

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO JOCSON Y MARIANO, ROMEO BASILIO Y CRISOSTOMO, ALFREDO SANTOS Y ROBLES, & REYNALDO CALAYAG Y SABILUNA, ACCUSED-APPELLANTS.

G.R. No. 69667. July 26, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Appellants, Ernesto Jocson and Romeo Basilio, together with Alfredo Santos and Reynaldo Calayag, were charged with Robbery with Homicide before the Regional Trial Court of Balanga, Bataan, Branch I,[*] in an Information quoted herein below:

"That on or about April 15, 1983, at night-time purposely sought to better accomplish their criminal design, in Balanga, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping one another, by means of violence and intimidation of persons, that is by stabbing Victor Cimatu and Eugenio Andres with a deadly weapon or a sharp and pointed instrument several times, did then and there: with intent to gain, willfully, unlawfully and feloniously take, steal and carry away:

One (1) National Colored TV, one (1) Pioneer Car Stereo Component, one (1) set of magwheels, cash money in the sum of P3,500.00, Celeste car (1600) black in color worth P30,000.00, and other personal properties like T-shirt, Jacket, pants, and shoes of undetermined amount, belonging to the spouses Victor Cimatu and Gloria Cimatu against the will and without the consent of the said owners; and as a result of the stabbings inflicted upon the said Victor Cimatu and Eugenio Andres by reason or on occasion of the said robbery, the said persons sustained mortal injuries on the different parts of their body which directly caused their death thereafter, to the damage and prejudice of the heirs of Victor Cimatu and Eugenio Andres." (p. 103, Rollo)

In a Judgment, dated 22 November 1984, all four accused were convicted. Appellants, Ernesto Jocson and Romeo Basilio, were inflicted the capital punishment, while Alfredo Santos and Reynaldo Calayag were both sentenced to reclusion perpetua.

The case against appellants Jocson and Basilio was elevated to us for automatic review in view of the extreme penalty of death imposed upon them. The accused, Santos and Calayag, did not appeal.

With the abolition of the death penalty in the 1987 Constitution, Jocson and Basilio were required by this Court to submit written statements as to whether or not they were desirous of continuing with their appeal (Resolution, August 27, 1987) Basilio submitted a manifestation to this Court that he was discontinuing his appeal. Jocson, for his part, expressed the wish to continue with the case as an appealed case. Jocson's case alone, therefore, is on automatic review.

The evidence reveals that Jocson was a former employee of one of the victims, Victor Cimatu at Balanga, Bataan. Jocson left his job because of low pay.

In the evening of 15 April 1983, Jocson arrived at the house of his co-accused, Alfredo Santos, at Malabon, who, at that time, was having a drinking spree with the other accused Calayag and Basilio. During that session, the accused talked about how they could find money since, according to Jocson, Santos' wife was pregnant. Jocson then suggested that the group rob his former employer, Victor Cimatú. The group agreed, with the determination that if they were caught they would not hesitate to fight.

That same evening, on the way to Balanga, Bataan, the group drank Hylorin cough syrup to calm themselves ("pampaalis ng kaba"). They finally reached the residence of the victim Cimatú at about 12:30 past midnight.

The four accused led by Jocson then jumped, one after the other, over the hollow block fence of the Cimatú compound. Probably because of the noise created by the dogs barking, the victims, Victor Cimatú and Eugenio Andres, Cimatú's bodyguard, went out of the house, Cimatú armed with a gun while Andres had with him a lead pipe.

Immediately after Cimatú opened the steel gate of the compound, Jocson dashed towards Cimatú and stabbed him three times on the arms and chest while Basilio stabbed and hit Andres. Santos and Calayag joined in subduing their two victims. These two were then taken inside the house where the four accused ransacked and carted away appliances, various articles and cash.

With their loot, the four accused then left the Cimatú house leaving the victims to die. Using Cimatú's "Celeste 1600" car, the group proceeded to Navotas, Malabon, where they left their stolen items in the house of Calayag's brother-in-law. The car was later found abandoned at the foot of a bridge in Talipit, Bulacan. It was Calayag who sold the effects of the crime after which the group divided the proceeds among themselves.

Tracked down to Malabon, the police were able to apprehend Jocson, Basilio and Santos. The fourth, Calayag, voluntarily surrendered and promptly accompanied the police team to the places where the stolen items were sold. All the properties recovered were turned over to Cimatú's wife. However, cash in the sum of P3,500.00 and clothings, except for a jacket, were unrecovered.

Placed under custodial investigation, the four accused executed interlocking extrajudicial confessions wherein they not only admitted their culpability but even confided the plan they had hatched in the early evening of 15 April 1983.

