

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER FERNANDO Y BAZAN, DEFENDANT-APPELLANT.

G.R. No. 68409. December 01, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

The defendant-appellant was nineteen years old when he was arrested on October 28, 1983, in Zamboanga City, for allegedly selling marijuana. He was taken that same evening to the Narcotics Command office where, after investigation, he signed a confession he later affirmed under oath. Charged with violation of the Dangerous Drugs Act, he was tried and ultimately convicted. The penalty imposed on him was life imprisonment plus a fine of P20,000.00 and the costs.[1]

As found by the trial court,* Roger Fernando was a suspected drug pusher who had earlier been placed under surveillance by the agents of the Narcotics Command. In the evening of the said date, Alfredo Conde, a civilian informer of the NARCOM, waited by pre-arrangement for Fernando near a store while the agents posted themselves at strategic places in the vicinity. When Fernando arrived, he gave Conde two plastic wrappers containing dried marijuana leaves, for which the latter paid two P5.00 bills previously marked with the signature of one of the agents, Sgt. Norberto Francia. The NARCOM agents then swooped down on Fernando and confiscated the marked bills, in addition to three sticks of marijuana leaves which were found in the right-hand pocket of his pants. His confession was later taken after a protracted investigation.[2]

These findings were based mainly on the extrajudicial confession of Fernando and the testimonial evidence of the prosecution witnesses, both of which the defendant-appellant now asks us to reject.

In objecting to the extrajudicial confession,[3] Fernando claims it was obtained through force and violence inflicted upon him by the NARCOM agents in their office the night he was picked up.[4] According to him, he was manhandled by the agents to force him to sign the confession but he did not inform his father about it because he was afraid of further punishment from the agents.[5] In fact, as the record shows, he did not complain either to any one else afterwards, not even to the fiscal who administered the oath when he subscribed his confession again. Fernando did speak of his alleged maltreatment during the trial. However, no witnesses were presented to corroborate him; there was also no physical evidence of the claimed injuries; and no medical certificate thereof was submitted to the court.

Nevertheless, the extrajudicial confession will still have to be disregarded. The reason is the obvious lack of compliance with the indispensable requirements of the Bill of Rights for the protection of the suspect under custodial investigation. We have examined the said confession and find there was a mere pro forma effort to inform the defendant-appellant of his rights under the Constitution. This is manifest from the following exchange preceding the actual interrogation:

"Preliminary: Mr. Roger B. Fernando, you are hereby informed that you are under investigation for commission of an offense. Under our New Constitution, you have the right to remain silent and to counsel of

your own choice and if you cannot afford to retain a lawyer to assist you in this investigation, the Government shall provide you one. Is this clearly understood?

Answer: Yes sir.

Question: After having appraised of your legal right under the New Constitution, do you understand your right?

Answer: Yes sir.

Question: Do you wish to sign a waiver stating among other that you wish to be investigated even without the presence of your counsel?

Answer: Yes sir."[6]

The above perfunctory and almost mechanical "compliance" certainly did not follow the prescribed procedure in the investigation of persons suspected of criminal offenses. The rights guaranteed by the Constitution were merely communicated but not explained to the suspect notwithstanding the apparent need to do so, considering his circumstances. Mere recitation of these rights is not enough where it is not shown that the person entitled thereto can knowingly and intelligently waive them, as we held in *People v. Caguioa*.^[7] Moreover, the waiver must now be made with the assistance of counsel in accordance with the rules laid down in *People v. Galit*^[8] as affirmed and even strengthened in the new Constitution.

In *Galit*, the Court declared:

"At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means - by telephone if possible - or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. 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."

It is noteworthy that the defendant-appellant was detained for all of five hours by the narcotics agents before they extracted the two-page extrajudicial confession from him.^[9] The questioning could not have taken twenty minutes to reduce to writing. During all the time he was under investigation, there was no counsel to assist him. Even his father, who was waiting in the office where his son was being detained, was asked to go home before the actual interrogation began.^[10] The defendant-appellant was all alone in the office of his inquisitors when he finally signed the extrajudicial confession.

