190.00 with interest thereon at the legal rate from the date of the filing of this action, November 9, 1992, until fully paid.”[2]

In an Information dated November 9, 1992,[3] appellants and their co-accused were charged as follows:

“That sometime in the year 1990 and including November 4, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away punctured currency notes due for shredding in the total amount of P194,190.00, belonging to the Central Bank of the Philippines as represented by Pedro Labita y Cabrera, to the damage and prejudice of the latter in the aforesaid sum of P194,190.00 Philippine currency;

“That said accused Santiago Peralta y Polidario, Armando Datuin, Jr. y Granados, Ulysses Garcia y Tupas, Miguelito de Leon y Luciano and Antonio Loyola y Salisi committed said offense with grave abuse of confidence they being at the time employed as Currency Reviewers, Driver, Currency Assistant I and Money Counter of the offended party and as such they had free access to the property stolen.”[4]

Garcia was arrested on November 4, 1992; and his co-accused, on November 9, 1992. Appellants, however,

obtained two Release Orders from RTC Vice Executive Judge Corona Ibay-Somera on November 9 and 10, 1992, upon their filing of a cash bond to secure their appearance whenever required by the trial court.[5]

During their arraignment on May 4, 1993, appellants, assisted by their respective counsels, pleaded not guilty.[6] On September 30, 1998, the trial court declared that Datuin Jr. and Peralta were at large, because they had failed to appear in court despite notice.[7]

After trial in due course, they were all found guilty and convicted of qualified theft in the appealed Decision.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"About 10:00 o'clock in the morning of November 4, 1992, Pedro Labita of Central Bank of the Philippines (CBP) [now Bangko Sentral ng Pilipinas (BSP)] went to the Theft and Robbery Section of Western Police District Command (WPDC), and filed a complaint for Qualified Theft against Santiago Peralta, Armando Datuin, Jr., Ulysses Garcia, Miguelito de Leon, Librando Flores and Antonio S. Loyola.

"Pedro Labita submitted to SPO4 Cielito Coronel, the investigating officer at WPDC, punctured currency notes in P100.00 and P500.00 bills with a face value of Php194,190.00. Said notes were allegedly recovered by the BSP Cash Department during its cash counting of punctured currency bills submitted by different banks to the latter. The punctured bills were rejected by the BSP money counter machine and were later submitted to the investigation staff of the BSP Cash Department. As a result of the investigation, it was determined that said rejected currency bills were actually punctured notes already due for shredding. These currency bills were punctured because they were no longer intended for circulation. Before these notes could be shredded, they were stolen from the BSP by the above-named accused.

"On the basis of the complaint filed by Pedro Labita, Ulysses Garcia was apprehended in front of Golden Gate Subdivision, Las Piñas City, while he was waiting for a passenger bus on his way to the BSP. Garcia was brought to the police station for investigation.

"On November 4, 5 and 6, 1992, while in the custody of the police officers, Garcia gave three separate statements admitting his guilt and participation in the crime charged. He also identified the other named accused as his cohorts and accomplices and narrated the participation of each and everyone of them.

"On the basis of Garcia's sworn statements, the other named accused were invited for questioning at the police station and were subsequently charged with qualified theft together with Garcia." [8] (Citations omitted)

Version of the Defense

The defense states its version of the facts in the following manner:

"Accused-appellant Garcia served as a driver of the armored car of the Central Bank from 1978 to 1994.

"On November 4, 1992, between 7:00 a.m. and 8:00 a.m., a man who had identified himself as a police officer arrested accused-appellant Garcia while waiting for a passenger bus in front of the Golden Gate Subdivision, Las Piñas City. He was arrested without any warrant for his arrest. The police officer who had arrested accused-appellant Garcia dragged the latter across the street and forced him to ride x x x a car.

"While inside the car, he was blindfolded, his hands were handcuffed behind his back, and he was made to bend with his chest touching his knees. Somebody from behind hit him and he heard some of the occupants of the car say that he would be salvaged if he would not tell the truth. When the occupants of the car mentioned perforated notes, he told them that he does not know anything about those notes.

