

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADRIANO MALMIS AND FEDERICO BONGOLO, DEFENDANTS-APPELLANTS.

G.R. No. 56464. November 07, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal taken by the accused Adriano Malmis and Federico Bongolo from a decision of the then Court of First Instance of Zamboanga del Sur, finding then guilty of the crime of murder. The information filed originally charged the above-named appellants and another co-accused Eleuterio Saga. However, the latter was tried separately on account of his plea of guilt. Hence, the appeal was taken only by accused-appellants Malmis and Bongolo. During the pendency of the case, however, Adriano Malmis died. Thus, the case now involves only Federico Bongolo who signified his desire to continue the case as an appealed case.

It appears from the records that on August 21, 1975 at 9:00 p.m. in Bgy. Lunib, Margosatubig, Zamboanga del Sur, Monica Pocong was stabbed by a certain Eleuterio Saga.

The antecedent facts of the case gathered from the testimonies of the accused-appellants and the victim's grandson, Warlito Paalisbo show that on the night of August 21, 1975, Eleuterio Saga went to the house of Monica Pocong who was a local midwife, on the pretense that his wife was about to give birth. He requested the old woman to go with him to the house of Crispin Capra where Saga's wife was allegedly staying. Having been successfully persuaded, the old woman brought along her teen-aged grandson, Warlito Paalisbo. They went ahead with Saga following. Upon seeing the opportunity to kill the woman, Saga stabbed Monica and fled. The incident was witnessed by the victim's grandson.

On investigation, the accused-appellants further gave extrajudicial statements none of which was disputed by any of them while the same were being taken. Adriano Malmis, uncle of Bongolo, asked him to look for anybody who could be hired to kill Monica Pocong for a fee of P500.00. Bongolo engaged the service of Saga and the plan was carried out.

Bongolo affirmed and corroborated Saga's statements and added that the reason why Malmis wanted Pocong killed is that he was having some problems with the old woman and her sons because they refused to vacate the land which was the property of his wife's father before the latter's marriage to Monica Pocong. He claimed that Pocong and her sons from her previous marriage are the ones benefitting from the proceeds of the coconut land.

On July 12, 1974, he wrote a letter (Exhibit B) to Monica Pocong and her sons asking them to vacate the land. The letter reads:

"TO: Monica Pocong
Genaro Dionaldo
Paterno Dionaldo
Domingo Dionaldo

"Nang, and your children:

In accordance with our verbal agreement you and your children can live and work without sharing provided you plant coconuts and now especially fifteen years living in my land our agreement was not fulfilled. I am now thinking to give warning within two months from the fifteenth of this month of July until September 15, 1974, you all go out of my land.

"If you will not go away, I will be constrained to complain in the town and if this happens I will compute your crops for more than fifteen years that you did not share with me, palay, corn and coconuts at copra time. And so think that in the end if you will not go out I will be forced to file a complaint and as we confront each other the products that you get from my land, rice, corn and coconuts shall be computed.

"That is all.

Brotherly yours,
ADRIANO MALMIS

Copies for your children
who are living here.

Genaro Dionaldo
Paterno Dionaldo (checked)
Domingo Dionaldo"
(page 10, Rollo)

After carrying out the crime, Saga proceeded to the chapel where Bongolo was waiting in order to hand to him his money. Saga, thereafter, spent the night in the house of Bongolo's father and left early the following morning for Margosatubig but he was met and arrested by one of the teams of the local police. Found in his possession was P497.00. He later declared that he spent the P3.00 to buy himself a pack of cigarettes.

On August 22, 1975, Dr. Adriano Manangan examined the victim's cadaver and issued a report. He found a stab wound at the back of the victim and declared that the cause of death was massive hemorrhage secondary to stab wound.

On the same date, Police Officer Rosos conducted a custodial investigation of Bongolo and an extrajudicial statement was taken. The statement was affirmed and corroborated by Saga who gave additional information as to the motive of the killing.

The accused-appellants were charged with the crime of murder in an Information which reads:

"The undersigned Provincial Fiscal of Zamboanga del Sur, accuses ELEUTERIO SAGA, ADRIANO MALMIS and FEDERICO BONGOLO for the crime of MURDER, committed as follows:

"That on or about August 21, 1975, at about 9:00 o'clock in the evening, in the Barangay of Lunib, Municipality of Margosatubig, Province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, treachery and evident premeditation, armed with a hunting knife, conspiring, confederating and helping one another, did then and there wilfully, unlawfully and feloniously stab from behind one Monica Pocong; thereby inflicting upon the latter mortal wound at the back which caused her instantaneous death.

