

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO BUEZA, DEFENDANT-APPELLANT.

G.R. No. 79619. August 20, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused, Antonio Bueza was found guilty beyond reasonable doubt of the crime of murder by the Regional Trial Court of Iriga City. The dispositive portion of the court's decision reads as follows:

"In view of the foregoing, the Court finds the guilt of the accused proven beyond reasonable doubt of the crime of Murder defined and penalized under Art. 248 of the Revised Penal Code. Considering the presence of the aggravating circumstance of nighttime which however is offset by the mitigating circumstance of voluntary confession and applying the Indeterminate Sentence Law, accused Antonio Bueza is therefore sentenced to suffer an imprisonment of ten (10) years and one (1) day to twelve (12) years of prision mayor in its maximum period and also to indemnify the widow, Nilda Rosela the sum of P12,000.00 and to pay the costs." (Rollo, p. 70).

Upon review, however, the Court of Appeals found that the imposable penalty should be reclusion perpetua and certified this case to us pursuant to Section 12, Rule 124 of the Rules of Court and our ruling in the case of *People v. Daniel*, 86 SCRA 511 [1978]).

The facts of the case are stated in the decision of the trial court as follows:

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"On March 8, 1983 at about 7:00 o'clock in the evening Nilda Rosela y Nasayao, was at their house situated at Barangay Niño Jesus, Iriga City cooking their night meal. At the time her husband Juanito Rosela and their small child were asleep.

"While thus cooking their food, Antonio Bueza and Rodolfo Solis armed with bolo and powder and were drunk came and tried to drag her to the dark place but she was able to hold at the wall of their house and also she told Rodolfo Solis that she does not like as she has also a husband. Rodolfo Solis therefore threw stones at their house causing her husband, Juanito Rosela to wake up and who thereupon got a bow and arrow but Rodolfo Solis was able to grab the same and were thereafter assaulted by Antonio Bueza and Rodolfo Solis, then dragged and strike him with stones. As he was being dragged he pleaded 'Don't kill me for I have a family' and as he was hit he kept on moaning. That was the last time he was seen by Nilda Rosela that evening alive.

"On the third day, Thursday, the body of Juanito Rosela, after search was made for him, was found buried with his foot protruding from the underground near the house of Paquito Lamiel also at Niño Jesus. He was found by the Barangay Captain and the Kagawad and was identified by Oscar Rosela, his son.

"He was exhumed on March 11, by Dra. Consuelo Margate, City Health Officer of Iriga City who has been such for the past 14 years and she made her exhumation report (Exh. A, A-1, and A-2). Her findings show that Juanito Rosela was exhumed from a grave 2 feet wide and four feet long and 1 foot and 2 inches wide. She

found many injuries but item No. 7 in her report which is a 'contusion with hematoma, 3 x 3 inches in the parietal region, right with con-comitant fracture of the skull is the most serious and caused the death of the victim. And in the death certificate issued and signed by Margarita Barce (Exh. B) the cause of death is cerebral hemorrhage.

"On March 21, 1983, Police Corporal Nicomedes Lopez of Garchitorena, Camarines Sur, acting upon a suspicious persons report, apprehended and investigated the persons of Antonio Bueza and Rodolfo Solis, but only after informing them of their constitutional rights and his investigation which was in the questions and answers were reduced to writing (Exh. C). In the statement Bueza admitted having killed Juanita Rosela because Rosela supposedly chased him with a bow and arrow, but then he hid and later he went out from hiding thinking that Rosela was no longer there, but it happened he was very near and so they grappled and he was able to wrest the bow and arrow and with which he struck and killed Rosela." (Rollo, pp. 68-70)

The Court of Appeals accepted the trial court's findings as the facts of the case and added:

"Since no bail was recommended by the City Fiscal, both the accused were detained at the Iriga City Jail. However, accused Rodolfo Solis escaped on July 26, 1983, and remained at large, hence, accused-appellant Antonio Bueza, with the assistance of counsel, was arraigned alone on October 28, 1983 during which he pleaded not guilty to the offense charged." (Rollo, p. 70)

The appellant raised the following assignment of errors, to wit:

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I

"THE HONORABLE COURT A QUO ERRED IN DISREGARDING THE FACT THAT THE LONE ALLEGED EYEWITNESS, NILDA NASAYAO (ROSELA) ADMITTED THAT SHE HAS NOT BEEN THE ACCUSED ASSAULT NOR MUCH LESS KILL JUANITO ROSELA;

II

THE COURT ERRED IN FURTHER DISREGARDING THE OTHER MATERIAL INCONSISTENCIES IN THE SAID TESTIMONY OF NILDA NASAYAO AND, INSTEAD, IN ACCORDING CREDENCE TO THE SAME AND IN FINDING THAT THE LATTER HAS "VERY POSITIVELY" IDENTIFIED THE ACCUSED-APPELLANT;

III

THE SAID COURT ERRED IN ADSORBING (sic) VALIDITY TO THE ALLEGED EXTRAJUDICIAL CONFESSION OF THE ACCUSED AND IN ADMITTING THE SAME AS EVIDENCE AGAINST THE LATTER;

IV

THE SAID COURT ERRED IN CONVICTING THE ACCUSED AND ORDERING HIM TO SUFFER IMPRISONMENT AND TO PAY DAMAGES; AND,

V

THE SAID COURT ERRED IN DENYING THE MOTION FOR RECONSIDERATION." (Rollo, pp. 71-72)

A review of the records of the case does not yield any ground or reason why we should reverse the judgment of conviction and acquit the appellant. We agree with the Court of Appeals' conclusion that guilt beyond reasonable

doubt has been proved.

