

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SALUDAR Y MONDIGO ALIAS "BAY", JULIO MABANSAG Y MABAIT ALIAS "CHITO", AND WILFREDO BABON Y PORE ALIAS "TOTONG BABON, RAF..."

G.R. No. 82178. July 31, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

For consideration is the appeal of the accused Romeo Saludar y Mondigo alias "Bay" from the decision* rendered in Criminal Case No. 68252 of the Regional Trial Court at Pasig, Metro-Manila, the dispositive portion of which reads, as follows:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused ROMEO SALUDAR y MONDIGO alias Bay guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide and hereby sentences said accused ROMEO SALUDAR y MONDIGO alias Bay to reclusion perpetua, to indemnify the heirs of the victim FRANCISCO CATU y SIOJO in the amount of THIRTY THOUSAND PESOS (P30,000.00) for the death of said victim and the further sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) in compliance with the mandate in articles 100, 104 (1) (3) and 107 of the Revised Penal Code and to pay the costs.

In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment.

On the other hand, for failure of the prosecution to rebut the constitutional presumption of innocence, accused JULIO MABANSAG y MABAIT alias Chito and WILFREDO BABON y Pore alias Totong Babon are hereby acquitted of the offense charged, with costs de-oficio.

The Municipal Jail Warden of Pasig is hereby ordered to release the persons of the accused JULIO MABANSAG y MABAIT alias Chito and WILFREDO BABON y PORE alias Totong Babon from custody unless there exists any other order or orders to the effect that they should remain confined under custody.

In case of appeal by accused ROMEO SALUDAR y MONDIGO alias Bay, the Branch Clerk of this Court is hereby ordered to reproduce the information in this case and have it certified as a true copy by the Office of the Provincial Fiscal of Rizal and have it archived the same to be revived upon the apprehension of accused RAFAEL ROSALA alias Nonoy and MANUEL ROSALA.

Let alias warrant of arrest be issued for the arrest of said accused RAFAEL ROSALA alias Nonoy and MANUEL ROSALA the same to be served thru the Taguig Police Force, NBI, PC/CIS and CAPCOM."

The established facts of the case are as follows: At about 8:30 o'clock in the evening of 12 September 1986, Francisco Catu, also known as "Mang Paquito", was stabbed, resulting in his death, inside his store located at Tomasa Avenue, Tomasa Estate Subdivision, Barangay Ususan, Taguig, Metro-Manila. The proceeds from sales in his store, amounting to P4,000.00, were missing and probably taken by the person or persons responsible for

his death.

Eufrocina Porlaje, who was living just across the street from the store of Mang Paquito, declared that shortly before or about 8:30 o'clock in the evening of 12 September 1986, while she was talking to Cely Mallari in front of her house, she saw a group of men, not less than five (5), but not more than eight (8), in number, going towards the store of Mang Paquito. The store was closed, but Mang Paquito was standing outside the door. The men talked to Mang Paquito and moments later, Mang Paquito went inside his store. Not long thereafter, Mang Paquito shouted; "ano ba, ano ba" and the men standing outside the store ran away.

Later, Eufrocina heard a dog yelping in pain. She also heard Richie, the son of Mang Paquito, shout: "Tama na, 'Dy' ", after which she saw a man dash out of the store and run to where the group of men had gone. Eufrocina, however, was unable to recognize the man, nor the group of men. Afterwards, she saw Richie going to the house of his aunt. When he returned, he had his aunt. Aling Nora, with him. Not long thereafter, Eufrocina heard Aling Nora cry out that Mang Paquito had been stabbed. Upon hearing this, she went to the house of Mang Paquito and helped in bringing him to the hospital, leaving Cely Mallari behind as she did not want to go with her.[1]

Richard Catu, or Richie, the son of Mang Paquito, declared that he was awakened by a commotion and the sound of breaking glass coming from the store. Upon going outside the room to investigate, he saw a man stabbing his father, and another man stabbing their dog, after which both ran away. He could not recognize the men. However, he later saw the man who stabbed their dog lying in the morgue of a funeral parlor in Taguig. After the men had gone, he roused his elder brother, Harold, to attend to their father, while he ran to seek help from their relatives living nearby.[2]

