

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JACINTO ALVAREZ, JR. Y BUNAG ALIAS NONONG, APPELLANT.

G.R. No. 152221. August 25, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Appellant Jacinto Alvarez y Bunag Jr. was charged with the crime of robbery with homicide in an Amended Information[1] which reads:

That on or about June 3, 1997, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating with one SALVADOR DIZON, alias "Boy Polio", and helping one another, did then and there willfully, unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation, to wit: by shooting the victim, DANILO HERNANDEZ, while on board the taxicab with Plate No. PWT-442 along Circumferential Road (C-3) Dagat-Dagatan, Caloocan City with the use of a .38 caliber revolver thereby inflicting upon said victim one (1) gunshot wound on the nape which was the direct cause of his death and thereafter the vehicle bearing the wounded victim was brought by his assailants Salvador Dizon and Alvarez to Brgy. Sauyo, Novaliches, Quezon City, and thereafter, take, steal and carry away victim's caliber .45 pistol, a tricolor gold ring with diamond stone, a citizen watch and an address book mistaken as a wallet, to the damage and prejudice of the heirs of said deceased-victim.

CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty." Trial on the merits ensued.

The facts as established by the prosecution.

On June 3, 1997, the Criminal Investigation Division - Central Police District Command in Camp Karingal, Quezon City received information that a dead body was found inside a taxicab with plate number PWT 442, parked along Camia Street, Brgy. Sauyo, Novaliches, Quezon City. Police Officers Wilfredo Quilang and Marcelino Castillo went to the place and learned that the deceased was Daniel Hernandez, from the press identification card found on him. They also recovered from the taxicab a fan knife, a caliber .22 Berretta pistol with Serial Number DD069663, forty (40) pieces of caliber .22 cartridges live ammunitions, one (1) magazine of a caliber .22 pistol, one (1) caliber .45 magazine, a diary and other personal effects of the victim.

Meanwhile, in a seemingly unrelated incident on June 15, 1997, a certain Salvador Dizon carnapped a taxicab with Plate No. PWA 737 driven by one Magtanggol Salazar along Quezon Avenue, Quezon City. Two (2) days later or on June 17, 1997 the carnapped vehicle was intercepted by the police officers and its driver, Salvador Dizon, was killed during the ensuing shootout. Recovered from the scene were a .38 caliber Armscor revolver with Serial Number 39103 WBQ, a .38 caliber holster and a .38 caliber deformed bullet. The gun was submitted for a ballistic examination to determine whether it was related to the killing of Daniel Hernandez. After examination, it was found that the bullet recovered from Daniel Hernandez's body was fired from the same .38 caliber Armscor revolver that was recovered from Dizon.

Subsequently, police officers Zoilo Mendiola, Joven Reyes, Ferdinand Altigo, Angel Ergina and Ronaldo Intia secured a warrant of arrest against appellant based on information of his involvement in the robbery-slay of Hernandez. Appellant was subsequently apprehended and invited for questioning.

The prosecution presented the extra-judicial confession of appellant taken on July 3, 1997 by SPO3 Quilang.[2] Appellant narrated that Salvador Dizon alias "Boy Polio" was his friend and neighbor. At about midnight on June 3, 1997, while he was asleep inside his house, Babes, Dizon's wife, woke him up and told him to accompany Dizon. Appellant immediately changed clothes and, together with Babes, joined Dizon who was waiting in front of his house in a white taxicab. Appellant and Dizon first dropped off Babes at the latter's house, then the duo proceeded towards Cubao. While along New York Street, Dizon told appellant to disembark and hide himself inside the baggage compartment of the taxicab, as was their modus operandi.

While he was inside the trunk, appellant felt that the taxicab stop and he heard someone say, "Sa Caloocan tayo." After some time, the taxicab again stopped, Dizon opened the trunk and told appellant to step down. Appellant noticed that they were somewhere near Cloverleaf in Balintawak and there was a male passenger sleeping on the back seat of the taxicab. When appellant was about to join the passenger, the latter woke up and asked what was happening, then pointed a gun at him. Appellant immediately ran away from the cab. Afterwards, he heard a gun shot. Moments later, Dizon caught up with him and told him to get in the taxicab, where he saw the wounded passenger.

