

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIAN MENDOZA FERMITA, DEFENDANT-APPELLANT.

G.R. No. 67858. June 29, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The appellant, Julian Mendoza y Ermita, 38 years of age, was charged before the Regional Trial Court, Branch X, in Balayan, Batangas, with the crime of Murder for killing with treachery and evident premeditation one Felipe Hernandez y Bata.

The appellant, upon arraignment on July 31, 1979, pleaded "not guilty." But before the prosecution was able to present its evidence, the appellant, assisted by counsel, manifested his willingness to change his plea by pleading guilty to the lesser offense of homicide. However, due to the vigorous objection of the fiscal who claimed that the crime committed was a clear case of murder, trial proceeded.

After trial, the lower court rendered judgment convicting the appellant of the crime charged, the dispositive portion of which reads:

IN THE LIGHT OF ALL THE FOLLOWING CONSIDERATIONS, the Court finds the accused Julian Mendoza y Ermita guilty beyond reasonable doubt of the crime of Murder qualified by treachery and aggravated by dwelling and evident premeditation with no mitigating circumstance to offset the same and hereby sentences him to suffer the penalty of DEATH, to indemnify the heirs of the victim Felipe Hernandez in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.[1]

Before us on automatic review, the appellant presents the following assignment of errors:

I.

THE TRIAL COURT ERRED IN FINDING THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER QUALIFIED BY TREACHERY WITH THE AGGRAVATING CIRCUMSTANCES OF EVIDENT PREMEDITATION AND DWELLING CONSIDERING THAT:

1. THE EXTRAJUDICIAL CONFESSION OF THE DEFENDANT WAS OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT.

2. THERE WAS NO COMPETENT, DIRECT EVIDENCE AND/OR EYEWITNESS TESTIMONY TO

SUSTAIN A FINDING THAT THE DEFENDANT WAS THE ONE WHO SHOT AND KILLED THE DECEASED.

3. THE TESTIMONY OF TERESITA HERNANDEZ IS PATENTLY NOT CREDIBLE AND APPEARS TO HAVE BEEN FABRICATED.

4. THE PARAFFIN TEST CONDUCTED ON THE DEFENDANT WAS, AT BEST, INCONCLUSIVE AND SHOULD HAVE BEEN DISREGARDED BY THE TRIAL COURT.

5. THE ALIBI OF THE DEFENDANT SUFFICIENTLY ESTABLISHED THE INNOCENCE OF THE DEFENDANT.

II.

EVEN GRANTING THAT THE EVIDENCE ADDUCED DURING THE TRIAL WAS SUFFICIENT TO ESTABLISH THE GUILT OF THE DEFENDANT, THE TRIAL COURT ERRED IN FINDING THAT THE CRIME FOR WHICH THE DEFENDANT SHOULD BE HELD LIABLE IS MURDER QUALIFIED BY TREACHERY AND AGGRAVATED BY EVIDENT PREMEDITATION AND DWELLING. IF AT ALL, THE CRIME COMMITTED AND PROVED WAS ONLY HOMICIDE, WITHOUT ANY AGGRAVATING CIRCUMSTANCES CONSIDERING THAT:

1. THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT PROVED.

2. THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION WAS NOT PROVED.

3. THE AGGRAVATING CIRCUMSTANCE OF DWELLING WAS NOT PROVED.

III.

AS A NECESSARY/LOGICAL CONSEQUENCE OF ERRORS I AND II ABOVE, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE DEFENDANT. THE DEFENDANT SHOULD

HAVE BEEN ACQUITTED OR, AT WORSE, THE PENALTY SHOULD HAVE BEEN THAT FOR THE CRIME OF HOMICIDE ONLY.[2]

The appellant rejects the trial court's statement of facts, in its decision dated April 13, 1984, insisting that it is replete with findings which are not supported or have not been established by credible and competent evidence. The undisputed facts are limited to the following:

On the night of 17 December 1977, at about 11:00 o'clock, Felipe Hernandez was awakened by the barking of dogs. He went outside the house to investigate and seconds later a shot rang out hitting Felipe Hernandez on the right side of his chest, resulting in his death. Upon hearing the shot, Amanda Pelagio Hernandez, wife of the deceased, likewise went out of the house and found her husband already mortally wounded. She then sought assistance from her neighbor, Margarito Magana and they immediately reported the shooting to the police authorities in Lian, Batangas.

