

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISPINO OCHAVIDO AND ROMAN DE OCAMPO, ACCUSED-APPELLANTS.

G.R. No. 68858. May 30, 1986

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of the decision of the defunct Circuit Criminal Court stationed in Pasig, Metro Manila, which sentenced CRISPINO OCHAVIDO and ROMAN DE OCAMPO to suffer the death penalty and to pay indemnity and damages.

OCHAVIDO and DE OCAMPO were accused of murder said to have been committed according to the information as follows:

"That on or about the 1st day of January, 1978 in the municipality of Muntinlupa, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, all convicts, confined and serving their sentence in the New Bilibid Prison by virtue of final judgments rendered against them by a court of competent jurisdiction, with intent to kill, evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab with an improvised deadly weapon, one Gavino Caponpon, also a convict, confined and serving sentence in the said institution, thereby inflicting upon the latter, mortal stab wounds on the vital parts of his body which directly caused his death.

"Contrary to law, with the aggravating circumstance of quasi-recidivism, the accused having committed the crime charged while serving their sentence in the New Bilibid Prison." (Expediente, p. 1.)

The accused entered a plea of "not guilty" and after trial they were sentenced as above stated.

The People's version of the facts is as follows:

"In the afternoon of January 1, 1978, inside Brigade 13 of the National Penitentiary in Muntinlupa, Metro Manila, appellants, both inmates thereat as shown by the record, stabbed to death another inmate, Gavino Caponpon. The stabbing was testified to by appellant, Crispino Ochavido, as follows (tsn, pp. 19-20, August 7, 1979):

Q

You stabbed Gavino Caponpon?

A

Yes.

Q

How many times?

A

Once only.

Q

How about Roman de Ocampo, how many times did he stab Caponpon?

A

Three times.

Q

So there were four stab thrusts at Caponpon?

A

Yes.

Q

Roman de Ocampo stabbed him three times and you once only?

A

Yes.

Q

You used a knife in stabbing Caponpon?

A

Yes, sir.

Q

And if that knife is shown to you, will you be able to identify the same?

A

Yes.

Q

I am showing to you here a knife, is this the knife you used?

A

Yes, sir, the small knife (Witness referring to Exh. "E").

Q

Where did you get this knife?

A

I made that personally.

Q

And you are bringing this knife before you actually stabbed Caponpon?

A

Yes.

Q

And you really intended to kill Caponpon on that day that is why you had a knife with you?

A

No, sir.

Q

You mean you just tried to stab him when you saw him in that place where you stabbed him?

A

Yes, sir.

Q

What was Caponpon doing when you stabbed him?

A

He was sitting down.

Q

And at the time you approached Caponpon, his back was towards you?

A

He was facing me.

Q

But you suddenly rushed at him and stabbed him?

A

Yes.

Q

And he was not in a position to defend himself at the time?

A

No, sir.

"On his part, appellant, Roman de Ocampo, testified that together with Ochavido, he (de Ocampo), stabbed Gavino Caponpon inside Brigade 13 of the National Penitentiary on January 1, 1978 (tsn., p. 1, August 10, 1979).

"The incident was immediately investigated by Leon Casanova, Shift Superintendent of the New Bilibid

Prisons. Having been informed by the other prisoners that the assailants were Ochavido and de Ocampo, Casanova proceeded to Brigade 8, appellants' dormitory, but both could not be accounted for there. Casanova then went to Brigade 13 where he found de Ocampo who surrendered to him a long bolo used by de Ocampo in killing Caponpon. Ochavido was found later on. Both appellants did not execute any state-ment at that time (tsn., pp. 3-6, August 3, 1979).

"On January 2, 1978, the cadaver of Gavino Caponpon was autopsied by Dr. Nieto M. Salvador, NBI Medico-Legal Officer, who issued a Necropsy Report (Exhibit A; Rec., p. 12) containing the following:

POSTMORTEN FINDINGS

Lips and nailbeds, pale,

Abrasion, reddish-brown: 3x1.5 cm., supra-ciliary region, right side; 3x1.0 cm., nasal region; 6x3.0 cm. left face.

Contuse-abrasion: 1.5x1.0 cm., upper lip 1x1.0 cm., lower lip.