The appellant alleges that the lone eyewitness, Nilda Nasayao, wife of the deceased did not actually see him kill or assault the victim and yet the trial court gave credence to her testimony. He further contends that her testimony is tainted with inconsistencies which the trial court disregarded.

We agree with the Court of Appeals that the testimony of Nilda Nasayao is sufficient to convict the accused of the crime charged as she positively identified the accused as one of the authors of the crime. As stated by the Court of Appeals:

"The record of the case indubitably shows that the witness positively identified Antonio Bueza and Rodolfo Solis as the two persons who came to their lowly house on the night of March 3, 1983, and thereafter Rodolfo Solis dragged Nilda Nasayao Rosela to a dark and secluded place in an attempt to sexually abuse her. Fortunately, she was able to hold on to the wall and escape the grappling of Rodolfo Solis (T.S.N., March 1, 1984, p. 7). After Nilda Nasayao Rosela was able to free herself, Rodolfo Solis got mad and threw stones at the house of the couple. Thereafter, the deceased who was then sleeping with his five year old daughter, upon being awakened by Nilda Nasayao picked up his bow and arrow (T.S.N., March 1, 1984, p. 8) apparently to defend his family. However, Rodolfo Solis grabbed the bow and arrow and together with Antonio Bueza assaulted Juanito Rosela and dragged him to a dark place where the two accused stoned him (T.S.N., March 1, 1984, pp. 8, 12-13).

At a distance of eleven (11) meters from the spot to which the victim was dragged, the witness could hear the victim moaning and the thud sounds of stones hitting the body (T.S.N., March 1, 1984, pp. 14-15)." (Rollo, p. 72).

The Court of Appeals correctly observed that "positive identification need not only mean the identification by the use of the visual sense. It also includes other human senses with which one could perceive" as Nilda Nasayao definitely recognized the voice of her husband while the latter was being killed. By the voice and sounds produced, one can very well imagine what was going on at that distance after Juanito Rosela was dragged and assaulted by the two (2) assailants. She testified, to wit:

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"Q. What happened after that?

A. My husband was assaulted.

Q. Who assaulted him?

A. Antonio Bueza and Rodolfo Solis.

Q. How?

A. They dragged my husband to the dark place.

Q. And what happened when your husband was in a dark place?

A. My husband was stoned by them.

Q. Who threw stone at your husband?

A. Antonio Bueza and Rodolfo Solis.

Q. Now was that the last time you saw your husband alive?

A. Yes, sir.

Q. Alright, when did you see your husband again?

A. When he was found dead.

Q. That was how many days later from the last time you saw your husband alive?

A. When he was sleeping in our house, that was the time when I saw him alive.

Q. Now while your husband was being dragged by Rodolfo Solis and Antonio Bueza, what did your husband say if any?

A. 'Don't kill me for I have a family.'

Q. And when your husband was in the dark place after he was dragged, did you still hear your husband say anything?

A. Yes, sir, he said, 'don't kill me for I have a family.'

Q. And what else did you hear?

A. He was already moaning.

Q. Can you tell us why he was moaning?

A. Because he was being killed." (T.S.N., March 1, 1984, pp. 8-9)" (Rollo, pp. 74-75)

The inconsistencies and contradictions cited by the accused refer only to minor details which do not destroy the credibility of the witness (People v. De Las Piñas, 141 SCRA 379 [1986]). We also see no need to discredit the lone testimony of Nilda Nasayao as this is corroborated by circumstantial evidence on record sufficient to support the judgment of conviction (People v. Roa, 167 SCRA 116 [1988]). As found by the Court of Appeals:

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"x x x We find the following series of the circumstantial evidence not only conclusively revealing but more than sufficient to sustain the judgment appealed from, to wit: When the two accused came to the house of the victim both were drunk (T.S.N., March 1, 1984, p. 50); that Antonio Bueza had a bolo while Rodolfo Solis was carrying a powder (T.S.N., March 1, 1984, p. 50); that the house of the victim was located near a creek where there are plenty of stones (T.S.N., March 1, 1984, p. 13).

"As the two accused were dragging the deceased to a dark and secluded place, Nilda Nasayao Rosela heard her husband pleading, "Don't kill me for I have a family," followed by a moaning cry of pain; the thud sounds she heard of a blunt instrument that was being struck on the victim's body; the autopsy which revealed that a blunt instrument was used to fracture the skull that caused the victim's death (T.S.N., April 6, 1984, p. 5).