“After the car had stopped, he was dragged out of the car and x x x up and down x x x the stairs. While being dragged out of the car, he felt somebody frisk his pocket.

“At a safe house, somebody mentioned to him the names of his co-accused and he told them that he does not know his co-accused x x x. Whenever he would deny knowing his co-accused, somebody would box him on his chest. Somebody poured water on accused-appellant Garcia’s nose while lying on the bench. He was able to spit out the water that had been poured on his nose [at first], but somebody covered his mouth. As a result, he could not breath[e].

“When accused-appellant Garcia realized that he could not bear the torture anymore, he decided to cooperate with the police, and they stopped the water pouring and allowed him to sit down.

“Accused-appellant Garcia heard people talking and he heard somebody utter, ‘may nakikinig.’ Suddenly his two ears were hit with open palm[s] x x x. As he was being brought down, he felt somebody return his personal belongings to his pocket. Accused-appellant Garcia’s personal belongings consisted of [his] driver’s license, important papers and coin purse.

“He was forced to ride x x x the car still with blindfold. His blindfold and handcuffs were removed when he was at the office of police officer Dante Dimagmaliw at the Western Police District, U.N. Avenue, Manila.

“SPO4 Cielito Coronel asked accused-appellant Garcia about the latter’s name, age and address. The arrival of Mr. Pedro Labita of the Cash Department, Central Bank of the Philippines, interrupted the interview, and Mr. Labita instructed SPO4 Coronel to get accused-appellant Garcia’s wallet and examine the contents thereof. SPO4 Coronel supposedly found three pieces of P100 perforated bill in accused-appellant Garcia’s wallet and the former insisted that they recovered the said perforated notes from accused-appellant’s wallet. SPO4 Coronel took down the statement of Mr. Labita.

“It was actually Mr. Labita, and not accused-appellant Garcia, who gave the answers appearing in accused-appellant Garcia’s alleged three sworn statements dated November 4, 1992, November 5, 1992 and x x x November 6, 1992.

“At or about 6:00 p.m. on November 5, 1992, accused-appellant Garcia was brought to the cell of the Theft and Robbery Section of the WPD. At or about 8:00 p.m., he was brought to the office of Col. Alladin Dimagmaliw where his co-accused were also inside. He did not identify his co-accused, but he merely placed his hands on the shoulders of each of his co-accused, upon being requested, and Mr. Labita took x x x pictures while he was doing the said act.

“Accused-appellant Garcia came to know Atty. Francisco Sanchez of the Public Attorney’s Office on November 4, 1992, at the office of police officer Dante Dimagmaliw, when SPO4 Coronel introduced Atty. Sanchez to accused-appellant Garcia and told him that Atty. Sanchez would be his lawyer. However, accused-appellant Garcia did not agree to have Atty. Sanchez to be his lawyer. Atty. Sanchez left after talking to SPO4 Coronel, and accused-appellant Garcia had not met Atty. Sanchez anymore since then. He was not present when Atty. Sanchez allegedly signed x x x the alleged three (3) sworn statements.

“During the hearing of the case on April 6, 2000, Atty. Sanchez manifested in open court that he did not assist accused-appellant Garcia when the police investigated accused-appellant Garcia, and that he signed x x x the three (3) sworn statements only as a witness thereto.

“Accused-appellant Garcia signed the alleged three sworn statements due to SPO4 Coronel’s warning that if he would not do so, he would again be tortured by water cure.

“SPO[4] Coronel caused the arrest without any warrant of accused appellants De Leon, Loyola, [Flores] on the basis of the complaint of Mr. Pedro Labita, and which arrest was effected on November 5, 1992, by SPO1 Alfredo Silva and SPO1 Redelico.

“SPO4 Coronel, in his letter dated November 6, 1992, forwarded the case to the Duty Inquest Prosecutor assigned at the WPDC Headquarters.”[9] (Citations omitted)

Ruling of the Trial Court

The trial court found that all the accused used to work for the BSP. Garcia was a driver assigned to the Security and Transport Department; while Peralta, Datuin Jr., De Leon, Flores and Loyola were laborers assigned to the Currency Retirement Division. Their main task was to haul perforated currency notes from the currency retirement vault to the basement of the BSP building for shredding.

