

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO TORREFRANCA, ALIAS “TONY”; SOFRONIO GILBOLINGO, ALIAS “PONYONG”; ISAIAS DARO, ALIAS “ELY”; TIRSO MELECIO, ALIAS “TIRSO...

G.R. No. 67302. June 18, 1987

Ponente: PARAS, J.

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PARAS, J.:

Accused Antonio Torrefranca alias "Tony", Sofronio Gilbolingo alias "Ponyong", Isaias Daro alias "Ely", Tirso Melecio alias "Tirso", Olipio Arellano alias "Apyot" and Benedicto Botohoy were charged with the crime of Robbery in Band with Double Homicide before the Regional Trial Court of the City of Tagbilaran, Bohol, Seventh Judicial Region, Branch I.

On the same day that the information was filed, the fiscal filed a motion requesting the discharge of accused Botohoy. After the prosecution had presented its evidence and rested its evidence (accused Botohoy was among the prosecution witnesses who testified) the trial court granted the said motion for discharge and ordered Botohoy's release from detention.

Trial proceeded against the other accused, and in a decision* dated January 25, 1984, the trial court rendered judgment, the dispositive portion of which, reads:

"WHEREFORE, finding the herein accused Antonio Torrefranca alias Tony, Sofronio Gilbolingo alias Ponyong, Isaias Daro alias Ely, Tirso Melecio alias Tirso and Olipio Arellano alias Apyot guilty beyond reasonable doubt of the special crime of Robbery with Homicide, all said accused are hereby sentenced to suffer the penalty of death and to pay severally and jointly the following damages, to wit:

- 1) Twelve Thousand Pesos (P12,000.00) by reason of the death of Vivencio Diaganon to be paid to his legal heirs;
- 2) Twelve Thousand Pesos (P12,000.00) by reason of the death of Flaviana Diaganon to be paid to her legal heirs;
- 3) Five Thousand Pesos (P5,000) as moral damages to be paid to the legal heirs of Vivencio Diaganon;
- 4) Five Thousand Pesos (P5,000) as moral damages to be paid to the legal heirs of Flaviana Diaganon;
- 5) To pay their proportionate share of the costs.

SO ORDERED." (p. 37, Rollo)

The facts of the case, as found by the trial court, are summarized as follows:

In the early evening of March 25, 1981, Botohoy went to the store of Gilbolingo at the junction of Barangay Libertad Norte, Sagbayan, Bohol to take a ride for Batuan, Bohol, to see his wife who was harvesting palay

thereat. Inside the store, he saw the appellants Torrefranca, Daro, Melecio, Arellano and Gilbolingo. Gilbolingo approached Botohoy and took his sickle and bolo (p. 26, TSN), then placed them on the shelves of the store. Botohoy observed that the appellants were drinking "tuba" and were discussing something which he could not hear, as he was far from the group. Thereafter, Gilbolingo and Torrefranca forced him to go with the group to the house of the Diaganon couple.

On their way to the Diaganons' house, Botohoy noticed that Gilbolingo brought a bolo and his (Botohoy's) sickle, Daro carried a small bolo, Melecio had a piece of wood, Arellano carried a small bolo, while Torrefranca had a revolver. At about 7:00 o'clock in the evening, the group reached the house of the Diaganon couple, which is a kilometer away. Gilbolingo called for Flaviana Diaganon, who, upon seeing Gilbolingo, readily invited him in. Whereupon, the group rushed up the stairs. While doing so, Torrefranca covered his head and face with a black cloth. (pp. 39-42, TSN)

Once inside, Gilbolingo held Flaviana by the hair and hacked her neck with the sickle (Exh. A). Flaviana fell down on the floor, spattering blood all over Gilbolingo's blue t-shirt. Then, Gilbolingo hacked her forearms and took the bundles of money on her waist, which were rolled inside a stocking (pp. 42-51, 53, TSN).

Meanwhile, Torrefranca, who was holding a gun, positioned himself at the sala while Daro and Melecio entered the bedroom of Vivencio Diaganon. Botohoy heard Vivencio's voice, pleading to Daro to stop assaulting him. Then, Daro came out of the room, carrying under his armpit a blanket and trousers, and holding a bolo covered with blood (pp. 57-58, TSN). Melecio also came out from the room of Vivencio, carrying a piece of wood covered with blood. Torrefranca then ordered Daro and Melecio to hurry up and look for money. Whereupon, Daro opened the drawer of a sewing machine and brought out a bundle of money, two centimeters thick. Torrefranca went to a big bamboo basket and dug into the palay inside. He got a bundle of money and placed it in his pocket (pp. 63-69, TSN). Arellano searched another room in the house but was not able to get anything (pp. 69-70, TSN).