Echoing and even improving upon *Galit*, Section 12 of the new Bill of Rights, provides as follows:

"Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

"(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."

The requirements embodied in these rules are especially important in cases like the one at bar, where the suspect from whom the uncounseled confession was taken was not yet in his twenties at the time. Nineteen is a vulnerable age. A teenager is practically putty in the hands of hardened investigators whose excess of zeal in the discharge of their work may tempt them to take constitutional shortcuts to secure a conviction. Such excesses will be futile now because the confession they may extract will not be admissible in evidence against the accused.

Exclusion of the extrajudicial confession will leave the prosecution with hardly a leg to stand on, so to speak, for the rest of the evidence is also unreliable. The declarations of the prosecution witnesses are so confused and inconsistent, to say the least, as to dictate disbelief and call for their rejection.

There is, first of all, Alfredo Conde, whose testimony understandably excited the amazement and anger of the trial judge for its sheer incredibility. This 24-year old witness, employed as a janitor in the NARCOM office, was supposed to double as an informer and was the person used to entrap the defendant-appellant.[11] The astonishing thing about Conde is that, when asked to read an affidavit he was supposed to have signed earlier, he said he could not do so because he did not know how to read. The reaction of the trial judge speaks for itself:

"Q: Do you remember having executed an affidavit in connection with this case?

A: Yes.

Q: Considering that you are a high school graduate, we presume that you know how to read?

A: Not much.

Q: But can you read this affidavit that you executed?

A: I do not know how to read.

COURT:

Impossible!!.. You are a high school graduate you do not know how to read!!!... You are lying!!.. You read that!...

WITNESS:

I do not know how to read."[12]

This same witness testified that he was unable to buy marijuana from the defendant-appellant in the afternoon of October 28, 1983,[13] but NARCOM agents Rodolfo Aquino and Norberto Francia declared under oath that he did.[14] Conde said he paid P10.00 for one bag of marijuana in the afternoon (thus contradicting himself)[15] but in the evening of the same day, only a few hours later, he said he paid P10.00 for two bags.[16] Conde said that upon receiving the two marked bills, Fernando placed them in his pocket,[17] but Aquino said that when he apprehended Fernando, the latter was still holding the marked money.[18] Conde also said he bought the marijuana in front of the Chinese temple,[19] then changed his mind and said it was in front of the nearby store,[20] which he said was closed at the time.[21] Aquino and Francia both said it was open.[22]

As for the NARCOM agents, there is no dearth of contradiction either in their declarations. Thus, Aquino said they had a briefing on October 28, 1983, by their commanding officer before they sent Conde to "test-buy," but Francia said they sent out Conde first before the briefing.[23] Aquino said that when they arrested Fernando, he and all the six NARCOM agents rode in a Land Rover, which could accommodate all seven of them because it was "a very big vehicle." [24] However, Francia said that they used not only the Land Rover but also a motorcycle, where he himself rode.[25] Aquino said that he was about 15 meters from the defendant-appellant and saw the latter give a cellophane bag to Conde,[26] but Francia testified that at the time of the transaction,

Aquino was behind Fernando.[27] This could mean that Aquino could not have seen what the latter was doing. The same Aquino swore that there were other persons in the vicinity when Fernando was arrested[28] but on subsequent questioning he said he could not remember if there were people around.[29]

For law-enforcement officers experienced in testifying against suspected offenders, these contradictory declarations are difficult to explain and strongly suggest that they were merely fabricated to convict the defendant-appellant. It is obvious that these witnesses did not take the precaution of first comparing notes, so to speak, to avoid the conflicting statements they later made at the trial.

The trial court says these contradictions are minor inconsistencies only and should not detract from the veracity of the prosecution evidence as a whole.[30] We do not think so. This is a criminal prosecution. We deal here with the liberty of a nineteen-year old accused whose future may be irretrievably blighted by a careless conviction. We cannot be too careful in assessing the evidence against him lest he be mistakenly condemned for life to the solitude and shame of a prison cell.

