

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGINIA MATOS-VIDUYA Y GALPA, ACCUSED-APPELLANT.

G.R. No. 60025. September 11, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Appellant Virginia Matos-Viduya appeal from the decision of the Regional Trial Court of Manila, Branch 35, finding her guilty beyond reasonable doubt of the crime of parricide:

The information alleges:

"That on or about the 26th day of August, 1980, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of ATTY. JOSE VIDUYA y TAVARES, her husband, and with whom she was united in lawful wedlock, by then and there stabbing him several times with a bladed weapon, thereby inflicting upon the said Atty. Jose Viduya y Tavares mortal stab wounds which were the direct cause of his death immediately thereafter." (Rollo, p. 4)

The prosecution presented the following evidence:

(1) Mrs. Remedios Domingo, a lessee on the ground floor of the victim's house, testified that on August 26, 1980, at about 12 o'clock midnight, she was awakened by moaning sounds, followed by a thud, emanating from the second floor where the victim, Atty. Viduya, lived. Mrs. Domingo, who had been a lessee in the same house for twenty five (25) years and had known her lessor to suffer from a heart ailment, presumed that the latter was having a heart attack. She immediately ran towards the apartment of the victim's family driver, Melanio Cambel, which was only four (4) meters away. She shouted, "Melanio, Melanio, your sir might have a heart attack, you better go upstairs." Awakened by her call, Melanio proceeded to the victim's house. (TSN, February 24, 1981, pp. 154-157)

(2) Melanio Cambel declared that he was the family driver and was renting an apartment owned by the victim which is just a few meters from his house. At about midnight of August 26, 1980, he was aroused sleep by the shouts of Remedios Domingo who was telling him to go upstairs as his "sir" might be having an attack. He ran upstairs to the house of Atty. Viduya and was let in by Lydia Firmanes, a cousin of the accused. Upon entering, Cambel saw the victim clutching, with both hands, the handle of the refrigerator located just outside the door leading to the victim's room, leaning thereon for support. Immediately standing behind the victim was the accused, his wife, holding a knife with both hands. As Cambel approached them, she stooped down saying "Diosko, Diosko," trying to conceal the knife from him. Cambel ran towards the victim, lending him support so that the latter would not fall. However, the victim was heavy, that even with Cambel supporting him, he nevertheless fell down. Still holding the victim, Cambel inquired from him what happened but the latter was too weak to speak. Not getting any answer from the victim, Cambel asked the accused why she stabbed her husband. Initially, the accused did not answer, but upon being questioned for the second time, she hesitantly muttered, "Magnanakaw, magnanakaw." Since other persons had by then arrived, Cambel requested assistance to bring the victim to the hospital. The victim was brought to St. Jude Hospital, Dimasalang, Sampaloc, Manila

but was pronounced dead on arrival. (TSN, Dec. 10, 1980, pp. 260-268)

(3) Florentino Bagallon, an investigator of the Crimes against Persons Section of the Manila Police, Force, Western Police District declared that he conducted an on-the-spot ocular inspection of the victim's house and found, in the bedroom of the victim and the accused, a single bed with a white blanket in disorder, soaked in a pool of blood. He extended the search to the ground floor of the house and recovered two pieces of bladed knives at the east yard of the victim's residence which was used as parking space for heavy trucks. One of the knives had a bended blade. On the east wall, he found a rectangular hole which used to hold an air-conditioning unit, and a wall clock and table clock beside the rectangular hole. He likewise noticed some pieces of wood placed under a parked heavy truck on the east yard. The accused informed him that those pieces of wood used to cover the rectangular hole. Thereafter, he advised the accused and the victim's son, Salvador Viduya, to go with him to the police headquarters for a formal investigation. (TSN., Oct. 28, 1980, pp. 18-30)

Bagallon testified that at 3:15 in the morning of August 26, 1980, the accused executed a salaysay. Significant portions of the said salaysay are quoted, as follows:

"xxx xxx xxx

7.T - Ana ba sa alam ninyo ang dahilan ng kanyang pagkamatay?

