

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZOSIMO CRISOLOGO, ALIAS ‘AMANG’;
DEFENDANT-APPELLANT.**

G.R. No. 74145. June 17, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from a decision of the Court of First Instance of Davao del Sur in Criminal Case no. 92 (76) convicting the defendant of robbery with homicide, sentencing him to the death penalty, and ordering him to indemnify the heirs of Martin Francisco the sums of P35,000.00 for loss of life, P25,000.00 for funeral expenses, P30,000.00 for loss of earnings and P20,000.00 for moral damages.

On 5 May 1976, a criminal complaint was filed by the Station Commander with the Municipal Court of Magsaysay, Davao del Sur against the accused Zosimo Crisologo alias "Amang", a deaf-mute, for robbery and homicide alleged to have been committed on 1 May 1976 between ten to eleven o'clock in the evening in Calamagoy, Poblacion Magsaysay, Davao del Sur.

The following information was subsequently filed by the Provincial Fiscal against the accused on 16 September 1977:

"That on or about the 1st day of May, 1976, in the Municipality of Magsaysay, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with violence against and intimidation upon persons, and with intent of gain, did then and there wil-fully, unlawfully and feloniously rob Martin Francisco of one (1) 'Seiko 5 Actus' wrist watch valued at Four Hundred (P400.00) Pesos and a two-battery flashlight valued at Thirty (P30.00) Pesos in the total amount of Four Hundred Thirty (P430.00) Pesos, to the damage and prejudice of the said owner in the amount aforesaid and on the same occasion, the above-named accused, with intent to kill, wilfully, unlawfully and felo-niously attack[ed] and stab[bed] the said Martin Francisco with the same bladed weapon, thereby inflicting upon him wounds which caused his death.

"CONTRARY TO LAW with the aggravating cir-cumstance of:

"(a) disregard of the respect due the offended party on account of his age; and

(b) nighttime.

"Digos, Davao del Sur, Philippines, Septem-ber 15, 1977."

On 12 December 1977, arraignment was set. The accused was allegedly informed of the charge against him through sign language by Special Policeman Alejandro Munoz, a child-hood-acquaintance. Mr. Munoz subsequently entered a plea of guilty on behalf of the accused. Upon objection of counsel, however, this plea was disregarded and arraignment was re-scheduled until such time as the Court could avail of the services of an expert in the sign language from the school of the deaf and dumb.

On 26 June 1979 the Court through another presiding judge, upon insistent plea of defense counsel for a sign language expert to assist the accused, again reset arraignment as no expert in sign language was available. The School for the Deaf and Dumb in Pasay City was sent a copy of the court order to enable it to furnish the court with an expert in sign language. No such expert was made available.

On 9 November 1982, or after five years from the date of filing of the information, an order through still another presiding judge was entered directing that a representative of the School of the Deaf and Dumb in Bago Gallera, Talomo District, Davao City be availed of to enable the accused to intelligently express his understanding of a plea of guilty or not guilty.

Apparently no sign language expert or representative ever arrived.

On 6 April 1983, the accused through a counsel de oficio waived the reading of the information and pleaded not guilty. Trial proceeded without any evidence being presented on his part. Finally, on 10 February 1986, without the services of an expert in sign language ever being utilized at any stage of the proceedings, the accused was found guilty beyond reasonable doubt of robbery with homicide and sentenced to die by electrocution. Executive clemency was recommended, however, in view of the accused's infirmity and his nearly ten-year detention as a suspect.

Counsel for the accused and the Solicitor-General now ask for the reversal of the judgment of conviction due to the failure of the trial court to safeguard the accused's right to due process of law and the insufficiency of the purely circumstantial evidence presented to overcome the constitutional presumption of innocence in favor of the accused.

We find their position to be well-taken.

The absence of an interpreter in sign language who could have conveyed to the accused, a deaf-mute, the full facts of the offense with which he was charged and who could also have communicated the accused's own version of the circumstances which led to his implication in the crime, deprived the accused of a full and fair trial and a reasonable opportunity to defend himself. Not even the accused's final plea of not guilty can excuse these inherently unjust circumstances.