Responding to the report, at about 1:00 o'clock in the morning of December 18, 1977, Captain Prudencio Umahon, Patrolman Roberto Jonson and other members of the Lian Police force, proceeded to the house of the deceased to conduct an investigation. The police investigators found Felipe Hernandez lying on the ground dead as a result of a gunshot wound. Thereafter, Pat. Jonson made a sketch of the place where the crime was committed and post mortem examination was conducted on the body of the deceased at about 4:00 o'clock in the morning of 18 December 1977 by Dra. Basilissa Tuni, Municipal Health Officer of Lian, Batangas.

Also at about 4:00 o'clock of the same morning, Amanda Pelagio Hernandez, the widow of the deceased gave a sworn statement to the police investigators wherein she said that she suspected the defendant Julian Mendoza, Quirico Ilao, and Mauricio Ilao to be the perpetrators, because she claimed that defendant Julian Mendoza had a grudge against the deceased. Quirico Ilao and Mauricio Ilao are the father-in-law and brother-in-law respectively of the defendant.

On the basis of the sworn statement of Amanda Hernandez, the police investigators invited for questioning the three suspects, who were forthwith brought to the police station at about 6:00 o'clock in the morning of 18 December 1977. The three suspects were detained at the police station for the duration of the day, without any formal investigation being made.

The next day, 19 December 1977 the three suspects were brought to Camp Vicente Lim, Laguna and, without the assistance of counsel, were subject to a paraffin test. The results of the test showed defendant Julian Mendoza positive for nitrates and the other two had negative findings.

Upon return that same day to Lian, Batangas, the defendant, without the assistance of counsel, appears to have executed an extra-judicial confession where he admitted that he alone shot and killed the deceased.[3]

The appellant interposed the defense of alibi and repudiated his extra-judicial confession. His version before the trial court is as follows:

xxx [T]hat at about 7:00 o'clock in the morning of December 17, 1977, he and his brother-in-law Mauricio Ilao went to the mountain in Barrio Tulo for the purpose of applying fertilizers on their corn crop. That after applying fertilizers they returned to their respective residence in Barrio Kapito, Lian, Batangas, where they took lunch. After taking his lunch, he made firecrackers from 2:00 o'clock up to 5:00 o'clock in the afternoon. At about 7:00 o'clock in the evening, he had stomach ache and he requested his wife to fetch Querico Ilao, his father-in-law, so that the latter could treat his stomach trouble; that his father-in-law and his brother-in-law Mauricio Ilao arrived in his house at 7:00 o'clock in the evening of December 17, 1977 and both stayed in his house until the following morning of December 18, 1977; that he never left his house from 7:00 o'clock in the evening of December 17, up to the following day because he was being treated of stomach ailment by his father in-law. The accused further testified that at about 7:00 o'clock in the morning of December 18, 1977, the police officers of Lian, Batangas, went to his house for the purpose of inviting him to the Police Station to shed light on the killing of Felipe Hernandez the night before; that before proceeding to the Headquarters, they dropped by for his brother in-law Mauricio Ilao and his father in-law Querico Ilao; that they voluntarily went with the Police Officers to the Police Headquarters in response to the invitation of Station Commander. The three stayed overnight in the Municipal Jail of Lian, and on the next day, December 19, 1977, they were brought to the P.C. Headquarters at Canlubang, Laguna, to undergo paraffin test. After they underwent a paraffin examination, they were brought back to the Municipal Jail of Lian. Upon their arrival, the accused was informed in the presence of his father in-law Querico Ilao and brother in-law Mauricio Ilao that he was found positive of powder burns but that his father in-law and brother in-law were found negative. After being informed of the results, police investigator Jonson maltreated him by inserting his head in a toilet bowl and a drum full of water; that because he could no longer withstand the torture, he reluctantly agreed to make a confession after he was asked which would he prefer between life and death.[4]

The appellant was convicted by the trial court mainly on the strength of the following evidence:

