

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL JUMADIAO, VIRGILIO CORILLO ALIAS VIRGILIO AGUILLON ALIAS BEBOT SPUTNIK AND JOHN “DOE” (ROMEO CINCO), ACCUSED, GIL JUMA...

G.R. No. 63070. August 12, 1986

Ponente: NARVASA, J.

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NARVASA, J.:

Under an information filed with the Court of First Instance of Leyte on October 18, 1978, later amended to allege additional aggravating circumstances,[1] Gil Jumadiao, Romeo Cinco, and Virgilio Corillo (alias Bebot Sputnik) were jointly accused of the crime of robbery with homicide. It is alleged that on or about September 17, 1978, in the City of Tacloban, the three, acting in conspiracy and being armed with daggers and a firearm, while on a motorized tricycle traveling along the Pan Philippine Highway, forcibly took from Tiburcio Reandino, a Chinese businessman riding in the same tricycle, the amount of P11,000.00; and on that occasion and for the purpose precisely of enabling them to effect the taking and carrying away of the money, they assaulted and employed personal violence on Reandino, inflicting on him in the process a gunshot wound in the abdomen which resulted in his death. It is further alleged that the crime was attended by the aggravating circumstances of treachery, use of firearm, nighttime, use of a motor vehicle, recidivism and abuse of superior strength. Only Gil Jumadiao and Romeo Cinco were arraigned and stood trial, however, Virgilio Corillo was never arrested and remains at large. The trial resulted in a verdict of conviction.[2] Judgment was promulgated on October 9, 1982, the dispositive portion of which reads as follows:

"WHEREFORE, the court finds the accused Gil Jumadiao and Romeo Cinco guilty beyond reasonable doubt of the crime of robbery with homicide defined and penalized under Art. 294, paragraph 1, of the Revised Penal Code, attended by the aggravating circumstances of treachery and use of superior strength, and each of them is hereby sentenced to the penalty of death, to indemnify the heirs of Tiburcio Reandino in the amount of Twenty Three Thousand Pesos P23,000.00), and to pay the costs."

There is no serious dispute about the manner in which the crime was committed. It was described in detail by the lone eyewitness, the driver of the tricycle, Juan Gatela; and there is nothing in the record to demonstrate that his depiction of the commission of the offense was inaccurate, or that the Trial Court's synthesis of that depiction, here reproduced, is incorrect.

" x x x At about 6 o'clock in the morning of September 17, 1978, Tiburcio Reandino, popularly known as Badong, a chinese copra buyer, x x x boarded a motorcab driven by Juan Gatela at the corner of Torres and Burgos Streets. After Reandino had sat on the motorcab three persons also boarded it. These persons were later identified as Virgilio Corillo (alias Bebot Sputnik), Gil Jumadiao and Romeo Cinco from pictures obtained by the police. Romeo Cinco was seated on the left side of the motorcab. Reandino was next to him. Virgilio Corillo alias Bebot Sputnik was seated to the right of Reandino. Gil Jumadiao sat on the rear seat of the motorcycle itself. The motorcab proceeded northwards towards Sabang District along Burgos Street. In front of