Hematomo: 5x4.0 cm., left temparafrontal region.

stab: 1. Curvilinear, 3.0 cm. in length, lower extremity, sharp, running upward and laterally, edges, clean-cut; chest, right side, untera-lateral aspect, directed backward, downward and medially, involving skin and underlying soft tissue, into the 5th intercostal space, perforating the middle lobe of right lung making an approximate depth of 11.0 cm.

- Curvilinear, 4.0 cm. in length, upper extremity sharp, lower extremity rounded, running upward and laterally, edges clean-cut; right hypochondriac region, level of 6th intercoastal space, 14.0 cm. to the right of anterior median line, directed backward, downward and medially, involving skin and underlying soft tissue, thru the 6th intercoastal space, incising the right lobe of the liver and making an approximate depth of 10.0 cm.

- Curvilinear, 2.5 cm. in length, upper extremity, sharp, running upward and laterally, edges clean cut; chest, left side level of the left nipple, involving skin and underlying soft tissues, non-penetrating with an approximate depth of 3.5 cm.

- Curvilinear, 3.0 cm. in length, upper extremity sharp, running upward and medially, edges, clean cut; left flank, 34.0 cm. to the left of anterior median line, directed backward, downward and medially, involving skin and underlying soft tissues, penetrating abdominal cavity.

- Curvilinear, 3.0 cm. in length, upper extremity, sharp, run vertically, edges, sharp; left thigh, upper third, lateral aspect, third, lateral aspect, underlying skin and muscle tissue only, penetrating, 3.0 cm. in depth.

- Wound, incised, 1.5 cm., small finger, left, anterior aspect

Hemothorax, right, 1,000 cc.; left, 800 cc.

Hemopericardium: 1,700 cc.

Other viaceral organs, pale.

Stomach contains small amount of mucoid material.

CAUSE OF DEATH:

Hemorrhage, acute, severe secondary to stab wounds, chest and abdomen.

"Subsequently, in a letter dated April 16, 1978 (Exhibit I; Rec., p. 26), appellants informed then Minister of Justice Vicente Abad Santos, as follows:

"Pinagpipitaganan naming Kalihim:

Kami pong nakalagda sa ibaba ay mga bilanggo na kasalukuyang napipiit sa Pambansang Bilangguan at kasalukuyang ding napaparusahan sa loob ng Cell House, 8-A-I, ng dahil sa pumatay kami ng kapwa naming bilanggo na si Benigno Caponpon @ Bony ng dahil sa utos ng magkapatid na si Orio at Mario Gallardo, batay sa usapan namin katulad ng mga sumusunod:

- Na pinatay namin ang nasabing bilango na si Benigno (sic) Caponpon @ Bony sa kadahilanang kami ay babayaran nila ng halagang P25,000.00 pesos;
- Na pagkatapos namin pinatay ang nasabing kapwa namin bilanggo noon January, 1978, ay limang libo P5,000.00 pesos lamang ang naibibigay ng nasabing brothers;
- Na ang halagang P20,000.00 na dapat bayaran ng nasabing mag-kapatid na Gallardo brothers na taga La Union ay hindi pa nababayaran hanggang ngayon po kaya kami ay nags umbong upang ang katarungan ay magtagumpay at maparusahan ang mga salarin;
- Na kami po ay handang magsabi ng boong katotohanan sa kinauukulan ano mang oras na nananaisin po ninyo alang-alang sa ikatataguyod ng katarungan.

Lubos po kaming umaasa sa agad na pansin sa bagay na ito upang masugpo ang karahasan sa boob ng bilangguan sa utos ng mga taga labas, katulad nila GALLARDO Brothers.

Lubos na gumagalang,

CRISPINO OCHAVIDO ROMAN DE OCAMPO

Pris. No. 37875-P Pris. No. 616120-P

"Appellant Crispino Ochavido, testified that they had been planning to kill Gavino Caponpon since 1976 (tsn., pp. 21-22, August 7, 1979).

"However, in separate statements executed on September 12, 1978 and November [actually September also] 12, 1978 (Exhibits K and G respectively), Ochavido and de Ocampo alleged that at the time of the incident, they had planned on killing another inmate by the name of Factora. Factora, however, was then armed with a chako, which deterred them from attacking him. But seeing Gavino Caponpon inside Brigade 13, they attacked him instead (Rec., pp. 18-21, 28-33)." (Brief, pp. 4-12.)

The appellants make the following assignment of errors:

"A. The Trial Court Erred in Admitting in Evidence the Extra-Judicial Confessions of the Accused; Having Been Obtained in Violation of Article IV, Section 20 of the New Constitution.

