

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONSTANTINO PECARDAL, ACCUSED-APPELLANT.

G.R. No. 71381. November 24, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant stands convicted of the crime of robbery with homicide and has been sentenced to life imprisonment.[1] He asks us to reverse the decision of the trial court because his constitutional rights have been violated.

The victim of the offense was a taxi driver whose body was found in the luggage compartment of his vehicle in the morning of May 27, 1982. He had been stabbed twenty three times with a balisong that had later been left on the dashboard of the car. Apparently, Rogelio Florendo had also been robbed for no money was found on his person or in the taxicab.

It was two months later when the accused-appellant was picked up by the police and questioned in connection with the crime. As a result, an information for the said offense was filed against him and his unidentified co-accused, who was then at large and so was not tried with him.[2]

According to the prosecution, Pecardal and his companion boarded the victim's taxicab at about 1 o'clock in the morning of May 27, 1982, and thereafter held him up. When he resisted, they stabbed him in different parts of the body and killed him. They then divested him of his money in the amount of P200.00, placed his body in the luggage compartment of the car, which they drove to and abandoned in Yakal Street, Project 3, Amihan, Quezon City. There it was discovered with its grisly occupant that same morning by a barangay tanod.[3]

Presented as prosecution witnesses were the victim's wife, Concepcion Florendo, who testified on the civil damages;[4] Dr. Gregorio Blanco, who performed the autopsy on the victim's body;[5] Pat. Teodoro Ybuan, and one of the two policemen who "invited" the accused-appellant for investigation.[6]

This last witness and Pat. Ernesto Daria declared in a joint affidavit that Pecardal "when questioned readily admitted his participation in the fatal stabbing of victim ROGELIO FLORENDO after robbing him of his daily earnings amounting to P200.00; and named EDUARDO AZARCON as his partner in the commission of the said offense." [7]

They said they thereafter turned over the accused-appellant to the Quezon City Police Headquarters, where he signed a statement confessing his guilt. The statement described in detail how the offense was committed and was marked as Exhibit "H" at the trial.[8] Significantly, however, it was never specifically offered in evidence by the prosecution.

The prosecution made much of this confession and argued it could not have been made except by the actual perpetrator of the crime because of its detailed narration. Moreover, it had been given by the accused-appellant voluntarily, after he had been apprised of his constitutional rights.[9]

The accused-appellant took the stand in his defense mainly to denounce this confession. He testified on the physical punishment inflicted on him by the police investigators that ultimately forced him to sign the statement which he said had been prepared unilaterally by them.[10] This testimony was not rebutted.

In the decision convicting the accused-appellant,[11] the trial judge relied strongly, if not almost mainly, on this confession. This is strange because, to repeat, that piece of evidence was never formally offered by the prosecution or, for that matter, even the defense.

This document should never have been considered at all because of Rule 132, Section 35, of the Rules of Court providing as follows:

"Sec. 35. Offer of evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

According to Moran, "the offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial." [12]

In his demurrer to the evidence, the accused-appellant stressed the failure of the prosecution to present this confession,[13] but the prosecutor simply said it was part of its strategy and left it at that.[14]

Despite all this, the trial judge referred in his decision to Exhibit "H" as the confession and considered it sufficient basis for the conviction of the accused. As a matter of fact, Exhibit "H" was not the confession but the Police Referral of the case to the City Fiscal of Quezon City dated July 22, 1982.[15]

But even assuming that the supposed confession had been formally offered in evidence, we would have to reject it just the same because it violates Section 20, Article IV, of the 1973 Constitution.

The undisputed evidence is that the confession was obtained without according to the accused-appellant the right to counsel and after he had been subjected to physical compulsion and maltreatment.

If there was really an interrogation of the accused, the notification of his constitutional rights by the investigating officer was perfunctory and pro forma, intended obviously merely to satisfy the prescribed norms through a recitation by rote of the sacramental advise.[16]

Although he was supposedly informed of his right to counsel, he was not told he could get one if he so desired or that one could be provided him at his request. It is a matter of record that the interrogation was made in the absence of counsel, de parte or de oficio, and that the waiver of counsel, if made at all, was not made with the assistance of counsel as required.[17]

It is true that the original requirement laid down in *Morales v. Enrile*[18] was not supported by the majority of eight required by the Constitution. Nonetheless, the doctrine announced therein was later affirmed in *People v. Galit*,[19] with fourteen members of the Court voting in favor and only one not taking part. The same rule was only recently reiterated in the case of *People v. Sison*,[20] decided last May.