1. The extra-judicial confession allegedly executed by the appellant admitting the commission of the crime.
2. The testimony of Teresita Hernandez, the 22-year-old daughter of the deceased Felipe Hernandez, to the effect that on the night of December 17, 1977, upon hearing the barking of the dogs owned by her family, she peeped through the window, and just then, heard a gunshot. At that precise time, she saw the appellant, Julian Mendoza, running away from their house carrying a long firearm. She positively identified the appellant because she beamed the light of a powerful five-battery flashlight on the appellant. She went out to the street and saw her wounded father sprawled on the ground; she then placed his head on her lap. Her father died a few minutes later as a result of the gunshot wound.
3. The paraffin test which showed the appellant positive for gunpowder residue.
4. The allegation that the appellant had killed the deceased in retaliation against the latter's having testified against him, three days prior to the killing, in a case involving the stealing of pieces of bamboo.

The appellant contends that, in convicting him of the crime of murder, the trial court erred in relying heavily on the extrajudicial confession he had made which is inadmissible in evidence as it had been obtained in violation of his constitutional rights.

We find merit in the contention of the appellant. A careful reading of the extrajudicial confession reveals that the appellant, an illiterate fanner, had not been fully apprised of his constitutional rights and therefore could not have made a valid waiver of the right to be assisted by counsel. Whenever a protection guaranteed by the Constitution is waived by the person entitled to that protection, the waiver must be examined meticulously for veracity. In other words, the prosecution must prove with strong and convincing evidence that the accused was truly not interested in having a lawyer assist him during the taking of that confession,[5]

The extrajudicial confession had been obtained and prepared cavalierly. We quote:

1. PASUBALI: Ipinababatid ko sa iyo ginoong JULIAN MENDOZA y ERMITA, na kayo ay nasa ilalim ng pagsisiyasat sa kasalanang pag patay, at ayon sa ating Bagong Saligang Batas, ay may karapatan kang manahimik o huwag sumagot sa lahat ng aking iitanong sa iyo, o sumagot sa tugaygay ng iyong napipiling manananggol, nauunawaan mo ba ang ibig kong sabihing ito?

SAGOT: Opo.

2. TANONG: Ipinababatid ko pa rin sa iyo, ginoong Julian Mendoza, na ang pag tatanong kong ito at ang magiging kasagutan mo ay maari naming magamit laban sa iyo, o magamit din namin para sa kaligtasan mo, nauunawaan mo ba ito?

SAGOT: Opo.

3. T Ngayong nabatid mo ang iyong karapatan, ay nahahanda ka bang magbigay ng iyong malaya at kusang loob na salaysay at handang sumagot ng pawang katotohanan sa lahat ng aking itatanong sa iyo, kahit wala kang manananggol na tutugaygay sa iyo?

S Opo.[6]

The appellant was informed of a number of rights: his right to remain silent, his right to have a defense counsel of his choice, and his right to be informed that his statements may be used against him. He was not, however, informed of his right, as an indigent, to a counsel appointed by the State. Under our justice system, in order to fully apprise a person under interrogation of the extent of his rights, it is necessary to warn him not only that he has a right to consult with an attorney, but, also that if he is indigent, a lawyer shall be appointed to represent him. Furthermore, the appellant here was not informed that if, at any time during the interrogation, he wished to have the assistance of counsel, the interrogation would cease until an attorney was present. The withholding of these basic rights of the accused which were guaranteed by Sec. 20, Article IV (Bill of Rights) of the 1973 Philippine Constitution — then the fundamental law in force at the time the confession was taken — rendered the extrajudicial confession inadmissible as evidence.[7] The appellant could not have knowingly and voluntarily waived his constitutional rights to counsel because he was not fully informed of such rights.

The right to counsel is inviolable.