S - Sinaksak dahil sa panloloob na ginawa sa amin.

xxx xxx xxx

15.T - Nang marinig ninyo ang ungol na nanggaling sa inyong asawa at kayo nga noon ay nagising, ano naman ang inyong nakita?

S - Dalawang lalaki, ang isa ay nakatayo sa tabi ng kama ko at may nakatutok na patalim sa aking ulo at sa kabilang kama naman ay nakita ko na may isa pa ring lalaki na sumasaksak sa aking asawa.

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26.T - Nakikilala po ba naman ninyo ang dalawang lalaking pumasok sa loob ng kuwarto ninyo?

S - Kung sakaling makita ko uli ay maaari kong makilala.

27.T - Ano po ba ang hitsura nila?

S - Yun pong sumaksak sa asawa ko ay maitim, mga 5'3 po, nakasuot ng dark color at yong tumutok naman sa akin ay may mga 5'2, kayumanggi, slender, putian ang suot na damit.

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31.T - Nang maganap ang pangloloob sa inyo at pananaksak sa asawa mo hanggang sa makaalis ang dalawang lalaki, nasaan ba naman ang mga taong kasama mo sa bahay?

S - Nagising silang lahat sa pagsigaw ko.

32.T - At ano ba naman ang isinigaw mo?

S - Magnanakaw, magnanakaw!!! (Underlining ours, Exh. "H", pp. 5--6, Folder of Exhibits)

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Pfc. Bagallon also stated that on August 26, 1980 at about 5:30 in the afternoon, the accused was again invited to the police headquarters for further investigation. In her second "salaysay" executed on the aforesaid date and time,

she reiterated her narration contained in her first "salaysay" executed earlier that morning. This time, however, she declared that one of the malefactors was a certain Edito Pateño, their former employee. (Exhibit "L", p. 12, Folder of Exhibits) On August 30, 1990 at 2:20 in the morning, Mrs. Virginia Viduya again executed a "salaysay" (Exhibit "M", p. 13, Folder of Exhibits). Later, at about 10:00 o'clock in the morning of the same date, Mrs. Viduya executed her extrajudicial confession wherein she categorically admitted authorship of the killing of her husband. However, she claimed that she merely acted in self-defense. (Exhibits "N", p. 17, Folder of Exhibits)

Upon arraignment, the accused pleaded, not guilty to the charge.

The version of the defense, during the trial is as follows:

The accused and her husband were asleep in separate beds when she was awakened by her husband's moans. She saw two men, one pointing a knife at her temple and the other stabbing her husband. She identified Edito Pateño as the man who poked a knife at her temple. Pateño was about to stab her so she parried the knife and tried to wrest it away from him and in the process, the blade became bent. She ran after them shouting "Magnanakaw, magnanakaw" but they had already escaped. (Exhibit "L", p. 11, Folder of Exhibits) She recognized Melanio Cambel, their family driver, as the man who stabbed her husband (TSN., March 17, 1981, p. 352). Cambel even threatened and slapped and nearly choked her to death at the first night of the wake because he could not force her to sleep (TSN., June 10, 1981, pp. 427-428). She was misled and deceived by Pfc. Bagallon into signing her extrajudicial confession (TSN., June 10, 1981, p. 431) since he told her that she will not be detained if she signs the document. (TSN., March 27, 1981, p. 372)

After due trial, the lower court rendered its decision adjudging the accused guilty beyond reasonable doubt of the crime of parricide. The relevant and dispositive portions of the judgment are quoted as follows:

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"Finding the confession made by the accused Virginia Matus Viduya admissible in evidence together with the convincing proof of the corpus delicti by the prosecution, this Court holds that accused Virginia Matus Viduya is guilty of the crime of Parricide as defined and penalized by the Revised Penal Code beyond reasonable doubt.

"WHEREFORE, this Court hereby sentences the accused Virginia Matus to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of the deceased Jose Viduya in the amount of TWELVE THOUSAND PESOS (P12,000.00), Philippine currency and to pay the costs of suit." (Rollo, p. 15)

Hence, this appeal.

