

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ALBERTO ARSENIO Y DELA CRUZ, EDUARDO DESAVILLE Y MEDALLO AND ROGELIO BERAME Y REYES, DEFENDANTS-APPELLANTS.

G.R. NO. 57025. April 06, 1990

Ponente: PARAS, J.

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PARAS, J.:

Before the Court, on automatic review, is the decision* of the Circuit Criminal Court of Manila, Sixth Judicial District, promulgated on April 24, 1981 in Crim. Case No. CCC-VI-2937 entitled *People of the Philippines v. Alberto Arsenio y de la Cruz, et al.*

This appeal stemmed from an information dated November 23, 1978 charging Alberto Arsenio, Eduardo Desaville, and Rogelio Berame with the murder of Ramoncito Alonzo. The same reads as follows:

"That on or about November 21, 1978, in the City of Manila, Philippines, the said accused, conspiring and confederating together, with another whose true name, identity and whereabouts are still unknown, and helping one another, all armed with bladed weapons, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use a personal violence upon the person of one RAMONCITO ALONZO Y LOPEZ, by then and there stabbing him several times on the different parts of his body, thereby inflicting upon said RAMONCITO ALONZO Y LOPEZ mortal wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law." (p. 3, Rollo)

The three accused entered identical "not guilty pleas. However, at the hearing scheduled on September 27, 1979, accused Rogelio Berame, through counsel, manifested his desire to withdraw his former plea of "not guilty" and to substitute it with that of "guilty" to the crime charged in the information. With the conformity of the prosecuting fiscal and after warning said accused of the consequences of his intended plea, of which he professed full knowledge and understanding, the Court granted the withdrawal. Rogelio Berame spontaneously entered a plea of guilty when he was arraigned. Being only 16 years old at the time of the commission of the crime and crediting him with his voluntary plea of guilty, Berame, in a partial judgment, was meted out a penalty of six (6) months and one (1) day to six (6) years of prision correccional. His civil liability was, however, reserved.

Trial proceeded against the two (2) remaining accused where the state presented four (4) witnesses, namely, Dr. Marcial Cenido, Sonny Salientes, Pfc. Rodolfo Jalandra, and Pfc. Eliseo Canares, whose testimonies may be summed up as follows:

"Prior to November 21, 1978, Sonny Salientes was a detainee at the City Jail of Manila, being then a trustee at the said jail. Among his co-trustees was the deceased, Ramoncito Alonzo. At about 7:00 o'clock, a.m., of the said day, Sonny Salientes and Ramoncito Alonzo were detailed to fetch co-detainees whose cases were scheduled for the day. Side by side, the two were calling out a Sigue Sigue gang member from Cell 22 when a detainee held Ramoncito Alonzo while accused Rogelio Berame stabbed him. The detainee who held

Ramoncito Alonzo was killed by a co-trustee and while he saw four detainees who ganged up on Ramoncito, he could recognize only Alberto Arsenio, aside from Rogelio Berame.

"Immediately after the stabbing, three suspects were identified and arrested by city jail authorities namely: Alberto Arsenio, Eduardo Desaville and Rogelio Berame, who were brought to the office of the city jail investigation unit by Major Florentino Jueco, deputy warden and Chief of the Security Section of the City Jail, together with two bladed instruments. Exhibits K and L. Upon questioning by Pat. Graciano C. Bautista, Jr., investigator of the Manila City Jail, Alberto Arsenio and Eduardo Desaville verbally admitted that they were the ones who planned the killing of Ramoncito Alonzo because the latter had squealed and removed his BCJ gang mark on his body.

"Pat. Bautista, Jr., then called up the homicide Section and Pfc. Rodolfo Jalandra and Pfc. Eliseo Canares took cognizance of the case. Questioned right at the investigation office of the City Jail Alberto Arsenio gave a written statement, Exhibit J, to Pfc. Jalandra, while Eduardo Desaville and Rogelio and Berame gave written statements, Exhibits N and O, respectively, to Pfc. Eliseo Canares. The three accused described in detail their respective roles in the killing of Ramoncito Alonzo, alias 'Reggie', for the reason that the latter was too strict and abusive in the performance of his duties as trustee.