"Now, taking all these together and comparing the findings of Dr. Consuelo M. Margate, the City Health Officer who conducted an autopsy of the victim, the conclusion is inevitable that the wounds and injuries suffered by the victim was caused by a bladed weapon and a blunt instrument (T.S.N., April 8, 1984, p. 5)." (Rollo, p. 74)

The accused admitted that he killed the victim and he outlined the details of the commission of the crime in an extrajudicial confession executed on March 21, 1983 at Garchitorena, Camarines Sur.

The extrajudicial confession, however, has no probative value as it was taken without a competent and independent counsel present to assist the appellant. The Constitution clearly provides that the right to counsel cannot be waived except in writing and in the presence of counsel. (Article III, Section 12 (1), Constitution).

The trial court credited the accused-appellant with the mitigating circumstance of plea of guilt arising from the

extrajudicial confession. Since the appellant questions the validity of the confession, it cannot reduce his penalty in any way. It bears emphasis, however, that the so-called "extra judicial confession" is not really a confession of guilt. While the appellant admitted the killing, he claims it was done in self-defense. It is also a defense and not a confession alone.

Moreover, the Court of Appeals ruled that for this mitigating circumstance to be present, the requisites are (1) the offender spontaneously confessed his guilt; (2) the confession of guilt was made in open court; (3) the confession of guilt was made prior to the presentation of evidence for the prosecution. (*People v. Crisostomo*, 160 SCRA 47 [1988]).

The Court of Appeals stated that none of the requisites mentioned were satisfactorily complied by the accused. Although the accused admitted having killed Juanito Rosela in self-defense in his extrajudicial confession, this allegation was never proved nor even raised during the trial. When arraigned, he did not plead guilty to the offense charged (*People v. Pampanga*, 139 SCRA 339 [1985]) but instead, insisted that he was not informed of the nature of the offense lodged against him. In his testimony, the accused kept on denying the whereabouts of the victim (T.S.N., June 22, 1984, p. 11) which "signifies a stubborn refusal to admit guilt" as observed by the Court of Appeals. Under the above circumstances, the accused is clearly not entitled to this mitigating circumstance of voluntary confession.

On the other hand, the aggravating circumstance of treachery was correctly appreciated by the Court of Appeals. We quote with favor its findings:

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"x x x Based on the evidence adduced and the testimony of Dr. Consuelo M. Margate, it appears that after the victim was physically dragged into a dark and secluded place unarmed, the two accused first disabled him by hacking the anterior aspects of both his right and left knees causing a horizontal cut wound of 2 inches long and 1 and 1/2 inch deep (Exhibit "A-1"). To quote that portion of her testimony:

FISCAL GONZALES:

Q. Now, going back doctor to Exhibit A and A-1 which is particularly Annex A and B, Exhumation Report, Item No. 4 states that the lower extremities of the victim were flexed in pugilistic position.

A. Now the position of the cadaver was like this, (witness demonstrating the position of the cadaver as the two legs were flexed and the two arms raised in a clenched position).

Q. Can you interpret that kind of position, what does that mean?

A. When he was not yet dead or semi-conscious that he could not run because his two legs were with cut wounds on the joint and therefore he could not run.

Q. So, it is possible by your interpretation that the victim Jose Rosela when he was buried, was still alive?

A. Yes, semi-conscious.

Q. Therefore he is alive?

A. Yes.

Q. Any other interpretation regarding that position? Could you interpret that he was in a state of fright and in defensive position from his assailant?

A. Yes, (T.S.N., April 8, 1984, pp. 6-7)

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Q. According to your exhumation report, there are contusions, cracked on the head and there are also cut wounds. From these wounds or from your findings, could these have been caused by any other person?

A. Possible because the assailant severed first the joint here on the feet so he could not run.

Q. From what you have found, which could have been the first injury inflicted upon the victim, the cut wounds or the x x x hitting on the head?

A. In my opinion, he cut first the joint so he cannot run and fight, so he cut the left and right joints so he cannot fight anymore. (T.S.N., April 8, 1984, p. 11).

Hence, as ruled by the Supreme Court in *People v. Velez*, 58 SCRA 21.

Treachery is aggravating. The accused in waylaying the victim, employed a mode of attack, which was deliberately designed by them to insure his death without any risk arising from the defense which he could have made. He was unarmed. He was not able to make any defense at all.

The other aggravating circumstances alleged in the information, namely, abuse of superior strength and nocturnity are absorbed by treachery (*People v. Remollo*, 123 SCRA 209), while the circumstance of disrespect or disregard of age was not proven during the trial." (Rollo, pp. 84-86)

WHEREFORE, the appealed judgment of the trial court as certified by the Court of Appeals is MODIFIED. The accused, ANTONIO BUEZA is found GUILTY beyond reasonable doubt of the crime of murder. Considering the presence of the aggravating circumstance of treachery without any mitigating circumstance, the accused is hereby SENTENCED to SUFFER the penalty of reclusion perpetua and to indemnify the widow, NILDA NASAYAO ROSELA the sum of P30,000.00 and to pay costs.

SO ORDERED.

Fernan, C.J. (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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