Resco Copra Dealer in Sabang where Reandino was supposed to alight Gil Jumadiao who was behind the driver draw a bladed weapon wrapped in a newspaper and thrusting it at the driver, Juan Gatela, commanded the latter to go on saying: "Pare, hold-up ine" (Friend, this is a hold-up). Scared Gatela obeyed and went on to Anibong. Virgilio and Romeo then and there snatched the shoulder bag of Reandino. Reandino defended the bag and wanted to shout for help but Virgilio Corillo covered his mouth with his hand and Romeo Cinco held and pressed Reandino's shoulder bag down. When the motorcab reached Mangonbangon Bridge in Sabang District Virgilio shot Reandino with a short firearm. Reandino sagged. Ordered to go on the driver proceeded to Anibong. Before reaching the PHHC Housing Project near the residence of Mr. Willie Martinez the driver was ordered to turn back. When the motorcab reached the Anibong chapel the three men again ordered the driver to turn back towards Anibong. After travelling a few distance Gil Jumadiao ordered the driver to stop. Virgilio Corillo and Romeo Cinco then lifted Reandino and threw him to a ricefield close to the road on the right side going to Tacloban near the residence of Ex-Mayor Antonio Jaro and the DYBR transmitting station. After Reandino was thrown to the side of the road Gil Jumadiao ordered the driver to proceed to the heart of Tacloban through Imelda Avenue. Upon reaching the corner of Imelda Avenue and Juan Luna Street Gil Jumadiao ordered the driver to turn left towards the Sto. Niño Church. For fear that he would be brought to a lonely place and killed the driver surreptitiously closed the gasoline valve of his motorcycle to stop the flow of fuel to the engine. When the engine later stopped the driver pretended to start the engine to trick the robbers into believing that the engine had trouble. One of the robbers then ordered Gil to get another motorcab. Unable to find another motorcab the robbers alighted from the motorcab and before leaving got a few bills amounting to P92.00 from the shoulder bag of Reandino and gave them to the driver for their fare but warned him not to tell the police about the crime. The three then walked towards Imelda Avenue and Real Street. After they were gone the driver Juan Gatela opened the Gasoline valve of his motorcycle and went home. Gatela told his wife about the crime and told her to notify the barangay chairman of his place about the crime. The Sabang District barangay chairman Geronimo Rabe accompanied Gatela to the police station. The driver was investigated by the Tacloban police. He gave the money given to him by the robbers to the police. A few days later he was fetched by a policeman from his home and made to identify the persons responsible for the crime in a group picture. In the picture taken in a beach party shown to him he recognized two persons who robbed and killed Tiburcio Reandino whom Lt. Felixberto Aujero said are Gil Jumadiao and Virgilio Corillo (Bebot Sputnik). Four months later Juan Gatela was again fetched by a policeman and made to identify a person in the police station. Gatela readily identified the person shown to him who is Romeo Cinco and named in the information as "John Doe" as one of the three robbers."[3]

It is their identification by Juan Gatela as two (2) of the three (3) perpetrators of the crime that Gil Jumadiao and Romeo Cinco chiefly contest. At the trial, they contended that Gatela was mistaken; they could not have committed the crime because they were elsewhere at the time. They gave testimony, and presented other evidence to prove their contention.[4] But the Trial Court was not persuaded, and declared them to be the perpetrators of the crime.

Thus it is that before this Court, and in the brief filed for them as appellants by their lawyers from the Citizens Legal Assistance Office, Gil Jumadiao and Romeo Cinco ascribe to the Court a quo the following errors, to wit:

- 1) "x x x giving credence to the evidence of the prosecution leading to x x x (their) identification x x x as the perpetrators of the crime; (and)
- 2) "x x x not considering x x x (their) defense of alibi."[5]

Said appellants also postulate –

- 1) "that the aggravating circumstances of treachery and abuse of superior strength were erroneously applied in imposing the penalty on x x x (them), (and)
- 2) "that the extra-judicial confession of appellant Gil Jumadiao was admitted by the Court a quo despite of

(sic) the fact that the same was obtained in contravention of x x x (their) constitutional rights."[6]

Appellants first advert to an inconsistency between Gatela's testimony and that of another prosecution witness, Lt. Felixberto Aujero. This, it is claimed, renders Gatela's identification of Gil Jumadiao and Virgilio Corillo essentially defective. It is theorized that whereas Gatela testified that it was only one photograph, a group picture, that was shown to him by Lt. Aujero and from which he picked out appellants' faces, Lt. Aujero deposed that what he showed to Gatela were "two blown-up pictures of Jumadiao and Corillo x x x mixed with other pictures in the rogues' gallery of the police."[7]

Appellants' reading of the recorded testimony is wrong. Gatela never said that it was only one photograph, but several or a "bunch of pictures" that was exhibited to him,[8] and it was from a group picture of several persons at the beach that he was able to make the identification of the appellants, although he could no longer then be certain whether he made the identification at his home or at the police station.[9] Lt. Aujero also spoke of several photographs, not just one: the group picture subject of Gatela's testimony; blown-up pictures of the appellants, extracted from that group picture; and a number of photographs from his office's "rogues' gallery." [10] The discrepancy lies in the matter of which precise photograph was the basis for Gatela's identification of the appellants: the group picture, as Gatela recalls, or the blown-up photographs derived therefrom, as is Aujero's impression. The discrepancy is an insignificant one and in the light of human experience, rather than detract from, should enhance the credit of the two (2) witnesses. It is "indicative of credibility for completely congruent testimony is suspect considering that different persons obtain different impressions." [11]

