

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY JUNGCO Y SANTIAGO, EDUARDO PALENCIA Y GALLO, ORLANDO ORTEGA Y MALINIA, RAFAEL ZARAGOZA Y DE LA CRUZ, AND ROLANDO AGUILAR...*G.R. No. 78531. June 22, 1990*

Ponente: PADILLA, J.

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This is an appeal interposed by the accused Rafael Zaragoza y De la Cruz and Eduardo Palencia y Gallo from the judgment* rendered in Criminal Case No. 17280 of the Regional Trial Court of Caloocan City, finding them and their co-accused Henry Jungco y Santiago, Orlando Ortega y Malinia, and Rolando Aguilar y Sombra,[1] guilty of the crime of Robbery with Homicide and sentencing each of them to suffer the penalty of reclusion perpetua, with the accessory penalties provided for by law, to indemnify the heirs of the deceased Dr. Lutgarda Rivera, jointly and severally, in the amounts of P30,000.00, as death indemnity, P30,000.00, as actual damages, and P50,000.00, by way of lost earnings, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The incriminatory facts of the case, according to the Solicitor General, are as follows:

“On December 20, 1981 at about 3:00 o’clock in the afternoon, Patrolman Eddie Regalado of the Northern Police District was in Women’s Club Street, Malabon, Metro Manila conducting a surveillance on the group of accused Rafael Zaragoza, Henry Jungco, Orlando Ortega, Rolando Aguilar and Eduardo Palencia, as part of his assignment to monitor the drug pushing activities of the bystanders in the said area (pp. 6-9, 7-9, tsn, Aug. 23, 1983). At that time all the accused were at the store drinking beer near the drugstore owned by Dr. Lutgarda Rivera (pp. 8-9, tsn, *ibid*). One of them was holding a wrapped newspaper more or less twelve (12) inches long and one (1) inch in diameter (p. 9, *ibid*). All the while that Regalado was watching the accused, he was standing in front of the drugstore of Dr. Rivera (p. 7, *ibid*). Later, at around 4:35 o’clock in the afternoon, the accused finished their beer and then proceeded to the drugstore of Dr. Rivera which is located at the Women’s Club Street, Malabon. When they reached the drugstore, Rolando Aguilar was left in front of the drugstore standing, while the four accused were inside the drugstore (p. 12, *ibid*). Regalado then left the place and went to the nearby police outpost to take a rest (p. 11, *ibid*). In a short while a person came to him (Regalado) and told him that there was a killing committed in the drugstore of Dr. Rivera (p. 11, *ibid*). He hurriedly went to the scene and found the dead body of Dr. Rivera prostrate on the floor (*ibid*). Immediately, he asked the sidewalk vendors that gathered around the drugstore if they have seen persons that came out from the store of Dr. Rivera (p. 11, *ibid*). One of the sidewalk vendors said that he saw five male persons hurriedly left the drugstore of the deceased (p. 35, *ibid*).

“Patrolman Eddie Regalado then relayed the information he gathered from the sidewalk vendor to Sgt. Dante Buenaventura who arrived at the scene together with Patrolman Leopoldo Simangan (p. 13, *ibid*; p. 6, tsn, Sept. 6, 1983). There-upon, they (Pat. Regalado, Sgt. Dante Buenaventura and members of the Anti-Organized Task Force) proceeded to arrest Henry Jungco and Orlando Ortega in their residence at Tambak, Navotas, Malabon (pp. 6-7, 11, tsn, Sept. 6, 1983; p. 14, tsn, Aug. 23, 1983). On the other hand, accused Rafael