On several occasions, during the period 1990-1992, they handed to Garcia perforated currency notes placed in a coin sack that he, in turn, loaded in an armored escort van and delivered to someone waiting outside the premises of the building. The trial court held that the coordinated acts of all the accused unerringly led to the conclusion that they had conspired to pilfer the perforated currency notes belonging to the BSP.

The RTC rejected the disclaimer by Garcia of his own confessions, as such disclaimer was “an eleventh hour concoction to exculpate himself and his co-accused.” The trial court found his allegations of torture and coerced confessions unsupported by evidence. Moreover, it held that the recovery of three pieces of perforated P100 bills from Garcia’s wallet and the flight of Peralta and Datuin Jr. were indicative of the guilt of the accused.

Hence, this appeal.[10]

Issues

In his Brief, Garcia raises the following issues:

“1

The trial court erred in admitting in evidence the alleged three Sworn Statements of Accused-appellant Garcia and the alleged three pieces of P100 perforated notes

“2

The trial court erred in finding the accused-appellant guilty of qualified theft.”[11]

In their joint Brief, De Leon, Loyola and Flores interpose this additional assignment of errors:

“1

The trial court erred in admitting in evidence the alleged three sworn statements of Accused Ulysses Garcia (Exhibits ‘I’, ‘J’ and ‘K’) and the alleged three pieces of P100 perforated notes (Exhibits ‘N’ to ‘N-2’) over the objections of the accused-appellants.

“2

The trial court erred in denying the demurrer to evidence of Accused-appellants De Leon, Loyola and Flores;

“3

The trial court erred in denying the Motion for Reconsideration of the Order denying the demurrer to evidence;

“4

The trial court erred when it failed to consider the evidence adduced by the accused-appellants, consisting of exhibits ‘1’, ‘2’ to ‘2-B’, ‘3’ and ‘4’ and the testimony of their witness, State Auditor Esmeralda Elli;

“5

The trial court erred in finding the accused-appellants guilty of qualified theft.”[12]

Simplified, the issues are as follows: (1) the sufficiency of the evidence against appellants, including the admissibility of Garcia’s confessions and of the three perforated P100 currency notes; and (2) the propriety of the denial of their demurrer to evidence.

The Court’s Ruling

The appeal has merit.

First Issue:

Sufficiency of Evidence

The trial court convicted appellants mainly on the strength of the three confessions given by Garcia and the three perforated P100 currency notes confiscated from him upon his arrest. Appellants, however, contend that these pieces of evidence are inadmissible.

Extrajudicial Confessions

Appellants aver that the alleged three Sworn Statements of Garcia were obtained without the assistance of counsel in violation of his rights under Article III, Section 12 (1) and (2) of the 1987 Constitution, which provides thus:

“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.

“(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.”

On the other hand, the OSG contends that counsel, Atty. Francisco Sanchez III of the Public Attorney’s Office, duly assisted Garcia during the custodial investigation.

It is clear from a plain reading of the three extrajudicial confessions[13] that Garcia was not assisted by Atty. Sanchez. The signature of the latter on those documents was affixed after the word “SAKSI.” Moreover, he appeared in court and categorically testified that he had not assisted Garcia when the latter was investigated by the police, and that the former had signed the Sworn Statement only as a witness.[14]

The written confessions, however, were still admitted in evidence by the RTC on the ground that Garcia had expressed in writing his willingness and readiness to give the Sworn Statements without the assistance of counsel. The lower court’s action is manifest error.

The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The basic law specifically requires that any waiver of this right must be made in writing and executed in the presence of a counsel. In such case, counsel must not only ascertain that the confession is voluntarily made and that the accused understands its nature and consequences, but also advise and assist the accused continuously from the time the first question is asked by the investigating officer until the signing of the confession.