Dizon and appellant divested the passenger of his watch, ring, .45 caliber revolver and green address book which they mistook for a wallet. The duo then proceeded towards Bgy. Sauyo in Novaliches, and left the taxicab with the wounded passenger. From Sauyo, they walked towards Mindanao Avenue where they hailed a taxicab that brought them to Dizon's house in Tatalon, Quezon City.

Dizon sold the ring for P5,000.00 and gave P1,500.00 to appellant as his share. Dizon kept the .45 caliber revolver while appellant kept the victim's watch. The following day, appellant left for Bustos, Bulacan where he stayed for three days at the house of his mother. While in Bustos, Bulacan, he sold the victim's watch for P200.00.

During the investigation, appellant identified the ring and the watch of the victim as well as the taxicab they used in committing the crime. Appellant likewise identified his fan knife which was recovered from the taxicab.

However, appellant denied the statements contained in his extra-judicial confession. He claimed that he was tortured by policemen to force him to admit that he knew Dizon. He further alleged that the investigators took his statement in the absence of a lawyer, despite his manifestation that he desired to be assisted by a counsel of his own choice. He was not allowed to read the statements which he was forcibly made to sign.

After trial, the Regional Trial Court of Quezon City, Branch 81, rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby finds accused JACINTO ALVAREZ Y BUNAG alias "Nonong" guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294, paragraph 1 of the Revised Penal Code and is sentenced to suffer the penalty of reclusion perpetua. Accused is ordered to indemnify the heirs of Daniel Hernandez the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity for his death.

SO ORDERED.[3]

Hence, this appeal based on the lone assignment of error that the trial court committed a reversible error in convicting the accused and in not acquitting him on grounds of reasonable doubt, considering that the extrajudicial confessions of the accused which was the basis of his conviction was obtained through force and

intimidation hence inadmissible in evidence, and that in fact some of the statements therein were not made by the accused.[4]

The contentions are without merit. Aside from his self-serving testimony, appellant failed to present any evidence to prove that he was tortured and intimidated into giving his extra-judicial confession. Appellant did not show any physical marks to prove that he was tortured; neither did he identify any of the police officers as his intimidators nor did he report the matter to his lawyer or to any of his relatives. The failure of the appellant to present evidence of compulsion or duress or violence on his person; to complain to the officers who administered the oath; to institute any criminal or administrative action against his alleged intimidators for maltreatment; to show marks of violence on his body; or to prove that he underwent examination by a reputable physician, are factors indicating the voluntariness of the confession.[5] Besides, extra-judicial confessions are presumed voluntary, and, in the absence of conclusive evidence showing the declarant's consent in executing the same has been vitiated, such confession will be sustained.[6]

Further, the testimonies of the police officers corroborated the declarations of the appellant in his extra-judicial confession on material points. Indeed, the sworn statement of appellant, as corroborated by the testimonies of the police officers in open court, are worthy of credit, especially since the testimonies of arresting officers who have no motive or reason to falsely testify in regard to a serious charge against the appellant are credible.[7]

Significantly, appellant's confession is replete with details which he alone could have known and supplied, thus indicating the voluntariness of its execution. It was appellant himself who informed the police authorities of their modus operandi in holding up their passengers. He even described in detail the manner on how they killed and robbed their victim. Lastly, he was the one who disclosed where the victim's ring and watch could be found which eventually led to their recovery. If not for his testimony, the police would not have known where to find the victim's personal effects. Thus:

T: May kilala ka bang BOY POLIO?

S: Mayroon sir.

T: Sino siya?

S: Kaibigan at kapitbahay sir.

T: Saan mo ito naging kapitbahay?

S: Sa Tatalon (QC) sir.

T: Ano ang alam mong hanapbuhay ni Boy Polio?

