

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ODON SURIGAWAN, ACCUSED-APPELLANT.

G.R. No. 83215. December 15, 1993

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Odon Surigawan, together with Herminiano Aperdo, Daniel Bahaynon and Alejandro Uayan, were charged with the crime of Robbery with Homicide under the following Information:

"That on or about the 4th day of March 1985, in the evening, in the residence of the victim, at Palaopao, barangay Maluko, municipality of Manolo Fortich, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery, with evident premeditation, with the use of a gun, did then and there wilfully, unlawfully and criminally attack, assault and beat TEODORO DONIA, inflicting several wounds on his body, which cause the death of TEODORO DONIA thereafter.

And that in the occasion of said murder upon Teodoro Donia and pursuant to the same conspiracy, the above-named accused, by means of force and intimidation take, rob and carry away from Teodoro Donia money the amount of THREE THOUSAND (P3,000.00) PESOS, Philippine Currency, to his damage and prejudice.

The crime was committed in the dwelling of the victim.

Contrary to and in violation of Article 294 in relation with Section 14, paragraph 3 of the Revised Penal Code."

Upon arraignment on May 24, 1985, the four (4) accused pleaded not guilty.

Their trial proceeded. The prosecution presented four (4) witnesses: Pat. Ruben Enguio, a policeman of Manolo Fortich, Bukidnon; Adelina Serrana, daughter of the victim Teodoro Donia; Judge Angel Baula, municipal judge of Manolo Fortich-Libona, Bukidnon; and Federico Abunda, a neighbor of the victim. After these witnesses testified, accused Aperdo, Buhaynon and Uayan, assisted by counsel, changed their plea from not guilty to guilty. They were accordingly meted their sentence.[1] Accused-appellant Odon Surigawan, however, continued to maintain his innocence and proceeded with his defense. He himself testified. His mother, Laureana Surigawan, buttressed his defense.

The facts as deduced from the evidence are hardly dubitable. The victim of the crime was Teodoro Donia. He was a widower, 69 years old and lived alone in his house at Palcopao, Maluko, Manolo Fortich, Bukidnon. His married daughter, Adelina Serrana, lived some 24 meters away from his house.

In the evening of March 4, 1985, Adelina and her husband Pablito and their children, heard the victim shouting for help. They ran to their neighbors and asked for help. None offered any assistance. They could only look through their window to see what was happening in the house of the victim. Below the victim's house, they saw two (2) persons wearing white shirts. Seized by fear, they did not come near the victim's house until 6 o'clock the

next morning. They were greeted by the dead body of the victim in blood. His chest had a wound. His left arm was swollen. One of his legs was broken. His P3,000.00 was gone. That was the money he earned selling corn and bamboo.

The crime was reported to the local police authorities. Patrolman Ruben Enguio conducted the investigation.[2] The investigators found that the wall at the back of the house of the victim was destroyed by the culprits. But what broke the case was a strange pair of slippers of different colors left by the culprits at the scene of the crime. The slipper for the right foot was red while the slipper for the left foot was yellow. A child[3] informed Pat. Enguio that he has seen accused Uayan wear this pair of slippers in the market.

The police looked for accused Uayan. They could not locate him for several days. They asked his mother and elder brother to surrender him. On March 9, 1985, the accused Uayan gave himself up. Pat. Enguio took his statement.[4] After he was apprised of his constitutional rights, he admitted his participation in the crime without the assistance of counsel. He also implicated his co-accused. He was then brought before Judge Angel Baula of the 2nd Municipal Circuit Trial Court of Manolo Fortich-Libona, Bukidnon where he swore to his statement.

With Uayon's confession, Pat. Enguio then filed a complaint against the four (4) accused in the municipal court. Judge Baula conducted the preliminary investigation. Accused Uayon reiterated his statement and the police picked up the three (3) other accused. The three (3) initially denied any involvement in the crime. They had a change of attitude and agreed to give their statements when they learned that accused Uayon had already spilled the beans on them. They were then informed of their constitutional rights and they waived their right to counsel. They admitted guilt in their respective statements. The statement of accused Aperdo[5] had as witnesses, his wife Nelia and Lourdes Surigawan.[6] The statement of accused Daniel Buhaynon[7] had as witness, his father, Marcelo. The statement of accused-appellant Odon Surigawan[8] had as witnesses his wife, Lourdes, father, Martin, and mother, Laureana.

In his defense, accused-appellant Surigawan declared that the statement he signed admitting his guilt was already prepared by the police. He said the police did not read the same to him before he signed it. He also averred that he signed the statement without the assistance of a lawyer due to the promise of the police that he would be released upon its signing. He was also threatened that something would happen to him if he refused to sign the statement. He advanced alibi to exculpate himself. He said that on the date and time in question, he was sleeping in his house with his wife and children.

The trial court[9] convicted the accused-appellant Surigawan in a Decision dated February 5, 1988.[10] It premised the conviction on two (2) grounds: (1) accused-appellant's extra judicial statement (Exh. "H") admitting his guilt, and (2) accused-appellant's implication to the crime made in the extra-judicial statements of his co-accused (Exhibits "B", "F" and "J").