"B. The Lower Court Erred in Holding that the Accused are Guilty of Murder in that:

- (i) The Prosecution Failed to Show that the Killing of Caponpon was Attended with Treachery.
- (ii) Justice Dictates that the Application of the Full Force and Effect of the Law be Tempered with Compassion in the Light of the Circumstances of Both Accused." (Brief, pp. 4-5.)

Ochavido executed a 6-page extrajudicial confession on September 12, 1978 before Prison Guard Joven P. Severo. It was verified before Asst. Provincial Fiscal Rodolfo T. Alejandro who also certified that he "personally examined the affiant and that I am convinced that he fully understood and executed the same voluntarily." Before Ochavido's statement was taken, Prison Guard Severo made the following "PASUBALI" -

"Ikaw Crispino Ochavido ay tinawagan ko dito sa aming tanggapn upang kunan ng tanong at sagot tungkol sa pangyayaring naganap sa harap ng brigada 13-B noong ika-1 ng Enero 1978 na ayon sa sumbong rig Pinunong

Nakatalaga, SO1 Miguel D. Marquez ay isa ka sa mga nasasangkot sa pagpatay kay bilanggong Gavino Caponpon. Ngunit, bago ang lahat ay nais kong ipabatid sa iyo ang iyong mga karapatan sa pagbibigay ng malayang salaysay. Na ikaw ay may karapatang manahimik, hindi magbigay ng anumang salaysay. Hindi kita maaring pilitin, saktan, takutin o pangakuan ng anumang pabuya na makakasira sa iyong malayang pagpapasiya. Na ikaw ay may karapatang kumuha ng iyong manananggol na siyang kakatawan dito sa pagsisiyasat na ito. Na kung hindi mo makayanan ang kumuha ng sariling abogado ang pamahalaan ay handang magbigay sa iyo ng walang bayad gugol. Na ang lahat ng iyong sasabihin ay maaaring gamitin laban o panig sa iyo sa alin mang Hukuman ditto sa Filipinas maging ito'y judicial o administratibo. Na ang lahat ng iyong sasabihin ay pawang katoto-hanan lamang." (Exhibit K.)

De Ocampo also executed a 4-page extrajudicial confession on September 12, 1978 before Prison Guard Buenaventura de la Cuesta. It was also verified before Fiscal Alejandro who made a certification similar to that in Ochavido's confession. De Ocampo's confession contains the following foreword:

"Ang may salaysay matapos maipabatid sa kanya ang kanyang mga karapatan tungkol sa pagbibigay ng malayang salaysay sang-ayon sa ipinag-uutos ng bagong Saligang Batas ay kusang loob na nagbigay ng mga sumusunod na salaysay bilang sagot sa mga tanong ng tagasiyasat:" (Exhibit G.)

As stated above, Ochavido and De Ocampo stated that they had originally intended to kill an inmate named Factora but they killed Gavino Caponpon instead upon seeing that Factora was armed.

The appellants claim that Exhibits K and G should not have been admitted in evidence because they were not informed of their Miranda rights prior to their execution. Surprisingly, the Solicitor General does not rebut this claim. He simply states:

"The first issue is whether or not there is evidence on record proving beyond a reasonable doubt appellants' culpability for the murder of Gavino Caponpon. We respectfully submit the affirmative, regardless of the alleged inadmissibility of their extrajudicial statements (Exhibits G and K). Their extrajudicial statements after all are not material in determining their guilt, since they admitted in open court that they killed Gavino Caponpon." (Brief, pp. 12-13.)

We hold that in the light of the pasubali given to the appellants there was substantial compliance with the Miranda provision of the fundamental law then in force. At any rate, as the Solicitor General states, the appellants had stated in open court that they killed Gavino Caponpon.

The relevant testimony of Ochavido has been reproduced in the People's version of the facts, *supra*. The corresponding testimony of De Ocampo follows:

"COURT:

According to CRISPINO OCHAVIDO you were his companion and you are also one of those who stabbed and killed GAVINO CAPONPON?

A:

Opo.

Q:

Did you surrender or not?

A:

Opo.

Q:

To whom did you surrender?

A:

Inspector CASANOVA po.

Q:

What about CRISPINO OCHAVIDO?

A:

Opo, sabay po.

x x x x x x x x

ATTY. AGOOT: [Defense Counsel]

Before January, 1978 do you know GAVINO CAPONPON?