CONTRARY TO Article 248 of the Revised Penal Code." (page 5, Rollo)

Upon arraignment on February 9, 1976, the accused-appellants, assisted by their counsel, pleaded not guilty.

On October 21, 1980, the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, finding both accused Adriano Malmis and Federico Bongolo guilty beyond reasonable doubt of the crime of Murder, considering all the aggravating circumstances aforecited without any mitigating circumstances to affect the same, the Court hereby sentences both accused Adriano Malmis and Federico Bongolo the penalty of DEATH, and pending the execution of this sentence, said accused Adriano Malmis and Federico Bongolo are hereby ordered confined in the National Penitentiary in Muntinlupa, Rizal; to pay the heirs of Monica Pocong, the victim in this case, the sum of P12,000.00, Philippine Currency, without subsidiary imprisonment in case of insolvency; and to pay the costs.

"The amount of P497.00 in paper bills recovered from the possession of the accused Eleuterio Saga which is part of the consideration in killing the victim Monica Pocong, given by the accused Adriano Malmis which are listed (Exhibit "C") and deposited with the Provincial Treasurer of Zamboanga del Sur (Exhibit "D") is hereby ordered confiscated in favor of the government.

"Let the records of this case be immediately forwarded to the Supreme Court for automatic review." (pp. 31-32, Rollo)

Accused-appellants now assign the following alleged errors of the trial court stating that the court erred:

- "1. In giving credence to the confession of Eleuterio Saga;
2. In giving credence to the unsubscribed written statement of Federico Bongolo which was obtained thru violence;
3. In holding the existence of conspiracy among all the accused;
4. In discrediting the declarations of the accused and their witnesses." (page 84, Rollo)

The basic thrust of appellant's assignment of errors is the inadmissibility of the extra-judicial confessions.

We agree with the appellant that extrajudicial confessions are inadmissible in evidence in view of the current policy rejecting extrajudicial confessions based on Article 4, Section 20 of the Constitution which includes among the rights of the accused the right to remain silent and to counsel and to be informed of such right. Any confession obtained in violation of the provision is inadmissible in evidence against him. Thus, even if the confession of the accused speaks the truth, if it was made without assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given (*People v. Pineda and Garcia*, G.R. No. 72400, January 15, 1988; *People v. Guarnes*, G.R. No. 65175, April 15, 1988; *People v. Newman and Tolentino*, G.R. No. 45354, July 26, 1988). Conviction, therefore, cannot be based purely on these confessions. However, even if the appellants' confessions would be disregarded, the prosecution evidence may be sufficient to prove guilt beyond reasonable doubt (*People v. Polo*, 147 SCRA 551, January 30, 1987). The inadmissibility of the findings based on an extrajudicial confession notwithstanding, the appellants cannot be acquitted of the crime charged. Their guilt can be established by the other evidence (*People v. Mauricio Nolasco y Bongay*, G.R. No. 55483, July 28, 1988).

The function of the Court, therefore, is to ascertain whether there is evidence, other than the extrajudicial statements of the accused, to sustain a conviction beyond reasonable doubt.

Insofar as Eleuterio Saga is concerned, he was positively identified by the victim's grandson as the person who stabbed the grandmother while the three of them were on their way to Crispin Capra's house where the woman in

labor was supposed to be staying. Eleuterio Saga pleaded guilty to the commission of the offense.

The participation of Malmis is gleaned from his motive established in part by the letter, the attempt to bribe Corporal Rosos, and the alleged order to look for a hired killer. However, Malmis died in prison and there is no point in discussing whether or not there is sufficient evidence to sustain a conviction.

Appellant Bongolo was charged with murder because he was allegedly the one directed by his uncle Malmis to look for a person willing to kill for a fee. Bongolo allegedly contacted Saga. He was the one who allegedly handed the P500.00 after Saga had planted the knife in the back of the unfortunate victim. However, the only items of evidence implicating Bongolo in the crime are the extrajudicial confessions all of which were taken without the benefit of counsel. There is absolutely no other evidence to indicate his participation. His being a nephew of Malmis and being very close to him do not by themselves prove conspiracy to commit the murder. There is no admissible evidence showing that Bongolo hired Saga and paid him for the crime after it was committed. Bongolo may be equally guilty with Saga who stabbed the old woman and Malmis who allegedly instigated the murder but he cannot be convicted on the basis of extrajudicial confessions which the Constitution states may not be used as evidence.

WHEREFORE, the judgment of the lower court insofar as it convicts appellant Federico Bongolo is hereby SET ASIDE. Appellant Bongolo is acquitted on grounds of reasonable doubt for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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