

PETER PAUL ABALLE Y MENDOZA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE JUDGE BERNARDO V. SALUDARES, RESPONDENTS.

G.R. NO. 64086. March 15, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a direct appeal from the decision of the then Court of First Instance of Davao City, Branch II, finding petitioner Peter Paul Aballe y Mendoza guilty of homicide and sentencing him to an indeterminate penalty of eight (8) years and one (1) day of prision mayor to sixteen (16) years of reclusion temporal with all the accessory penalties and ordering him to indemnify the heirs of the deceased Jennie Banguis y Aquino in the amount of P12,000.00 and to pay the amount of P5,000.00 as actual and compensatory damages.[1]

At around seven o'clock in the evening of November 7, 1980 in Saypon, Toril, Davao City, Quirino Banguis, a 42-year old driver, attended a birthday party at the residence of his neighbor Aguilles Mora. He brought along his wife and other children, leaving his 12-year-old daughter Jennie alone in their house.[2]

Upon their return at around 8:30 that same night, Quirino found Jennie in the sala, lying prostrate, bathed in her own blood with multiple wounds on different parts of her body. There were no eyewitnesses to the bizarre killing.

The postmortem report disclosed that Jennie sustained a total of thirty-two (32) stab wounds. Cause of death was attributed to hemorrhage secondary to multiple stab wounds.[3]

At daybreak of the following day, November 8, 1980, acting on information furnished by the victim's father, a police team headed by Sergeant Herminigildo Marante sought the accused Peter Paul Aballe for questioning. They found him just as he was coming out of the communal bathroom in Saypon and wearing what appeared to be a bloodstained T-shirt. Upon seeing Sgt. Marante, the accused without anyone asking him, orally admitted that he killed Jennie Banguis. Sgt. Marante subsequently brought him to the Toril police station for interrogation.

While under custodial investigation, Aballe, 17 years old, a school dropout (he finished second year high school) and next door neighbor of the victim, brought the police to his house and pointed to them the pot at the "bangera" where he had concealed the death weapon which was a four-inch kitchen knife.[4] Also taken from Aballe was the bloodstained red and white striped T-shirt which he claimed he wore during the commission of the crime.[5] Aballe also made an extra judicial confession admitting his guilt in killing Jennie while under the influence of liquor and marijuana.[6] The sworn affidavit in the main reads as follows:

"Preliminary Question:

Mr. Aballe, you are under investigation in connection with an offense. Any statement you may give may be use (sic) for or against you in court in the future. Under our New Constitution, you have the right to remain silent and the right to the presence and assistance of a counsel of your own choice, do you understand? Do you waive all these rights?

"Answer:

Yes sir.

"Q -

After apprising you of your rights under our new Constitution, do you still wish to proceed with this investigation?

"A -

Yes sir.

"Q-

Are you willing to waive all these rights?

"A-

Yes sir. x x x.

"Q-

If so will you please state your name and other personal circumstances.

"A-

Peter Paul Aballe y Mendoza, 17 years old, single, a high school drop out, jobless and presently residing at Saypon, Crossing Bayabas, Toril, Davao City.

"Q-

Are you aware on why you are in this Office?

"A-

I am here sir in connection with the death of a minor JENNY BANGGIS Y AQUINO, our neighbor in the night of November 7, 1980.

"Q-

What do you know about the death of the said JENNY BANGGIS?

"A-

I was the one who killed her sir while she was sleeping alone at their residence by stabbing her with the use of a kitchen knife for several times while I was under the influence of liquor and marijuana at about 6:30 P.M. November 7, 1980.

"Q-

Where did you get the said marijuana you were referring to?

"A-

From one alias Dodong Flores who sold it to me for Fifteen pesos (P15.00) per match box.

"Q-

Showing you this kitchen knife and this blooded (sic) T-shirt, (Investigator showing the subject a kitchen knife measuring about (4) inches in length with a wooden handle and a striped T-shirt with blood stains) can you identify this (sic)?

"A-

That is the very same knife sir I used in stabbing JENNY BANGGIS and that was the T-shirt I wore during the incident.

"Q-

Do you have any standing grudge with the said JENNY?

"A-

No sir, for I only stabbed her when she slapped me after I woke her up at their residence where she was sleeping alone.

"Q-

You mean to say that you just stabbed her because she slapped you when you woke her up?

"A-

Yes sir, and I was not at my right sense for I was under influence of liquor and the marijuana I took.

"Q-

After you have stabbed her, where did you go?

"A-

I went to watch television at the residence of one Alias Ma at Saypon, Crossing Bayabas, Toril, Davao City and I only knew that the said JENNY BANGGIS was dead the morning after and I was apprehended by the Police and was brought to this office.