A second contradiction is imputed by appellants to Gatela and Aujero. They assert that Gatela's testimony is that he "picked out Gil Jumadiao from a police line-up" "some 2 or 3 months after the incident" (the killing on September 17, 1978); this would therefore place the identification at sometime in "November or December, 1978." Romeo Cinco's identification by Gatela was also accomplished at about this time, too. And yet, appellants argue, it was only in February, 1979 that, according to Lt. Aujero, Gil Jumadiao was arrested and taken into custody by the police.[12]

Appellants' argument is founded on an incomplete reference to the record. Gatela frankly admitted that he could not be certain of the exact time of his identification of Romeo Cinco, or of Jumadiao at a police line-up; he acknowledged that it could be "from four to six months" or even "seven or eight months," from the time he was "shown that picture where x x x (he) identified Jumadiao and Sputnik"[13] (sometime therefore in January or March, 1979 or April or May, 1979). Thus considered in context, Gatela's testimony is not contradictory of Aujero's. In any case, whatever uncertainty might exist in Gatela's memory of the date, his identification of the malefactors is not open to doubt. "The hour, the date, the month and the year, I am not very sure," he said, "but the person I can be sure." [14]

Given the clear and certain circumstances of record -- Gatela witnessed the crime from beginning to end; he was in fact a terrified member of the dramatis personae in that tragic drama; he thus had adequate opportunity to observe the persons of the malefactors, in broad daylight, over a not inconsiderable period of time, under circumstances as conduced to deeply impress the event and the participants in his memory; and, as the Trial Court has pointed out, there is no evidence of any improper motive on his part to falsely accuse the accused appellants. -- Gatela's positive, unequivocal and categorical identification of Gil Jumadiao and Romeo Cinco precludes the accord of any credence to their defense of alibi.[15] In any event, the Trial Court pronounced appellants' evidence of alibi unconvincing, a pronouncement that this Court will not disturb, having been cited to no cause of substance to warrant it.

It may be observed, in this connection, that Jumadiao's proof of alibi, manifests unprepossessing features.

From all indications, Gil Jumadiao had always resided at Tacloban City although born in San Vicente, Daram, Samar. He studied at the Kapangi-an Community School until the school year 1971; and when arraigned on July 19, 1979, he stated that he was a crew member of a fishing boat and a resident of Eureka District of Tacloban City.[16]

However, he had suddenly decided to go and did in fact go on September 14, 1978 to Barangay San Vicente (formerly Pait), Daram, Samar where he stayed until February 15, 1979. This is the testimony of Jumadiao's witness, the husband of his mother's sister, Simeon Padayao.[17] Jumadiao himself never took the witness stand. According to Padayao, the reason given by Jumadiao for his unexpected visit was, "I want to visit you because you are my parent (relative) and I am from here";[18] and during his sojourn at San Vicente, Jumadiao stayed in Padayao's house and did some chores at Padayao's farm, clearing grass and planting camote.[19] Of course, this unexpected sojourn very providentially puts Jumadiao away from the scene of the crime on the day of its commission, but the coincidence is too pat. There is moreover something not quite right about Padayao's memory. His recollection of what Gil Jumadiao did on September 14, 15, 16 and 17, 1978 is assertedly quite vivid.[20] Yet it is strangely vague as regards a later time in February, 1979 when, according to him, Gil Jumadiao was "lost", or "was not seen any more in our place,"[21] although the fact of his nephew's disappearance is plainly a more notable event than his prosaic activities from September 14 to 17, 1978.