When the investigation conducted by the police authorities is no longer a general inquiry into an unsolved crime but has begun to focus on the guilt of a particular suspect for the purpose of eliciting incriminating statements, the suspect's right to counsel is vital. On this point, the United States Supreme Court held in the celebrated case of *Escobedo vs. Illinois*:^[8]

In *Massiah v. United States*, 377 US 201, 12 L ed 2d 246, 845 S Ct 1199, this Court observed that "a Constitution which guarantees a defendant the aid of counsel at ... trial could surely vouchsafe no less to an indicted defendant under interrogation by the police in a completely extrajudicial proceeding. Anything less . . . might deny a defendant 'effective representation by counsel at the openly stage when legal aid and advice would help him.'" *Id.*, at 204, 12 L ed 2d 249, quoting Douglas, J., concurring in *Spano v. New York*, 360 US 315, 326, 3 L ed 2d 1265, 1274, 79 S Ct 1202.

"The guiding hand of counsel" was essential to advise petitioner of his rights in this delicate situation. *Powell v. Alabama*, 287 US 45, 69, 77 L ed 158, 170, 53 S Ct 55, 84 ALR 527. This was the "stage when legal aid and

advice¹ were most critical to petitioner. *Massiah vs. United States*, supra, 377 US at 304, 12 L ed 2d at 249. It was a stage surely as critical as was the arraignment in *Hamilton v. Alabama*, 368 US 52, 7 L ed 2d 114, 32 S Ct 157, and the preliminary hearing in *White v. Maryland*, 373 US 59, 10 L ed 2d 93, 83 S Ct 1050. What happened at this interrogation could certainly "affect the whole trial," *Hamilton v. Alabama*, supra, 368 US at 54, 7 L ed 2d at 116, since rights "may be as irretrievably lost, if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic purposes." Ibid. It would exalt form over substance to make the right to counsel, under these circumstances, depend on whether at the time of the interrogation, the authorities had secured a formal indictment. Petitioner had, for all practical purposes, already been charged with murder.

In *Gideon v. Wainwright*, 372 US 335, 9 L ed 2d 799, 83 S Ct 792, 93 ALR 2d 733, we held that every person accused of a crime, whether state or federal, is entitled to a lawyer at trial. The rule sought by the State here, however, would make the trial no more than an appeal from the interrogation; and the "right to use counsel at the formal trial (would be) a very hollow thing (if), for all practical purposes, the conviction is already assured by pre-trial examination." In re *Groban*, 352 US *330, 344, 1 L ed 2d 376, 387, 77 S Ct 510 (Black, J., dissenting). "One can imagine a cynical prosecutor saying: 'Let them have the most illustrious counsel, now. They can't escape the noose. There is nothing that counsel can do for them at the trial.'" *Ex parte Sullivan*, 107 F Supp 514, 517-5 18.

Moreover, in the case at bar, the appellant could not have validly waived his constitutional right to counsel without the presence and assistance of counsel. We have held in *Morales vs. Ponce Enrile*,^[9] *People vs. Galit*,^[10] and *People vs. Lumayok*,^[11] that:

The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.

In *People vs. Decierdo*,^[12] the Supreme Court en banc ruled that the absence of counsel nullifies the confession of the defendant. We said:

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There is no doubt that the accused's alleged extrajudicial confession is in the nature of an uncounselled confession and hence, inadmissible in evidence. Section 20 of Article IV of the 1973 Constitution applies. It provides:

Section 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 inadmissible in evidence.

That the aforequoted provision applies has been affirmed in a long line of decisions, the confession in question having been obtained during the effectivity of the 1973 Constitution, although the incumbent Chief Justice of

this Court insists that coerced confessions obtained either prior to or after the effectivity of the 1973 Charter are equally inadmissible in evidence.

While the right to counsel is a right that may be waived, such waiver must be voluntary, knowing, and intelligent. The waiver must furthermore be in the presence of the accused's lawyer.

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We have not, after all, built a perfect democracy. "Invitations" for questioning by police agencies, forced "reenactments" of crimes, and coerced confessions are practices that have not perished with the passing of the ancien regime. It is in such proceedings that the guiding hand of counsel becomes truly essential. The fact that the respondent may, in the minds of the peace officers holding him under custody, be truly guilty is of no moment, for if he is, such peace officers are charged to present proof of such guilt. But let that guilt rest on competent evidence, and not from an involuntary admission.