Upon arraignment on 29 August 1983, all four accused entered pleas of not guilty. However, at the start of the trial on 10 September 1984, after the prosecution had already presented three witnesses, the accused, through their two lawyers, manifested their desire to withdraw their plea of "not guilty" and substitute it with that of "guilty". The Trial Court called each and everyone of the accused and allowed them to withdraw their previous plea only after they had confirmed the manifestation of their respective counsel that they were informed of the gravity of the offense charged against them and the consequences of their plea.

Upon re-arraignment, the four (4) accused, assisted by their respective counsel spontaneously pleaded "guilty". Notwithstanding, the Trial Court held in abeyance its decision until the presentation of additional evidence by the prosecution to include the extrajudicial confessions of the accused, the fact of recovery of some of the stolen items and to prove the alleged aggravating circumstance of nighttime. The Trial Court then set the reception of additional evidence three (3) days thereafter to afford the accused sufficient time to further reflect on the consequences of their change of plea.

At the resumption of the reception of evidence for the prosecution, the accused clung to their guilty pleas and confirmed their respective participations in the commission of the crime charged (t.s.n., September 13, 1984, pp. 2-4)

After the prosecution rested its case, with no evidence presented by the defense, the Trial Court, on 22 November 1984, rendered a judgment of conviction, the dispositive portion of which reads:

"WHEREFORE, by reason of the voluntary plea of guilty of all the accused and in light of the clear, unequivocal and strong evidence adduced supportive of the indictment, the Court finds all four accused, namely, ERNESTO JOCSOY y MARIANO, ROMEO BASILIO y CRISOSTOMO, ALFREDO SANTOS y ROBLES and REYNALDO CALAYAG y SABILUNA, GUILTY beyond reasonable doubts as principals by direct participation, in conspiracy with each other, of the special complex crime of ROBBERY WITH HOMICIDE, defined and punished under paragraph 1, Article 294 of the Revised Penal Code, with three (3) aggravating circumstances of dwelling, nocturnity and the second homicide.

"Considering the presence of equally three (3) mitigating circumstances, to wit: plea of guilty, drunkenness and extreme necessity in favor of ALFREDO SANTOS and plea of guilty, drunkenness and voluntary surrender for REYNALDO CALAYAG, these two (2) accused are hereby sentenced to RECLUSION PERPETUA with the accessories of the law.

"With respect to accused ERNESTO JOCSOY and ROMEO BASILIO, there being only two mitigating circumstances appreciable in their favor, namely, plea of guilty and drunkenness, vis-a-vis three (3) aggravating circumstances aforementioned against them, the Court finds no alternative but to impose the greater, supreme penalty of DEATH.

"All four accused are hereby ordered to pay solidarity an indemnity of P30,000.00 plus P60,000.00 moral damages to the heirs of deceased Victor Cimatu; an indemnity of P30,000.00 to the heirs of deceased Eugenio Andres, and to pay the costs proportionately. All accused are further ordered to return or pay to the heirs of Victor Cimatu the unrecovered cash amount of P3,500.00.

"IN VIEW of the death sentence meted to accused ERNESTO JOCSOY and ROMEO BASILIO let the records of this case be elevated at the proper time to the Supreme Court of the Philippines for its automatic review.

SO ORDERED," (pp. 340-341, Rec.)

Appellant Ernesto Jocson seeks a reversal of the aforesaid judgment and his acquittal of the offense charged on the following grounds:

I

"The lower court erred in basing its judgment of conviction upon the inadmissible extra-judicial statements of appellants Ernesto Jocson and Romeo Basilio and of their co-accused Reynaldo Calayag and Alfredo Santos.

II

"It would be error to convict the appellants on the basis of their plea of guilty.

III

"The lower court erred in not suspending the proceedings with respect to appellant Ernesto Jocson after its attention had been called to his abnormal behaviour indicating that he was suffering from mental illness.

IV

"The lower court erred in not acquitting the appellants."

It is inaccurate to state that the lower Court based its judgment of conviction on Jocson's extrajudicial statement. As clearly stated in the opening paragraph of the dispositive portion of the judgment, *supra*, conviction was "by

reason of the voluntary plea of guilty of all the accused and in light of the clear, unequivocal and strong evidence adduced supportive of the indictment."

However, the extrajudicial confession of Jocson (Exhibit "H") is indeed, inadmissible in evidence against him considering that custodial, investigation was not conducted in the presence of counsel, and although there may have been an implied waiver when, in answer to the question as to whether he wanted counsel, he replied "hindi muna", such waiver was neither made with the assistance of counsel. Any statement obtained in violation of the foregoing procedure, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence (People vs. Galit, L-51770, March 20, 1985, 135 SCRA 465). Moreover, the information imparted by the investigators to Jocson regarding his constitutional rights was at best, perfunctory, pro-forma, and stereo-typed, the mode of questions and answers being identical in all the extrajudicial confessions taken (Exhibits "E", "F" and "G"). There was, therefore, only a semblance of compliance with the fundamental law. The rejection of Jocson's extrajudicial confession is thus called for and conviction cannot be based thereon.

