

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO AUSTRIA Y MONTAÑO, JAIME DE LA TORRE Y PAHILUNA AND PABLO AUSTRIA Y CAMELLOSO, ACCUSED-APPELLANTS.*G.R. No. 55109. April 08, 1991*

Ponente: BIDIN, J.

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This is an appeal from the decision[*] dated March 18, 1980 of the then Circuit Criminal Court, 12th Judicial District, Bacolod City, finding accused/appellants Eduardo Austria, Pablo Austria and Jaime dela Torre guilty of the crime of robbery with homicide and sentencing them to suffer the penalty of death, to jointly and severally indemnify the heirs of deceased Tomas Azuelo in the amount of P12,000.00 and to pay the costs (Rollo, pp. 12-13).

It appears from the records that in the morning of August 10, 1975, the police dug out of the ground in a sugarcane field in sitio Palanas, Sagay, Negros Occidental, the lifeless body of Tomas Azuelo. Found near his grave were the traces of blood and a bloodstained piece of wood. Post mortem examination showed that Tomas Azuelo's skull was fractured and his body sustained eighteen (18) stab wounds, fifteen (15) of which were fatal. The payroll, together with the sum of P771.40 intended for the wages of laborers of Hacienda Austria, of which Azuelo was the overseer, was missing.

Four suspects for the death of Tomas Azuelo were picked up by the police working together with the Philippine Constabulary. One of the suspects, Pablo Austria, was the last person who was seen with Tomas Azuelo. They boarded a tricycle together, on August 9, 1975 at about 3:30 p.m., from the poblacion of Sagay and alighted at about 4:00 p.m. at crossing Tupas.

The other suspects were implicated based on the sworn statement dated September 17, 1975 of Pablo Austria, who imputed to his son Eduardo, his brother-in-law Jaime de la Torre and Leopoldo Abanilla, the commission of the crime. In his sworn statement, Pablo Austria stated that while he and Tomas Azuelo were on their way home on August 9, 1975, Eduardo Austria, Jaime de la Torre and Leopoldo Abanilla suddenly appeared and pulled Tomas Azuelo toward the sugarcane field. Thereafter, Jaime de la Torre struck the victim on the head with a piece of wood while Leopoldo Abanilla stabbed Tomas Azuelo in different parts of his body. Jaime de la Torre got the money inside Tomas Azuelo's pocket and together, they buried the victim (Original Records, pp. 7-9).

On September 17, 1975, Gregorio Eras, Deputy Chief of Police, Sagay, Negros Occidental, filed a complaint for robbery with homicide against Eduardo Austria, Pablo Austria, Jaime de la Torre and Leopoldo Abanilla. After preliminary examination, Judge Emilio Ignalaga, Acting Municipal Judge, Sagay, Negros Occidental, issued a warrant of arrest against herein appellants. No bail was recommended (Original Records, p. 9).

On December 11, 1975, an information was filed against accused/appellants, which reads:

"The undersigned provincial Fiscal accuses Eduardo Austria y Montano, Jaime de la Torre y Pahiluna, Pablo

Austria y Camelloso, and Leopoldo Abanilla y Bantalagon of the crime of Robbery with Homicide, committed as follows:

"That on or about the 9[th] day of August 1975, in the municipality of Sagay, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a piece of wood and sharp instrument, by means of force, violence and intimidation of person and with intent of gain, conspiring, confederating and helping one another, did then and there, wilfully, unlawfully and feloniously take, steal and carry away the money in the total sum of Seven Hundred Seventy-one Pesos and 40/100 (P771.40), Philippine Currency, belonging to Tomas Azuelo y Binigay, without the consent of the latter, to the damage and prejudice of the said Tomas Azuelo y Binigay the aforestated amount.

"That on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the money to be robbed, the said accused, in furtherance of their conspiracy, with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault strike and stab the said Tomas Azuelo y Binigay, thereby inflicting multiple injuries on the different parts of the body of the latter which caused the death of the said victim.

"Contrary to law."

(Original Records, pp. 51-52).

All the accused pleaded not guilty to the charge.

