

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCOS P. JIMENEZ AND ROBERT JIMENEZ, ACCUSED-APPELLANTS.

G.R. No. 82604. December 10, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

The failure of the police authorities to observe the constitutional safeguards governing custodial interrogation impels rejection of the extrajudicial confession ascribed to one of the appellants and consequent reversal of the Trial Court's verdict of conviction chiefly based thereon.

On August 13, 1985 the police officers at the Ginatilan, Cebu station received a report that one Pelagio Jimenez had been found dead at barangay Guiwanon, "below the cliff near the balite tree." Without much loss of time, Pat. Reynaldo Cinco and other policemen went to the scene to conduct an investigation. The Municipal Circuit Judge of Ginatilan, Hon. Palmacio Calderon, accompanied them, as did Dr. Trifina M. Ferraren. They came upon the lifeless body of Pelagio Jimenez at the place indicated, with stab and lacerated wounds on the head and leg; and apparently the corpse was beginning to decompose since there were maggots crawling over the face, arms, hands and feet.

The police investigators learned that the deceased Pelagio Jimenez, had been living separately from his family; that in the early morning of August 12, 1985, Marcos Jimenez, who was wont to spend the night at his father's house, told his mother that Pelagio Jimenez had not come home the previous night; that inquiries were immediately made about Pelagio and a search for him undertaken by his relatives and friends; that although the search lasted the whole day and proceeded well into the night of the 12th, it proved unsuccessful, and it was not until the morning of the following day, August 13, 1985, that Pelagio Jimenez was finally found, murdered, the searchers having been led to the place where he lay by the foul odor already being exuded by his corpse.

The investigators also learned from the persons that they interviewed of other circumstances that drew their suspicion to the sons of Pelagio Jimenez, Marcos and Robert, viz.: that there was a trail of drops of dried blood leading from the porch (pantawan) of the dead person's residence to the cliff by the balite tree where he was ultimately found; that at some point the trail of blood was interrupted by a patch of freshly plowed soil, and Robert Jimenez said that it was he who had plowed that part of the field and before doing so, had indeed noticed some blood on the ground but had attached no significance to it; that midway between Pelagio's house and the cliff, there were signs as of a body having been dragged through some bushes; that the brothers, Marcos and Robert Jimenez, were seen by neighbors bathing at the artesian well in that place at midnight, "as if washing away stains of blood;" and that Pelagio Jimenez often had violent quarrels with his children, and had been known to complain that there were even occasions when he had been boxed and hit by his children, particularly Marcos and Robert, who had been accused of surreptitiously selling copra belonging to their father's brother, a Dr. Mario Jimenez.

On the 16th of September, 1985, the police invited Pelagio's widow, Albina Jimenez, and her sons, Marcos and

Robert Jimenez, for questioning about their father's killing. The circumstances attendant upon and subsequent to the questioning of Marcos Jimenez are succinctly narrated in the People's brief as follows:

" ** At first, ** (Marcos) denied any participation on the death of his father. However, after Lt. Bancog confronted Marcos Jimenez of his observations during the ocular inspection (id, [TSN, May 26, 1986], p. 23) the latter admitted that it was his brother Roberto who hacked their father on the right leg. Thereafter, they (Marcos and Roberto) carried their father near the balite tree by the cliff and left him there (id., p. 30). Initially, Lt. Bancog took down appellant's confession in a piece of paper (Exh. 'C') (id., p. 24; Tsn, December 19, 1985, p. 7). Thereafter, Lt. Bancog gave the draft (Exh. 'C') to Pat. Cavalida to enable the latter to type the same (id., p. 47).

"Pat. Cavalida continued the investigation conducted by Lt. Bancog (Tsn. March 6, 1986, p. 8) in the presence of Ex-Judge Jabagat who acted as counsel for appellant Marcos Jimenez (id., pp. 10-11; Tsn. May 26, 1986, p. 22). He typed appellant's confession (Exh. 'B') which was contained in the draft (Exh. 'C') prepared by Lt. Bancog while at the same time, injecting some questions of his own (ibid., pp. 4-5). Appellant was unable to sign his confession (Exh. 'B') since Judge Calderon, before whom the confession was supposed to be sworn to and signed, had earlier left (id., p. 6). Hence, appellant agreed to come back the next day to sign his statement (Exh. 'B') (id., p. 7).

