

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO ELEGINO Y SORRONT, RODOLFO BUENBRAZO Y BASTASA, ULDARICO SANCHEZ Y TUPAZ, ACCUSED, EDUARDO ELEGINO Y SORRONT & RODOL...

G.R. No. 64848. August 11, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

On the basis of the sworn statements or extrajudicial confessions given by Eduardo Elegino, 22, Rodolfo Buenbrazo, 34, and Uldarico Sanchez, 33, to the police on September 15, 1980, an information charging them with having committed the crime of Robbery with Homicide was filed by the Assistant City Fiscal on January 19, 1981, alleging, as follows:

"The undersigned accuses the above-named accused of the crime of ROBBERY WITH HOMICIDE, under Art. 294, Par. 1 of the Revised Penal Code, committed as follows:

"That on or about September 14, 1980, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, with intent to gain and by means of violence and intimidation upon person, wilfully, unlawfully and feloniously took, stole and carried away cash in the amount of P70.00, belonging to one ELESEO GAMONIDO; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the above-mentioned amount, the herein accused, with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted and choked the said ELESEO GAMONIDO, that caused his death.

"Contrary to law." (pp. 23-24, Rollo.)

Upon arraignment on February 5, 1981, they all pleaded "not guilty."

As the accused did not have a common defense, or had incompatible defenses, their counsel de oficio, Attorney Ruben Cañete requested the trial court to appoint a different counsel de oficio for each of them, which the court did. Attorney Cañete was appointed counsel de oficio for Sanchez, Attorney Josue Zozobrado for Elegino, and Attorney Eduardo de Vera for Buenbrazo.

On June 22, 1981, prior to the trial, the prosecution filed a motion to utilize Uldarico Sanchez as a State witness because his testimony was crucial and absolutely necessary; it could be corroborated on material points; he had not been previously convicted of any crime; and, he did not appear to be the most guilty. The motion was opposed by his co-accused. Nevertheless, the court ordered his discharge from the information to be utilized as a State witness.

The facts as established by the testimony of the State witness Uldarico Sanchez, 33 years old, a jeepney driver and a resident of Toril, Davao City, shows that at 3:00 o'clock in the afternoon of September 14, 1980, he was at Godo's Beach drinking "tuba" with his former neighbor Eduardo Elegino in the house of Rodolfo Buenbrazo, 34

years old, a dispatcher and driver at Toril Crossing, Davao City. After they had consumed about three gallons of "tuba" and many bottles of Tanduay rum, Elegino remembered that he had a telegram to be delivered to his brother-in-law in Davao City. So the three of them proceeded to the poblacion of Davao City on board a Mintranco bus. They alighted at the terminal on Tomas Claudio street where they took a PU Minica marked "Claudios," driven by Eliseo Gamonido. Elegino and Sanchez sat in the rear seat while Buenbrazo sat beside the driver. When they reached the vicinity of the gambling casino near the Davao Light and Power Company Plant, Buenbrazo and the driver had a heated altercation. Buenbrazo stopped the cab by pushing the gear shift to neutral, and got out. The driver did the same. Buenbrazo accosted the driver, pushed him against the side of the cab, struck him with "karate" chopping blows on the neck, and strangled him. Sanchez testified that he was "surprised" by Buenbrazo's action because there had been no agreement among them to assault the driver. He yelled at Buenbrazo to stop choking the driver but Buenbrazo did not pay attention to him. After the driver collapsed, Buenbrazo put him in the rear of the cab beside Elegino and ordered Sanchez to drive the vehicle. They wove through several streets in the city and ended up at Godo's Beach once more. They left the PU Minica at Godo's Beach with the lifeless body of the driver in the rear seat. Elegino took the driver's wallet and handed it to Buenbrazo who took out the money and throw the wallet inside the PU Minica. The wallet contained the Professional Driver's License No. 14335580 of the deceased Eliseo L. Gamonido.