A:

Opo.

Q:

How did you know him?

A:

Lagi ho siyang pumupunta sa aming brigada.

Q:

On Jan. 1, 1978 did you have occasion to see CAPONPON?

A:

Opo sa harap ng Brigada namin.

Q:

How did you see CAPONPON that day, I withdraw, no more direct.

COURT:

I am showing to you this Confession which you made before DELA CUESTA, is this yours?

A:

Opo.

Q:

All what is stated here is true?

A:

Opo.

Q:

Bakit ka napipiit?

A:

Nakabaryl po ako ng tao.

Q:

Ano ang naging parusa mo?

A:

10 to 17 years po.

COURT:

All right Fiscal, Cross.

FISCAL ANGELES:

You said you are one of those who killed GAVINO CAPONPON, at sa pagkakapatay mo sa kanya ikaw ay inimbistigahan ni PG DELA CUESTA, is that correct?

A:

Opo.

Q:

And when you were asked by the court you said all that is stated here is the truth you answered yes, sir, is that correct?

A:

Opo.

Q:

And because it is all true, when you were made to sign this you voluntarily signed the same, is that correct?

A:

Opo.

Q:

If I will show you this, will you be able to identify the signature you signed in this statement?

A:

Opo.

Q:

I am showing to you a sworn statement taken by BUENAVENTURA DELA CUESTA and there is a signature here up to page 4, in the first page is a signature, whose is that?

A:

Akin po.

Q:

Second page?

A:

Akin din po.

Q:

Third and 4th page?

A:

Akin din po.

Q:

Did you read this before you signed it?

A:

No, sir.

Q:

But it was read to you by the Investigator, is it not?

A:

Opo.

Q:

And you signed before him that this is true?

A:

Opo.

FISCAL ANGELES:

That will be all." (TSN, Aug. 10, 1979, pp. 1-3.)

Anent the letter dated April 16, 1978 which the appellants sent to me, it was actually received in my office only on June 28, 1978. (Exhibit I.) The letter was indorsed on July 10, 1978 by Deputy Minister of Justice Catalino Macaraig, Jr. to the Acting Director of Prisons for investigation and report. (Exhibit J.) The record does not include the report if one was made. As to the investigation, Exhibits K and G appear to have been the result thereof.

In the resolution of this case on appeal, Exhibits I, K and J have not been accorded probative value because the appellants admitted in open court that they killed the deceased. But even as they made the admission, the appellants claim that (a) they acted in self-defense or (b) at the very least their crime is homicide only because the killing was not attended by evident premeditation and treachery.

The claim of self-defense cannot be sustained. There is nothing in the testimony of De Ocampo to support this claim, Ochavido's testimony which is more lengthy does not support the claim either. He said:

"ATTY. AGOOT

Q:

Are you the same Crispino Ochavido, one of the accused charged of the murder of the victim, Gavino Caponpon?

A:

Yes.

Q:

On January 1, 1978, do you remember where you were, Mr. Witness?

A:

Yes, sir, I remember.

Q:

Where were you at?

A:

In our Brigade.

Q:

And do you remember on that date, Jan. 1, 1978, if there was any extraordinary incident that happened?

A:

On January 1, there was an incident that happened in Brigade 13.

Q:

What was that incident about?

A:

Caponpon went to our Brigade.

Q:

And what happened when Caponpon went to your Brigade?

A:

He was holding a 'pamalo'.

Q:

And who was this Caponpon?

A:

He was a Cavite boy.

Q:

And what happened when Caponpon came to your Brigade?

A:

He was boasting when he came to our Brigade.

Q:

And what happened?

A:

We did not want to be killed so we moved against him.

Q:

Did Caponpon threaten you?

A:

He told us that he was our 'Bosyo'.

Q:

What do you mean by the word 'Bosyo'?

A:

He supplied money and he bribes his co-accused.

Q:

Will you please tell the Court how Caponpon was stabbed?

A:

I stabbed him on the chest.

COURT

Q:

So it is a fact that you stabbed and killed Caponpon together with your co-accused?

A:

Yes, Your Honor.

Q:

In detail, will you please tell the Court how Caponpon was stabbed by you and your co-accused?

A:

He was very boastful as if we will be frightened so we stabbed him.

Q:

Just for that being boastful, you killed him?

A:

Omogong ang pangalan niya sa labas when he was outside our Brigade and I know he was also a killer.