The prosecution then presented the testimonies of the following witnesses:

Rodolfo Labajas, cashier of the RLC Management Corp., testified that in the morning of August 9, 1975, Tomas Azuelo, as overseer of Hda. Austria, received from him the sum of P771.40 representing the wages of laborers of said hacienda. Tomas Azuelo left his office at 12:00 o'clock noon and that was the last time he saw Tomas Azuelo alive (TSN, January 27, 1978, pp. 315-333).

Nestor Colegado, tricycle driver, testified that at about 3:30 in the afternoon of August 9, 1975, the deceased and accused Pablo Austria boarded his tricycle together with three women passengers at the poblacion of Sagay. Both Pablo Austria and Tomas Azuelo, who were neighbors, alighted at crossing Tupas. (TSN, January 30, 1978, pp. 334-352).

Andres Caro, a farmer/resident of Hda. Palanas, Sagay, Negros Occidental, testified that at about 1:00 o'clock in the afternoon of August 9, 1975, he saw accused Eduardo Austria standing at the side of the latter's farm along the road going to Hda. Austria. (TSN, February 23, 1978, pp. 368-372).

Diego de Ocampo, Rural Health Physician of Sagay, Negros Occidental, declared that in the morning of August 10, 1975, he, together with policeman Voltaire Yee, recovered the body of Tomas Azuelo which was buried in the sugarcane field. His post mortem examination showed that Tomas Azuelo had a fractured skull and his body sustained several stab wounds, fifteen (15) of which were fatal. Shock secondary to severe hemorrhage due to multiple stab wounds was the cause of Tomas Azuelo's death (TSN, February 23, 1978, pp. 356-368).

Voltaire Yee, a police investigator, testified that in the morning of August 10, 1975, Eugenio Azuelo reported to the desk officer the disappearance of his father Tomas Azuelo. After receiving the report, they proceeded to the scene of the crime together with other policemen. There, they saw the payroll and the protruding toe of a human being buried in the sugarcane field which the people in the area discovered. A wooden bat with bloodstains was found six (6) meters from the protruding toe. Coins, slippers, fish, and bloodstains were also discovered in the area. The lifeless body of Tomas Azuelo, identified by his daughter Nenita, was exhumed in the presence of Dr. Ocampo. Joint investigation by the police and the Philippine Constabulary ensued, after which Pablo Austria and

his son Eduardo were picked up by the police for investigation. Jaime de la Torre was also picked up and investigated on account of a bloodstained hoe found in his home. On September 17, 1975, Pablo Austria executed a sworn statement implicating his son Eduardo in the commission of the offense (TSN, August 17, 1978 to September 20, 1978, pp. 373-391; 1-47).

Vicente Aquino, a PC soldier, testified that on September 16, 1975, he investigated Jaime de la Torre as one of the suspects in the killing of Tomas Azuelo. He declared that de la Torre was informed of his constitutional rights to remain silent and to counsel but he voluntarily waived said rights (TSN, January 13, 1976, pp. 253-283).

Myrna Areola, a forensic chemist of the Third Regional PC Crime Laboratory testified that upon the request of Capt. Natino she conducted a laboratory examination of the short pants of Jaime de la Torre, a hoe, a piece of wood, soil scraped from the surface of the hoe and sample of the soil where the victim was buried. Her findings showed that the blood stain on the handle of the hoe and that the piece of wood submitted for examination were positive for human blood belonging to the same blood group. The pants, however, were negative for human blood. Analysis of the soil also revealed that the soil scraped from the surface of the hoe and the soil from the place where the victim was buried were of the same origin (TSN, November 17, 1977, pp. 283-295).

Emilio Ignalaga, Municipal Judge of Escalante, Toboso and Sagay, Negros Occidental, testified that on September 17, 1975 the accused Jaime de La Torre and Pablo Austria subscribed before him their written extra-judicial statements. Before they affixed their thumbmarks, he read and explained to them the contents of their extrajudicial statements and warned them that the same can be used against them. They affixed their thumbmarks on said document voluntarily (TSN, November 17, 1977, pp. 296-307).