Hence, the lawyer’s role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused.[15] The accused is entitled to effective, vigilant and independent counsel.[16]

A waiver in writing, like that which the trial court relied upon in the present case, is not enough. Without the assistance of a counsel, the waiver has no evidentiary relevance.[17] The Constitution states that “[a]ny confession or admission obtained in violation of [the aforementioned Section 12] shall be inadmissible in evidence x x x.” Hence, the trial court was in error when it admitted in evidence the uncounseled confessions of Garcia and convicted appellants on the basis thereof. The question of whether he was tortured becomes moot.

Perforated Currency Notes

Appellants contend that the three P100 perforated currency notes (Exhibits “N” to “N-2”) allegedly confiscated from Garcia after his arrest were “fruits of the poisonous tree” and, hence, inadmissible in evidence.

The solicitor general evades the issue and argues, instead, that appellants waived the illegality of their arrest when they entered a plea. He further contends that the exclusion from the evidence of the three punctured currency bills would not alter the findings of the trial court.

The police arrested Garcia without a warrant, while he had merely been waiting for a passenger bus after being pointed out by the Cash Department personnel of the BSP. At the time of his arrest, he had not committed, was not committing, and was not about to commit any crime. Neither was he acting in a manner that would engender a reasonable ground to suspect that he was committing a crime. None of the circumstances justifying an arrest without a warrant under Section 5 of Rule 113 of the Rules of Court was present.

Hence, Garcia was not lawfully arrested. Nonetheless, not having raised the matter before entering his plea, he is deemed to have waived the illegality of his arrest. Note, however, that this waiver is limited to the arrest. It does not extend to the search made as an incident thereto or to the subsequent seizure of evidence allegedly found during the search.

The Constitution proscribes unreasonable searches and seizures[18] of whatever nature. Without a judicial warrant, these are allowed only under the following exceptional circumstances: (1) a search incident to a lawful arrest, (2) seizure of evidence in plain view, (3) search of a moving motor vehicle, (4) customs search, (5) stop and frisk situations, and (6) consented search.[19]

Where the arrest was incipiently illegal, it follows that the subsequent search was similarly illegal.[20] Any evidence obtained in violation of the constitutional provision is legally inadmissible in evidence under the exclusionary rule.[21] In the present case, the perforated P100 currency notes were obtained as a result of a search made without a warrant subsequent to an unlawful arrest; hence, they are inadmissible in evidence.

Moreover, untenable is the solicitor general’s argument that Appellants De Leon, Flores and Loyola waived the illegality of the arrest and seizure when, without raising objections thereto, they entered a plea of guilty. It was Garcia who was unlawfully arrested and searched, not the aforementioned three appellants. The legality of an arrest can be contested only by the party whose rights have been impaired thereby. Objection to an unlawful search and seizure is purely personal, and third parties cannot avail themselves of it.[22]

Indeed, the prosecution sufficiently proved the theft of the perforated currency notes for retirement. It failed, however, to present sufficient admissible evidence pointing to appellants as the authors of the crime.

The evidence presented by the prosecution shows that there were other people who had similar access to the shredding machine area and the currency retirement vault.[23] Appellants were pinpointed by Labita because of an anonymous phone call informing his superior of the people allegedly behind the theft; and of the unexplained increase in their spending, which was incompatible with their income. Labita, however, did not submit sufficient evidence to support his allegation.

Without the extrajudicial confession and the perforated currency notes, the remaining evidence would be utterly inadequate to overturn the constitutional presumption of innocence.

Second Issue:

Demurrer to Evidence

Appellants contend that the trial court seriously erred when it denied the demurrer to evidence filed by Appellants Loyola, De Leon and Flores. Not one of the documents offered by the prosecution and admitted in evidence by the RTC established the alleged qualified theft of perforated notes, and not one of the pieces of evidence showed appellants' participation in the commission of the crime.

