

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADVENTOR ITLANAS Y BAUTISO, ACCUSED-APPELLANT.

G.R. No. 60118. February 28, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Appellant Adventor Itlanas y Bautiso was found guilty by the then Court of First Instance of Zamboanga del Norte of the crime of murder committed against Philippine Constabulary Sgt. Amelito Perez; homicide against CIC Edmar Mag-aso; and, homicide thru reckless imprudence committed against Manuel Flores. The dispositive portion of the decision, dated May 12, 1982, reads:

"FOREGOING CONSIDERED, the Court finds the accused ADVENTOR ITLANAS y BAUTISO, guilty beyond reasonable doubt, of the crime of

"1. MURDER, committed on the person of SGT. AMELITO PEREZ with the use of a lethal weapon, an M-16, Armalite rifle, causing the instantaneous death of the latter, by reason of which the Court has to impose, as it hereby imposes upon accused Adventor Itlanas the penalty of reclusion perpetua, there being no aggravating, but one mitigating circumstance.

"The mitigating circumstance is voluntary surrender. When accused Itlanas jumped into the sea from the barge and as he was aimed at, and to be fired by, Constable Second Class Winifredo Villamor, he raised his hands and shouted that he will surrender.

"2. HOMICIDE, for accused Itlanas' shooting with the same deadly weapon Constable First Class (CIC) EDMAR MAG-ASO, causing the latter's instantaneous death. The Court sentences said accused to suffer an imprisonment of from 8 YEARS and 1 DAY to 14 YEARS, 8 MONTHS and 1 DAY of reclusion temporal, there being no aggravating, but one (1) mitigating circumstance present, namely, of voluntary surrender.

"3. HOMICIDE THRU RECKLESS IMPRUDENCE, for the death of civilian MANUEL FLORES who was hit by stray bullets from the M-16 Armalite rifle which he fired under a desperate impulse to avoid a retribution or avengement from CIC Edmar Mag-aso. For this separate offense, accused Adventor Itlanas y Bautiso is hereby sentenced to serve imprisonment of from 4 MONTHS and 1 DAY to 2 YEARS, 4 MONTHS and 1 DAY of prision correccional.

"The Court holds that the three (3) killings are characterized as distinct and juridically independent acts which should be separately punished (People vs. Layos, 60 Phil. 224; Fleminster vs. U.S., 207 U.S. 372, 11 Phil. 803).

"The Court also imposes against the accused to pay to the heirs of SGT. AMELITO PEREZ the sum of P12,000.00; to the heirs of CIC EDMAR MAG-ASO the sum of P12,000.00; and, to the heirs of MANUEL FLORES, the separate sum of P12,000.00, without subsidiary imprisonment in case of insolvency." (pp. 225-226, Record)

Records show that appellant Adventor Itlanas y Bautiso was the oiler in Tugboat M/V SAN PEDRO SAN

PABLO, which delivers cement to the different places in Visayas and Mindanao. There were sixteen (16) crew members in said tugboat, including its captain, Diosdado Gaje, and 3rd Engineer, Nilo Pantoja. In June 1978, Tugboat M/V San Pedro San Pablo left Danao City for Zamboanga City to deliver 35,000 bags of cement. For security purposes, three members of the constabulary, namely: Sgt. Amelito Perez, CIC Edmar Mag-aso and CSC Winifredo Villamor escorted the group.

On July 2, 1978, the tugboat unloaded the 35,000 bags of cement at Zamboanga City port. In the evening of July 11, 1978, the tugboat started its voyage back to Danao City, with apprentice Manuel Flores joining the group.