The absence of a qualified interpreter in sign language and of any other means, whether in writing or otherwise, to inform the accused of the charges against him denied the accused his fundamental right to due process of law.[1] The accuracy and fairness of the factual process by which the guilt or innocence of the accused was determined was not safeguarded. The accused could not be said to have enjoyed the right to be heard by himself and counsel, and to be informed of the nature and cause of the accusation against him[2] in the proceedings where his life and liberty were at stake.

In *Terry v. State*[3], where a deaf-mute accused of manslaughter was not provided with an interpreter despite repeated requests from counsel, it was held:

"xxx The Constitution of this state expressly provides that an accused has a right to be heard by himself and counsel, also, to demand the nature and cause of the accusation; against him, and, further to be confronted by the witnesses who are to testify against him. In construing this constitutional provision it needs no discussion in deciding that all this must be done in a manner by which the accused can know, the nature and the cause of the accusation he is called upon to answer, and all necessary means must be provided, and the law so contemplates, that the accused must not only be confronted by the witnesses against him, but he must be accorded all necessary means to know and understand the testimony given by said witnesses, and must be placed in a condition where he can make his plea rebut such testimony, and give his own version of the transaction upon which the accusation is based. This the fundamental law accords, and for this the law must

provide. These humane provisions must not, and cannot, be dependent upon the ability, financial or otherwise, of the accused xxx [This] constitutional right xxx would be meaningless and a vain and useless provision unless the testimony of the witnesses against him could be understood by the accused. Mere confrontation of the witnesses would be useless, bordering upon the farcical, if the accused could not hear or understand their testimony. So, also, as to the nature and cause of the accusation. In the absence of an interpreter it would be a physical impossibility for the accused, a deaf-mute, to know or to understand the nature and cause of the accusation against him, and, as here, he could only stand by helplessly, take his medicine, or whatever may be coming to him, without knowing or understanding, and all this in the teeth of the mandatory constitutional rights which apply to an unfortunate afflicted deafmute, just as it does to every person accused of a violation of the criminal law. In other words the physical infirmity of this appellant can in no sense lessen his rights under the Constitution, and, in the proper administration of its laws, this great and sovereign state must and will accord the means by which its citizens, humble and afflicted though they may be, shall receive all the rights, benefits and privileges which the Constitution, laws, regulations, and rules of practice provide.[4]

The basic constitutional infirmity alone in the conduct of the case against the accused is, in our candid assessment, fatal to the judgment of conviction meted out against him.

Aside from the unfair setting and circumstance in which the accused was convicted, insufficiency of evidence to warrant a finding of guilt beyond reasonable doubt also leads this Court to set aside the conviction. The following events and circumstances are relevant in this regard:

On 1 May 1976, at past eight o'clock in the evening, the accused and the deceased were last seen walking away together from a sari-sari store where they had been drinking tuba steadily in apparent harmony. At around eleven thirty of the same evening, the, accused suddenly appeared in the house of Wilson Evangelista, who was then with relatives butchering a pig for the baptism of his child the following day. The accused was panting and trembling, and told Wilson Evangelista in sign language that he had come from Calamagoy, at the side of the canal, where there were persons fighting on the road. Evangelista later testified that he noticed the accused wearing a fatigue shirt with a blood-stain on it, and carrying a flashlight.

On 2 May 1976, Patrolman Reynaldo Pinto, Jr., was told to investigate a case of robbery with homicide with the deceased Martin Francisco as victim, and to arrest the accused on the basis of Wilson Evangelista's statement that he saw the accused with a bloodstained shirt the previous evening when the crime could conceivably have occurred. Patrolman Pinto did so that very day. Several days later, he was also able to recover the deceased's wristwatch and flashlight from the house the accused's father allegedly through the assistance of the accused himself.

Upon being asked who killed the deceased, the accused allegedly admitted to Pat. Pinto in sign language that it was he by making gestures which Pat. Pinto interpreted to mean that the accused had been stoned by the deceased, thus impelling the accused to stab the latter. This confession, however, was not included in Pat. Pinto's affidavit as he allegedly forgot to tell the investigator. He also acknowledged his failure to notify the accused of his right to counsel before interrogation and investigation due to difficulty in conveying the matter by sign language.