To further substantiate his alibi, Jumadiao also presented the Barangay Captain of San Vicente, Heracleo Panes. Like Simeon Padayao, Panes professed to distinctly remember the activities of Gil Jumadiao not only when they first met on September 14, 1978, but also on September 15, 16 and 17, 1978.[22] Among other things, Panes declared that on September 17, 1978 at about 2:00 o'clock A.M. he saw Jumadiao taking a bath with a friend at a "faucet which was constructed by the barangay people" (probably an artesian well); and this "faucet" was connected by a G.I. pipe to a reservoir; and coincidentally, on September 14, 1978, when he saw Jumadiao for the first time, there was in fact a meeting of the Barangay Council to approve a change of the pipe connecting the reservoir to said faucet "because the former pipe installed was rather small." [23] Panes' testimony is however at odds with the minutes of the meeting of that day, which he himself presented and which was marked at the trial as Exhibit 2.[24] Those minutes state that the purpose of the meeting was "to look for an important project that can be funded by the Five Thousand (P5,000.00) Pesos Barangay Fund"; and that on motion of Andres Violen, seconded by Manuel Bacsal, the project ultimately adopted was the construction of a "reservoir for x x x drinking water", with a "G.I. water pipe" x x x (connecting) the reservoir to the barangay." Clearly then, on September 14, 1978 there was yet no reservoir built or "faucet" installed from which Jumadiao could draw water for his bath. Mr. Panes could not explain the contradiction.[25] Furthermore, Mr. Panes is contradicted by the Barangay Secretary, Inocencio Molito, who was present at the meeting, and who also signed the minutes.[26] Molito confirmed the fact that at the time of the meeting of September 14, 1978 there was "no construction yet" and therefore "no water yet." [27]

Appellants also assail the Trial Court's admission of Jumadiao's extra-judicial confession, marked Exhibit "G". It is argued that the confession states that Jumadiao "finished 6th grade" although in truth he had not even gone to Grade I, could not read, and could only write his name a little; [28] moreover, the confession had been written in English and "there is no showing that the same was translated into the dialect and explained to and understood by Jumadiao"; [29] and finally, the confession was obtained in violation of Jumadiao's constitutional rights, citing *Morales vs. Enrile*. [30]

The point sought to be made by appellants is of no moment. Even without the extra-judicial confession, the evidence on record is sufficient to sustain appellant's conviction.

Be this as it may, the extra-judicial confession shows that the police interrogator did advise Gil Jumadiao of his

rights in the following manner;

"01 QUESTION:

GIL JUMADIAO you are informed that you are under investigation for having participated in the commission of an offense. You are reminded that under the present Constitution, you have the right to remain silent and be entitled to the assistance of counsel of your own choice. Is this clearly understood by you?

01 ANSWER :

Yes sir.

02

Q -

Having been informed of your rights under the present Constitution to remain silent, do you wish to proceed with this investigation?

A -

Yes sir.

03

Q -

You are also reminded that whatever statement you will give might be used against you. Is this clearly understood by you?

A -

Yes, sir.

04

Q -

Are you ready to give a free and voluntary statement?

A -

Yes sir."

Admittedly, the "reading of rights" to Gil Jumadiao was not perfect. For one thing, Jumadiao was not told that if he desired to have an attorney but could not afford to engage one, the court would provide him with counsel without cost; and that if he wished, he could communicate with his lawyer, or a relative or friend, by the most expedient means available.[31] For another, it does not appear that when the accused waived his right to counsel end to remain silent, a lawyer was there to assist him.[32]

It is however significant that there is no evidence whatsoever to show, or a claim during the trial that the confession was improperly obtained or involuntarily given. Indeed, Jumadiao made no protest at all about his confession when he took oath as to the truth thereof before the Fiscal. On the other hand, as stressed by the court a quo, quoting extensively from the confession, said document is replete with details which could be known only to

the accused.

Appellants' asseveration that alevosia should not have been appreciated against them cannot be accepted. The evidence amply proves the attendance of this aggravating circumstance in the commission of the offense. This proposition is persuasively set forth in the appellee's brief.