For the time-honored rule is that it is the lesser evil to set a hundred guilty men free than to have one innocent person languish in prison. As humanity enters the threshold of the 21s' century, it is indeed unimaginable that the dreaded days of the inquisition should still haunt us. The rights of a human being, no matter how unfortunately circumstanced, deserve full recognition and protection. Only then can we be truly called a civilized society.[13]

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The case at bar profoundly illustrates the compelling need for instrumentalities of the court and police authorities to render justice to the poor, the marginalized, and the disadvantaged by making them understand fully that they, like all other persons in our country, have basic constitutional rights which no one can take away from them.[14] As earlier emphasized, the appellant is a poor farmer who can neither read nor write. A perfunctory and ceremonial reading of his rights can not therefore by any means convey to him the true import and substance of these constitutional safeguards and how they can aid him in exculpating himself from the grievous crime of which he was charged. At the risk of being irreverent, it is no different from reading the ten commandments to a deaf and dumb sinner. For as we held in *People vs. Quizon*. [15]

"x x x the right of a person under interrogation 'to be informed' implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been 'informed' of his rights. Now, since the right 'to be informed' implies comprehension, the degree of explanation required will necessarily vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered."

We hold, therefore, that the extrajudicial confession, heavily relied upon by the prosecution and adopted by the trial judge in convicting the appellant, is inadmissible in evidence.

Without the extrajudicial confession, we hold that the prosecution does not have sufficient evidence to overcome the presumption of innocence and establish the guilt of the appellant beyond reasonable doubt.

We now turn to the seemingly most damaging evidence left against the appellant, which is the testimony of Teresita Hernandez. The appellant argues that Teresita's testimony is 1) patently not credible, and 2) appears to have been fabricated. This submission is based on the fact that Teresita, a daughter of the victim and a claimed eyewitness to the crime, did not at once divulge to the police authorities or to her mother, or to anybody, what she had allegedly seen, undoubtedly a startling event. Teresita lamely explained such failure that she was not able to make such an expected revelation, much more to give any statement to the police investigators because when they were taking down the statement of her mother, she (Teresita) was attending to the corpse of her father;[16] that she had belatedly spoken to her mother about what she had allegedly seen only the day before her father's burial, or two days after the incident;[17] that she was not able to immediately tell her mother and the police investigators about what she had seen because she was shocked by her father's death;[18] and that she went to the police station to report what she had seen four days after the incident but the policeman, whom she could not identify, told her that it was not necessary to take down her statement because Julian Mendoza had already admitted his guilt.[19]

The appellant submits that no state of grief or shock could have prevented Teresita from immediately reporting what she had allegedly witnessed.

We agree with the appellant.

Granting that by some remarkable coincidence, considering the lateness of the hour (11:00 o'clock p.m.) and the surreptitiousness of the attack, Teresita had seen the appellant running away from the scene of the crime carrying a long firearm immediately after hearing the gunshot; it is incomprehensible why she had not reported such a significant fact. She had a very early opportunity to do so because the police officers of the town were there at the scene of the crime, where she was also, just two hours after her father was shot and killed. The most natural reaction of a witness to such an incident, indeed a *res gestae* would have been to tell her mother about it, and subsequently the police authorities, who had, as earlier adverted to, responded to the summons for help two hours after the reported murder. Human nature would have compelled her to declare that she had seen, and in fact, could identify, the assailant of her father. But she withheld that vital information from everybody for an unreasonable length of time (at least four days after the commission of the crime, by her own statement), which makes her testimony suspect. Teresita's testimony smacks of fabrication and, therefore, can not support a conviction.

Furthermore, Amanda Pelagio, the wife of the deceased testified on August 15, 1979 that:

MACATANGAY:

And that you mentioned here Julian Mendoza the accused in this case, and you presumed that he was the one who shot your husband because of the quarrel between your husband and that of Julian Mendoza, is that right?

A: Yes, sir.

Q: But you did not see him on the place where the incident happened?

A: No, sir [20]

Amanda did not mention in her testimony that her daughter, Teresita, had told her that she (Teresita) had seen the appellant shoot her father. Amanda merely presumed, at the time she gave her testimony, that it was the appellant who had killed her husband because of an alleged quarrel between them.

When Teresita testified two and one-half months after her mother had taken the witness stand, however, she declared for the first time that she had told her mother two days after her father's killing that she had seen the appellant running away from the scene on the night of the incident.

