

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLONIO HIZON Y VELASCO ALIAS REY BAKLA, ARMANDO LIPARA Y BARNOBAL ALIAS TEDDY AND JOHN DOE ALIAS BOY BUNGAL – AT LARGE, ACCU...

G.R. No. 71273. July 29, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

Diosdado Gandillo was a seaman who had just returned from abroad and was naturally looking forward to the enjoyment of his hard-earned wages. But this was not to be. In the early morning of April 3, 1983, the police found his bloodied corpse along the EDSA highway in Quezon City. He had been stabbed to death and apparently also robbed.[1]

In due time, Armando Lipata, together with Apolonio Hizon and a John Doe alias Boy Bungal, was charged with the crime of robbery with homicide.[2] Only accused-appellant Lipata was tried as his co-accused were then at large. The trial judge[3] found him guilty as charged and imposed upon him the penalty of reclusion perpetua. He was also condemned to pay the civil indemnity in the sum of P30,000.00, the value of the stolen articles, the funeral expenses, and the costs.[4]

The prosecution sought to prove that in the evening of April 2, 1983, Gandillo gave a drinking party at a cousin's house for some relatives and friends. These included Ciriaco Cruzado, who later declared that Gandillo had on him an Omega gold watch, a gold necklace, a ring, US \$2,400.00 and P900.00 in cash when he left at 10 p.m.[5] At about 2 o'clock in the morning of April 3, 1983, he was standing in front of the Ketch Department Store in Cubao, Quezon City, apparently waiting for a ride. He was approached by the three accused, who, taking advantage of his intoxication, divested him of his necklace. When he protested and resisted, they began stabbing him, continuing to do so even as he ran and fell, until he died. The three men then escaped with their loot. Later, one of them, the herein accused-appellant, sold the victim's Omega watch for P150.00 to person named Victor.[6]

The prosecution presented only four witnesses, to wit, the medical examiner who autopsied the corpse, the victim's widow, the police investigator of the case, and Ciriaco Cruzado. None of them testified on the actual killing.

Major Dario Gajardo spoke only of the 19 stab wounds sustained by Gandillo and declared that the cause of death was cardio-respiratory arrest due to shock and hemorrhage.[7] Mrs. Gloria Gandillo, the widow, merely identified her earlier statement to the police and detailed her late husband's income and the funeral expenses. [8] Cruzado testified about the drinking party the night before the tragedy and the disappearance of the articles Gandillo was carrying when he left.[9] Pat. Melencio Lim said it was he who found the dead body of Gandillo and thereafter took the accused-appellant's statement. He also received the two other statements taken by another investigator from the accused Hizon and an alleged eyewitness, Mario Estorninos.[10]

For his part, Lipata claimed alibi and said he was in Samar at the time the crime was committed.[11] He was corroborated by a neighbor, who said he talked to the accused-appellant on April 3, 1983, when the latter passed by his farm.[12] Lipata related how he returned to Manila only in November, 1983, and was soon arrested and investigated for the killing of Gandillo. He said the confession had already been prepared when he was asked to sign it and that he did so for fear of being "salvaged." [13]

None of the four prosecution witnesses actually saw the killing of Gandillo. The statements of Hizon and Estorninos, who were not presented in court, were correctly rejected by the trial court. The only possible basis for the conviction, therefore, was Lipata's extrajudicial confession, which, however, he disowned at the trial.

The defense argued that the said confession was inadmissible because it was violative of the Bill of Rights, particularly of Article IV, Section 20, of the 1973 Constitution, providing as follows:

"SEC. 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 evidence."

and of the existing jurisprudence interpreting the said provision, especially *Morales v. Enrile*[14] and *People v. Galit*. [15]

The trial court disagreed and noted four distinctions between Galit and the instant case that, in its view, made Lipata's confession voluntary.[16] The judge also said that the narration "reflects spontaneity and coherence" and "the response in every question is fully informative, sometimes beyond the requirements of the questions."

The Court is not convinced.

A reading of the alleged confession clearly shows that Lipata was not fully and properly informed of his rights, particularly of his right to the assistance of counsel. The procedure in connection with the waiver of this right as laid down in the Galit case is most explicit. The suspect must be informed that he has a right to the assistance of counsel and assured that if he cannot afford to retain counsel of his own he will be provided with one for free. While he may choose to waive the right, such waiver must be a knowing and intelligent one and in any case must be made only with the assistance of counsel. Any waiver made without observance of these requirements is null and void.

Contrary to the trial judge's finding, there was in this case also the usual kilometric statement of the suspect's rights during a custodial investigation ending with the question of whether he understood the advice and followed by the brief reply, "Opo." [17] This was the same answer given when he was later asked, "Kahit na wala kang abogado sa kasalukuyan ay magbibigay ka pa rin ba ng salaysay?" ("Even if you have no lawyer at the moment, are you still willing to give your statement?") [18] There is nothing in the written confession showing that a lawyer assisted Lipata when he made the answer waiving his right to the assistance of counsel. There is no record elsewhere of any such assistance when the waiver was made. What appears in the sworn statement only is that, having made the waiver, Lipata was immediately subjected to the questioning that resulted in the detailed narration of how Gandillo was robbed and killed.

The other reason the trial court considered the sworn statement to have been voluntarily given was that it was spontaneous and contained details that the accused-appellant would not have known if he had not really committed the offense imputed to him. It does not appear so to the Court. As a matter of fact, a mere reading of the claimed confession will show that it was not really that detailed such that it could not have come except only from the killer himself. The only details noted by the trial court are the exact location of the scene of the crime,

the identity of the person who bought the stolen watch, and the specification of the balisong.[19] These are matters that could have been supplied by any zealous investigator preparing a statement for the suspect's signature in hopes of an easy conviction. These are not details only the suspect could have revealed. They were known to the police as early as April 6, 1983,[20] when Hizon was investigated, more than eight months before the supposed confession was taken from Lipata.