Accused-appellant[11] now assails the Decision of the trial court with the following:

"ASSIGNMENT OF ERRORS

THE TRIAL COURT COMMITTED GRAVE ERROR IN ADMITTING IN EVIDENCE THE EXTRA-JUDICIAL CONFESSIONS OF THE ACCUSED;

THE TRIAL COURT COMMITTED GRAVE ERROR IN RELYING ON THE EXTRA-JUDICIAL CONFESSIONS OF THE ACCUSED IN CONVICTING THE ACCUSED-APPELLANT;

THE TRIAL COURT COMMITTED GRAVE ERROR IN NOT FINDING FOR THE ACCUSED-APPELLANT AND ACQUITTING HIM OF THE CHARGE AGAINST HIM";

In his Manifestation and Motion dated March 16, 1993, the Solicitor General[12] recommended the reversal of the conviction of accused-appellant Surigawan.

We find merit in the appeal as well as the recommendation of the Solicitor General.

The guilt of the accused-appellant was not established by any competent and credible evidence. The prosecution did not present any witness identifying the accused-appellant as among the perpetrators of the crime at bar. Adelina Serrana, the daughter of the victim, could only state that she saw two (2) persons under the house of the victim when the crime was committed. Unfortunately, however, she failed to recognize the identities of these persons.

Be that as it may, the trial court still convicted the accused-appellant based on his extra-judicial statement (Exh. "H") given to the police sans counsel. The admission and use of this uncounselled confession is prohibited by no less than the Constitution, sec. 12 (1) and (3), Article III of which provide:

"(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 service of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x

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

In a litany of cases,[13] we have ruled that uncounselled confession cannot convict. This shopworn ruling was reiterated in *People v. Gonzales*[14], viz:

"It is now too well-settled to require extensive citation of authority that the right to remain silent and to refrain from giving an extrajudicial confession and to have competent and independent counsel, cannot be waived save in the presence of counsel and that an extrajudicial confession obtained under such circumstances is not admissible in evidence. We cannot, therefore, take account of the extrajudicial confession of appellant Gonzales. The judgment of conviction must stand or fail on the basis of other evidence of record."

It is not difficult to understand why unlawfully, obtained evidence has to be excluded. To paraphrase Mr. Justice Tom Clark in *Mapp vs. Ohio*[15] "to hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment."

The error of the trial court is compounded by the use of similar uncounselled confessions[16] made by the other accused to convict accused-appellant Surigawan. Cited by the trial court to bolster its ruling is section 30 of Rule 130 which provides:

"The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration."

Again, the inapplicability of this provision is plain to the eye. For this provision to apply, the following requisites[17] must be satisfied:

- "a. that the conspiracy be first proved by evidence other than the admission itself;
- b. that the admission relates to the common objects; and
- c. that it has been made while the declarant was engaged in carrying out the conspiracy."

In the case at bar, the alleged conspiracy among the accused was not priorly established by separate and independent evidence. Nor was it shown that the extra-judicial confessions of the other accused (Exhibits "B", "F" and "J") were made while they were engaged in carrying out the conspiracy. In truth, the confessions were made after the conspiracy has ended and after the consummation of the crime. These confessions cannot be used against the accused-appellant without doing violence against his constitutional right to be confronted with the witnesses against him and to cross examine them.[18]

Without the uncounselled confession of the accused-appellant and the extra-judicial confessions of the other accused, no shred of evidence remains to establish the guilt of accused-appellant Surigawan beyond reasonable doubt.

IN VIEW WHEREOF, the Decision of the Regional Trial Court of Bukidnon, 10th Judicial Region, Br. XI, Manolo Fortich, Bukidnon in Crim. Case No. 318 is reversed and set aside and the accused-appellant Odon Surigawan is acquitted from the charge of Robbery with Homicide. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] They were sentenced to suffer imprisonment from 8 years, 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum, to indemnify the heirs of Donia in the amount of P33,000.00, to suffer the other accessory penalties provided for by law, and to pay the cost of the proceedings.

[2] He was assisted by Pfc. Lozada and Pat. Elnar.

[3] Pat. Enguio failed to give the name of the child.

[4] Exh. "B".

[5] Exh. "F".

[6] Wife of accused-appellant Odon Surigawan.

[7] Exh. "J".

[8] Exh. "H".

[9] The RTC of Bukidnon, 19th Judicial Region, Br. XI, Manolo Fortich, Bukidnon presided by the Hon. Garison Mabelin. The case was docketed as Crim. Case No. 318 for Robbery with Homicide.

[10] It appreciated the aggravating circumstances of superior strength and dwelling and sentenced the accused-appellant to reclusion perpetua, to indemnify the heirs of Teodoro Donia the sum of P30,000.00 and to pay the costs of the proceedings.

[11] He was ably assisted by Atty. Augusto Jose Y. Arreza, as counsel de oficio.

[12] Solicitor General Raul Goco, assisted by ASGs Ramon A. Barcelona and Pio C. Guerrero and Associate Solicitor Armand Mejia.

[13] People vs. Lacap, 171 SCRA 147 [1989]; Aballe vs. People, 183 SCRA 196 [1990]; People vs. Capinpon, 204 SCRA 116 [1991]. People vs. Jimenez, 204 SCRA 719 [1991].

[14] 189 SCRA 343 [1990].

[15] 367 US 643 [1961].

[16] Exhibits "B", "F" and "J".

[17] Apostol, Essentials of Evidence, 1986 ed., p, 163; Francisco, The Revised Rules of Court in the Philippines, Vol. VII, part I, 1990 ed., pp. 349-356.

[18] People vs. Badilla, 48 Phil. 718, 725; People vs. Ferry 66 Phil. 310.

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