The inherent defects in the testimony of the government witnesses have deprived the prosecution of that ring of truth needed to toll in the clearest tones the defendant-appellant's guilt. What we see here is a possible frame-up of the accused, prompted probably by the frustrations of the narcotics agents over the failure of their "buy-bust" operation. It is not unlikely that Fernando, assuming he was really a drug pusher, had no marijuana on him that evening, to the chagrin of the surveillance team. Nothing daunted, however, and so as not to spoil their preparations, the agents arrested him just the same pursuant to their original plan. Then they simply concocted the story they later narrated in court.

We have repeatedly said that in this jurisdiction, accusation is not synonymous with guilt.[31] In every criminal prosecution, the accused shall be presumed innocent until the contrary is proved,[32] and not by a mere preponderance of evidence but by proof beyond reasonable doubt.

The accused comes before the court with all the cards stacked against him as it were, to answer charges that have already been established prima facie. His accuser is the People of the Philippines. The full panoply of state authority is marshaled against him. He usually faces a skilled and experienced prosecutor. It is therefore only fair to tilt the scales in his favor by presuming his innocence and thereby lessen the heavy odds against him. The rule is that he can be convicted not because his defense is weak but only if the prosecution is strong.[33]

It is true that the defense itself is weak because the defendant-appellant and his corroborating witnesses limited themselves mainly to denying the prosecution charges. According to Fernando, he was seated at the stairs of his house when he was accosted by the agents, threatened with a gun, and forcibly brought to the NARCOM office, where he was manhandled until he signed a confession. It is not a very convincing defense, to be sure. Nevertheless, as insubstantial as it may be, the prosecution is in our view even more feeble and less believable. And so the conviction must fail.

This Court holds that for all the dark suspicions that hang over him, the defendant-appellant is still entitled to be freed. His guilt, if it exists at all, has not been proved beyond the whisper of a doubt.

WHEREFORE, the conviction of the defendant-appellant is REVERSED and he is ordered released immediately. No costs.

Teehankee, C.J., Paras, and Gancayco, JJ., concur.
Narvasa, J., in the result.

[1] Rollo, p. 14.

* Presided by Judge Jesus C. Carbon, Jr.

[2] TSN, February 15, 1984, pp. 79-82.

[3] Rollo, p. 38.

[4] TSN, March 26, 1984, pp. 323-329.

[5] Ibid, pp. 327-331.

[6] TSN, February 14, 1984, pp. 70-71.

[7] 95 SCRA 2.

[8] 135 SCRA 465.

[9] TSN, February 15, 1984, pp. 79-82.

[10] TSN, April 25, 1984, p. 354.

[11] TSN, February 14, 1984, pp. 29-33.

[12] Ibid, pp. 13-14.

[13] Id, pp. 43-44.

[14] Exhibits "A" and "B", February 14, 1984, p. 52; February 15, 1984, pp. 2-6; February 16, 1984, pp. 3-5.

[15] TSN, February 14, 1984, p. 44.

[16] Ibid, pp. 34-35.

[17] Id., p. 44.

[18] Id., p. 14.

[19] Id., pp. 6-7; 23.

[20] Id., pp. 41-43.

[21] Id., p. 42.

[22] TSN, February 15, 1984, pp. 15-16; February 16, 1984, p. 40.

[23] TSN, February 14, 1984, p. 77; TSN, February 16, 1984, pp. 4, 5, 25.

[24] TSN, February 15, 1984, pp. 46-47.

[25] TSN, February 16, 1984, pp. 29-30.

[26] TSN, February 15, 1984, p. 93.

[27] TSN, February 16, 1984, p. 46.

[28] TSN, February 15, 1984, p. 15.

[29] Ibid., p. 30.

[30] Rollo, p. 10.

[31] *People v. Dramayo*, 42 SCRA 59.

[32] Sec. 14(2), Art. III, 1987 Constitution.

[33] *People v. Tempongko*, 144 SCRA 583.

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