Q:

Do you mean to say that even though he was already incarcerated, he had the influence to kill anybody outside his cell?

A:

Yes, Your Honor, if he escapes, he could kill.

COURT:

Proceed.

ATTY. AGOOT

Q:

What happened when Caponpon want to your Brigade holding a 'pamalo'?

A:

He was still at the gate.

Q:

And what happened at the gate?

A:

He invaded us.

Q:

Why were you the one who stabbed him?

A:

Because he was invading us, we moved ahead of him.

Q:

Why did . . .

COURT:

Q:

What is the gang of the victim?

A:

Batman, Your Honor.

Q:

And what is your gang?

A:

G.I.G., Your Honor

Q:

Was any member of your G.I.G. gang ever killed by the Batman gang?

A:

None, Your Honor.

COURT:

Proceed.

ATTY. AGOOT

Q:

Why did you kill Caponpon . . . When Caponpon entered your Brigade, why did you stab him?

A:

Because if I go out, he might beat us that is why we moved ahead of him.

Q:

Why were you afraid that Caponpon might hurt you?

A:

Because we know that he is a killer.

Q:

Did you have a chance to see if Caponpon has killed anybody?

A:

None but the news that is spreading inside is that he is a killer.

Q:

Prior to January 1, 1978, did you have any bad blood with Caponpon?

A:

None, sir." (TSN, Aug. 7, 1979, pp. 17-19.)

It is obvious from the foregoing testimony that the elements of self-defense were absent, namely: unlawful aggression, reasonableness of the means employed and lack of sufficient provocation.

The claim that the prosecution failed to prove evident premeditation is well-taken. There is nothing in the record to show that the appellants had deliberated to kill the deceased. From their testimony, especially that of Ochavido, it appears that the killing was a casual incident, a spur of the moment when the deceased went to the premises of the appellants.

Upon the other hand, the record shows that the killing was qualified by treachery. Thus Ochavido testified:

"FISCAL ANGELES

Q:

What was Caponpon doing when you stabbed him?

A:

He was sitting down.

Q:

And at the time you approached Caponpon, his back was towards you?

A:

He was facing me.

Q:

But you suddenly rushed at him and stabbed him?

A:

Yes.

Q:

And he was not in a position to defend himself at the time?

A:

No, sir." (TSN, Aug. 7, 1979, p. 20.)

The aggravating circumstance of quasi-recidivism has not been proved. This is conceded by the Solicitor General in respect of Ochavido. As to De Ocampo the Solicitor General claims the application of the circumstance because he admitted having shot someone for which he was sentenced 10 to 17 years. But there is nothing in the record to show that he was serving a final sentence. For this reason his crime cannot said to be aggravated by quasi-recidivism. (People vs. Santos, L-44973, Nov. 4, 1985, 139 SCRA 443.)

The crime committed by the appellants is murder qualified by treachery without any attendant circumstance and as such the appropriate penalty is reclusion perpetua.

WHEREFORE, the judgment of the trial court is modified in that the appellants are sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased jointly and severally the amount of P30,000.00. Each appellant shall pay his share of the costs.

SO ORDERED.

Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.

Teehankee, C.J., in a separate opinion, states that the prevailing rule of Galit that waivers of the right to counsel by persons under custodial investigation require the assistance of counsel stands and is in no way in issue in this case.

SEPARATE OPINION

TEEHANKEE, C.J.:

I concur in the result. It should be understood that the issue of inadmissibility of the two accused's extrajudicial confessions because of their not being informed of their Miranda rights prior to their execution and because their alleged waiver of counsel not having been made with the assistance of counsel has not be considered as a material issue in this case. The Solicitor General correctly submitted that "their extrajudicial statements after all are not material in determining their guilt, since they admitted in open court that they killed Gavino Caponpon." (Main Opinion, p. 9).

The prevailing rule is still that laid down by unanimous Court en banc (except by one abstention) in *People v. Galit* (135 SCRA 465) as follows:

"10. This Court, in the case of *Morales v. Ponce Enrile*, laid down the correct procedure for peace officers to follow when making an arrest and in conducting a custodial investigation, and which we reiterate:

'7. At the time the person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must show 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 any one who 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 in 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.'" (Emphasis supplied.)

This ruling has been adhered to by the Court in a number of subsequent cases, the latest of which is the decision of the Court's Second Division in G.R. No. 70906, *People v. Hon. Luis. V. Sison, et al.*, promulgated on this same day.

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