Accused/appellants testified as follows:

Pablo Austria testified that Tomas Azuelo was his second degree cousin. On August 9, 1975, he was summoned by the wife of Tomas Azuelo to fetch water. He was in Azuelo's house from 11:00 o'clock in the morning, took his lunch thereat upon invitation of Azuelo's wife and waited for Tomas Azuelo up to 7:00 o'clock in the evening for his compensation in plowing their farm. On August 14, 1975, he was picked up without a warrant of arrest by a policeman and a PC soldier while working on the concrete cover of the deceased's tomb. He was investigated without informing him of his right to remain silent and to counsel. After six (6) days in detention he was released upon the intercession of Iluminada, wife of the deceased. On September 17, 1975 he was again picked up by Voltaire Yee at about 7:00 o'clock in the evening. Jaime de la Torre, who was with him in the PC stockade, struck him in the head with a revolver on orders of a certain Torenas, a PC soldier. Later, he was brought out of the PC stockade and Torenas kicked and boxed him. The following day, Alberto Olario, the commanding officer, again maltreated him as he refused to admit participation in the killing of Tomas Azuelo. On orders of the commanding officer, Voltaire Yee prepared an affidavit. He did not read the affidavit, as he does not know how to read, nor was it read to him. Voltaire Yee forced him to affix his thumbmark in the affidavit inside the office of Judge Ignalaga. (TSN, December 4, 1978, pp. 171-200)

In his testimony, Jaime de la Torre disowned the statements attributed to him during the investigation conducted by Sgt. Vicente Aquino and instead declared that it was not Eduardo Austria but Carlos Capitle, Jr. who borrowed his hoe in the afternoon of August 9, 1975. He also contradicted the statements contained in the affidavit that he saw Pablo Austria, Eduardo Austria and another person standing near the body of the deceased. Instead, he testified that in the sugarcane field that day (August 14, 1975), he saw Carlos Capitle, Jr. and Celestino Capitle with another person looking at the dead body of Azuelo. He helped cover the dead with grass on orders of Carlos Capitle with warning not to tell his family or anybody, otherwise his family will be killed. He admitted ownership of the hoe, but denied any participation in the killing. He also claimed that he was arrested without warrant and

detained for more than a month in the PC headquarters, at Sagay, Negros Occidental. During said detention he was investigated and allegedly maltreated by Captain Olario (TSN, January 22, 1980, pp. 149-170, 210-221, 393-404).

On rebuttal, the prosecution presented four (4) witnesses, as follows:

Capt. Olario denied that he manhandled Pablo Austria and Jaime de la Torre and claimed the he merely interviewed the suspects; it was Sgt. Aquino who conducted the formal investigation after Jaime de la Torre narrated the commission of the crime and implicated Pablo Austria and Eduardo Austria. Both Jaime de la Torre and Pablo Austria admitted to him the commission of the crime.

On cross-examination, however, Capt. Olario admitted that the suspects were not apprised of their constitutional rights to remain silent and to counsel as he was merely conducting an informal interview (TSN, August 23, 1979, pp. 86-148).

Celedonio Capitle, a watchman, denied the imputation of accused Jaime de la Torre that he participated in the killing of Tomas Azuelo. He was not even investigated by the police for the death of the latter and learned of his implication only through Roger Azuelo, son of the deceased (TSN, August 24, 1979, pp. 426-446).

Carlos Capitle, Jr., also denied that he borrowed a hoe from Jaime de la Torre on August 19, 1975; he, his brother, Celedonio, and another person were not standing and looking at the dead body of Tomas Azuelo on the day he was killed; nor did they warn and threaten de la Torre not to tell anybody about the incident; he has no participation in the killing of Tomas Azuelo (TSN, October 15, 1979, pp. 405-425).

Illuminada Azuelo, wife of the deceased, declared that: before the death of Tomas, only Pablo Austria was working in the hacienda as her late husband dismissed Jaime de la Torre and Eduardo Austria; Pablo Austria worked in her house in the morning but did not return in the afternoon of August 9, 1975; she interceded for the release of Pablo Austria upon the request of the latter's wife, Leonora, since there was no strong evidence against him; the second time Pablo Austria was picked up, she turned down the request of Leonora for her to intercede in behalf of Leonora's husband (October 15, 1975, TSN, pp. 405-417).