The trial court's own factual findings are, indeed, replete with details of how the offense was committed. To quote from the decision:

"Unfortunately for him, he was spotted by a group of malefactors which consisted of three accused: Lipata, Hizon, and one Boy Bungi or Boy Bungal. Lipata is also known as Teddy Kulot. Hizon is also known as Rey Bakla.

"They decided to rob their drunken victim. Boy approached the victim by placing his arm on the latter's shoulder. Then Boy snatched the victim's necklace. Gandillo defended himself by hitting Boy. But Hizon held Gandillo's arms, and Boy stabbed him in front.

"Gandillo tried to fight back, but Boy and Lipata simultaneously stabbed him. Lipata stabbed him twice in the back. Gandillo was able to push Boy back. Gandillo ran for his life. But Boy and Lipata ran after him and kept stabbing him. Gandillo fell on the road. Even then, Boy and Lipata continued to stab him. They apparently divested him of the specified jewelry and cash.

"The three malefactors went to Arayat Street, where they parted ways. The next day, Lipata sold the watch for P150, to a certain Victor, a buy-and-sell merchant in Cubao. Then Lipata went to his hometown in Samar where he hid until things cooled off. In particular, he hid his balisong there."

The following details are, however, not found in Lipata's sworn statement:

- Lipata is also known as Teddy Kulot.
- Hizon is also known as Rey Bakla.
- Boy approached the victim by placing his hand on the latter's shoulder.
- Then Boy snatched the victim's necklace.
- Gandillo ran for his life.
- But Boy and Lipata ran after him and kept stabbing him.
- Gandillo fell on the road.
- Even then, Boy and Lipata kept stabbing him.

- The three malefactors went to Arayat Street, where they parted ways.

So where did these details come from?

They certainly could not have been supplied by the four prosecution witnesses as none of them actually saw the killing. Evidently, they were taken from the sworn statement made by the other accused, Apolonio Hizon,[21] who escaped and has not been tried nor could he be presented as a prosecution witness, subject to cross-examination by the defense.

It is clear that the facts relating to the commission of the offense were taken by the trial judge from Lipata's supposed confession, which was inadmissible for violation of the Bill of Rights, and Hizon's sworn statement, which was ostensibly rejected for being hearsay but was actually considered just the same by the trial court. These factual findings became the basis of Lipata's conviction.

Parenthetically, no effort seems to have been taken by the authorities to look for the Victor who had allegedly bought the stolen watch, so he could testify against Lipata and perhaps even be investigated for his possible involvement in the crime. He, together with Hizon and the other accused, Boy Bungal, just disappeared without a trace.

It is worth stressing that *Morales v. Enrile* was already in force at the time the extra-judicial confession was taken from Lipata on November 21, 1983, said decision having been rendered six months earlier, on April 26, 1983. The *Morales* ruling was affirmed in an en banc decision in *People v. Galit*, also through Justice Hermogenes Concepcion, Jr., and has been consistently applied by the Court since then. And more so now since, significantly, the doctrine has been embodied in Article III, Section 12(1) of the Constitution of 1987, thus:

"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. Those rights cannot be waived except in writing and in the presence of counsel."

All law-enforcement officers are enjoined to observe this guaranty lest its disregard result in the conviction of innocent persons deprived of the valuable assistance of counsel. The reminder must also be made that violation of this rule may result in the escape of the guilty, and all because the investigator has blundered, rendering the confession inadmissible even if truthful. Constitutional shortcuts are not allowed to diminish the liberties of the person facing custodial investigation who is, even at this stage, already fully protected by the Bill of Rights.

The Court holds that the so-called extrajudicial confession of Armando Lipata should not have been admitted against him because it was obtained in violation of the Constitution. Without such confession, the evidence against the accused-appellant is not, in our view, sufficient to prove his guilt beyond reasonable doubt. Even if it be supposed that his defense of alibi is weak, the prosecution is nonetheless not strong enough to overcome the constitutional presumption that he is innocent. This presumption must be and is hereby upheld.

WHEREFORE, the appealed judgment is REVERSED and the accused-appellant ACQUITTED. No costs.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino and Medialdea, JJ., concur.

[1] Rollo, p. 12.

[2] Ibid., pp. 10-11.

[3] Judge Miriam Defensor-Santiago, Regional Trial Court, National Capital Region, Branch 106, Quezon City.

[4] Rollo, pp. 17-18.

[5] Salaysay, Original Records, p. 131: TSN, January 24, 1984, p. 3.

[6] Rollo, p. 13.

[7] TSN, June 7, 1983, p. 4.

[8] TSN, May 8, 1984, pp. 1-4.

[9] TSN, January 24, 1984, pp. 1-3.

[10] TSN, August 22, 1984, pp. 1-7.

[11] TSN, November 21, 1984, p. 2.

[12] Virgilio Pinanggay, TSN, February 25, 1985, p. 2.

[13] TSN, November 21, 1984, pp. 2-3.

[14] 121 SCRA 538.

[15] 135 SCRA 465.

[16] Rollo, p. 16.

[17] Salaysay, Original Records, p. 139.

[18] Ibid.

[19] Rollo, p. 15.

[20] Salaysay, Original Records, pp. 133-135.

[21] Ibid.

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