S:

Driver sir.

T: Noong June 2, 1997, natatandaan mo ba kung saan ka naroroon?

S: Nasa trabaho ko sir.

T: Maghapon at magdamag ka bang nasa trabaho mo noong araw na iyon?

S: Maghapon po.

T: Hanggang anong oras ka naroroon sa trabaho mo?

S: Pasado alas 6:00 na ng gabi sir.

x x x x x x x x

T: Pagkagaling mo sa trabaho mo noon June 2, 1997, saan ka nagpunta?

S: Umuwi na ako sa bahay.

x x x x x x x x

T: Hanggang anong oras kang naroroon sa bahay mo noon June 2, 1997?

S: Mga alas 12:00 na sir ng hatinggabi.

T: Bakit?

S: Sinundo ako sa bahay ni Babes sir.

T: Sino itong Babes na sumundo sa iyo?

S: Asawa ni Boy Polio sir.

x x x x x x x x

T:

Ano ba ang sadya ni Babes at sinundo ka sa bahay mo noong oras na iyon?

S: Sabi niya sa akin..."SAMAHAN MO SI BOY..."

T: Ano ang naging reaction mo o sagot sa sinabi ni Baby?

S: Wala...nagbihis ako at nanaog ng bahay.

T: Saan ka nagpunta noong makapanaog ka ng bahay noong gabing iyon?

S: Sumama ako kay Boy (Polio) sir.

x x x x x x x x

T: Saan kayo nagpunta ni Boy noong gabing iyon?

S: Sa Cubao.

x x x x x x x x

T: Pagdating ninyo ni Boy sa gawing New York, Cubao, ano ang ginawa ninyo, kung mayroon?

S: Pinababa ako ni Boy sa taksi at pinalipat sa baggage compartment.

T: Bakit ka pinalipat ni Boy sa baggage compartment?

S: Ganoon ang style ni Boy (Polio).

T: Ano ang ibig mong sabihin?

S: Kung may titirahin ay lalabas ako sa compartment.

T: Anong titirahin ang ibig mong sabihin?

S: Iyong pasahero ng taksi ay ho-holdapin namin.

x x x x x x x x

T: Ano ang sumunod na nangyari, kung mayroon?

S: Hindi nagtagal umandar uli ang taksi.

T: Ano ang ibig mong sabihin sa pag-andar ng taksi?

S: Lumakad uli sir at narinig ko ang salitang..."SA CALOOCAN TAYO..."

T: Ano pa ang sumunod na nangyari, kung mayroon?

S: Pagdating sa isang lugar malapit sa Cloverleaf (Balintawak) ay tumigil ang taksi.

T: Bakit tumigil ang taksi, kung alam mo?

S: Bumaba si Boy (Polio) at sinenyasan ako na bumaba.

T: Anong senyas ang ibig mong sabihin?

S: Binuksan muna ni Boy ang compartment at binulungan ako ng ... "NONG...BABA NA..."

T: Ano naman ang ginawa mo, kung mayroon?

S: Agad akong bumaba.

T: Si Boy Polio, ano pa ang ginawa matapos kang pagsabihan na bumaba?

S: Sumampa uli siya sa manibela at iniangat ang pagkakalock ng pinto ng taksi.

T: Ano ang naging reaction ng pasahero, noong tumigil ang taksi?

S: Wala, tulog siya.

T: Saang gawi ng taksi nakaupo ang pasahero?

S: Sa likod sir, gawing kaliwa.

x x x x x x x x

T: Pagbukas mo ng pinto, ano pa ang nangyari, kung mayroon?

S:

Nagising ang pasahero at sumigaw..."HOY ANO IYAN? At bigla na lang akong tinutukan ng kuwarenta y singcong baril.

T: Ano naman ang naging reaction mo noong tutukan ka ng baril?

S: Sa takot ko ay bigla kong sinara ang pinto pero pinutukan ako kaya ako tumakbo palayo.

T: Ano pa ang sumunod na nangyari, kung mayroon?