Based on the above circumstances and evidence, the trial court found the accused guilty beyond reasonable doubt of the crime charged, reasoning as follows:

"The prosecution proved and which this Court finds that the accused was the last person to be seen with the deceased, and that he was drunk when he left the store of prosecution witness Salome del Socorro together with the deceased. The Court also finds that the accused's clothes had blood-stain on it when he went to the house of prosecution witness Wilson Evangelista at 11:30 in the evening of May 1, 1976, the night when the deceased was robbed and killed. The seiko 5 actus wrist watch and the flashlight colored red and white both belonging to the deceased Martin Francisco were recovered from the possession of the accused and which

recovery was done with his help. The unexplained possession by the accused of the properties belonging to the deceased proved that he took these things unlawfully. The fifteen (15) stab wounds which were inflicted on the deceased, many of which were fatal wounds proved that a much younger [man] than the deceased could have inflicted the same. In the case at bar, the accused is very much younger than the deceased who was 63 years old at the time of his death, xxx frail and without physical attributes, unlike the accused who looks hastily, robust and young xxx.

While it is true that Pat. Pinto and his companion were able to get a statement from the accused without telling him in advance of his constitutional rights, due to difficulty in explaining them in sign language, the accused's statement by sign language was coupled with his voluntary help in recovering the things belonging to the deceased. Furthermore, the court considered and took note of the plea of guilty which was entered into by the accused on his first arraignment by sign language through Mr. Alejandro Munoz who is an associate of the accused in their younger days." (Emphasis supplied).

We find the trial court's decision essentially lacking in that degree of certainty in reason and conscience which is necessary to establish guilt beyond reasonable doubt. As held in *U.S. v. Lasada*,^[5] "By reasonable doubt is not meant that which of possibility may arise, but it is that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense."^[6] Facts must be presented methodically and meticulously, contradictions must be clarified, and gaps and loopholes in the evidence must be adequately explained "to the end that the court's mind may not be tortured by doubts, the innocent [not] suffer and the guilty [go] unpunished."^[7]

Such standards, we believe, have not been met in this case.

Patrolman Pinto, the interrogator to whom the accused allegedly confessed the details which led to a presumption that he killed the deceased, expressly admitted that he could have misinterpreted the gestures made by the accused as he had only a slight knowledge of sign language. Furthermore, the same witness did not give fully credible replies when questioned about the possibility that he was ordered to proceed to the house of accused's father to get the incriminating watch and flashlight which were delivered there earlier by a certain Nicolas.

The bloodstain on the accused's shirt could conceivably have come also from the fighting that the accused told Wilson Evangelista he had witnessed. Considering that the deceased sustained fifteen (15) stab wounds, twelve (12) of which could have separately caused death, according to the medical officer who examined the body of the deceased, the presence of a single bloodstain on the front of accused's shirt hardly supports the conclusion reached by the trial court, especially, when related to the high degree of intoxication appreciated against the accused. As testified to by the medical officer who, as stated, examined the body of the deceased, the stab wounds could also have been inflicted by several assailants using different weapons. That the accused looked much more robust than the deceased and thus could have committed the crime does not by itself deserve the weight and consideration that the trial court gave to it. Furthermore, the rubber slippers and eyeglasses found near the scene of the crime were never identified or explained.

The trial court's appreciation of the plea of guilty earlier entered for the accused by Special Policeman Alejandro Munoz, which the first presiding judge earlier discarded, is regrettable, to say the least, especially when considered with the admittedly limited knowledge in sign language on the part of Pat. Munoz and in relation to the investigator's own admission that the accused was never informed of his right to counsel.^[8]

WHEREFORE, the appealed decision is hereby reversed. The accused is acquitted, on the ground that his guilt has not been proved beyond reasonable doubt. The Court hereby orders his immediate release from confinement,

unless he is legally detained for some other cause or offense.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Const. (1973), art. IV, Sec. 17: "No person shall be held to answer for a criminal offense without due process of law." Reiterated in art. III, Sec. 14, par. (1) of the 1987 Constitution.

[2] Const. (1973), art. IV, Sec. 19: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. xxx" Reiterated in art. III, Sec. 14, par (2) of the 1987 Constitution.

[3] 21 Ala. App. 100, 105 So. 386 (1925)

[4] Id at 387

[5] 18 Phil. 90 (1910)

[6] Id at 96-97

[7] People v. Esquivel, 82 Phil. 453, 459 (1948)

[8] Const. (1973), art. IV, Sec. 20, "No person shall be com-pelled 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 in evi-dence." Cf. art. III, Sec. 12 of the 1987 Constitution.

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