Zaragoza and Eduardo Palencia were apprehended inside Hulo Market, while Rolando Aguilar was arrested the following day by members of the other elements of the Malabon Police Force (pp. 11-12, tsn, Sept. 6, 1983). At the Malabon Police Station, Patrolman Leopoldo Simangan conducted the investigation of the five accused. In said investigation, after the accused were duly apprised of their constitutional rights by Pat. Simangan, they executed and signed their respective sworn statements (Exhibits I, J, K and L, pp. 8-17, records; pp. 12-19, tsn, Sept. 6, 1983), except Henry Jungco who invoked his right to remain silent (p. 13, tsn, *ibid*). Ortega and Palencia admitted having stabbed the victim several times on the body with the use of an icepick and having ransacked the cash register of the drugstore and that they thereafter fled away (Exhibits I, L, pp. 8-10, 15, 17, record). After their statements were taken down they (Rafael Zaragoza, Henry Jungco, Eduardo Palencia, Rolando Aguilar and Orlando Ortega) were brought to Assistant Fiscal Eduardo Manalaysay where they swore to the truthfulness of their confessions (Exhibits I, J, K and L, *ibid*; pp. 12-19, tsn, *ibid*).

“On December 23, 1981, the police investigators conducted a re-enactment of the crime at the place of the incident (pp. 20-21, tsn, *ibid*). Present at time were the Mayor of Malabon Maynardo Espiritu, Station Commander Alfredo Cruz, Deputy Station Commander Julio Duenas, Lt. Daniel B. Cruz and a People’s Journal Reporter Bernie Razon and hundreds of other people surrounding the vicinity (p. 21, tsn, *ibid*). Before Regalado started the re-enactment, he informed again the accused of their constitutional rights, but nonetheless all the accused willingly participated in the re-enactment (p. 24, tsn, *ibid*). Pictures of the re-enactment then were taken (Exhibits N to N-24, pp. 22-30, tsn, *ibid*). As depicted in the pictures of the re-enactment, accused Henry Jungco, Eduardo Palencia and Orlando Ortega went to the drugstore of the victim Dr. Lutgarda Rivera to buy cough syrup (Exhibit N, p. 26, tsn, *ibid*). The victim, however, refused to sell them Ornacol cough syrup (p. 26, tsn, *ibid*). A heated argument then ensued between Ortega and the victim (pp. 26-27, *ibid*). In the course of the argument, Ortega pulled out an improvised dagger and stabbed the victim hitting her on the body (Exh. N-12, p. 27, tsn, *ibid*). Palencia then entered the store and likewise stabbed the victim with an icepick (Exh. N-13, *ibid*). Seeing what happened, Jungco grabbed the icepick and dagger from the hands of Palencia and Ortega and without any hesitation stabbed the victim three times with the use of an icepick (Exhs. N-14 to N-17, p. 28, *ibid*). Then Jungco and Ortega pulled down the body of the victim (Exh. N-19, p. 29, *ibid*), while Palencia proceeded to ransack the cash register of the victim and take the money found therein (Exh. N-23, p. 30, *ibid*).

“On December 21, 1981, Dr. Alberto M. Reyes, NBI Supervising Medico-Legal Officer, performed the post mortem examination on the cadaver of Dr. Lutgarda Rivera (Exhibit E, pp. 6-7, 13-20, tsn, July 12, 1983). According to his findings, the victim sustained eleven (11) stabbed wounds caused by a sharp pointed instrument such as an icepick; that the wounds on the aorta and upper and lower lobes of the left lung were fatal; that the wounds sustained at the anterior chest wall of the victim indicate that the assailant was in front of the victim when the said wounds were inflicted on her body (pp. 13-16, tsn, *ibid*).

“Atty. Roberto Rivera, the son of the victim, testified that before 6:00 o’clock in the afternoon of December 20, 1981, the son of the owner of the adjoining establishment adjacent to the drugstore of her mother came to their house and informed him that something bad happened to his mother; that immediately he went hurriedly to their drugstore together with his father; that upon reaching the place, he saw hundreds of people around the door of the drugstore; that he saw the dead body of his mother covered with a white blanket being carried by persons working with the International Funeral Homes; that inside the drugstore, he noticed that the shelves were forced opened, many bottles of medicines and boxes were scattered on the floor; that the store lost cash money in the sum of P2,000.00; that they spent P5,000.00 for the wake and P10,000.00 for the funeral expenses; that his mother was earning P1,000.00 per month as a professor in the College of Medicine of the University of Santo Tomas; that their drugstore had an average net income of P300.00 a day (pp. 5-13, tsn, Sept. 13, 1983).”[2]

The appellants denied having committed the crime charged. According to the appellant Rafael Zaragoza, he was in the Hulo Market in Malabon on 20 December 1981. He arrived at the said market at about 6:00 o’clock in the

morning of the said day after selling fish, and stayed thereat with his co-accused, drinking until about 10:00 o'clock of the same morning, when he went home to Tangos, Navotas. Then, on the following day, 21 December 1981, while he was inside the said market eating "mami", policemen came and arrested him in connection with the death of Dr. Rivera.