Why did Amanda, at the time she testified, merely presume that it was the appellant who had killed her husband?

If her daughter had told her about what she had allegedly seen, Amanda would have insisted, not merely presumed, that the appellant was the culprit. No mention whatsoever was made by Amanda of Teresita's eyewitness account. Thus, based on the above circumstances, this court is constrained not to give credence to Teresita's testimony.

With respect to the paraffin test undergone by the appellant which yielded positive results for nitrates, we hold that this fact alone, uncorroborated by any other evidence, is not sufficient to establish the guilt beyond reasonable doubt of the appellant. The prosecution insists that the finding was due to the firing of the firearm which was employed to kill the victim. The defense on the other hand attributes the positive finding to the appellant's having applied fertilizer to his plantings and manufactured fireworks thereafter. It is submitted that both these activities could produce the same positive finding: Authorities on this subject seem to support the submission of the defense.

The (Diphenylamine or Parrafin) test is not conclusive as to the presence of gunpowder because fertilizers, cosmetics, cigarettes, urine, and other nitrogenous compounds with nitrites and nitrates will give a positive reaction.[21]

This (Diphenylamine or Parrafin) test has proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be definitely established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, Pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco. As a result, the usefulness of this test as evidence is very small, although it does have some investigative value.[22]

In case of doubt, we have to rule in favor of the appellant and adopt the interpretation consistent with his innocence. A vital finding of fact which negates the prosecution's insistence on the guilt of the accused is that no firearm was presented by the prosecution to corroborate its claim that Mendoza was the person who had fired the gun that felled Felipe Hernandez.

The trial court held that the contention of the appellant that the positive finding of the parrafin test was the result of the application of fertilizers to his corn crop and in making firecrackers hardly deserves any modicum of consideration. If it is true, the trial court said, that the powder burns found in the hands of the victim were the result of the application of fertilizers, how come the appellant's brother-in-law, Mauricio Ila, who also applied fertilizers on that same day, was found negative for nitrates?

From the records we find that this expressed doubt of the trial court had been sufficiently explained. The appellant testified as follows:

Q: What were you doing in that land of yours in the mountain while you were there?

A: I was applying fertilizer, sir.

Q: How about your brother-in-law, was he also applying fertilizer in his landholding?

A: He was plowing the field, sir [23]

Thus it is not surprising that only the appellant was found positive for nitrates because his brother-in-law did not apply fertilizer, but only plowed the field.

Nor could the alleged motive of the appellant for killing the victim overcome the presumption of innocence of the appellant. Relying on the speculations of the wife and the daughter of the deceased, the trial court found that the appellant held a grudge against the deceased because the latter had allegedly testified against the appellant in a certain criminal case involving the theft of pieces of bamboo three days prior to the killing of the deceased.

We, however, find this speculation contradicted by the wife of the appellant who testified that the deceased and the appellant were in good terms, to wit:

Q. You said that Felipe Hernandez is a relative of yours. Was he in good terms with your husband during his lifetime?

A: Yes sir.

Q: Why did you say so?

A: Because when he had our table made, we invited him, sir.

Q: When was that your table was made by Felipe Hernandez?

A: Two days before his death, sir.

Q Did you pay him after your table was made by Felipe Hernandez?

A: He did not accept payment.

Q. What did you do? What did you offer considering that he did not accept payment?

A: They just drink a little, sir.[24]

Furthermore, no evidence was submitted regarding the alleged criminal case wherein the deceased had testified against the appellant.

The trial court stressed in its decision that the appellant's eagerness to change his plea of not guilty by pleading guilty to the lesser offense of homicide, although rebuffed by the fiscal, is an inculpatory circumstance that strongly militates against his claim of innocence.[25]

We disagree.

The Court considers the fact that the appellant is a poor and illiterate farmer. He can only write his name and nothing more; he cannot read at all. We cannot exactly ascertain what motivated the appellant to plead guilty to a crime but such an unfortunate person, facing an accusation as serious as murder before our complex judicial processes, could have been easily prodded by his counsel to plead guilty to the lesser offense of homicide. He could have improvidently pleaded guilty without knowing and understanding the consequences of his act. For this reason, the appellant's offer, through counsel, to plead guilty to the lesser offense of homicide should not be taken as fatal to his claim of innocence.