About ten o'clock in the morning of July 12, 1978, Sgt. Amelito Perez was playing cards with a crew member inside the sergeant's cabin. CIC Edmar Mag-aso was on deck duty, unarmed. Whereupon, appellant Itlanas went to the upper deck and took the armalite of Mag-aso which was then hanging on the wall. He then went back to the lower deck and hid himself behind the steering wheel facing Sgt. Perez' cabin. When the latter's companion left the cabin, appellant Itlanas approached Sgt. Perez who was then seated on a cot still holding the playcards and, suddenly, fired at the latter, hitting him on the neck and killing him instantaneously. Thereafter, appellant went up the upper deck where he was met by CIC Mag-aso who tried to grab the armalite. CIC Mag-aso failed and, instead, he was fired upon by Itlanas, killing him on the spot.

Captain Gaje and the other members of the group went out of their respective rooms and saw the dead bodies of Sgt. Perez and CIC Mag-aso, and apprentice Manuel Flores who was profusely bleeding, having been hit by bullets when appellant fired the armalite at CIC Mag-aso. Flores eventually died. In the meantime, appellant Itlanas went to the captain's deck where crew member Nilo Pantoja was. Pantoja asked him, "what are you doing?" Appellant did not answer; instead, he dropped the armalite and then jumped over board, holding the rope which connected the tugboat and the barge. Captain Gaje ordered the master to stop the engine. Whereupon, Itlanas climbed the barge, holding a knife and warned to kill anybody who would go near him. Captain Gaje then instructed the master to sail toward Pulawan wharf where they could report the matter to the authorities. Appellant jumped over board again. As a consequence, the captain ordered the crew to untie the rope which connected the barge and the tugboat causing the latter to go around the area where appellant jumped. When CSC Villamor saw Itlanas floating, he fired at the latter but missed. Cornered, appellant eventually surrendered. They tied his hands and legs and when they reached Pulawan, they brought him to the police.

The bodies of the three victims were brought to the Provincial Hospital of Zamboanga del Norte for autopsy. Dr. Luis P. Young made the following findings:

"1. EDMAR MAG-ASO. - Three wounds (sic) of entrance located at the mid-spinal column, 10 inches from the base of the neck one inch apart, wound of exit located epigastric area 12 inches from the umbilicus 2 inches from the center line.

"2. AMELITO PEREZ. - Wound of entrance left side base of the neck anterior wound of exit left scapular region outer portion.

"3. MANUEL FLORES. - Two wounds of entrances right arm lateral affect fracturing humerus; 2 wounds of exit inner aspect of the arm upper portion; 2 wounds of entrance located at the lateral aspect of the right chest at the level of the nipple 2 inches apart - no wound of exit. (Exhibits "E", "F", "G")." (pp. 8-9, Appellee's Brief)

The defense is denial. Appellant claims that about past 10:00 in the morning of July 11, 1978 he was summoned to the cabin of Nilo Pantoja, 3rd Engineer of said tugboat, where the latter, while poking a gun at him reminded him of his (Pantoja) plan to disarm the PC escorts, informing him that his contact man was already in the upper deck and that one of the oilers was already entertaining one of their PC escorts. Fearing for his life, he went to the upper deck, followed by Pantoja and, upon seeing an opportunity to escape, he jumped over board. Thereafter, he

heard explosions. He clung to the two rope and reached for the barge. While thereat, the patron told him that the tugboat was going back. Upon hearing this, he again jumped over board for fear that Nilo Pantoja and Diosdado Gaje might order that he be shot because he had refused to help them disarm their PC escorts. Later, he was fished out and, thereafter, Nilo Pantoja directed him to proceed to the upper deck where he saw Sgt. Amelito Perez already dead. He was instructed to pick the gun, to put it down and then he was tied to the stern of the tugboat.

The foregoing testimony of appellant was not corroborated.

In this appeal, appellant assigned as errors the following:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF MURDER, HOMICIDE, AND HOMICIDE THRU RECKLESS IMPRUDENCE DESPITE THE INSUFFICIENCY OF EVIDENCE POSITIVELY POINTING TO HIM AS THE ASSAILANT.

