

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAURICIO NOLASCO Y BONGAY, DEFENDANT-APPELLANT.

G.R. No. 55483. July 28, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a direct appeal from a judgment[1] dated August 20, 1980 of the then Circuit Criminal Court of Manila in Criminal Case No. CCC-VI-129(79), entitled, "People of the Philippines vs. Mauricio Nolasco y Bongay," convicting the accused of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Carmelita Contapay-Bacay, in the sum of P12,000.00, and to pay the costs of the suit. In this appeal, the accused-appellant maintains that the trial court erred in convicting him of the crime of murder based on an extrajudicial confession which he executed involuntarily. He denounces his physical maltreatment while he was under police custody. He prays that he be acquitted.

The facts are simple.

At about ten o'clock in the evening of July 21, 1979, the sisters, Carmelita Contapay-Bacay and Lilia Contapay-Laguitan, who earned their living by collecting trash and selling whatever things they were able to salvage therefrom, parked their respective pushcarts (caritons) in front of their mutual residence at 264 Moriones Street, corner Mithi Street, in Tondo, Manila. As it was late and the house was already locked with everyone inside presumably asleep, the two decided to spend the night outside in their pushcarts. Anyway, the place was sufficiently illuminated by a lighted bulb on a nearby MERALCO electric post. While Lilia was still lulling to sleep her two children in the pushcart, Carmelita, who lay down on a piece of wooden board placed on top of her own cart, was soon asleep.

The serenity of the night was however disturbed when not long afterwards two men appeared. One of them approached the sleeping Carmelita while the other stayed a short distance away. Lilia saw them but did nothing, thinking that they were only looking for somebody. But when the man who was beside Carmelita suddenly drew a bladed weapon and was poised to attack her sleeping sister, just three arm's length away, Lilia shouted at him "not to stab that woman as she is not an enemy." [2] Lilia's warning shouts however proved futile as the man stabbed Carmelita three times before scampering off.

Lilia hurriedly brought the wounded Carmelita to the Mary Johnston Hospital but the latter expired along the way. Carmelita was pronounced DOA (Dead on Arrival) at the hospital. At around 12:45 a.m. on July 22, 1979, barely three hours after the incident, Lilia was investigated by the police and she gave a statement identifying the accused Mauricio Nolasco, alias Totoy Palengke, as the one who stabbed her sister. A post-mortem examination of the victim, Carmelita, was conducted at 11:50 a.m. on that same day by the medico-legal officer of the Western Police District-Metropolitan Police Force, Dr. Marcial C. Ceñido.

The accused was apprehended by the police only on October 11, 1979 and on October 17, 1979, in a confrontation with Lilia Contapay-Laguitan, he was positively pointed at by the latter as the person who killed

Carmelita. The accused on October 18, 1979 executed a written statement in which he admitted having stabbed to death Carmelita.[3] His statement was sworn to before the inquest fiscal.[4] On October 19, 1979, the accused was charged with murder before the Circuit Criminal Court, Sixth Judicial District, Manila, in an information which reads:

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That on or about July 21, 1979, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, identity and whereabouts are still unknown, and helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one CARMELITA CONTAPAY-BACAY several times on the different parts of her body with a deadly weapon, thereby inflicting upon said CARMELITA CONTAPAY-BACAY mortal wounds which were the direct and immediate cause of her death thereafter.

CONTRARY TO LAW.[5]

At the trial the prosecution presented three witnesses: Lilia Contapay-Laguitan who positively identified the accused in open court as the perpetrator of the crime; Dr. Marcial C. Ceñido, who testified that hemorrhage and shock, secondary to multiple (three) stab wounds, caused the death of the victim;[6] and Patrolman Juanito Garcia, who conducted the police investigation of the case.

The defense presented the accused as its lone witness. In his testimony, the accused, who stated that he was 21 years old, single, a laborer, and residing at 288 Moriones Street, Tondo,[7] repudiated his sworn statement before the police admitting the commission of the crime. He claimed that he was forced to sign the said statement due to physical harm inflicted on him by the policemen.[8]

The accused, however, failed to produce any medical certificate to support his claim of maltreatment. He likewise did not report his alleged maltreatment to the police officer who administered the oath for his sworn statement. When queried on why he did not do so, the accused gave the feeble excuse that he thought nothing would anyway come out of it considering that the perpetrator is a policeman.[9]

Finally, the accused tried to attribute the inculpatory testimony and hostility of prosecution witness, Lilia Contapay-Laguitan, to the latter's anger against the frequent gang riots in the place where the crime transpired. The accused even speculated that Lilia and the deceased, victim Carmelita Contapay-Bacay, might have been hit in one of the stone-throwing incidents.

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Atty. Miano (Counsel for the accused):

Q. Do you know of any reason why Lilia Contapay pointed to you, as the one who stabbed Carmelita Contapay?

A. Because they are angry at me.

Q. Why?

A. Because of the riot that took place.

Q. What riot are you referring to?

A. The throwing incident, Sir.

Q. When was that?

A. I cannot remember anymore.

Q. But how many months or days before July 21, 1979?

A. Sometimes it was everyday before July 21, 1979, and thereafter there was stone throwing.

Q. Why should Carmelita Contapay-Bacay and Lilia Contapay (will) harbor any grudge against you, by virtue of the riot as you said?

