

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FIDEL MATEO, RENE AMBROCIO, EDWIN AGLUGOB, FLORANTE MARTINEZ AND ELMER DAJUGAR, ACCUSED, ELMER DAJUGAR, ACCUSED-APPELLANT.

G.R. No. 65165. June 29, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This is a murder case. In the early morning of October 9, 1981, the dead body of Manuel Pascual, 34, a tricycle driver, was found by the police near the bridge or creek east of the Mariano Marcos State University Compound (Normal School) in Laoag City (Exh. M). It had thirteen incised and stab wounds (Exh. A). The victim was killed the night before (Exh. P).

His tricycle was found on the shoulder of the road south of the Barit Elementary School of the city (Exh. F-1). A bolo was found a few meters from the tricycle in the field planted to kangkong (Exh. E).

About two weeks later, or on October 23, 1981, five suspects, Fidel Mateo, 20, Elmer Dajugar, 18, Rene Ambrocio, 15, Florante Martinez, 15, and Edwin Aglugob, 15, were arrested. Their confessions were taken (Exhs. H to L).

According to their extrajudicial confessions, the five accused boarded the tricycle of Pascual at about five o'clock in the afternoon of October 8, 1981 at the bus terminal. They went to Juman's Eatery at Pasiocan, Bacarra, Ilocos Norte. They invited Pascual to drink gin with them. They got drunk.

They returned to the city with Pascual driving his tricycle. Mateo allegedly concocted the idea of killing Pascual because the latter had boxed him sometime in July, 1981. They stopped the tricycle in Barangay Barit on the street leading to the city mayor's residence.

Dajugar boxed Pascual while Martinez stabbed him. To avoid further assault, Pascual ran and shouted for help. They caught up with him and stabbed him until he fell on the concrete road. Dajugar and Martinez loaded him in his tricycle and dumped his body east of the Don Mariano Marcos State University (Exh. H to L-4 and M).

The trial court said that what precipitated the assault was the refusal of Pascual to enter the road leading to the city mayor's residence. He feared that they would harm him. As Pascual was good in karate and was armed and as he was reminded that he had previously boxed Mateo, Pascual attacked the accused. They retaliated by killing him.

Aside from the confessions, the prosecution offered the eyewitness testimony of Froilan Ramirez, 16. He testified that he knows accused Mateo. He knows also Aglugob who was his classmate in the elementary grades. At around nine o'clock in the evening of October 8, 1981, while he was in front of his parents' house at Barrio Pandan, Laoag City, near the highway leading to Bacarra, Ilocos Norte, he saw Pascual running, pursued by Mateo, Aglugob and a third person. The scene was illuminated by a light from the office of the National Power

Corporation (See sketch prepared by Ramirez, Exh. N, p. 119, Record).

A tricycle with a driver and a passenger was following them. He did not recognize the driver and passenger of the tricycle. The three pursuers were able to overtake Pascual. They repeatedly stabbed and hacked him. Then, they loaded him in the tricycle. The sidecar number of the tricycle was 640.

The five accused were charged on November 12, 1981 with murder qualified by treachery and evident premeditation and with "the generic aggravating circumstances of abuse of superior strength (and) nighttime and the alternative aggravating circumstance of drunkenness" (p. 1, Record).

After the prosecution had rested its case and the defense had presented the testimonies of Mateo and Dajugar about their alibis, or at the hearing on July 20, 1983, the three accused, Ambrocio, Aglugob and Martinez, all fifteen-year olds at the time of the commission of the crime, changed their plea of not guilty to guilty.

They were rearraigned. The trial judge interrogated them. In answer to the judge's questions, Aglugob answered that he was one of the killers of Pascual, that the killing was the offshoot of his drunkenness and that he felt in his conscience that he was guilty (184 tsn).

Ambrocio admitted that he was one of the killers of Pascual and he informed his parents of that fact. He was ready to suffer the consequences of his act (184-5, tsn).

But Martinez changed his mind. He told the court that he had no participation in the killing of Pascual. So, although he had changed his plea to guilty, this was withdrawn and his former plea of not guilty was restored (186 tsn).

On the same day, July 20, 1983, the trial court rendered a decision finding Ambrocio and Aglugob guilty but suspended sentence on the two and committed them to the custody of the Laoag City branch of the Ministry of Social Services and Development.

Trial was continued as to Mateo, Dajugar and Martinez. In its decision of July 29, 1983, the trial court found them guilty of murder, sentenced Mateo and Dajugar to reclusion perpetua and ordered the three accused to pay solidarily an indemnity of P43,496 to the heirs of the victim, Manuel Pascual (Criminal Case No. 1751).