Mang Paquito was brought to a medical clinic in Tuktukan, Taguig, Metro-Manila, but when his wife Doris Lim de Catu arrived at the hospital, Mang Paquito was already dead. Doris Lim declared that she spent P18,000.00 for the funeral, including the wake; and that the daily revenue from the store is P4,000.00, which could no longer be found, except for some small coins and bills.[3]

On 5 November 1986, the police authorities received information that one Romeo Saludar alias "Bay" of Barangay Ususan, Taguig, Metro-Manila, was involved in the killing of Mang Paquito. Romeo Saludar was, consequently, picked up and brought to police headquarters for questioning. During the custodial interrogation that ensued, Romeo Saludar executed an extra-judicial confession wherein he admitted his participation in the commission of the crime and pointed to one Jose (whose cadaver was found lying in the morgue of a funeral parlor in Taguig, Metro-Manila), Nonoy Rosala, Manuel Rosala, Totong Babon, Julio Mabansag, and one Junior as his companions.

In view of these revelations, Wilfredo Babon alias "Totong Babon" and Julio Mabansag alias "Chito" were picked up for questioning. Both, however, denied participation in the commission of the crime.[4] Nevertheless, they were charged, together with Romeo Saludar, with the crime of Robbery with Homicide in an Information filed with the Regional Trial Court of Pasig, Metro-Manila, which was docketed therein as Criminal Case No. 68252.

When arraigned, the three (3) accused entered pleas of "not guilty".

On 12 December 1986, the Information was amended to include Rafael Rosala alias "Nonoy" and Manuel Rosala as party defendants. Said defendants, however, have remained "at large" up to the present and their whereabouts are unknown.

At the trial of the case, Romeo Saludar claimed that he was maltreated by police investigators and forced to sign his extra-judicial confession (Exh. H). He further claimed that the contents of the document were not read nor explained to him before he signed the same. He declared that he was at home the whole day of 12 September

1986, fixing the wall of their house, and did not leave the house at any time.[5] He further declared that he first met his co-accused, Wilfredo Babon and Julio Mabansag, only on 5 November 1986, at the elementary school building where they evacuated because of the flood.[6]

Josefina Saludar corroborated the testimony of her husband, Romeo Saludar. She testified that her husband was in their house the whole day of 12 September 1986, and went to sleep after taking their supper.[7]

After Romeo Saludar rested his defense, his co-accused Julio Mabansag and Wilfredo Babon, instead of presenting evidence in their defense, filed a demurrer to the evidence.

In support of his appeal, the defendant-appellant Romeo Saludar claims that the trial court erred in finding him guilty of the crime charged on the sole basis of his Salaysay (Exh. H) which is inadmissible in evidence, for having been extracted from him during custodial interrogation by means of force and violence and without the assistance of counsel.

The Solicitor General agrees with him and recommends his exoneration.

After a review of the records of the case, we agree with the defendant-appellant and the Solicitor General that the extra-judicial confession executed by the defendant during custodial investigation is inadmissible in evidence for failure of the investigating officers to observe the strictures laid down in *People vs. Galit*,[8] to wit:

"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, 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." (Underlining for emphasis)

It would appear in the instant case that the defendant-appellant Romeo Saludar was not assisted by counsel engaged by him, or by any person in his behalf, or appointed by the court upon petition of the detainee or anyone in his behalf, when he executed the Salaysay (Exh. H) during his custodial interrogation, as required in the aforecited rule. Cpl. Ricardo Sto. Domingo, Jr. of the Marikina Police Station, who conducted the interrogation, testifying for the prosecution, declared as follows:

"Q When you arrested the accused Romeo Saludar, you immediately proceeded to the police headquarters?

A No, before we proceeded to the police headquarters, we interrogated him until he tell this accomplices. He implicated Julio Mabansag so we arrested him.

Q Where?

A Taguig Elementary School.

Q In the presence of what, the police officers?

A The police officers including the barangay tanod.

Q Who was the police officer present?

A Maj. Nestor Cruz, our chief at CID.

Q How many were you when you interrogated the suspects?

A 6 to 7 follow-up members.

Q Was the accused Romeo Saludar with a companion at that time exclusive of the arresting officers?

A None, sir.

Q Did you take their statements?

A After the arrest of Romeo Saludar and Julio Mabansag, we took them to the police headquarters.

Q At the police headquarters, what did you do?

A The statement of Romeo Saludar was reduced into writing.

Q How about Julio Mabansag?