A. Maybe they were hit.[10]

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After the trial, the court a quo found the accused guilty beyond reasonable doubt of the crime of murder and sentenced him as aforesaid to suffer the penalty of reclusion perpetua and to indemnify the heirs of Carmelita Contapay-Bacay in the sum of P12,000.00, and to pay the costs of the suit.

In this appeal, the defense assails the judgment of the trial court for convicting the accused by giving full weight to the extrajudicial confession which the accused claims he executed and signed because of his maltreatment. The accused-appellant argues in his appeal that while ordinarily his confession may be given in evidence against him, that rule does not apply because that confession was extracted from him involuntarily. He then prays that he be acquitted.

We agree with the appellant that the trial court erred in admitting in evidence his extrajudicial confession. Even granting that the appellant failed to substantiate his claim that he was coerced into executing an extrajudicial confession that does not suffice to make his confession admissible in court. A careful perusal of the records of the case reveals that the appellant has been deprived of his constitutional rights under Section 20 of Article IV (Bill of Rights) of the 1973 Constitution.

Section 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No

force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall not be admissible in evidence.

It was not sufficiently shown that his rights under the above-quoted constitutional provision have been protected fully.

True, it is shown in his alleged confession that after he was informed of his constitutional right to remain silent and to counsel, he waived the same. It is now however settled in this jurisdiction that while the right to counsel may be waived, such waiver must be voluntary, knowing, and intelligent, and made in the presence of the accused's lawyer.[11] And nowhere in the records of the case is it indicated that the accused-appellant, Mauricio Nolasco, was assisted by counsel in making his waiver. This defect nullifies and renders inadmissible in evidence his confession.

The above findings notwithstanding, the accused could not be acquitted of the crime charged. His guilt has been established beyond reasonable doubt by other evidence. He was positively identified by Lilia Contapay-Laguitan, the sister of the deceased, as the culprit. Lilia could not have erred in the identity of the accused. She had been living for ten years in the same neighborhood in Tondo where the accused lives.[12] It is reasonable to expect that she knew her neighbors if not by their names, at least by their faces. Further, she had often seen the accused participating in riots and rumbles in the vicinity.[13] In fact, she even knew that the accused is a member of the notorious Commando Gang.[14] More importantly, the scene of the crime was brightly illuminated by a lighted bulb on a nearby electric post at the time of the incident.[15] And Lilia was only three arm's-length away from her sister when the latter was stabbed to death by the accused.[16] There was therefore no possibility that Lilia had mistakenly identified the accused. This is despite the accused's claim that he was at home at the time of the commission of the crime, and that the prosecution witness, Lilia Contapay-Laguitan, was motivated to testify falsely against him due to ill-will. He surmised that probably Lilia had been hit by a stone in one of the frequent riots in the neighborhood prior to this killing.

The defense of alibi interposed by the accused can not prevail over his positive identification by the prosecution witness as the one who stabbed her sister especially because it was not physically impossible for the said accused to be at the scene of the crime at the time of its commission.[17] Here, while the accused-appellant claims that he was at home at the time the crime was committed, his residence at Moriones Street is within walking distance, if not a mere stone's-throw away, from the scene of the crime which is on the same street.

The ill-motive imputed on the prosecution witness Lilia Contapay-Laguitan for allegedly perjuring herself was not likewise proven satisfactorily. The reason given for the alleged ill-motive -- the probability that Lilia was hit by a stone in one of the frequent riots in the vicinity of the crime -- is too conjectural to merit belief. It is too flimsy an excuse to motivate false testimony against the accused who may be sentenced to death at that time. On the other hand, we find credible the testimony of Lilia Contapay-Laguitan positively identifying the appellant as the perpetrator of the crime.

Finally, the offense committed by the appellant being Murder qualified by treachery, as the victim was attacked while she was asleep and defenseless, with neither mitigating nor aggravating circumstance present, the trial court correctly imposed the penalty of reclusion perpetua. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal, in its maximum period, to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

For purposes of the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor, maximum, to reclusion temporal, medium, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months

(Article 61, par. 3, Revised Penal Code).

WHEREFORE, the appealed judgment is hereby MODIFIED in that the accused, Mauricio Nolasco y Bongay, shall suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum. Further, in line with our recent pronouncements, the indemnity to the heirs of the victim is increased from P12,000.00 to P30,000.00. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.

[1] Penned by Judge Amante Q. Alconcel; Rollo, 5-9.

[2] T.s.n., Session of January 14, 1980, 3.

[3] Exhibit "I"; Original Records, 29-30.

[4] Id.

[5] Rollo, 4.

[6] T.s.n., id., 14.

[7] Id., Session of July 22, 1980, 1.

[8] Id., 8.

[9] Id., 13.

[10] Id., 6-7.

[11] People vs. Decierdo, No. L-46956, May 7, 1987, 149 SCRA 496.

[12] T.s.n., session of January 14, 1980, 6.

[13] Id., 4-5.

[14] Id., 5.

[15] Id., 3.

[16] Id., 8.

[17] People vs. Trawon, No. L-51387, February 24, 1981, 103 SCRA 170; People vs. Canamo, No. L-62043, August 13, 1985, 138 SCRA 141; People vs. Gani, Nos. L-54182-84, October 15, 1985, 139 SCRA 301; People vs. Pecato, No. L-41008, June 18, 1987.

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