The appellant assigns the following errors:

I

"THE LOWER COURT ERRED IN ADMITTING THE EXTRA-JUDICIAL CONFESSION OF THE ACCUSED, THE SAME HAVING BEEN SIGNED WITHOUT ASSISTANCE OF COUNSEL AND BEING INVOLUNTARY AND UNCORROBORATED.

II

THE LOWER COURT ERRED IN FINDING THE EVIDENCE FOR THE DEFENSE INCREDIBLE AND IN RELYING ON THE ALLEGED CONFESSION TO CONVICT THE ACCUSED." (Rollo, p. 47)

Article III, Section 12 (1) of the 1987 Constitution mandates that:

"Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel." (Emphasis supplied)

In this case, it is undisputed that the extrajudicial confession was executed without the presence of counsel. We quote the relevant excerpt from the extrajudicial confession:

"xxx xxx xxx

T - Ikaw ay may karapatan pa rin kumuha ng serbisyo ng isang abogado para makatulong mo sa imbestigasyong ito at kung wala kang makukuha, ikaw ay aming bibigyan ng libreng abogado, ano ngayon ang iyong masasabi?

S - Nandiyan naman po si Fiscal (pointing to Assistant Fiscal DOMINGO A. MENDOZA) kayo hindi ko na kailangan ang abogado.

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(Exhibit "N", p. 17, Folder of Exhibits)

The trial judge, in holding that the extrajudicial confession is admissible, reasoned out that there is no prohibition for Assistant Fiscal Domingo A. Mendoza to act as counsel for the accused as it is his primordial duty not only to prosecute a case but also to protect the rights of an accused and to see that no violence, force, coercion or intimidation be used to secure from a person under custodial investigation his statement. (Rollo, p. 13)

Section 12(1) of Article III of the 1987 Constitution favors the accused and is fully applicable to this case. It is also elementary that a Fiscal or Prosecutor cannot be a lawyer for the accused at the same time.

In his testimony, Assistant Fiscal Mendoza stated that his main functions as Assistant Fiscal in the City of Manila are to prosecute cases and to render duties as an inquest fiscal.* Whether or not the subsequent trial of a confessant's case will be assigned to him as prosecutor is immaterial. He cannot pretend to act as defense counsel.

An assistant fiscal, or a fiscal for that matter, cannot exercise the function of defense counsel even during custodial investigation. To allow such a happenstance would render illusory the protection given to the accused during custodial investigation. What the Constitution requires in Article III Section 12 (1) is the presence of competent and independent counsel, one who will effectively undertake his clients defense without any intervening conflict of interest.

Moreover, the answer of the accused ("Nandiyan naman po si Fiscal kaya hindi ko na kailangan ng abogado") is a palpable indication that she did not fully understand her in-custody rights, hence it cannot be said that she knowingly and intelligently waived those rights. The rule espoused in *People v. Nicandro*, 141 SCRA 289 [1986]), bears repeating:

"xxx xxx xxx

"Like other constitutional rights, the right against self-incrimination, including the right of a person under investigation to remain silent and to counsel, and to be informed of such right, may be waived. To be valid, however, a waiver of the right must not only be voluntary it must be made knowingly and intelligently, which presupposes an awareness or understanding of what is being waived. It stands to reason that where the right has not been adequately explained and there are serious doubts as to whether the person interrogated knew and understood his relevant constitutional rights when he answered the questions, it is idle to talk of waiver of rights."

This ruling has been reinforced and made clearer by the new provision of the Bill of Rights.

The extrajudicial confession having no probative value on the grounds that it was executed without the presence of counsel and there having been no intelligent waiver of the right to remain silent, this Court no longer deems it necessary to inquire into the alleged deceit employed by Pfc. Bagallon in extracting the above-mentioned confession from the accused.

The remaining issue left for determination is whether or not the prosecution evidence, absent the extrajudicial confession, is sufficient to sustain the lower court's conviction of the accused.