Thereafter, the trio proceeded to Buenbrazo's house in Daliao, Toril, where they resumed drinking "tuba" which was purchased by Mrs. Buenbrazo with the money given to her by Buenbrazo. They consumed two or three gallons of "tuba" until the early morning of the next day when they were arrested by Davao City policemen led by Sergeant Jorge Milan.

On April 27, 1981, Sanchez returned to the witness stand and testified additionally as follows:

"Q

What part of your testimony did you omit Mr. Sanchez?

"A

That part of my testimony whereby Buenbrazo directed Elegino to press the testicles of the Minica driver that caused his ultimate death." (p. 71, t.s.n., Aug. 27, 1981.)

Dr. Juan M. Abear, the medico-legal officer who made an autopsy on the body of the victim, found contusions on the upper and lower lips, ligature marks on the neck and fractures of the laryngeal box, right shoulder, and collar bone. His conclusion was that the victim died from strangulation and ligature.

Prior to their custodial investigation by Patrolman Wilson Esparcia, the accused were apprised of their constitutional right to remain silent (which they waived in writing) and to be assisted by counsel. Comelec lawyer, Attorney Teofilo Gamad, was requested by the police to assist them during the investigation. He signed as witness to their confessions.

The trial court admitted the extrajudicial confessions of the accused although Elegino and Buenbrazo disowned theirs on the ground that their statements were given under duress and through the use of force and violence upon their persons. The trial court held that the confessions were given under proper safeguards to insure respect for the constitutional rights of the accused.

The trial court found Buenbrazo and Elegino guilty beyond reasonable doubt of robbery with homicide committed with aggravating circumstances of abuse of superior strength, craft and fraud, nocturnity and use of a motor

vehicle. It sentenced them to suffer -

"the penalty of DEATH with all the accessory penalties provided by law, to indemnify jointly and severally the lawful heirs of the victim, Eliseo Gamonido in the amount of P12,000, apart from restituting to the same lawful heirs the amount of P70.00 taken from the victim. With costs." (p. 175, Records.)

Both accused appealed to this Court. However, on February 8, 1988 Buenbrazo who, at the trial, admitted killing, but denied robbing, Gamonido (p. 211, t.s.n., September 2, 1982) manifested to the court that, in view of the abolition of the death penalty under Section 19(1), Article III of the 1987 Constitution, he was willing to accept the sentence of reclusion perpetua in lieu of the death penalty meted to him by the trial court. In a second letter dated March 9, 1988 he acknowledged that "the decision of the lower court is just and reasonable" and reiterated his willingness to accept the penalty of reclusion perpetua.

Those letters constitute, in effect, a withdrawal of Buenbrazo's appeal which We hereby allow, thus leaving only the appeal of the accused Eduardo Elegino to be resolved by this Court.

The appellant alleges in the Joint Appellants' Brief filed for him and Buenbrazo by their counsel de oficio, that the trial court erred:

- In admitting his extrajudicial confession (Exh. C);
- In not acquitting him; and
- In not holding alternatively that he is liable only for the separate crime of theft.

The appeal has merit.

The 22-year old high school drop-out was convicted with Buenbrazo, the confessed killer of Gamonido, on the theory that he conspired with Buenbrazo to commit the killing. However, the conspiracy theory flies in the teeth of the entire evidence on record. The State witness, Sanchez, candidly disclosed that he and Elegino "were surprised" by Buenbrazo's physical attack against Gamonido because it was unplanned (p. 79, t.s.n., Aug. 27, 1981). Elegino testified that Sanchez himself tried to prevent the killing by shouting at Buenbrazo to stop choking Gamonido but Buenbrazo, who was very drunk, did not heed him (p. 159, t.s.n., May 18, 1982).