"As a result of the investigation, the three suspects, all of whom were members of the BCJ (Batang City Jail) gang, were placed under arrest and booked for murder (See Exhibits G, H, and I)." (p. 63, Rollo)

On the other hand, the three accused testified for the defense, whose testimonies may be summed up as follows:

"For his part, Eduardo Desaville who is serving sentence for murder in connection with another case testified that it was Rogelio Berame who killed Ramoncito Alonzo. When the incident happened, he was inside Cell 23 of the City Jail to get a pair of pants as his nephew is to have a trial on the next day. He then heard shouting and a commotion ensued. Prisoners ran inside Cell 23 where he was. The prisoners were made to fall in line by cell guards who were asking as to who stabbed the victim but no one could tell. He and Alberto Arsenio were taken away by the guards and were brought to the investigation room of the city jail. Later, Rogelio Berame was also brought into the said office. He was investigated and he gave a statement, Exhibit N, because he could no longer endure the maltreatment he suffered in the hands of the policemen who were in civilian clothes. He was hit with the butt of a gun on his chest and back, for how many times he could no longer remember. It was during the investigation that he came to know Rogelio Berame who was being investigated and was holding a bladed weapon soaked in blood.

"On cross-examination, Desaville admitted that, on November 20, 1978, or one day before the killing of Ramoncito Alonzo, the case for which he was detained was up for trial but he could not remember if the deceased, who was a trustee, frisked him for possible weapon before joining other detainees who were going to court. He also admitted being a member of the BCJ gang like his co-accused Alberto Arsenio and Rogelio Berame, but denied knowledge of the deceased's membership of any gang. He admitted finally that he swore to the truth of Exhibit N before an administering Officer but claimed that he did so because he could not bear the maltreatment he suffered in the hands of the police although he declared that he did not suffer any injury due to said maltreatment. He declared further that he did not surrender any weapon to the police authorities.

"Alberto Arsenio denied that he ever attacked Ramoncito Alonzo on November 21, 1978, the truth being that he was just pointed to as one of the suspects. When Alonzo was killed, he was inside Cell 23 together with Eduardo Desaville. He declared that while inside Cell 23, he did not notice any commotion and that he does not know who killed Ramoncito Alonzo. He does not even remember having given a statement but he remembers that he signed Exhibit J which he had not read and which was explained to him but did not understand the same. He never admitted participation in the killing of Ramoncito Alonzo but because his hands were tied behind his back and made to lie down on his stomach while he was beaten up and kicked on his forehead by policemen from the detective bureau, he was forced to sign Exhibit J. He could not, however, tell the names of the policemen who had allegedly maltreated him.

"On cross-examination, he declared that there were more than 200 detainees in the City Jail at the time and he did not know Sonny Salientes who pointed to him as one of the assailants of the deceased. He admitted having been asked questions by the investigator but cannot remember if his name was asked and if he gave any answer at all. Asked about the handwritten name of his wife, Araceli Cebangel, in answer to Question 8 in Exhibit J, he admitted having written it as it was asked of him, after which, he affixed his signature to certify that he made the correction. He, however, denied having anything to do with the handwritten correction in the answer to Question 22 which bears the initials A.A. Asked as to the name of the policemen who maltreated him, he could not mention any name although he claimed he could remember their faces. He did not report the matter of his maltreatment to his relatives and admitted that it was only in Court that he mentioned about the same.

"Rogelio Berame who pleaded guilty to the crime charged declared that it was he and he alone who attacked Ramoncito Alonzo and that is the reason why he pleaded guilty.

"On cross-examination, he admitted having given a statement, Exhibit O, to the police by answering questions and swearing to the truth thereof before a fiscal. He added that he understood his statement as it was read and explained to him by the fiscal and that the contents thereof are true and correct." (pp. 65-67, Rollo)

On the basis of the evidence presented, the trial court rendered a decision, now the subject of the instant appeal, the dispositive portion whereof reads as follows:

"WHEREFORE, the Court finds the accused, Alberto Arsenio y de la Cruz and Eduardo Desaville y Medallo, guilty beyond reasonable doubt of the crime of murder qualified by treachery and aggravated by evident premeditation, and hereby sentences them to DEATH; to indemnify the heirs of the deceased, Ramoncito Alonzo y Lopez, jointly and solidarily with their co-accused Rogelio Berame y Reyes, in the sum of P12,000.00. All the three accused are also ordered to pay their proportionate shares of the costs.