According to appellant Zaragoza, he was brought to a salt bed ("asinan") at Tonsuya where he was maltreated by the policemen and made to affix his thumbprint on a document the contents of which he did not know. He was also laid on a wooden bed with his head hanging and his feet tied to the bed and distilled water (for dry batteries) was poured over his mouth. He latter complained to the National Police Commission,[3] but he does not know what happened to his complaint. He admitted that he had also executed a statement,[4] wherein he stated that he was not maltreated by the policemen. He explained that he made such statement because he was given money by Atty. Rivera, the son of the deceased, through Pat. Gungon.[5]

The appellant, Eduardo Palencia, for his part, declared that he arrived at the Hulo Market at about 1:00 o'clock in the afternoon of 20 December 1981, and spent his time playing the jukebox, until 2:30 o'clock of the same after-noon when he went to the chinese restaurant at the back of the factory of Rufina Patis and drank beer with his co-accused. After about thirty (30) minutes, they went back to the market place where they read "komiks" at a store in the corner of said market until 3:30 o'clock when they parted. He went home to Tanza, Malabon, while the others went to Cubao, Quezon City.[6] Then, in the morning of the following day, he and Zaragoza were picked up by the police. He was brought inside a bodega in Niugan, Malabon, where he was maltreated and made to sign a document the contents of which he did not know. He also complained but he does not know what happened to his complaint.[7]

In finding the appellants guilty of the crime with which they were charged, the trial court relied principally upon the extra-judicial confessions executed by them on 21 December 1981,[8] and the pictures taken during the re-enactment of the crime.[9]

Counsel for the appellants, in this appeal, contends that the said extra-judicial confessions are inadmissible in evidence because they were extracted from the appellants during custodial investigation without the assistance of counsel and after the appellants had been subjected to different forms of maltreatment, threats, and intimidation. Counsel further asserts that the pictures of the re-enactment were taken in a manner contrary to law and are, therefore, inadmissible.

After going over the record of the case, we are convinced that the extra-judicial confessions in question are inadmissible in evidence, the same having been executed by the appellants during custodial investigation without the assistance of counsel, particularly, when the confessants manifested the waiver of their right to counsel. The prevailing rule is still that laid down in *People vs. Galit*,[10] as follows:

"10. This Court, in the case of *Morales vs. 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 a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown 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 anyone he 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, or by any person on 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.’ “

We also find that the pictures taken during the re-enactment of the crime, are inadmissible in evidence since the re-enactment was based upon the defendants’ inadmissible extra-judicial confessions. Pictures re-enacting a crime which are based on an inadmissible confession are themselves inadmissible.[11]

However, in a sworn statement executed on 14 July 1982,[12] the appellant Rafael Zaragoza admitted that he and his co-accused were responsible for the robbery and the death of Dr. Lutgarda Rivera. His sworn statement reads, in part, as follows:

“23. T: Ano ang inamin mo?

S: Inamin ko po na kasama ako sa pagnanakaw at pagpatay kay Dra. Rivera.

24. T: Sabihin mo sa akin ngayon kung tutoo ngang kasama ka sa pagnanakaw at pag-patay?

S: Iyon nga po ang pagkakamali ko dahil nasa labas lang po ako ng botika. Hindi po ako pumasok sa loob.