"Q-

I have no more to ask, do you have something more to say in investigation?

"A-

No more sir.

"Q-

Are you willing to affix your signature in this statement signifying veracity to the best of your knowledge and belief?

"A-

Yes sir. x x x."[7]

Whereupon, an information was filed against Aballe, charging him with homicide penalized under Article 249 of the Revised Penal Code.[8] At his arraignment on April 13, 1981, he pleaded not guilty.[9] He also disavowed his extrajudicial confession on the ground that it was obtained through coercion and in the absence of counsel.

Aballe's repudiation of his earlier confession notwithstanding, the trial court convicted the accused of the crime of homicide.[10]

In this petition for review on certiorari, Aballe contends that the trial court erred in giving full weight to his extrajudicial confession taken during custodial investigation and in imposing a penalty which was not in accordance with law.

The argument that Aballe's extrajudicial admission should have been disregarded by the lower court for having been obtained in violation of Aballe's constitutional rights is well taken. Throughout the custodial interrogation, the accused's parents and relatives were almost always around but at no stage of the entire proceedings was it shown that the youthful offender was ever represented by counsel. Since the execution of the extrajudicial statement[11] was admittedly made in the absence of counsel, whether de officio or de parte, and the waiver of counsel was not made with the assistance of counsel as mandated by the provisions of Section 20, Article IV of the 1973 Constitution, said confession should have been discarded by the lower court.[12]

Indeed, equally inadmissible is the kitchen knife[13] recovered from Aballe after his capture and after the police had started to question him. Together with the extrajudicial confession, the fatal weapon is but a fruit of a constitutionally infirmed interrogation and must consequently be disallowed. The bloodstained T-shirt,[14] however, is admissible, being in the nature of an evidence in plain view[15] which an arresting officer may take and introduce in evidence. The prevailing rule in this jurisdiction is that "an officer making an arrest may take from the person arrested any money or property found upon his person which was used in the commission of the crime or was the fruit of the crime or which might furnish the prisoner with the means of committing violence or escaping, or which may be used in evidence in the trial of the cause..."[16]

But even with the exclusion of the extrajudicial confession and the fatal weapon we agree with the trial court that the guilt of the accused has been established beyond reasonable doubt. It is well to note that even before the taking of the extrajudicial confession, the accused, upon being picked up in the morning of November 8, 1980 as he was coming out of the communal bathroom and wearing a T-shirt covered with bloodstains which he tried to cover with his hands, suddenly broke down and knelt before Sgt. Marante and confessed that he killed Jennie Banguis. The testimony of Sgt. Marante on Aballe's oral confession is competent evidence to positively link the accused to the aforesaid killing. His testimony reads in part:

"Q: -

In the morning of November 8, 1980, where were you at that time?

"A: -

At the police station.

"Q: -

And could you tell us of any unusual incident?

"A: -

The father of the deceased came to the office and he told us that he suspected somebody whom he observed to be suspicious so we responded immediately to the call of assistance of the father and went back to the scene of the incident and asked for the whereabouts of the person whom he confided to us the name.

"Q: -

And what did you find out?

"A: -

Somebody told us that the subject was still in a common bathroom so I posted myself outside the bathroom.

"Q: -

This subject you are referring to Sgt. Marante, who is he?

"A: -

Peter Paul Aballe.

"x x x x x x x x.

"Q: -

And after finding out that ah, by the way, where was the bathroom?

"A: -

It was a common bathroom located just a few meters away from in front of his house.

"x x x x x x x x.

"Q: -

And when you found out that the subject was still in the bathroom what did you do?

"A: -

I waited until he came out.

"Q: -

And did that person come outside?

"A: -

Yes, sir.

"Q: -

Is he the accused?

"A: -

Yes, sir.

"Q: -

What happened next?

"A: -

I saw bloodstains in his T-shirt and I pointed to the bloodstain and he tried to cover it and I notice again that he had a swollen knuckle -- and I asked him what is this and then he broke down, held my hand, knelt down and confessed that he was the one who killed the victim and I said you stop that because whatever you will say now might led (sic) you to jail and he continued and so I asked him where is (sic) his parents and the mother was nowhere to be found and I asked for his relatives and they accompanied him to the police station. At the police station the mother later arrived and I told her that your son confessed to the commission of the crime.

"Q: -

And in the station what did you do per your procedure?

"A: -

As I was appraising (sic) him or asking him in front of her (sic) mother I still repeated the same thing. I appraised (sic) him if he needs a lawyer and he said he does not need a lawyer because he just wanted to tell the truth. And in the course, I called the desk officer to record what he mentioned as to the commission of the crime.