Mateo did not appeal. Martinez was also committed to the Laoag City branch of the Ministry of Social Services and Development. Only Dajugar appealed.

Dajugar contends in this appeal that the trial court erred in admitting his confession, considering that he was maltreated and that he was not informed by the investigator that if he could not get a lawyer he would be provided with one to assist him. The Solicitor General recommends Dajugar's acquittal on that ground (People vs. Pascual, G. R. No. 53403, November 12, 1981, 109 SCRA 197, 205). Without his confession, there is allegedly no evidence as to his complicity in the killing.

Article IV of the Constitution provides:

"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 admissible in evidence."

Section 20 on its face requires that the accused under custody should be advised that he has the right to remain silent and the right to be assisted by counsel. It should be noted that article 125 of the Revised Penal Code, as amended, provides that "in every case, the person detained shall be informed of the cause of his detention and

shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel." (See sec. 11, Rule 112, Rules of Court.)

However, in *Miranda vs. Arizona*, 384 U. S. 436, 16 L. ed. 694 (a five-to-four decision, said to be an "earthquake in the world of law enforcement" and a "handcuff on the police"), it was held that "in order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him." (p. 723, Syllabus No. 33.)

In this case, in the confession of appellant Dajugar, he was merely informed of his right "to remain silent and to hire a lawyer to assist" him. (Preliminary Question, Exh. K-4.) Dajugar was 18 years old, who finished third year high school. He said in his confession that he "used a scout knife in stabbing" Pascual. (No. 5, Exh. K-4.)

Appellant's contention might be tenable if only his confession would be taken into account. However, there are five (5) extrajudicial confessions in this case. In the three (3) confessions of Ambrocio, Aglugob and Mateo, all taken by Patrolman R. A. Ventura, the following admonition is found (Exh. H, I and J):

"6. Q - If you cannot afford to hire a lawyer, we can hire one so that he will assist you during your investigation? A - No more, sir, as I will be telling the truth."

In the case of Dajugar, the investigator apprised him of his right to remain silent and to have counsel and then gave him this warning:

"Question: I am also informing you that your statement may be used as evidence in favor or against you in any Court, do you still want to continue giving your statement without a lawyer to assist you? - Answer: Yes, sir." (Exh. K-4.)

The rule is that "extrajudicial confessions, independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime" (*People vs. Condemena*, L-22426, May 29, 1968, 23 SCRA 910, 919).

"While confessions of a co-conspirator are not ordinarily admissible as evidence against another co-conspirator, the fact that they implicate the latter and were made soon after the commission of the crime, is circumstantial evidence to show the probability of their co-conspirator having actually participated therein." (*People vs. Lumahang*, 94 Phil. 1084.)

The admissibility of the four confessions of Dajugar's co-accused is not in question in this appeal. The recitals therein as to Dajugar's involvement in the case, which are partly corroborated by Ramirez' testimony, are evidence against Dajugar.

His counsel contends that the lower court erred in convicting Dajugar on the basis of his confession, that he is not guilty of murder, that treachery, evident premeditation, nocturnity, abuse of superior strength and drunkenness were not aggravating and that he is entitled to a one-degree reduction of his penalty because he was less than eighteen at the time of the killing. He was born on October 11, 1963 (60 tsn August 12, 1982).

We hold that there is sufficient evidence proving that appellant Dajugar was a co-principal in the killing. It was qualified by abuse of superiority. The fiscal was mistaken in characterizing it as generic aggravating. The five accused ganged up on Pascual. The latter as a tricycle driver had imprudently joined the five accused in the drinking spree.

The circumstances of treachery and evident premeditation, which were alleged in the information as qualifying,

were not proven. Intoxication, which was nonhabitual and unintentional, is mitigating.

At the time of the commission of the crime, Dajugar was below eighteen. He was exactly 17 years, 11 months and 28 days old. Therefore, he is entitled to a one-degree reduction of his penalty (Art. 68, Re-vised Penal Code). The maximum of his indeterminate sentence should be taken from prision mayor maximum; the minimum, from prision correccional maximum.

Considering all the circumstances of this case, particularly that Dajugar's participation in the assassination was due to camaraderie (barkada), drunkenness and teenage indiscretion, he may be paroled after serving his minimum sentence, if he satisfies the other legal requirements.

WHEREFORE, appellant Dajugar is sentenced to four years, two months and one day of prision correccional as minimum to ten years and one day of prision mayor as maximum. In other respects, the lower court's judgment is affirmed. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), dissent on the grounds stated by the Solicitor General.

Abad Santos, J., in the result.

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