Nonetheless, Jocson's plea of guilty, which was freely and voluntarily made, added to the evidence adduced by the prosecution, sufficiently establishes his culpability. The Trial Court took all the necessary measures mandated by existing jurisprudence in assessing his guilty plea. Thus, the following transpired before the Trial Court in the hearing of 10 September 1984:

"ATTY. PALAD:

If your Honor please, I have a long talk with accused Ernesto Jocson and he intimated to me his desire to withdraw his former plea of 'not guilty' and in its stead a plea of 'guilty' be entered.

"COURT:

Did you inquire from him whether he is making this decision on his own volition?

"ATTY. PALAD:

Yes, Your Honor.

"COURT:

Are you convinced in your observation of the accused that he is making his offer to change his plea from 'not guilty' voluntarily and spontaneously or on his own volition?

"ATTY. PALAD:

Yes, Your Honor.

"COURT:

Call him. Make of record that accused Ernesto Jocson came near the rostrum and he is now to be asked similar questions asked of the other three accused.

"Accused Ernesto Jocson stands before the rostrum for interrogation by the Presiding Judge.

"COURT:

Is it true, as manifested by your counsel, Atty. Isagani M. Palad, that you want to change your former plea of 'not guilty' and to enter instead a plea of 'guilty' to the charge of robbery with homicide?

"A

That is correct, Your Honor.

"Q

Before your counsel made that manifestation did you have a conference with him?

"A Yes, sir.

"Q And did he explain to you the probable consequences of your change of plea, if you will plead 'guilty'?

"A Yes, Your Honor.

"Q Did he inform you that this charge is punishable with life imprisonment or death?

"A That is true, sir.

"Q And have you, before you come to Court before your conference with your counsel, reflected on this matter very well?

"A Yes, sir.

"Q Was it you or was it your counsel who decided that you change your plea of 'not guilty' into one of 'guilty'?"

"A Myself, sir.

"Q And are you making this decision without any pressure from anybody and without mental reservation?"

"A No one forced me, sir.

"Q Are you not just swayed to follow up the change of plea entered by your three other co-accused, or is this really your own decision unaffected by the decision of the other three accused?"

"A It is my voluntary decision, sir.

"Q Do you have anything to say to the Court through your counsel?"

"A No more, Your Honor.

Thereafter, appellant Jocson was re-arraigned, with the Information in English translated into Tagalog, and he pleaded:

"INTERPRETER:

What is your plea?

"ACCUSED ERNESTO JOCSON:

Guilty." (t.s.n., September 10, 1984, p. 10).

The Trial Court did not stop at that point, but re-set the reception of evidence three days thereafter in order to the consequences of their change of plea, and to enable the prosecution to present additional evidence particularly on the extrajudicial confession of the accused, the recovery of some of the stolen items, and to prove the alleged aggravating circumstances of nighttime, in keeping with jurisprudential requirements that after a plea of guilty has been entered in capital offense, the prosecution should be allowed to substantiate the attendance of aggravating circumstances and the degree of culpability of the accused (People vs. Ang, L-62833, October 8, 1985, 139 SCRA 115).

Moreover, other evidence and/or circumstances unequivocally point to the guilt of all four accused, particularly, the recovery of some of the stolen items when accused Calayag led the police investigating team to the different individuals to whom he had respectively sold those effects as a consequence of which some of them were recovered and returned to Cimatu's wife.

But the defense maintains that the Trial Court should have suspended proceedings with respect to appellant Jocson because of his "abnormal behavior indicating that he was suffering from mental illness." That averment is not borne out by the proceedings, however. Throughout the trial below, Jocson was assisted by counsel without the letter informing the Court of any aberration in his mental condition, much less was any request made for the suspension of the proceedings in his respect. His counsel went about cross-examining the prosecution witnesses matter-of-factly. To all intents and purposes everything was normal.

The validity of the lower Court judgment is, therefore, unassailable. There was no improvident acceptance of the plea of guilty, no repudiation by Jocson of his extrajudicial confession (which we have nonetheless considered inadmissible), and no challenge whatsoever to the proceedings during the trial in the Court below.

Under Article 294, paragraph 1, of the Revised Penal Code, the penalty for Robbery with Homicide is reclusion perpetua to death. But since capital punishment has been abolished by the 1987 Constitution, the only remaining penalty imposable is reclusion perpetua. That being the case, the attendance of modifying circumstances need no longer be considered nor discussed, that penalty being an indivisible penalty (Article 63, Revised Penal Code).

WHEREFORE, the accused-appellant, Ernesto Jocson, is found guilty beyond reasonable doubt of the crime of Robbery with Homicide and is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victims Victor Cimatu and Eugenio Andres the sum of P30,000.00, respectively by way of civil indemnity. He shall also pay the heirs of Victor Cimatu the unrecovered cash amount of P3,500.00. With proportionate costs.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

[*] Presided by Judge Ruben T. Reyes.

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