"Q: -

Aside from the admission of the accused in this case what other physical objects of the crime were you able to recover?

"A: -

I was able to recover the fatal weapon, the knife.

"Q: -

Where?

"A: -

From the house of the accused.

"Q: -

Who gave it to you?

"A: -

The accused himself.

"Q: -

What else?

"A: -

The T-shirt with bloodstain.

"Q: -

Where is the knife now?

"A: -

In the possession of the desk officer in Toril.

"Q: -

And also the T-shirt?

"A: -

Yes, sir.

"Q: -

So after interviewing the accused, what other procedure followed?

"A: -

The accused was indorsed to the office investigator to take down the statement of said accused.

"x x x x x x x x.

"Q: -

When did you apprehend the accused, while he was inside or already outside the bathroom?

"A: -

He was coming out.

"x x x x x x x x.

"Q: -

What was he wearing?

"A: -

T-shirt with bloodstain on the breast that is why I asked him immediately what is this and I pointed to the bloodstain.

"Q: -

Mr. Marante you immediately asked or rather you informed the accused immediately of the death of Jennie Banguis after getting out of the bathroom?

"A: -

He confessed to me.

"Q: -

You just answer the question, did you inform him?

"A: -

No, I did not.

"Q: -

So without informing him about it as you said he immediately confessed.

"A: -

Yes, sir.

"Q: -

At that time were you in your police uniform?

"A: -

No, I was in civilian.

"Q: -

Without even introducing yourself at that time it was only after bringing the accused to the police station did he know that you were a Deputy District Commander of the police in Toril?

"A: -

Probably yes."[17]

"The declaration of an accused expressly acknowledging his guilt of the offense charged may be given in evidence against him.[18]

The rule is that "any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance. (23 C.J.S. 196)[19]

Compliance with the constitutional procedures on custodial investigation is not applicable to a spontaneous statement, not elicited through questioning, but given in an ordinary manner, whereby the accused orally admitted having slain the victim.[20]

The penalty decreed by the lower court must however be modified. The killing of Jennie is mitigated by minority (the accused was born on June 29, 1963), but it is aggravated by dwelling since Jennie was fatally stabbed while in her parents' house, a fact overlooked by the trial court. Not having been alleged in the information, dwelling is considered generic and cannot therefore offset minority which is a privileged mitigating circumstance.

The imposable penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. For being only 17 years, 4 months and 8 days of age at the time of the commission of the offense, the penalty next lower than that prescribed by law shall be imposed on the accused but always in the proper period. With the aggravating circumstance of dwelling, the penalty is imposable in its maximum period or from ten (10) years and one (1) day to twelve (12) years or prision mayor maximum.[21] Applying the Indeterminate Sentence Law, the range of the penalty next lower is from six (6) months and one (1) day to six (6) years of prision correccional.

WHEREFORE, the appealed judgment of conviction is hereby AFFIRMED with the penalty modified to an indeterminate sentence of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum. The civil indemnity is increased to P30,000.00 in accordance with recent jurisprudence. Costs against the accused Peter Paul Aballe.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

[1] Criminal Case No. 6211; Original Record, p. 69.

[2] Affidavit, Original Record, p. 4.

[3] Exhibit A, Original Record, p. 9.

[4] Exhibit C.

[5] Exhibit D.

[6] Exhibit B.

[7] Original Record, p. 6.

[8] Original Record, p. 1.

[9] Original Record, p. 13.

[10] Original Record, p. 69.

[11] Exhibit B.

[12] *People v. Galit*, G.R. No. 51770, March 20, 1985, 135 SCRA 465; *People v. Pascual*, G.R. No. 53403, November 12, 1981, 109 SCRA 197; *People v. Pecardal*, G.R. No. 71381, November 24, 1986, 145 SCRA 647; *People v. Lacap*, G.R. No. 78730, March 8, 1989; *People v. Almario*, G.R. No. 69374, March 16, 1989.

[13] Exhibit C.

[14] Exhibit D.

[15] *Harris v. United States*, 390 U.S. 234, 236 (1968).

[16] *Moreno v. Ago Chi*, 12 Phil. 439; *People v. Veloso*, 48 Phil. 168; *Alvero v. Dizon*, 76 Phil. 637.

[17] TSN, December 2, 1981, pp. 44-46, 52-54.

[18] Section 29, Rule 130, Revised Rules of Court.

[19] See *People v. Tawat*, G. R. No. 62871, May 25, 1984, 129 SCRA 431.

[20] *People v. Dy*, G.R. No. 74517, February 23, 1988, 158 SCRA 111.

[21] Article 76, Revised Penal Code.

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