"The next day, appellant Marcos Jimenez failed to come back as promised, and the authorities were unsuccessful in fetching him since they were informed that appellant had left for Cebu City (id., p. 7). Marcos Jimenez returned thereafter, but refused to sign his statement (Exh. 'B') (id., p. 8).

"At about 6:00 o'clock in the evening of August 16, 1985 (Tsn. March 7, 1987, p. 4) Manolita Castañares, a relative of appellants, overheard a conversation between appellant Marcos Jimenez and his mother Albina, while they were on their way toward the house of Dr. Jimenez (ibid.). She heard Albina tell Marcos that the way he answered the questions during the examination before the authorities were wrong. Marcos replied, 'It is just the same because if I don't admit, you will be the one pressured' (id., pp. 4-5). Albina remarked, 'You should have denied about the circumstances why it happened like that' (id., p. 5). Marcos answered, '(I)t is just the same. Had somebody seen the one mentioned in the affidavit when I admitted?' (id.)."

Lt. Bancog asked a policeman to invite ex-Judge Pacita Jabagat so that, to use her own words, she could "assist the accused whose confession has been taken before the Office of the Chief of Police." According to Judge Jabagat, when she arrived at the station, what happened was, again in her own language, Marcos Jimenez -

" * * was asked about the written confession, and it was read to him. He was (also) apprise (sic) of his Constitutional right, and I ask him about the contains (sic) of his written confession, I said to him 'are these true?' and he said, Yes, alright I said, you sign. I am here to assist you, but if you think you are hesitant to sign it, you think it over and ask me (for) time, (saying) I would like to confer with my uncle Engineer Marcos Jimenez and that we summon (sic) his uncle who was just around, and after that, he told me he was not going to sign the confession and I ask (sic) him, if you will not sign, you have the privilege not to sign, if you don't like to sign its' (sic) just OK."

Subsequently, an information dated October 22, 1985 was filed by the Provincial Fiscal of Cebu with the Regional Trial Court accusing Pelagio's widow, Albina Jimenez, and her sons by Pelagio, Marcos, Robert, and Wilkins, of the felony of parricide in that

" . . . on or about August 11, 1985 at around 8 o'clock P.M. at barangay Guiwanon, Ginatilan, Cebu, * * said accused, confederating together and helping one another, with intent to kill and during night-time, and without just cause, did then and there wilfully, unlawfully and feloniously attack, assault and hack Pelagio Jimenez * * with a bolo, inflicting upon the said Pelagio Jimenez mortal injuries on various parts of his body, that soon caused his death thereafter."

All the accused entered a plea of innocent when arraigned. At the trial, the prosecution presented eight (8) witnesses whose evidence established substantially the facts above summarized. The four defendants took the witness stand and gave evidence in their behalf. They all maintained their innocence of the crime.

Marcos Jimenez' testimony, substantially corroborated by his brother, Robert, is outlined by the Trial Court as follows:

" ** that on August 11, 1985, he was at the house of his uncle, Dr. Marcos Jimenez. His mother (Albina) and his two brothers (Robert & Wilkins) were also there. He claims that they were overseeing the house of their uncle. At about 6 P.M. of that day, his father came and asked for dry coconut leaves to light his way in going home. At past 9 P.M., he went home while the rest stayed behind. When he arrived home, he did not see his father. He slept until the following morning. When he still did not see his father the following morning, he went back to his uncle's house to inform his mother and brothers that their father did not arrive home that night. So, they agreed to look for him. They looked for him in the bushes and towards the sea the whole day and the following day until the body was found near the cliff. It was then that he went to the poblacion to notify the authorities about the death of his father.