A Together with Julio Mabansag.

Q Were they assisted by counsel?

A No, sir. I don't know with Pat. Fortaleza.

Q You want to impress the Hon. Court that you were not present at that time?

A I was present there but it was the discretion of Pat. Fortaleza.

Q You were also a witness to the taking down of the statements of the accused?

A Yes, sir.

Q Did you inform him of his constitutional rights?

A It was Pat. Fortaleza who apprised him of his constitutional rights.

Q You were present then?

A Yes, sir.

Q Were you able to take down the exact words of Pat. Fortaleza in apprising the accused of their constitutional rights? What were the exact words?

A You have the right to remain silent. Whatever you say will be used as evidence for and against you. You also have the right to secure the services of a counsel of your own choice.

Q And Romeo Saludar answered, 'Yes, sir'?

A Yes, sir.

Q After taking the statement of Romeo Saludar, what did you do?

A We proceeded to the Pepsi Cola Company to look for the residence of suspect Wilfredo- Babon. Then, we returned to the Taguig Police Station to take Wilfredo Babon.

Q Were you able to effect the arrest?

A Yes, sir.

Q He was immediately brought to the Eastern Police HQ for interrogation?

A Yes, sir.

Q When you investigated the suspect, was he assisted by any counsel?

A No, sir.

Q Did you not avail the assistance of the CLAO member?

A No, sir.

Q During the interrogation, how long did it end or how long was it conducted?

A I cannot remember. It was continuous paper works and extensive follow-ups.

Q Who was the investigator?

A Pat. Fortaleza, Romeo de la Cruz and Ziga.

Q Do you have witnesses during the arrest when you arrested the suspects?

A None, sir." [9]

The absence of counsel during the custodial investigation is affirmed by the Salaysay (Exh. H) of Romeo Saludar wherein the following is stated:

"Tanong: Ngayong nalaman mo na ang ilan sa iyong mga karapatan na naaayon sa ating Binagong Saligang Batas, ikaw ba naman ay nakahanda pa ring magbigay ng iyong salaysay kahit na walang abogado at ang lahat ng iyong sasabihin sa pagtatanong na ito ay kusang loob at pawang katotohanan lamang?

Sagot: (Sgd.) Romeo Saludar." (emphasis supplied)

If accused Romeo Saludar had been assisted by counsel, there would have been no need for the police investigator to ask if the accused was willing to answer his questions even without the assistance of counsel.

The Court observes that there is written at the bottom of page 2 of said Salaysay a note that the appellant was assisted by one Atty. Editha Pio of the Citizens Legal Assistance Office (CLAO). But said statement is not sufficient compliance with the rule. The CLAO attorney should have been presented in court to confirm her presence during the custodial interrogation of the appellant, in view of the conflicting testimony of the police investigators that Romeo Saludar was not assisted by counsel during custodial investigation, as well as to show her authority to appear for and in behalf of the accused. Let it be noted that under the rule, it is necessary that the person under custodial investigation be assisted by an attorney engaged by the accused or by any person on his behalf or appointed by the court, upon petition of the detainee or person acting on his behalf. Appearing as public attorney is not enough. He should be engaged by the accused, or by the latter's relative or person authorized by him to engage an attorney, or by the court, upon proper petition of the accused or person authorized by the accused to file such petition.

It appearing that there is no evidence that would link defendant-appellant Romeo Saludar to the commission of the crime other than the Salaysay (Exhibits H and I) taken during custodial investigation, which are inadmissible in evidence, the guilt of said Romeo Saludar cannot be said to have been proven beyond reasonable doubt.

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE and another one entered, acquitting the defendant-appellant Romeo Saludar y Mondigo alias "Bay" of the charge against him. With costs de oficio.

SO ORDERED.

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

* Penned by Judge Martin S. Villarama, Jr., RTC, Branch 156, Pasig, Metro Manila

[1] tsn of January 14, 1987, pp. 2-4

[2] tsn of February 11, 1987, pp. 4-5,10

[3] tsn of August 5, 1987, pp. 3-5

[4] Exhibits E and J; see also tsn of April 8, 1987, pp. 3-7

[5] tsn of September 16, 1987, pp. 2-7

[6] Id., p. 13

[7] tsn of October 7, 1987, pp. 3-4

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

[9] tsn of April 8, 1987, pp. 13-14

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