"x x x The victim was unarmed. He was in a tricycle, well guarded by two of the accused, one at the left and one at the right. Virgilio Corillo alias Bebot Sputnik cupped the mouth of the victim to prevent him from shouting. The other accused, Romeo Cinco, pressed the shoulder of the victim to force him to remain seated (tsn, pp. 9-10, Aug. 16, 1979). It was in this position when appellants shot the victim. It is clear that appellants killed the deceased in such a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. In the case of *People vs. Capalac*, 117 SCRA 874, 878-879, this Hon. Court said:

2. From the facts as narrated above, there can be no other conclusion except that the crime was one of murder, the qualifying circumstance of treachery being present. The specific language of the Revised Penal Code calls for application: 'There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution there-of which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.' Magaso's situation was hopeless. Any defense he could have put up would be futile and unavailing. His hands were raised in surrender. That notwithstanding, he was pistol-whipped. When lying prostrate on the ground, he was stabbed. It must be remembered that, according to the testimonial evidence, there were two other persons assisting the brothers Capalac. There was no risk, therefore, to the aggressors, no hope for the victim. The trial court committed no error then in appreciating the circumstance of treachery as being present.' "

As regards the aggravating circumstance of abuse of superior strength, also adequately proven to exist in this case, it must be deemed absorbed and inherent in treachery, as is appellee's submission.[33]

It is immaterial however whether there be only one aggravating circumstance, or more than one, as far as appellants' criminal liability is concerned. The crime perpetrated by them is highway robbery, accompanied by "murder or homicide x x x committed as a result or on the occasion thereof." In accordance with Article 294 of the Revised Penal Code, as amended by PD 532,[34] the penalty is single and indivisible: death.

WHEREFORE, the decision under review, being in accordance with law and the evidence, is affirmed in toto. However, for lack of the necessary votes, the penalty of death is commuted reclusion perpetua. Costs de officio.

SO ORDERED.

Feria, Yap, Fernan, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

Teehankee, C.J., in the result.

Cruz, J., see separate opinion.

[1] Rollo, pp. 5-6

[2] Rollo, pp. 8-12

[3] Rollo, pp. 11-13

[4] Rollo, pp. 13-14

[5] Appellants' Brief, p. 1: Rollo, p. 84

[6] Id., p. 6

- [7] Id., p. 7
 - [8] TSN, Sept. 18, 1979, pp. 49, 51, 52
 - [9] Id., pp. 50, 51, 53
 - [10] TSN, June 11, 1980, pp. 81-83
 - [11] Peo. vs. Gutierrez, 112 SCRA 409
 - [12] Appellants' Brief, p. 8
 - [13] TSN, Sept. 18, 1979, pp. 54-55
 - [14] Id., p. 55
 - [15] Peo v. Granado, 116 SCRA 326; Peo v. Espinosa, 112 SCRA 421
 - [16] See Minutes of Arraignment, Trial Court Record, pp. 23 and 24
 - [17] TSN, April 12, 1981, pp. 3, 4
 - [18] Id., p. 3
 - [19] Id., pp. 5 and 6
 - [20] Id., pp. 4 to 6 8 to 11
 - [21] Id., pp. 4, 13
 - [22] TSN, March 18, 1981, pp. 4 to 8
 - [23] Id., p. 14
 - [24] P. 103, Original Record
 - [25] TSN, March 18, 1981, pp. 15 to 17
 - [26] Exhibit 2
 - [27] TSN, Id., pp. 21 to 22
 - [28] Appellants' Brief, pp. 11-12
 - [29] Id., p. 12
 - [30] Id., pp. 12-13
 - [31] Morales v. Enrile, 121 SCRA 538
 - [32] Peo. v. Galit, 135 SCRA 465
 - [33] Rollo, pp. 118-119, citing Peo. v. Morales, 113 SCRA 683; Peo. v. Camano, 115 SCRA 688; Peo v. Alfaro, 119 SCRA 204
 - [34] Eff. Aug. 8, 1974
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CONCURRING AND DISSENTING OPINION

CRUZ, J.:

I concur insofar as the majority opinion says that “even without the extra-judicial confession, the evidence on record is sufficient to sustain the appellants’ conviction.” However, I must disagree with the suggestion that the said confession “was not improperly obtained or involuntarily given” because I think it was, having been taken, as the majority opinion itself concedes, without strict observance of Section 20, Article IV, of the 1973 Constitution. That provision says in no uncertain terms: Any confession obtained in violation of this section shall be inadmissible in evidence.”

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