Continuing, ** (Marcos) admitted having been investigated by Lt. Bancog on August 16. They were only two in the room. He likewise admitted that Judge Jabagat arrived but only after his statement had been typed by Pat. Cavalida. He admitted that Lt. Bancog wrote down what he stated, and this handwritten statement was handed to Pat. Cavalida. ** (He also) admitted the existence of blood near the house and plenty of it in the bushes **; the existence of blood in the plowed area ** (and) it was he and Robert who plowed the same. In the matter of his confession (Exh. 'B'), he claims that what is stated there is in accordance with what his uncle, Marcos Jimenez, wanted him to tell; that he was pressured to admit the crime under threat of punishment."

The defense rested its case on July 21, 1986, at which time the Trial Court gave the parties thirty (30) days "from receipt of the stenographic notes within which to submit simultaneous memoranda." The Court, declaring that it was "cognizant of the fact that the accused had been incarcerated and detained for almost one year," also issued the following Order absolving, for lack of proof, Albina Jimenez and her son, Wilkins, from liability under the indictment, viz.:

"The Court after appreciating all the facts and the law in this case, finds no evidence whether direct or circumstantial that may tend to establish the guilt of two of the accused in this case, namely: Albina Jimenez and Wilkins Jimenez. Considering the rule that judgment of conviction should be imposed only after the guilt of the accused has been proven beyond reasonable doubt, the said two accused should be acquitted.

Wherefore, without prejudice to an extended decision, the Court finds the said two (2) accused: Albina Jimenez and Wilkins Jimenez NOT GUILTY of the charge against them. Accordingly, they are hereby ordered released from custody unless there are other causes which would warrant their further detention.

This Order serves as a partial decision in this case. The Court, aware of the long detention suffered by the said accused, hereby orders the promulgation of this judgment upon the two accused immediately in open Court."

Then on December 19, 1986, the Trial Court promulgated its Decision (dated November 21, 1986) finding "the defendants Marcos Jimenez and Robert Jimenez guilty beyond reasonable doubt of the crime of parricide as defined and penalized under Article 246 of the Revised Penal Code," and condemning "the said defendants to suffer the penalty of reclusion perpetua." The Trial Court stressed that "the revelations ** in the confession all tally with the evidences adduced during the trial, viz.: the hacking by Robert of his father with a bolo is confirmed by the doctor who examined the cadaver; the carrying of the body from the house to the cliff is confirmed by the evidences of the bloodstains found along the way from the house to the cliff and of the signs of a body being dragged along the bushes." The Court then made the following legal pronouncements:

"The Court agrees with the ** prosecution that a confession, although unsigned and/or involuntarily given, is admissible as evidence if in consequence of such confession facts are discovered which confirm it. As correctly pointed out, jurisprudence sustains the admission of such an involuntary confession (People v. Fontanilla [CA] O.G. 1313), and where details as described in such confession is corroborated by evidence aliunde which dovetails with the essential fact contained in the confession (People v. Elizaga, 23 SCRA 449).

"The evidence, likewise, show conspiracy on the part of both accused, Marcos and Robert. While an extra-judicial confession is, under certain conditions, admissible only as against the person who made it and not as against his co-defendants, it becomes admissible as corroborative evidence of other facts that stand to establish the guilt of his co-defendants (People v. Simbajon, et al., L-18073-75, Sept. 20, 1965)."

From this judgment the defendants have taken an appeal to this Court and here ascribe the following errors to the Trial Court, to wit:

- 1) "not giving credit to the claim of accused Marcos Jimenez that what he stated in the alleged confession is in accordance with what his uncle, Marcos Jimenez, wanted him to tell and that he was pressured to admit the crime under threat of punishment;"
- 2) "not giving credence to the testimony of accused Robert Jimenez to the effect that he has nothing to do with the death of his father **;"
- 3) "holding that Pelagio Jimenez was found in the house near the cliff on August 13, 1985;"
- 4) "giving credence to the testimony of ex-Judge Pacita Jabagat to the effect that she was in the office of the Station Commander of Ginatilan, Cebu, in the afternoon of August 16, 1985 and she was then the counsel of accused Marcos Jimenez for the purpose of the confession and that she read the confession to him and when asked whether he admitted to be true all the allegations as stated in the confession, confirmed that everything is true;"
- 5) "holding that the evidence shows conspiracy on the part of both accused * * ;" and
- 6) "finding and holding both accused * * guilty beyond reasonable doubt of the crime of parricide by mere circumstantial evidence, there being no eyewitnesses available."