Moreover, the appellant's manifestation regarding his willingness to withdraw his appeal and accept the penalty of reclusion perpetua as his death sentence had been automatically commuted pursuant to Sec. 19(1), Art. III of the 1987 Constitution (which took effect during his confinement at the New Bilibid Prison) proves the appellant's gullibility. When ordered by this Court to verify the genuineness and voluntariness of the said manifestation, the appellant's counsel de officio responded as follows:

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However, the accused-appellant further informed undersigned counsel that when he signed the 5 May 1988 letter, the consequences thereof had not been properly explained to him and he signed only at the prodding of some of his fellow prisoners. The accused-appellant is a poor, illiterate and disadvantaged farmer and undersigned counsel is inclined to accept his explanation that he did not realize what he was doing when he accepted the sentence of reclusion perpetua. The accused-appellant professed to undersigned counsel his innocence of the crime charged and when undersigned counsel explained to him that in accepting the sentence of reclusion perpetua, he had given up any chance of being declared innocent, the accused readily expressed to undersigned counsel his desire to continue with his case as an appealed case in the hope that this Honorable Court will set aside the trial court's decision and enter a new one acquitting the accused-appellant.[26]

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The defense of the appellant, which is alibi, is admittedly a weak defense. The Court, however, does not at once look upon it with disfavor; nor does it have a mental prejudice against the accused who uses it as his defense. For

the defense of alibi does not relieve the prosecution of the required burden of proof.[27] Nor is the rule that alibi must be satisfactorily proven ever intended to change the burden of proof in criminal cases.[28] In fact, alibi need not be inquired into where the prosecution's evidence is weak.[29] For the rule is that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense. We have held that:

It is to be admitted that the starting point is the presumption of innocence. So it must be, according to the Constitution x x x. Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies, x x x Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the State, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defense could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.[30]

Premises considered, we find the evidence for the prosecution inadequate to prove the guilt of the appellant beyond reasonable doubt.

WHEREFORE, the judgment appealed from is REVERSED and the appellant, Julian Mendoza y Ermita, is hereby ACQUITTED of the crime charged. No costs.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and Regalado, JJ., concur.

[1] Penned by Executive Judge Alberto A. Reyes.

[2] Appellant's Brief, 6-7; Rollo; 52-53.

[3] Id., 3-5; Rollo, 49-51.

[4] Decision 8-9; Rollo, 31-32.

[5] People vs. Decierdo, No. L-46956, May 7, 1987, 149 SCRA 496.

[6] Original Record, 6.

[7] People vs. Lasac, No. 64508, March 19, 1987, 148 SCRA 624; People vs. Quizon, No. 68603, June 25, 1986, 142 SCRA 362..

[8] 378 US 478 (1964).

[9] Nos. 61016-61105, April 26, 1983, 121 SCRA 538.

[10] No. 51770, March 20, 1985, 135 SCRA 465.

[11] No. 54016, October 1, 1985, 139 SCRA 1.

[12] Supra.

[13] W., 501-502, 511-512.

[14] People vs. Hassan, No. 68968, January 22, 1988, 157 SCRA 261.

[15] Supra.

[16] T.s.n., November 6, 1979, 13.

[17] Id., 29.

[18] Id., 30.

[19] Id., 13, 26.

[20] T.s.n., August 15, 1979, 17.

[21] Pedro Solis, Legal Medicine, 380 (1987).

[22] American Jurisprudence, Proof of Facts Annotated, Volume 5, 119-120(1960).

[23] T.s.n., December 7, 1981, 4.

[24] T.s.n., January 22, 1981, 9-10.

[25] Decision, 12; Rollo, 35.

[26] Rollo, 144-145.

[27] People v. Delmendo, No. L-32146, November 23; 1981, 109SCRA350.

[28] People v. Fraca, 108 Phil. 241 (1960).

[29] People v. Agripa, No. L-48625, June 29, 1984, 130 SCRA 185.

[30] People vs. Dramayo,. L-21325, October 29, 1971,42 SCRA 59.

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