In its sur-rebuttal, the defense presented Paquito Tolentin. Tolentin testified that from 2:00 o'clock in the afternoon up to 5:45 or 6:00 o'clock in the evening or August 9, 1975, he, together with Pablo Austria, Diosdado Alova, Ricardo Alova and Eugenio Azuelo were playing a card game known in the locality as "41" in the house of Tomas Azuelo. During the time they were playing, Pablo Austria never left the place and was in fact there when he left the house of Tomas Azuelo (November 13, 1979, TSN, pp. 222-232).

On March 18, 1980, the trial court rendered its decision convicting appellants of the imputed crime, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing, the Court finds all accused Eduardo Austria y Montaño, Jaime de la Torre y Pahiluna and Pablo Austria y Camelloso, GUILTY beyond a reasonable doubt of the offense of robbery with homicide, as charged, xxx and pursuant to paragraph 1, Article 294, in relation to paragraphs 13 and 15, Article 14, of the Revised Penal Code, the Court sentences all accused, Eduardo Austria y Montaño, Jaime de la Torre y Pahiluna and Pablo Austria y Camelloso, each to suffer the maximum penalty provided by law which is DEATH, to jointly and severally indemnify the heirs of the late Tomas Azuelo the amount of P12,000.00, as indemnity for his death, and to pay the costs."

During the pendency of the appeal, Pablo Austria and Jaime de la Torre died of undetermined cause and hypertension, respectively, at the New Bilibid Prisons Hospital. Hence, the resolution of the instant appeal should be based on the evidence against the surviving appellant, Eduardo Austria.

After a review of the records, the Court finds that the evidence presented by the prosecution failed to establish the guilt of appellant Eduardo Austria beyond reasonable doubt.

In the first place, as stated in the appealed decision, the evidence of the prosecution against appellant Eduardo Austria is merely circumstantial. Aside from the extra-judicial confessions of the deceased appellants, there is neither direct evidence nor actual witness to the commission of the crime. This is not to say, however, that conviction cannot be had simply because the evidence is circumstantial. To sustain a conviction based on circumstantial evidence under Sec. 5, Rule 133, there must be (a) 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.

The series of circumstances proved must be consistent with each other and that each and every circumstance must be consistent with the guilt of the accused and inconsistent with his innocence. To warrant conviction in criminal cases based upon circumstantial evidence, it must constitute an unbroken chain of events so as to lead to a conviction that the accused is guilty beyond reasonable doubt. In the case at bar, the circumstantial evidence do not prove an unbroken link of events that could give rise to a reasonable and fair conclusion that appellant committed the imputed offense.

As regards appellant Eduardo Austria, the only evidence against him is that he was seen at about 1:00 o'clock in the afternoon of August 9, 1975 along the road going to Hda. Austria. This evidence even if tied up with the testimony of Iluminada Azuelo that Austria harbored ill-feelings against the deceased because he was dismissed from the hacienda by the deceased does not establish or support an inference, much less a conclusion, that he participated in the commission of the offense charged. The conviction of appellant Eduardo Austria on an inference based on another inference cannot be maintained.

It is axiomatic that conviction should be made on the basis of a strong, clear and compelling evidence (*People v. Tulagan*, 143 SCRA 107 [1986]). Thus, "if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the tests of moral certainty and is not sufficient to support a conviction" (*People v. Ale*, 145 SCRA 64 [1986]; *People v. Modesto*, 25 SCRA 36 [1968]).

To overcome the presumption of innocence, proof beyond reasonable doubt is needed. Thus, in *People v. Dramayo* 42 SCRA 60 [1971], this court held:

"Accusation is not, according to the fundamental law, synonymous with guilt; the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. To meet this standard, there is need for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment."

WHEREFORE, the appealed judgment is hereby REVERSED and the accused/appellant Eduardo Austria is ACQUITTED on the ground of reasonable doubt.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

[*] Penned by Judge Nicolas A. Gerochi, Jr.

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