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT TO THE ALLEGED EXTRA-JUDICIAL CONFESSION OF THE ACCUSED DESPITE ITS INADMISSIBILITY

III

THE COURT A QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION AND IN DISREGARDING THE THEORY OF THE DEFENSE.

IV

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT THE GUILT OF THE ACCUSED DID NOT PASS THE TEST OF MORAL CERTAINTY. (p. 105, Rollo)

Itlanas contends that he could not be convicted beyond reasonable doubt of the crimes charged because there was no eyewitness to the actual commission of the crime despite the presence of the fifteen (15) members of the crew in that small tugboat and that his extra-judicial confession (Exhibits P and P-7) which could have been the only basis for his conviction should have not been admitted in evidence as the same was taken without the assistance of counsel and obtained through the use of physical and psychological coercion employed upon him by Nilo Pantoja, Diosdado Gaje and the peace officers.

We cannot subscribe to appellant's contention. Section 5, Rule 133 of the New Rules of Court provides:

"SEC. 5. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

(a) There is 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 a reasonable doubt."

The following circumstantial evidence have been duly proved:

1. Motive. Hereunder is the testimony of prosecution witness, Apolinar Banzon:

"Q And when you were informed by Itlanas in that first voyage that he would disarm the PC escort, did he give you the reason why he would disarm them?

A

He told me that he wanted to get rich overnight. So I advised him that it is not good." (p. 213, tsn., March 11,

1980 hearing)

2. Flight. Nilo Pantoja testified that immediately after the gun explosions he saw appellant holding an armalite and upon being asked about the incident, ran away. (p. 118, tsn., July 18, 1979 hearing). If he were not the perpetrator of the crime why should he jump into the sea and risk his life when all that is necessary for him is to claim innocence regarding the incident. His allegation that he jumped into the sea for fear that Nilo Pantoja and Diosdado Gaje might harm him for not cooperating with them in disarming their PC escorts is incredible. Appellant could have reported the matter to their PC escorts, instead of facing the danger of the high sea. And, if it were true that the masterminds were Nilo Pantoja and Diosdado Gaje, why would the latter advise PC CSC Winifredo Villamor not to shoot him (appellant) and just order that he be apprehended and brought to the nearest port for investigation. The truth is, appellant escaped for fear of retaliation from the other members of the crew and the other PC escort.

3. Admission of the commission of the crime immediately after the startling occurrence. Hereunder is the testimony of prosecution witness Tomas Ramonida on this point:

"Q And while Itlanas was only in the barge with you, were you, able to talk to Itlanas?

A Yes, sir.

Q

And did you ask why Itlanas was there in the barge?

A

Yes, sir. I inquired. I inquired from him and he answered me that he was the one who made the firing in the tugboat.

Q.

Did you ask him about the result of his firing?

A

He answered me that he was mad or angry.

Q

And did you ask Itlanas why he was going to jump into the sea?

A

Yes, sir. I inquired from him about that and he told me that he was going to escape. (p. 191, tsn., Nov. 27, 1979

hearing)

The foregoing conversation between the appellant and witness Ramonida could be taken as part of the *res gestae* and, therefore, admissible in evidence as an exception to the hearsay rule.

The preceding circumstances, even without the extrajudicial confession (Exhibits "P" and "P-7") and the positive identification of eyewitnesses, all point to appellant as the author of the crimes.

Relative to the claim that his extrajudicial confession is inadmissible in evidence, suffice it to say that Section 20, Article IV of the New Constitution, which reads:

"SEC. 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 be inadmissible in evidence."

had been fully complied with. Hereunder are the answers given by appellant to the questions asked of him by Sgt. Ludivico Q. Floreza:

"FOREWORD: Mr. Adventor Itlanas, I am informing you that you are to be investigated regarding your involvement in the crime for the killing of the two soldiers of the PC and one civilian. I am informing you of your right according to law that you can remain silent and that you have a lawyer to assist you in this investigation. If you cannot afford to hire a lawyer, the government will shoulder the expenses so you will be represented. This is your right according to the provisions of Article IV, Section 20 of our constitution. Did you understand all that has been explained to you?