A rule firmly entrenched in our criminal justice system is that the prosecution must rely on the strength of its evidence and not on the weakness of the defense. (*People v. Ramirez*, 116 SCRA 48 [1982]; *People v. Co*, 163 SCRA 453 [1988]). In the case before us, the defense of the accused is weak. In trying to exculpate herself, the appellant tried to shift culpability to another person. The attempt is not convincing. As the trial court ruled:

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"The claim of accused that it was Melanio Cambel who stabbed her husband for reasons that he had been indifferent, never cared to bring the victim to the hospital, that he was drunkard, a Casanova and failed to repair the headlamp of their car on time-such motive is too incredible to believe. That he slapped and choked her when every body were (sic) asleep at the first night of the wake at the Funeraria Paz and she did not shout but merely cried are beyond the comprehension of human instinct. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself. (*Vda. de Bonifacio v. BLT Bus Co., Inc.*, 34 SCRA 618 [1970]) It is a common knowledge and a recognized custom within us that no relative or friend will sleep on the very first night of a wake - more so when the case of death is a shocking one. Human perception can be warped by the impact of events and the testimony colored by the unconscious workings of the mind. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind. Whatever is repugnant to these belong to the miraculous and could not be of judicial cognizance (*People v. Baquiran*, 20 SCRA 451 [1967])." (Rollo, pp. 14-15)

But though the accused's defense is weak, the prosecution's evidence is not strong enough to adduce proof beyond reasonable doubt that the accused is the guilty party.

A thorough review of the prosecution's evidence discloses that the only proof linking the accused to the killing of her husband is the testimony of Melanio Cambel. Cambel testified that he saw the accused behind the victim, holding a knife with both hands. It is not shown how twelve stab wounds, most of them serious, could have been inflicted by a woman under the circumstances of his testimony. Two knives were involved in the stabbing. Other than Melanio Cambel's testimony, there is no other evidence, direct or circumstantial, pointing to the accused as the author of the crime.

The Solicitor General capitalizes on the inconsistencies in the three affidavits which the accused executed prior to the taking of her extrajudicial confession. He is of the persuasion that her issuance of three statements, the truth of which she affirmed in open court but the contents of which differ from each other, is another circumstantial evidence of her culpability. This Court, however, is of the view that the conflicting affidavits executed by the accused merely weaken her defense and cannot be considered as circumstantial evidence for the prosecution.

Moreover, the trial court's complete reliance on only one of three (3) extrajudicial statements and its total rejection of the two other statements without any independent evidence or proof for such action, is not explained.

Considering the paucity of the State's evidence, we are not satisfied that the constitutional presumption of innocence accorded to the accused-appellant has been overthrown. The constitutional presumption of innocence

can be overcome only by proof beyond reasonable doubt, which is the degree of proof that, after investigation of the whole record, produces moral certainty in an unprejudiced mind of the appellant's culpability. (People v. Dramayo, 42 SCRA 59 [1971]) The prosecution failed to produce such proof. This Court, therefore, has no other recourse but to acquit the accused- appellant.

It is high time that our law enforcement agencies learn to live with the new requirements of the Bill of Rights. A former Senator and distinguished libertarian was reportedly asked about academic qualifications of policemen and he answered, "they have only one degree --- the third degree." This perception, justified or not, is the reason for the present Bill of Rights provision on extrajudicial confessions. It should become a thing of the past. Better investigation procedures and more sophisticated techniques, not to mention industry and persistence, must replace the former persuading and coercing of, or total dependence on extrajudicial confessions.

WHEREFORE, the JUDGMENT of the trial court convicting the accused-appellant is hereby REVERSED and SET ASIDE and another entered ACQUITTING her on reasonable doubt.

SO ORDERED.

Fernan, C.J., (Chairman), on official leave.

Feliciano, Bidin, and Cortez, JJ., concur.

* As an inquest fiscal, he advises police investigators as to whether or not a prima facie case exists in cases which they investigate. (TSN., Dec. 10, 1980, p. 245)

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