Atty. Leopoldo Balguma, counsel de oficio for the accused, is hereby awarded the sum of P500.00 as attorney's fees.

SO ORDERED.

Manila, April 24, 1981"

(Rollo, p. 69: Judgment, p. 8).

Two basic issues are raised for Our determination, namely:

1. That the court erred in admitting as evidence the extrajudicial statements of Alberto Arsenio and Eduardo Desaville, Exhibits J and N, respectively; and
2. That the court erred in admitting as evidence the extrajudicial statement of Sonny Salientes, a prosecution witness notwithstanding the fact that the contents thereof were entirely repudiated when he testified and in not appreciating the testimony of this witness.

The two remaining accused-appellants subsequently repudiated the voluntariness of their extrajudicial confessions, claiming force and intimidation.

With the promulgation of the 1987 Constitution prohibiting the imposition of the death penalty and commuting death penalties already imposed to reclusion perpetua, this Court, on November 16, 1987, ordered the two remaining accused-appellants to file written statements personally signed by them with the assistance of counsel, stating whether or not they wished to continue with the case as an appealed case. In compliance therewith, Alberto Arsenio, on November 26, 1987, filed a statement (later confirmed by his counsel) informing Us, that he was no longer interested in pursuing his appeal and asked that he be recommended for executive clemency. In a resolution dated January 26, 1988, the Court granted the withdrawal of the appeal and remanded the records

thereof to the court a quo for execution of judgment. Judgment was entered accordingly as against said accused.

The trial court based its judgment of conviction on the evidence presented by the prosecution, consisting mainly of the testimonies of the police investigator who investigated accused-appellants, which testimonies are based solely on the extrajudicial confessions in question. It likewise relied on the extrajudicial statement given by Sonny Salientes, a co-trustee of the victim and supposed only eyewitness to the stabbing incident, and discarded his testimony in open court.

After a thorough examination of the records of the case, We hold that the extrajudicial statements of the accused-appellants should not have been admitted because they were obtained in violation of the Bill of Rights (Article IV, Section 20 of the 1973 Constitution). We cannot sustain the Solicitor General's view that Alberto Arsenio and Eduardo Desaville had been sufficiently informed of their rights during custodial investigation. The preliminary questions addressed to Alberto Arsenio when his sworn statement was taken read:

"T 06 :

Bago ka magbigay ng iyong salaysay o sumagot sa aming mga tanong sa iyo, aming ipinaalam at ipinaliliwanag sa iyo na ayon sa Artikulo IV Section 20 ng ating Saligang Batas, ikaw ay may mga karapatan gaya ng mga sumusunod: Na ikaw ay may karapatan na tumahimik at huwag sumagot sa aming mga tanong sa iyo; Na ikaw ay may karapatan na kumuha ng iyong abugado para ka matulungan sa usaping ito at kung wala kang abugado ikaw ay bibigyan ng opisinang ito; at dapat mong malaman na ang salaysay mong ito sampu ng mga sagot mo sa aming mga tanong sa iyo ay maaring gamitin laban sa iyo sa alinman hukuman dito sa Pilipinas. Matapos mong maintindihan at maliwanagan ang mga karapatan mong ito, ano ang masasabi mo?

"S 06 :

Magbibigay ako at sasagot sa inyo at hindi ko rin kailangan ang abugado, isasalaysay ko lang ang tunay na nangyari." (p. 68, Original Records)

In like manner, the preliminary questions addressed to Eduardo Desaville read as follows:

"Paalala:

Ikaw ay may karapatan na manatiling tahimik at huwag sumagot sa mga tanong ko sa iyo at kung wala kang abogado ay bibigyan ka namin. Dapat mong malaman na lahat ng sasabihin mo dito sa iyong salaysay ay puwede naming gamitin laban o pabor sa iyo sa alinmang hukuman dito sa Pilipinas.

"Sagot:

Opo.