"ANSWER: Yes, I understood. I will not be forced to answer questions that I am not supposed to answer. I can get a lawyer to be present and assist me while I am being investigated. If I cannot afford to hire lawyer the government will shoulder the expenses for a lawyer of my choice to assist me.

"QUESTION:

After knowing your rights according to law will you agree that this investigation shall proceed?

"ANSWER: Yes, proceed.

Do you still need a lawyer to be present and to assist you while you are investigated?

A It is not necessary. I will answer questions asked.

Q Are you ready to answer the questions to be made?

A Ready.

Q Do you swear to tell the truth, all truth and nothing but the truth in this investigation?

A I swear." (p. 192, Record)

Thus, appellant was fully apprised of his constitutional rights under custodial investigation and the consequences of his waiver of said rights. Nonetheless, he volunteered to give an extrajudicial confession, Exhibits "P" and "P-7", which are unquestionably admissible. And, the fact is, there are no signs of physical injuries on his body and no complaint was filed with any authority for maltreatment or violence exerted upon him; on the other hand, the confession is full of details which only appellant could have known and could not have been concocted by the investigator.

With respect to the crime committed by the appellant on the deceased Manuel Flores, who was killed by stray bullets when CIC Mag-aso was shot by him, appellant is guilty of homicide. Article 4 of the Revised Penal Code provides that "(c)riminal liability shall be incurred: (1) by any person committing a felony (delito) although the wrongful act done be different from that which he intended." The provision of the law is so clear that there is no room for interpretation.

WHEREFORE, the judgment appealed from is AFFIRMED with respect to the death of Sgt. Amelito Perez and CIC Edmar Mag-aso. However, with respect to the death of Manuel Flores, the crime committed is homicide and, for this, appellant is hereby sentenced to suffer imprisonment of from EIGHT (8) YEARS and ONE (1) DAY of prison mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum.

Further, the indemnities to be paid to the heirs of the three (3) victims are hereby increased to P30,000.00 each.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.
Teehankee, (Chairman), concurs and dissents in a separate opinion.

CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

I concur with the judgment affirming the conviction of the accused-appellant there being sufficient evidence, particularly the positive identification of eyewitnesses, other than his extrajudicial confession, to establish his guilt.

I am constrained to dissent, however, from the decision's finding of admissibility of the said extrajudicial confession. The "foreword" question propounded by the military investigator in obtaining from the accused-appellant a waiver of his right to silence and counsel under section 20 of the Bill of Rights as to whether he understood his constitutional rights and that "if (he) cannot afford to hire a lawyer the government will shoulder the expenses so (he) will be represented" drew this alleged answer from the accused-appellant:

"ANSWER: Yes, I understood. I will not be forced to answer questions that I am not supposed to answer. I can get a lawyer to be present and assist me while I am being investigated. If I cannot afford to hire a lawyer the government will shoulder the expenses for a lawyer of my choice to assist me."

Such an unusual glib and voluble answer somehow reeks of formulism obviously designed to take the place of the

perfunctory and monosyllabic answer of "Yes" which was stricken down by the Court as utterly unacceptable as a voluntary and intelligent waiver in *People vs. Caguioa* (95 SCRA 2). One can hardly erase the impression of the words having been put in the accused's mouth. The late Justice Douglas aptly stressed that "Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of [constitutional rights]." (*Haley vs. State of Ohio*, 332 US 596).

I subscribe to the Court's requirement in *Morales, Jr. vs. Ponce Enrile* (121 SCRA 538) that "the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel" in order to assure that it is knowingly, voluntarily and intelligently given. It was thus underscored therein that "(A)fter a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in a strange and unfamiliar surrounding, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study has taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence. Section 20 of the Bill of Rights seeks to remedy this imbalance," and 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. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence."

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