Thereafter, Torrefranca announced to his companions: "Let us go down now." Before leaving the house, Torrefranca increased the volume of the radio, which was then set on a small table. Torrefranca removed his mask, as he went down the house, and took custody of all the money taken from the victims. When the group returned to Gilbolingo's house, Torrefranca explained that they could not yet divide the loot because they may tend to spend it and may direct suspicion on them (pp. 70-78, TSN). Then, he warned Botohoy not to report the matter to the police, otherwise, he would kill Botohoy and his family.

The following morning, Alfonso Diaganon, a son of Vivencio Diaganon by a previous marriage, went to the house of the victims, upon being informed by one of the victims' farm hands that something tragic had happened to the two old persons. He saw Flaviana Diaganon lying on the floor leading to the kitchen with a large wound on her neck, and Vivencio Diaganon lying prostrate on his bed in the bedroom, with wounds on the forehead, left cheek and on the sides of his body. He also discovered an amount of Twenty One Thousand Pesos (P21,000.00) concealed among the palay. Then, he reported the matter to the police.

On the same day, Dr. Estanislao Camacho, Municipal Health Officer of Sagbayan, Bohol autopsied the bodies of the victims and reduced his findings into writing, to wit: that the cause of death of Vivencio Diaganon was massive hemorrhage of the head and the right chest, probably caused by a sharp pointed instrument (pp. 73-74, TSN); and that the cause of death of Flaviana Diaganon was massive hemorrhage, coming from the neck caused by a sharp instrument, possibly a sharp bladed scythe (pp. 80-81, TSN).

On April 15, 1981, when Botohoy was apprehended by the police, Botohoy executed an extrajudicial confession revealing the details of the commission of the outrageous offense and identifying the appellants as the perpetrators

thereof. Thus, on April 16, 1981, Sgt. Amedio G. Cagata applied for and obtained a search warrant from the Hon. Andrew S. Namocatcat, Judge of the then Court of First Instance of Bohol, to authorize the search of the residences of the appellants. From the house of Daro, they recovered one small bolo, stained with blood (Exh. "B"), two bales of cloth (Exhs. "D" and "D-1") and one t-shirt (Exh. "L"); from Gilbolingo's house, they recovered a blue t-shirt, stained with blood (Exh. "C"); and from Melecio's house, they found a white t-shirt (Exh. "M").

On April 20, 1981, Gilbolingo executed a document entitled Waiver of Rights, in which he expressed his desire to waive his rights to remain silent and to the presence of counsel during interrogation. Thereafter, he executed an extrajudicial confession admitting his participation in the commission of the crime and naming all the other accused, except Arellano (his brother-in-law) as his co-conspirators. Subsequently, Gilbolingo subscribed and swore to his Waiver of Rights and Extrajudicial confession before the then Assistant Provincial Fiscal Daniel B. Bernaldez of Bohol.

During the trial, the appellants testified on their whereabouts at the time of the incident, their defenses amounting to a general denial and alibi. Gilbolingo subsequently repudiated the voluntariness of his extra-judicial confession, claiming that he was merely forced to sign prepared documents (p. 117, Rollo). The defense also presented witness Epifanio Abaño, who assumed full responsibility for the crime, allegedly with a certain Marlito Paca (whose family name he does not know), a certain Cris (whose family name he does not also know), Cito Petalcorin, Junior Tutor, Junior Petalcorin and Narding Abari (p. 24, Rollo).

After trial, the trial court convicted the appellants of the complex crime of Robbery with Homicide, and sentenced them as aforesaid.

In this appeal, the appellants assail the credibility of the testimony of their co-accused Botohoy. They also contend that the discharge of Botohoy to become a state witness was in violation of Rule 119, Section 9, for he appears to be the most guilty (Botohoy had been working in the plantation of the deceased spouses and had known the extent of their earnings) and has been a fugitive from justice for attempted rape, a crime involving moral turpitude.

We have carefully examined the records of the case and We find no plausible reason to alter the trial court's appreciation of the credibility of Botohoy's testimony.

In the discharge of a co-accused, the trial court may reasonably be expected to err. Where such error is committed, however, the error of the court in discharging such accused cannot affect the legal consequences of his discharge (US vs. Mendiola, 82 Phil. 740). Neither can such error affect the testimony and the quality of his testimony. Even if the discharged witness should lack some of the qualifications enumerated by Section 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded (US vs. Abanzado, 37 Phil. 658; People vs. Jamero, 24 SCRA 206).

Thus, the trial court correctly gave credence to Botohoy's testimony in court, which confirmed the material allegations of his extrajudicial confession, pointing to the appellants as the perpetrators of the crime.

Indeed, appellants' mere denial and stories of alibi cannot prevail over the positive testimony of Botohoy, that the appellants killed the Diaganon spouses and ransacked the latter's house. Post mortem findings of Dr. Estanislao Camacho corroborate Botohoy's testimony on the injuries sustained by the victims. The results of the searches conducted in the respective residences of the appellants, likewise, substantiate Botohoy's description of the t-shirts worn by the appellants at the time of the incident, the weapons used by them, and the articles which formed part of the loot (TSN, pp. 478-490).