There is no clear evidence that Elegino cooperated with Buenbrazo in killing Gamonido. Sanchez's allegation that "Buenbrazo directed Elegino to press the testicles of the Minica driver that caused his ultimate death" (p. 71, t.s.n., Aug. 27, 1981) was a contrived afterthought, the motive for which We have been unable to fathom. He returned to the witness stand to testify on this loathsome detail a month after he had given his direct testimony. Neither in his extrajudicial confession (Exh. D), nor in his original testimony, did he mention it. Elegino vigorously denied it (p. 184, t.s.n., July 1, 1982). Buenbrazo also denied it (p. 195, t.s.n., July 29, 1982). The autopsy findings of Dr. Abear did not show that such injury had been inflicted on the deceased and caused his death. In his original testimony, Sanchez declared that he did not see what Elegino did, if any, to Gamonido during the drive to Godo's Beach because he (Sanchez) was driving the cab and "he (Elegino) was at my back." (p. 58, t.s.n., July 27, 1981.) Furthermore, no policeman was presented at the trial to prove that the deceased was naked when they found him.

Since Sanchez himself testified that Buenbrazo strangled the driver "for a long time until he died," and thereafter placed his lifeless body in the rear of the cab (pp. 58-59, t.s.n., July 27, 1981), and Buenbrazo affirmed that Gamonido "was no longer breathing" when he loaded him in the cab beside Elegino (p. 193, t.s.n., July 29, 1982; p. 215, t.s.n., September 2, 1982), it was unlikely that Elegino would squeeze his organ to cause his "ultimate death" for he was already dead.

The taking of the extrajudicial confession of Elegino (Exh. C) while in police custody, without the assistance of counsel, violated his constitutional right to remain silent and to counsel and to be informed of such right, "and his right to have no force, violence, threat, intimidation, or any other means employed upon him which vitiate his free will." (Sec. 20, Article IV, 1973 Constitution.) His confession (Exh. C) was, therefore, inadmissible in evidence. The presence of Attorney Gamad's signature in Exhibit C does not prove that Elegino had the benefit of his advice and counsel during the investigation which lasted from 1:30 P.M. to 3:00 P.M. Elegino denied seeing any lawyer while he was under investigation (p. 167, t.s.n., May 18, 1982). The prosecution failed to present Attorney Gamad, as a witness, if only to prove that Elegino's extrajudicial confession was voluntarily given.

The admission of Exhibit C as evidence against Elegino was a reversible error on the part of the trial court. The incriminatory admission therein that he "removed the pants of the deceased" may not be used against him. He categorically denied it on the witness stand. He alleged that the confession was prepared by the police, that he was beaten with a rattan stick, and a gun was poked in his mouth, to force him to sign it (People vs. Decierdo, 149 SCRA 496; People vs. Albofera, 152 SCRA 123).

Elegino also denied complicity in the robbery. He denied taking the wallet of the deceased (p. 181, t.s.n., July 1, 1982). The only evidence against him is Sanchez's testimony that he saw "Elegino x x x holding the wallet but Buenbrazo got it from him." (p. 60, t.s.n., July 27, 1981).

In view of Sanchez's testimony that it was Buenbrazo who took the money (P70.00) from the dead man's wallet, Elegino may not be found guilty of theft of the money (which Buenbrazo spent), nor of the dead man's wallet, which Buenbrazo left in the cab where the police found it. This notwithstanding, his alternative plea that, at most, he may be convicted only of the crime of theft - a plea that was presumably made for him by his counsel with full awareness of the fact that he has long served out the penalty for that offense (arresto mayor in its medium period to prision correccional in its minimum period as provided in Art. 309, subpar. 4, Revised Penal Code) in view of his detention for the past eight (8) years, or since 1980.

WHEREFORE, the decision of the trial court finding the appellant Eduardo Elegino guilty of the crime of robbery with homicide is reversed and set aside. The said accused is acquitted of the crime charged and his immediate release from custody is hereby ordered unless he is being held to answer for another crime.

In view of the withdrawal of his appeal, the conviction of the accused Rodolfo Buenbrazo is affirmed but the penalty of death imposed upon him by the trial court is deemed automatically commuted to reclusion perpetua, as provided in Section 19(1), Article III of the 1987 Constitution. The indemnity due the heirs of Eliseo Gamonido for his death is increased to P30,000.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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