The Constitution explicitly declares that a person being investigated by the police as a suspect in an offense has the right, among others, "to have competent and independent counsel preferably of his own choice" and if he "cannot afford the services of counsel, he must be provided with one;" and that said right "cannot be waived except in writing and in the presence of counsel." [1] The lawyer who assists the suspect under custodial investigation should be of the latter's own choice, not one foisted on him by the police investigators or other parties. In this case, former Judge Jabagat was evidently not of Marcos Jimenez' own choice; she was the police officers' choice; she did not ask Marcos if he was willing to have her represent him; she just told him: "I am here because I was summon(ed) to assist you and I am going to assist you." This is not the mode of solicitation of legal assistance contemplated by the Constitution.

In one case, the confession of an accused was rejected there being no showing that the lawyer of the Citizens' Legal Assistance Office (CLA) called by the National Bureau of Investigation to assist the accused was his counsel of choice. [2] In another case, the confession given during custodial investigation was invalidated where it appeared that the lawyers called to be present at the interrogation were members of the police organization investigating the suspects and did not actively assist and advise them, being there merely to give a semblance of legality to the proceedings. [3] In still another case, the confession of the defendant was disregarded upon a showing that he had been assisted by an assistant fiscal (public prosecutor), who "cannot exercise the function of defense counsel even during custodial investigation," and to allow such a practice "would render illusory the

protection given to the accused." [4]

Furthermore, the evidence discloses that Judge Jabagat was not present at the critical time that interrogation of Marcos Jimenez by the police was actually taking place. She came only after the questioning had been completed, and the handwritten record of Marcos Jimenez' answers already typewritten; and all she did was to show the typewritten document to Marcos and ask him if he had voluntarily given the statements therein contained. This is far from being even substantial compliance with the constitutional duty of police investigators during custodial interrogation, *supra*. It follows that neither the handwritten summary of Marcos Jimenez' answers made by two investigating officers nor the typewritten statement based thereon is admissible.

The typewritten confession is, in any event, unsigned, as are the handwritten notes from which the former was derived. The confession was in fact expressly rejected by Marcos Jimenez as not reflective of his own perceptions and recollection, but as containing only what his uncle, Marcos Jimenez, had instructed him to tell the police "under threat of punishment." Hence, the supposed waiver made therein of his constitutional right to counsel of his own choice, is void.

The interrogation of Marcos Jimenez having been conducted without the assistance of counsel, and no valid waiver of said right to counsel having been made, not only the confession but also any admission obtained in the course thereof are inadmissible against Marcos Jimenez. This, too, is the explicit mandate of the Constitution: any confession or admission obtained in violation among others of the rights guaranteed in custodial investigations shall be inadmissible in evidence against the person making the confession or admission. This is so even if it be shown that the statements attributed to the accused were voluntarily made, or are afterwards confirmed to be true by external circumstances.

Equally obvious is that any confession or admission ascribed to Marcos Jimenez in the premises is inadmissible against his brother, his co-accused, Robert Jimenez, not only because obtained in violation of the Constitution and therefore void, but also because of the familiar principle of *res inter alios acta*. [5] "The rights of a party cannot be prejudiced by an act, declaration, or omission of another;" [6] the confession of an accused is admissible only against him, but not against his co-defendants. [7]

Now, without the confession or the admissions imputed to Marcos Jimenez, the rest of the evidence of the prosecution is inadequate to overcome the presumption of innocence raised by the fundamental law in favor of both the accused.