Appellants argue that Botohoy's testimony is biased and unreliable, because he harbored ill-feelings against them,

to wit: Sofronio Gilbolingo mauled Botohoy in 1979 and they have become enemies since then; Isaias Daro testified against Botohoy in a case for Malicious Mis-chief filed against the latter; Olipio Arellano's wife also testified against Botohoy in said Malicious Mis-chief case; Tirso Melecio reprimanded Botohoy's son for stealing his (Melecio's) corn; and Antonio Torre Franca was responsible for the arrest of Botohoy, as suspect in the instant case. (p. 114, Rollo).

We find these supposed insidious motivations, however, too frivolous and shallow, as to induce Botohoy to testify falsely against the appellants, at the risk of confessing participation in the commission of such grave offenses, as in the instant case. As held in *People vs. Tatlonghari*, 27 SCRA 726:

"The reasons for the alleged individual grudges of the witnesses against appellant being so flimsy and uncertain, it is incredible that they could constitute as sufficient motive for an average individual to conjure up so serious a charge as murder and thereby send an otherwise innocent man to a long stretch of prison terms.
x x x"

We find the testimony of witness Epifanio Abaño, assuming full responsibility for the commission of the crime, unworthy of credit and belief. A careful analysis of the evidence adduced in this case shows that his statements are substantially inconsistent on material points, rendering him a totally unreliable witness.

Thus, on cross examination, he testified that on the date of the incident, he and his companions waited for nighttime at the public market in Barangay San Vicente Sagbayan, Bohol; and that the bodies of the victims were lying side by side on the floor of the room of their house (TSN, p. 1292).

At the trial, however, it was established that on March 25, 1981, there was no public market in Barangay San Vicente, Sagbayan, Bohol. It was also clearly proven that the victims' bodies were lying in different places (where the victims were respectively killed). Witness Mauricio Petalcorin (one of his alleged co-conspirators), denied any participation in the robbery and advanced the reason why Abaño testified in favor of the appellants, to wit:

"Q - Can you give any reason why Epifanio Abaño will testify here and point you as the person who killed the old woman in that robbery case committed in San Vicente, Sagbayan, Bohol, on March 25, 1981?

A - I know the reason.

Q - Please tell the Honorable Court?

A - That fellow...

INTERPRETER:

Witness pointing to a person who answered to the name Epifanio Abaño

Cont't of the Answer:

is always asking money and that Gilbolingo is used to give money. x x x

Q - How long have you known Sofronio Gilbolingo?

A - May 19, 1983 since the time that I was placed in jail because we were together in one cell. x x x" (pp. 1364-1365, TSN)

The foregoing infirmities in witness Abaño's testimony lead us to no other conclusion than that his narrations were last minute concoctions to exculpate the appellants from their criminal responsibilities.

Finally, appellant Gilbolingo's claim that his extra-judicial confession was secured thru force or intimidation,

deserves scant consideration. While he claimed that Sgt. Cagata maltreated and coerced him into signing prepared documents, he did not complain of the alleged maltreatment when he was brought before Provincial Fiscal Bernaldez before whom he swore to the truth of the same. Neither did he file a complaint thereafter against Sgt. Cagata. The trial court also found that his confession is replete with details, that could have been furnished only by the appellant himself (People vs. Nillos, 127 SCRA 207). Additionally, it is alleged that since he made the extra-judicial confession in the absence of his attorney, the confession has no evidentiary value, even if his right to have his counsel present at the time of the interrogation or confession had been WAIVED by him, the waiver being VOID. Assuming this to be so, still the evidence presented in this case excluding said confession, will suffice to con-vict all the appellants.

Well settled is the rule that conclusions of the trial judge, regarding the credibility of witnesses, command great respect and consideration, specially when, as in this case, they are supported by the evidence of record.

WHEREFORE, the appealed decision is hereby AFFIRMED, subject to the following modifications: (1) the death penalty is reduced to reclusion perpetua* in view of the provisions of the 1987 Constitution and (2) the indemnity to the victims' heirs is increased from P12,000.00 to P30,000.00 for each victim.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Cruz, J., see separate opinion.

* Penned by Judge Mercedes Gozo-Dadole.

* "Art. III, Sec. 19(1) of the 1987 Constitution provides: Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

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SEPARATE OPINION

CRUZ, J.:

The extrajudicial confession of Gilbolingo should not have been admitted because it was obtained in violation of the Bill of Rights and existing applicable jurisprudence. (Art. IV, Sec. 20, 1973 Constitution; Art. III, Sec. 12, 1987 Constitution; People v. Galit, 135 SCRA 465; People v. Sison, 142 SCRA 219.) I concur in the result, however, because, as the majority opinion observes, "even if we were to disregard his confession, the other evidence presented in this case can suffice to convict all the appellants."

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