S: Maya-maya ay nakarinig uli ako ng isa pang putok, Naisip ko na binaril si Boy.

T: Gaano ang layo mo sa taksi noong marinig mo ang isang putok?

S: Mga 10-15 metros siguro, sir.

T: Ano pa ang nangyari pagkatapos?

S:

Mayamaya pa ay narinig ko ang boses ni Boy at tinatawag ako... "NONG...SAKAY NA..." Balik ako at sumakay uli ng taksi.

T: Ano pa ang nangyari pagkatapos?

S: Nakita ko na may tama iyong pasahero..binaril pala ni Boy ito.

T: Ano ba ang baril ni Boy Polio?

S: 38 na de bola sir.

T: Ano naman ang armas mo, kung mayroon, noong oras at araw na iyon?

S: Balisong sir.

x x x x x x x x

T: Matapos mabaril iyong pasahero, ano pa ang sumunod na nangyari, kung mayroon?

S: Umalis na kami at iniwan ang pasahero sa loob ng taksi sa Sauyo.

x x x x x x x x

T: Ano ba ang nahold-up ninyo sa pasaherong ito na namatay, kung mayroon?

S: Brilyanteng singsing, relo, baril at berdeng wallet.

x x x x x x x x.[8]

The voluntariness of a confession may be inferred from its being replete with details which could possibly be supplied only by the appellant, reflecting spontaneity and coherence which cannot be said of a mind on which violence and torture have been applied. When the details narrated in an extra-judicial confession are such that they could not have been concocted by one who did not take part in the acts narrated, where the claim of maltreatment in the extraction of the confession is unsubstantiated and where abundant evidence exists showing that the

statement was voluntarily executed, the confession is admissible against the declarant. There is greater reason for finding a confession to be voluntary where it is corroborated by evidence aliunde which dovetails with the essential facts contained in such confession.[9]

Interestingly, it appears from the records that appellant's extra-judicial confession was taken in the presence not only of Atty. Salatandre Jr., but also of radio and television reporters. More importantly, his mother and his wife's nephew were present and he even physically pointed to them in reference to some of his answers. Thus:

T: Naririto ngayon sa harap mo ang ilang peryodista, mga police reporter sa radyo at TV at si Atty. Orlando Salatandre, Jr. Kilala mo ba si Atty. Salatandre Jr.?

S: Opo. Siya po ang pinili kong abogado sa kasong ito.

x x x x x x x x

T:

Kanino ka tumira sa Bustos, Bulacan?

S: Tatlong (3) araw sir.

T: Kanino ka tumira sa Bustos, Bulacan?

S: Sa bahay ng nanay ko.

T: Ano ba ang pangalan ng nanay mo?

S: Roberta Alvarez sir, hayun po siya (affiant pointing and referring to Mrs. Roberta Alvarez y Bunag).

T: Ano ang ginawa mo sa Bustos, Bulacan?

S: Ibinenta ko iyong relo.

T: Magkano mo naibenta iyong relo?

S: P200.00 lang sir.

T: Kanino mo ito naibenta?

S: Taga-roon din sa Bustos, hindi ko kilala...kay Pidoy ko iniutos na ibenta.

T: Sinong Pidoy ito?

S:

Pamangkin ng misis ko. Siya po. (Affiant pointing and referring to Alfredo Quilatan y Castillo).[10]

We find it rather strange and hard to believe that the police officers would torture and intimidate appellant in the presence of his relatives and reporters from the radio and television in order to obtain his confession.

Moreover, whatever changes the investigating officer may have made on appellant's extra-judicial confession did not materially affect or change the essence of the confession. As the police officer satisfactorily explained, he did not write word for word the testimony of the appellant; instead, he edited the sentences but without necessarily changing their meaning. If, indeed, appellant did not conform to what was written by the police officer, he could have simply refused to sign the written statement and requested that the same be changed to his satisfaction. Since torture and intimidation has been ruled out, we find no other reason why appellant signed the confession other than the fact that he affirmed the truth of the statements therein. Significantly, even appellant's wife signed his extra-judicial confession, thus proving that said confession was executed voluntarily and contained in essence the appellant's testimony.

