

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUGENIO JAVAR Y PABLO, ACCUSED-APPELLANT.

G.R. No. 82769. September 06, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Eugenio Javar y Pablo has appealed the decision dated December 7, 1987 of the Regional Trial Court of Manila, Branch 32, which found him:

"x x x guilty of murder beyond reasonable doubt and sentenced to suffer life imprisonment, to indemnify the Heirs of the deceased (Reynaldo Balberan[1]) in the sum of P46,500.00 and to pay the costs.

"Pursuant to Article 29, RPC, as amended by RA 2167, the accused should be credited with the full time of his preventive imprisonment." (p. 24, Rollo.)

The information against Javar alleged:

"That on or about May 20, 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, identity and present whereabouts are still unknown, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of REYNALDO BALBERAN Y VALDEZ, by then and there stabbing him with a bladed weapon on the stomach thereby inflicting upon him mortal and fatal stabwound which was the direct and immediate cause of his death." (p. 5, Rollo.)

On May 20, 1984 at about 8:30 in the evening, while Rodolfo Arpon, Reynaldo Balberan and Danilo Garcia were conversing with each other in front of St. Joseph Chapel at the corner of Road 10 and Road 11, Fabie, Sta. Ana, Manila, Teodoro "Teody" Garcia came along and confronted Reynaldo Balberan, saying: "Ikaw matagal ka ng may atraso sa akin" (p. 66, Rollo). A heated argument ensued between them. Garcia challenged Balberan to a fight, but the latter did not accept the challenge. So, Teodoro left. He talked to the accused, Javar, who was his friend and who happened to be standing at the doorway of his house nearby. Javar approached Arpon, Balberan and Danilo Garcia and asked them who their enemy was. They replied that it was "Teody." Without any warning, Javar pulled out an 8-inch-long knife and aimed it at Arpon and Garcia, but he did not strike them. After the two men had fled, he turned on Balberan, grabbed him by the shoulder, and stabbed him below the navel. Having done that, he returned to his house.

The victim was rushed to the Philippine General Hospital where he expired on arrival. The cause of death was shock secondary to stab wound which cut through the artery that supplied blood to his left kidney, and penetrated his stomach and descending colon as well (Exh. A, Testimony of Dr. Bienvenido Muñoz, pp. 4-5, Tsn, Oct. 8, 1984).

Arpon who gave a written statement to the police on the killing, described the accused as a braggart, who always played with his balisong. The investigating officer, Marcelo Tadeo, took a statement from the accused after informing him of his constitutional rights. He observed that the accused had a tattoo "ss" signifying that he is a

member of the Sigue-Sigue gang. The father of the accused was present during the custodial investigation. The records, together with the testimony of the investigating officer, indicate that the accused was arrested on June 14, 1984 at 11:00 P.M. In his signed "Sinumpaang Salaysay," he admitted having killed a person, with a kitchen knife ten inches long.

The evidence of the defendant consisted of his own testimony and the testimonies of his mother, Adelina Pablo-Javar, and his godmother, Irma Rodriguez. They alleged that on the date and time of the killing, the accused had come from the market and went to sleep. For unknown reasons, his house was stoned and he was awakened by the noise. Seeing some persons in front of the St. Joseph Chapel at the corner of Roads 10 and 11 Fabie, Sta. Ana, Manila, and that "Teody" Garcia and "Rudy" Arpon were engaged in a heated exchange of words, the accused went out of his house and approached them. He was still some three armslengths from them when he heard someone shout "May Tama! May Tama!" ("Someone's been hit!") (p. 68, Rollo), and saw people scampering away. "Teody" and "Rudy" were fighting with each other. The accused denied that he caused the death of Reynaldo Balberan or that he attempted to attack the companions of said victim.

The accused was prodded by his mother to spend the night and hide at his sister's house on Road 13, for the group of the victim was allegedly troublesome and most of the time under the influence of drugs and she was apprehensive that her son could get involved.

The accused allegedly did not want to admit any-thing at the custodial investigation but the investigator warned him "baka hindi ka tumagal diyan" ("You might not last long") (p. 69, Rollo) so he signed the statement. He was allegedly maltreated by pouring water diluted with hot pepper on his genitals; subjecting him to electric shock; and allowing the father of the deceased to maul him (pp. 22-28, Tsn, Jan. 20, 1987). The accused, however, did not complain of maltreatment to the proper authorities nor submit himself to a medical examination.

The accused denied that he killed the deceased and attacked Balberan's two companions.

Nevertheless, the trial court convicted him of the murder of Balberan in a decision which is now before this Court for review of the following assignment of errors:

1. The trial court erred in giving credence to the unreliable testimonies of the prosecution witnesses and completely disregarding the evidence for the defense.
2. The trial court erred in giving probative value to the sworn statement of accused (Exh. "C") admitting that he committed the crime despite the fact that it was taken in violation of his constitutional rights.
3. The trial court erred in convicting the accused-appellant of the crime of murder despite failure of the prosecution to prove his guilt beyond reasonable doubt; and
4. The trial court erred in convicting accused-appellant of the crime of murder instead of homicide absent proof of treachery, granting without admitting, that he killed Reynaldo Balberan.