On the exercise of sound judicial discretion rests the trial judge's determination of the sufficiency or the insufficiency of the evidence presented by the prosecution to establish a prima facie case against the accused. Unless there is a grave abuse of discretion amounting to lack of jurisdiction, the trial court's denial of a motion to dismiss may not be disturbed.[24]

As discussed earlier, the inadmissibility of the confessions of Garcia did not become apparent until after Atty. Francisco had testified in court. Even if the confiscated perforated notes from the person of the former were held to be inadmissible, the confessions would still have constituted prima facie evidence of the guilt of appellants. On that basis, the trial court did not abuse its discretion in denying their demurrer to evidence.

WHEREFORE, the assailed Decision is REVERSED and SET ASIDE. Appellants are hereby ACQUITTED and ordered immediately RELEASED, unless they are being detained for any other lawful cause. The director of the Bureau of Corrections is hereby directed to submit his report on the release of the appellant or the reason for his continued detention within five (5) days from notice of this Decision. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Penned by Judge Perfecto A. S. Laguio Jr.

[2] RTC Decision, p. 5; rollo, p. 33.

[3] Signed by Assistant Prosecutor Leoncia R. Dimagiba.

[4] Rollo, p. 9.

[5] Records, pp. 53 & 58.

[6] Order dated May 4, 1993; records, p. 90.

[7] Order dated September 30, 1998; records, p. 434.

[8] Appellee's Brief, pp. 8-11; rollo, pp. 154-157.

[9] Appellant Garcia's Brief, pp. 2-5; rollo pp. 109-112.

[10] This case was deemed submitted for decision on October 18, 2002, upon receipt by this Court of Appellant Garcia's Reply Brief, signed by Atty. Jose Hernandez-Dy; and of Appellants De Leon, Flores and Loyola's Reply Brief, signed by Atty. Edgardo G. Pena. Appellee's Brief, signed by Asst. Solicitors General Carlos N. Ortega and Nestor J. Ballacillo and Associate Solicitor Maricar S. A. Prudon, was filed on June 20, 2002. Appellants De Leon, Flores and Loyola's Brief was filed on January 2, 2002, while Appellant Garcia's, on

January 14, 2002.

[11] Appellant Garcia's Brief, p. 1; rollo, p. 108; original in upper case.

[12] Appellants De Leon, Loyola and Flores' Brief, pp. 1-2; rollo, pp. 61-62; original in upper case.

[13] Records, pp. 19-27.

[14] Order dated April 6, 2000; records, p. 468.

[15] People v. Binamira, 277 SCRA 232, 238, August 14, 1997; People v. Ordonio, 334 SCRA 673, 688, June 28, 2000; People v. Rodriguez, 341 SCRA 645, 653, October 2, 2000; People v. Rayos, 351 SCRA 336, 344, February 7, 2001; and People v. Patungan, 354 SCRA 413, 424, March 14, 2001.

[16] People v. Patungan, supra; People v. Rayos; supra; and People v. Bermas, 306 SCRA 135, 147, April 21, 1999.

[17] People v. Gerolaga, 331 Phil. 441, October 15, 1996; People v. Cabintoy, 317 Phil. 528, August 21, 1995.

[18] Hizon v. Court of Appeals, 333 Phil. 358, 371, December 13, 1996; People v. Valdez, 363 Phil. 481, 487, March 3, 1999.

[19] Hizon v. Court of Appeals, supra, pp. 371-372; Malacat v. Court of Appeals, 347 Phil. 462, 479, December 12, 1997; People v. Usana, 380 Phil. 719, 734, January 28, 2000; People v. Encinada, 345 Phil. 301, 316, October 2, 1997.

[20] People v. Aruta, 351 Phil. 868, 885, April 3, 1998; People v. Bolasa, 378 Phil. 1073, 1080, December 22, 1999.

[21] People v. Valdez, supra; Manalili v. Court of Appeals, 280 SCRA 400, 413, October 9, 1997; People v. Che Chun Ting, 385 Phil. 305, 318, March 21, 2000.

[22] Uy v. Bureau of Internal Revenue, 344 SCRA 36, 67, October 20, 2000.

[23] Exhs. "Q" and "R"; records, pp. 140-141 & 142-143.

[24] People v. Mercado, 159 SCRA 453, 459, March 30, 1988.

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