The foregoing questions by the police investigators and the answers given thereto by the accused-appellants suffer from a constitutional infirmity. Thus, the Court in *People v. Albofera*, 152 SCRA 134, laid down the following pronouncements:

"Judicial precedents have laid down the rule that the foregoing form of questioning, does not satisfy the constitutional requirement that an accused be apprised of his constitutional rights to remain silent and to counsel. It is, at best, ceremonial and perfunctory, with the answers being mere formalisms put into the mouth of the affiant. What is contemplated is the transmission of meaningful information, comprehended by the person under investigation, not a mere recitation of the Constitutional mandates."

Equally important is the doctrine set forth in the case of *People v. Duhan*, which reads as follows:

"As a rule, therefor, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Art. IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands. (People v. Ramos, 122 SCRA 312; People v. Caguioa, 95 SCRA 2). In other words, the right of a person under interrogation 'to be informed' implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been 'informed' of his rights. Now, since the right 'to be informed' implies comprehension, the degree of explanation required will necessarily vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed when the subject is unlettered." (142 SCRA 100, 107)

While it is true that accused-appellants waived their right to counsel before making their extrajudicial confession, it had been extracted without the assistance of counsel. That is contrary to the rulings of this Court in a number of decisions (Morales v. Enrile, G.R. No. 61016, April 26, 1983, 121 SCRA 538; People v. Albofera, et al., G.R. No. 69377, 20 July 1987, 152 SCRA 128; People v. Galit, No. 51770, March 20, 1985, 135 SCRA; People v. Burgos No. 65955, Sept. 4, 1986, 144 SCRA 1) saying that "no custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the Court upon petition either of the detainee himself or by anyone on his behalf." Thus, while the accused-appellants apparently waived their right to counsel, which they are allowed to do, aside from the fact that they allege that their confessions were not made voluntarily, knowingly, and intelligently, the waiver was not valid because it was made without the assistance of counsel. That principle is now enshrined in the 1987 Constitution, which explicitly requires that the waiver of the right to counsel be in writing and made in the presence of counsel, otherwise, the extrajudicial confession is inadmissible (Section 12 (1), Article III, 1987 Constitution).

Nevertheless, even if We do not consider the extrajudicial confessions in question, We find no plausible reason to alter the trial court's judgment of conviction with regard to Rogelio Berame and Alberto Arsenio. Rogelio Berame's conviction must be sustained, based on his voluntary plea of guilty and his testimony in open court. With respect to Alberto Arsenio, his conviction should likewise be upheld. Two reasons support this conclusion namely: (1) the extrajudicial statement of the supposed eyewitness Sonny Salientes pointing to Alberto Arsenio as one of the assailants of the victim, and (2) the withdrawal of his appeal and acceptance of the lowered penalty pursuant to the 1987 Constitution which in Our mind is an implied admission of guilt.

As regards Eduardo Desaville, We are of the considered view that his conviction by the court a quo does not satisfy the constitutional guaranty of right to counsel during custodial investigation. By reason of the violation of this constitutional mandate, his guilt has not been established beyond reasonable doubt. Eduardo Desaville's conviction lacks some legal basis for having been based solely on the testimony of the police officer who examined him, which testimony consisted basically of Desaville's extrajudicial confession.

WHEREFORE, the judgment of the trial court is MODIFIED so as to read as follows:

- Eduardo Desaville is ACQUITTED on reasonable doubt, his extrajudicial confession being inadmissible as evidence for having been secured without the assistance of counsel.
- The judgment of conviction of Rogelio Berame, who pleaded guilty to the crime of murder, is AFFIRMED and he is ordered to indemnify the victim's heirs in the sum of P30,000.00 jointly and solidarily with Alberto Arsenio.
- The death penalty imposed on Alberto Arsenio, who subsequently withdrew his appeal (thereby rendering the trial court's judgment dated April 24, 1981 final and executory as to him), is reduced to RECLUSION

PERPETUA in view of the non-imposition of the death penalty under the 1987 Constitution.

No pronouncement as to costs.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, (Chairman), J., with reservation as to the penalty of reclusion perpetua pursuant to my dissent in *People vs. Millora et al.*, G.R. L-38968-70, Feb. 2, 1989.

* Penned by Judge Amante O. Alconcel

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