For instance, proof of the presence of the appellants at or near the place of the commission of the crime is innocuous. They were after all children of the deceased, one of whom usually slept in the same house as the latter. And the fact that there might have been some animosity and quarrels between the deceased, on the one hand, and his wife and children, on the other, would indicate at the most that the latter might have reason to wish him ill, but would not be proof they actually attacked and killed him. Furthermore, the witnesses who gave evidence of said quarrels were close relatives of the deceased, i.e., his brothers, a sister-in-law, his cousins, who were not themselves on good terms with at least one of the appellants. Eng. Marcos Jimenez, brother of the victim, was the one who requested Lt. Bancog, the Police Chief of another town, to investigate close members of the victim's family -- on the basis, according to him -- of "rumors" and "gossips" [8] circulating in the barrio. Another brother of the victim, Dr. Mario Jimenez, who together with Eng. Jimenez, testified as to previous quarrels between the deceased and appellants, had a previous misunderstanding with appellants concerning the latter's unauthorized sale of the former's copra. Jacinta Jimenez who testified to a recent quarrel between the victim and his wife and sons Marcos and Robert, is the wife of Eng. Marcos Jimenez. Another relative of the deceased, Manolita Castaños, testified to having heard a conversation between the victim's wife Albina and the latter's son Marcos

wherein the mother chided her son for giving wrong answers during the investigation.

The information gathered by the police to the effect that Marcos and Robert Jimenez had been seen by neighbors bathing at the artesian well at midnight of the day of the crime, ostensibly washing away blood from their bodies and clothing, is patently speculative and arrant hearsay. Not one of the persons who had supposedly seen the appellants washing themselves ever took the witness stand to affirm this.

It is not correct to say, as the Trial Court does in its judgment under review, that the appellants had tried to cover up the commission of the crime by not reporting it immediately to the authorities and by attempting, during the search for the deceased, to prevent others from going to the precise spot where the slain man was eventually found. That the appellants did not immediately notify the authorities that Pelagio Jimenez was missing cannot be taken as an inculpatory circumstance against them. The truth is that the victim's family and neighbors first looked everywhere for him, and when he was finally found after a day's search, Marcos Jimenez forthwith reported his father's death to the police. The truth is, too, that as disclosed by the evidence, Robert Jimenez had indeed conducted a search for his father in the vicinity of the cliff near the balite tree where his father's body was found the following day. Marcos Jimenez knew this, and this is why he afterwards told other persons involved in the search not to proceed to that place any more. It bears stressing that the area covered by the search has been described as a "vast" area, and there were many large boulders and thick bushes about the balite tree. This might explain why the corpse could not be immediately located. In fact, were it not for the foul odor emanating from the direction of the balite tree, the searchers would not have proceeded thereto as the place was so secluded.

In fine, all the evidence considered, it appears that the prosecution has failed to demonstrate the guilt of the appellants of the crime with which they are charged beyond reasonable doubt.

WHEREFORE, the decision of the Trial Court dated November 21, 1986 is REVERSED, and the appellants, Marcos P. Jimenez and Robert Jimenez, are ACQUITTED, with costs de oficio.

SO ORDERED.

Cruz, Feliciano, Griño-Aquino, and Medialdea, JJ., concur.

[1] SEC. 12 (1), ART. III, Constitution

[2] *Peo. v. Olvis*, 154 SCRA 513 (1987)

[3] *Peo. v. Generoso Labuac, et al.*, G.R. No. 80764, Sept. 28, 1990

[4] *Peo. v. Virginia Matos-Viduya*, 189 SCRA 403 (1990)

[5] *Res inter alios acta alteri nocere non debet* (a transaction between two parties ought not to operate to the prejudice of a third person)

[6] SEC. 25, Rule 130, Rules of Court

[7] SEE *People vs. Flores*, 195 SCRA 295; *People vs. Ramirez*, 169 SCRA 711; *People vs. Ola*, 152 SCRA 1; *People vs. Plaza*, 140 SCRA 277

[8] TSN, July 7, 1986, pp. 35-6

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