Besides the lack of counsel, there was the violence the accused claimed was inflicted upon him by the police. According to him, he was undressed, boxed, kicked, hit in the back with a rattan chair, and electric-shocked.[21] Finally, unable to bear the punishment any longer, he agreed to sign the prepared confession which he was not allowed to read.[22] The prosecution did not introduce any witness to refute these allegations.

Surely, a confession obtained under these circumstances cannot stand if we are to obey the mandate of the Constitution, as we must.

It is argued, however, that the accused-appellant orally admitted to Pat. Ybuan and Pat. Daria that he had killed

and robbed Florendo. This admission was made, according to the two policemen in their joint affidavit, after they apprehended the accused-appellant and started questioning him.

While Pat. Ybuan testified that he informed the suspect of his constitutional rights at the time of his arrest, there is no record that the admission was made by him in the presence of counsel, or that he had previously waived counsel.

Additionally, even assuming that the accused-appellant was not yet under custodial investigation at the time and that the requirements of Section 20 were not yet applicable, there is still the question of the credibility of these two policemen.

One may suppose that in an excess of zeal the peace officers might have colored their statement to insure the accused-appellant's conviction. In any event, it is their word against that of the accused-appellant, who disavowed the admission.[23]

When the evidence for the prosecution and the evidence for the accused are weighed, the scales must be tipped in favor of the latter. This is because of the constitutional presumption of innocence the accused enjoys as a counterfoil to the awesome authority of the State that is prosecuting him.[24]

The element of doubt, if reasonable as in this case, must operate against the inference of guilt the prosecution would draw from its evidence. That evidence, as it happens, consists only of the uncorroborated statement of the two policemen which, as previously observed, is flawed and therefore suspect.

The confession which could have corroborated them was not formally offered by the prosecution. In any case, it is void because it was obtained without the advice or even the presence of counsel, besides having been vitiated by force and threats.

The Solicitor General strongly argues that the supposed confession could not have been made by any one except the perpetrator of the offense because its commission was described in minute detail. Perhaps so. On the other hand, it could have been the work of a creative imagination that concocted all the said details to make a plausible tale against the accused-appellant. The doubt, which we cannot brush aside, is there.

We note that at the time the accused-appellant was apprehended and interrogated, he was only seventeen years old. That is a susceptible age. One can accept how easily a teenager can succumb to the pressure exerted upon him by hardened investigators experienced in extracting confessions through the use of methods less than legal. That pressure was in this case irresistible.

A life has been taken and justice demands that the wrong be redressed. But the same justice that calls for retribution cannot convict the prisoner at bar whose guilt has not been proved. *Justitia est duplex, viz., severe puniens et vere praeveniens*. Even as this Court must punish, so too must it protect. Conceivably, the conviction of the accused-appellant could add another victim in this case.

WHEREFORE, the appealed decision is REVERSED and the accused-appellant ACQUITTED, with costs de oficio. It is so ordered.

Yap, (Chairman), Narvasa, Melencio-Herrera, and Feliciano, JJ., concur.

[1] Rollo, p. 25.

[2] Orig. Rec., p. 1.

- [3] Rollo, p. 20.
- [4] TSN, March 17, 1983, pp. 5-6.
- [5] TSN, May 10, 1983, pp. 3-12.
- [6] TSN, May 10, 1983, pp. 12-15; TSN, May 26, 1983, pp. 3-18.
- [7] Exhibit "G".
- [8] Orig. Rec., p. 143.
- [9] Brief for Plaintiff-Appellee, pp. 9-10.
- [10] TSN, May 24, 1984, p. 2; TSN, May 31, 1984, pp. 1-2; TSN, June 19, 1984, pp. 1-2.
- [11] Rollo, pp. 19-25.
- [12] 6 Moran p. 120 citing US vs. Solano, 33 Phil. 582 and Dayrit vs. Gonzales, 7 Phil. 182.
- [13] Rollo, p. 94.
- [14] Ibid., p. 101.
- [15] See List of Exhibits.
- [16] Signed statement of accused Constantino Pecardal, p. 1.
- [17] Brief for the Accused-Appellant, pp. 18-19.

[18] 121 SCRA 538.

[19] 135 SCRA 465.

- [20] G.R. No. 70906.
- [21] TSN, May 24, 1984, p. 2; TSN, May 31, 1984, p. 1.
- [22] TSN, May 31, 1984, p. 2; TSN, June 19, 1984, pp. 1-2.
- [23] Supra.
- [24] Sec. 19, Art. IV, 1973 Constitution; People vs. Opida, G.R. No. L-46272, June 13, 1986.

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