The Court is not convinced that the ill-feeling which the prosecution witness Arpon supposedly harbored against the accused arising from a gambling quarrel could have sufficiently motivated him to give perjured evidence against the accused for a grave felony like murder. Improper motives on the part of a prosecution witness are not presumed. The presumption is that he was not so moved and his testimony is entitled to full faith and credit (People vs. Perez, 175 SCRA 203; People vs. Doctolero, 193 SCRA 632). Although the witness described the accused as a braggart and "makulit" (p. 16, Rollo), his candid assessment of the character of the accused did not amount to improper motive, nor did it prove that he had an axe to grind against the accused.

Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate

courts will generally not disturb the findings of the trial court, because the latter is in a better position to decide that question for it heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case (*People vs. Serdan*, 213 SCRA 329; *People vs. Yambao*, 193 SCRA 571).

"It is doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect because it is the trial court that has the direct opportunity to observe them on the stand and detect if they are telling the truth or lying in their teeth." (*People vs. Santito, Jr., et al.*, 201 SCRA 87.)

"Furthermore, findings of fact of trial courts are accorded great weight by an appellate tribunal for the latter can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated words." (*People vs. Arroyo, et al.*, 201 SCRA 616, 624.)

The defense assails the trial court for having given full weight to the extrajudicial confession (*Sinumpaang Salaysay*) given by the accused while in custody and without the advice and assistance of counsel. Par. (1), Section 12 of Article III of the 1987 Constitution provides that:

"Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

Further, Par. (3) of the same Section provides:

"Sec. 12. x x x.

"(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him."

It is now settled in this jurisdiction that even if the right to counsel may be waived, the waiver must be voluntary, knowing and intelligent, and must be made in the presence and with the assistance of counsel (*People vs. Estevan*, 186 SCRA 34). Otherwise, the confession of the accused becomes inadmissible in evidence even if he fails to prove that he was coerced to execute the same (*People vs. Nolasco*, 163 SCRA 623). Nowhere do the records of this case indicate that the accused-appellant was assisted by counsel when he made such waiver. The fatal omission renders his extrajudicial confession inadmissible (*People vs. Lim*, 196 SCRA 809). Any statement obtained in violation of the constitutional provision, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession speaks the truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given (*People vs. Estevan, supra*).

"We have zealously guarded and protected this right of the accused, ruling time and again, in a long line of decisions, that uncounselled confessions are inadmissible in evidence.

"No custodial investigation can 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." (*People vs. Campos*, 202 SCRA 387, 399.)

Nevertheless, the inadmissibility of the appellant's extrajudicial confession does not necessarily entitle him to a verdict of acquittal. His guilt was established beyond reasonable doubt by independent evidence, i.e., the

eye-witness testimony of Arpon, his neighbor who positively identified him as the person who killed Balberan. "Where there is independent evidence, apart from the accused's uncounselled confession, that the accused is truly guilty, he accordingly faces a conviction." (People vs. Como, 202 SCRA 200, 211.)

The accused is trying to implicate Teody as the assailant of Balberan for he allegedly had a motive: he and the deceased had a heated argument before the stab-bing incident. It is axiomatic, however, that motive is immaterial once the identity of the assailant has been positively identified.

Was treachery present in the commission of the crime?

For alevosia or treachery to be appreciated as an aggravating or qualifying circumstance, the offender should have employed means, methods or forms in the execution of the crime which tended directly and specifically to insure its execution without any risk to himself arising from the defense which the offended might make (Art. 14[16], Revised Penal Code; People vs. Cempron, 187 SCRA 248).

The trial court pointed out that when the accused suddenly plunged a ten-inch kitchen knife in the victim's stomach after solicitously inquiring who their enemy was (so that the victim was completely disarmed of the real intention of the accused), treachery was present. The accused pretended to aim his knife first at Rodolfo Arpon and Danilo Garcia thereby, lulling Balberan to believe that he himself was in no danger. The killing of the victim under those circumstances was treacherous. As aptly noted by the trial court:

"x x x. After a careful, dispassionate and judicious evaluation of the evidence, we find that the prosecution has sufficiently established the presence of the qualifying circumstance of treachery. The deceased was unarmed. The accused attacked the deceased without warning, unexpected. The deceased was in a very defenseless position. The accused immobilized and incapacitated the deceased who had no chance to defend himself. These surrounding facts and circumstances leave no doubt in our mind that the measures taken by the accused forestalled any danger to himself insuring the success of his intent to murder the deceased." (p. 74, Rollo.)

Even a frontal attack can be treacherous when it is sudden and unexpected and the victim was unarmed (People vs. Cruz, 213 SCRA 611).

The flight of the accused who hid in his sister's house after the killing, was a tacit admission of guilt (People vs. Balansi, 187 SCRA 566, 572-573). As the Bible says: "The righteous is brave as a lion, but the wicked man fleeth even if no one pursueth" (People vs. Cruz, 213 SCRA 611, 619).

WHEREFORE, the Court finds Eugenio Javar y Pablo GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code. The appealed decision is AFFIRMED but with modification of the penalty which should be reclusion perpetua, not life imprisonment, for they are not synonymous (People vs. Baguio, 196 SCRA 459, 468; People vs. Jaymalin, 214 SCRA 685, 693), and the death indemnity is increased to P50,000.00 in accordance with the more recent decisions of this Court (People vs. Bañez, 214 SCRA 109; People vs. Ragabuto, G.R. No. 98062, Sept. 11, 1992; Abaya vs. People, G.R. No. 96389, Dec. 11, 1992).

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Name in parenthesis supplied.

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