25. T: Isalaysay mo nga sa akin ang tunay na pangyayari?

S: Ganito po iyon, magka kasama po kami nina Butch (referring to HENRY JUNGCO), si Lando (referring to Orlando Ortega), si Labo (referring to Rolando Aguilar), at Eding Hula (referring to Eduardo Palencia), sa may harapan ng botika ni Dra. Rivera. Bumibili po kami ng Corex D pero ayaw kaming pagbilhan. Ang ginawa namin ay nagpunta kami sa palengke, tapos nagbigay ako ng katorse pesos kay LANDO para pambili ng Corex D, si Lando na po ang bahala doon sa kulang. Naghanap siya ng mabibilhan. Tapos, dumating na si Lando at may dala siyang dalawang boteng sientong bente bawat isa nang Corex. Naghati-hati na kami. Tapos, nagkuwentuhan kami sa palengke, tapos naisipan naming balikan si doktor. May dalang kutsilyo si Lando, si Butch naman po ay ice pick and dala. Ang dating maydala ng ice pick noong nasa may botika na kami ay Eding Hula, pero nakita kong kinuha iyon ni Butch bago sila pumasok sa loob ng botika. Ako po ay nagbantay na lang sa labas, dalawa kami, ako at si Labo. Nang lumabas na iyong tatlo na tuma-takbo, umalis na rin ako. Hindi na ako sumunod sa kanila sa palengke. Tapos nga noon, nahuli na kaming lahat.”

Rafael Zaragoza, during the trial, confirmed his execution of the said sworn statement. He claims, however, that he was paid for it by Atty. Rivera, the son of the victim, who gave him the money through Pat. Gungon,[13] but this was denied by Atty. Rivera and Pat. Gungon.[14]

The trial court, therefore, did not commit an error in finding the appellants guilty of the crime with which they were charged. Zaragoza’s admission is supported by the physical facts of the case and the testimonies of Pat. Eddie Regalado that he saw the appellants and their co-accused enter the drug store of Dr. Lutgarda Rivera and later leave the place hurriedly, at about the time the crime was committed, and of Atty. Roberto Rivera that upon his arrival at the drug store, he saw the dead body of his mother and that the shelves of the drug store were forcibly opened and bottles and boxes containing medicine scattered on the floor. Zaragoza’s admission is further supported by the testimonies of the appellant Eduardo Palencia and co-accused Orlando Ortega, and Rolando Aguilar that they were together in the afternoon of 20 December 1981.[15] While admittedly no prosecution witness testified to have actually seen the appellants and their co-accused in the act of robbing the drug store and killing the owner thereof, the circumstantial evidence is consistent with each other, such that the appellants and their co-accused, and no other, were the culprits and are guilty thereof.

Besides, the acceptance by co-accused Henry Jungco, Orlando Ortega and Rolando Aguilar of their sentence proves, not only their guilt but also that of their companions, the herein appellants Rafael Zaragoza and Eduardo

Palencia.[16]

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with proportionate costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.

Sarmiento, J., concur except with regard to the last statement that the acceptance by the co-accused of their sentence proves not only their guilt but also of their companions, to which I do not agree.

* Penned by Judge Geronimo S. Mangay

[1] The accused Henry Jungco y Santiago, Orlando Ortega y Malinia, and Rolando Aguilar y Sombra also interposed an appeal from the judgment, but, they subsequently withdrew the same. (Rollo, p. 179)

[2] Rollo, pp. 128-135

[3] tsn of August 29, 1984, pp.4-8

[4] Exhibit BB, Original Record, p. 372

[5] tsn of October 15, 1984, pp. 14-15

[6] tsn of October 31, 1984, pp. 5-7

[7] tsn of November 21, 1984, pp. 5-8

[8] Exhibits I and J

[9] Exhibits N, N-1 to N-24

[10] G.R. No. 51770, March 20, 1985, 135 SCRA 465, 472

[11] People vs. Galit, supra; People vs. Jara, G.R. Nos. 61356-57, September 30, 1986, 144 SCRA 516, 535

[12] Exhibit BB

[13] tsn of October 15, 1984, pp. 14-16

[14] tsn of January 9, 1985, p. 4; tsn of Dec. 18, 1984, p. 18

[15] tsn of October 31, 1984, p. 6; tsn of May 7, 1984, pp. 8-10; tsn of March 27, 1984, p. 15

[16] People vs. Molinao, G.R. No. 63735, April 5, 1990; People vs. Bongo, L-26909, February 22, 1974, 55 SCRA 547, 553

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