Appellant's claim that he was not represented by a counsel of his own choice during the taking of the extra-judicial confession, merits no consideration. The purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting confession by coercion no matter how slight, as would lead the accused to admit something false. What is sought to be avoided is the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him. These constitutional guarantees have been made available to protect him from the inherently coercive psychological, if not physical, atmosphere of such investigation.[11]

Appellant failed to prove that Atty. Orlando Salatandre was not his counsel of choice. On the contrary, his testimony proved otherwise, thus:

T: Karapatan mo ang magsawalang kibo o huwag sumagot sa mga itatanong sa iyo, ito ba ay naiintindihan mo?

S: Opo, naiintindihan ko.

T:

Karapatan mo din ang magkaroon ng abogado na sarili mong pili upon pagpayuhan ka sa kasong ito, ito ba ay naiintindihan mo?

S: Opo, mayroon po akong abogado na sarili kong pili.

T:

Na ano man ang sasabihin mo dito sa imbestigasyon na ito ay maaaring gamitin laban sa iyo sa alin mang hukuman dito sa Pilipinas, ito ba ay nauunawaan mo?

S: Yes, sir, naiintindihan ko ito.

T:

Naririto ngayon sa harap mo ang ilang peryodista, mga police reporter sa radyo at TV at si Atty. Orlando Salatandre Jr. Kilala mo ba si Atty. Salatandre Jr.?

S:

Opo. Siya po ang pinili kong abogado sa kasong ito.[12]

The trial court correctly imposed the penalty of reclusion perpetua on appellant. Article 294, paragraph 1 of the Revised Penal Code provides that the penalty of reclusion perpetua to death shall be imposed on any person guilty of robbery with the use of violence against or intimidation of persons when by reason or on occasion of the robbery, the crime of homicide shall have been committed.[13] Since there was no aggravating or mitigating circumstance, the lesser of the two indivisible penalties shall be imposed.[14]

We agree with the trial court in its award of P50,000.00 as civil indemnity. The victim's heirs are entitled to civil indemnity in the said amount without proof other than the fact of the victim's death.[15]

Moreover, in cases involving murder or homicide, moral damages can be awarded without need of further proof other than the death of the victim.[16] It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.[17]

WHEREFORE, premises considered, the Decision dated January 2, 2002 of the Regional Trial Court of Quezon City, Branch 81, in Criminal Case No. Q-97-72071, finding appellant Jacinto Alvarez y Bunag Jr. guilty of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of his victim the amount of P50,000.00, is **AFFIRMED** with the **MODIFICATION** that appellant is further ordered to pay P50,000.00 as moral damages. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Records, p. 51.

[2] Records, pp. 31-40.

[3] Penned by Judge Ma. Theresa L. De La Torre-Yadao.

[4] Appellant's Brief, Rollo, pp. 47, 58.

[5] *People v. Taboga*, G.R. Nos. 144086-87, 6 February 2002.

[6] *People v. Obrero*, G.R. No. 122142, 17 May 2002.

[7] *People v. Doro*, 346 Phil. 682, 702 [1997].

[8] Sinumpaang Salaysay of Jacinto Alvarez, Jr. y Bunag, Records, pp. 32-35.

[9] *People v. Obrero*, *supra*.

[10] See note 7, pp. 31, 36.

[11] *People v. Janson*, G.R. No. 125938, 3 April 2003.

[12] See note 7, p. 31.

[13] *People v. Geral*, G.R. No. 145731, 26 June 2003.

[14] Revised Penal Code, Art. 63(2).

[15] *People v. Diaz*, G.R. No. 133737, 13 January 2003.

[16] *People v. Punsalan*, G.R. No. 145475, 22 November 2001, 370 SCRA 379, 392.

[17] *People v. Panado*, G.R. No. 133439, 26 December 2000, 348 SCRA 679, 690.

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