

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO PONCE ALIAS TARCING/PERSING, JULIAN ANCIS, NESTOR RICAFORT, DIONISIO ALPUERTO, PANTALEON ORTIZ, BERNARDINO HERMOCILLA ...

G.R. No. 83694. May 31, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

This is an appeal from the judgment of the Regional Trial Court, Branch 8, Malaybalay, Bukidnon in Criminal Case No. 1758 dated January 4, 1988, entitled "People of the Philippines vs. Alfredo Ponce alias Tarsing/Persing, Julian Ancis, Nestor Ricafort, Dionisio Alpuerto, Pantaleon Ortiz, Bernardino Hermocilla and Hermogenes Tagotongan," the dispositive portion of which reads:

"Premises considered, this Court finds the accused Alfredo Ponce (alias Persing), Dionessio (sic) Alpuerto (Boy), and Hermogenes Tagotongan, guilty beyond doubt of robbery with homicide as defined in Article 294 of the Revised Penal Code; and this Court thereby imposes the penalty of reclusion perpetua each upon Alfredo Ponce (Persing), Dionisio Alpuerto (Boy), and Hermogenes Tagotongan; and orders jointly and severally to pay P60,000.00 the heirs of Gaudencio Gepitacio and Cornelio Gepitacio. Their period of detention is hereby credited in the service of their sentence.

"For insufficiency of evidence, Pantaleon Ortiz and Julian Ancis are hereby acquitted. This case is hereby archived with respect to Alberto Jumawan until he shall have been arrested.

"SO ORDERED." [1]

Accused Nestor Ricafort was discharged from the information and utilized as state witness [2] while the charges against accused Bernardino Hermocilla were dismissed in the course of the proceedings, [3] there being no showing that he had any participation in the felonies charged. Accused Dionisio Alpuerto jumped bail after having testified in his behalf. [4] Accused Hermogenes Tagotongan chose not to appeal his case. Hence, this review refers only to accused Alfredo Ponce, for purposes of which the Court appointed his present counsel de oficio in its resolution of February 28, 1990.

The facts are correctly stated in appellee's brief and sustained by the evidence, thus:

"On April 1, 1976, in Mibantang, Quezon, Bukidnon, a certain Nonoy Formadas and Bernardino Hermocilla approached Nestor Ricafort to recruit him for a robbery to be done at Kauswagan, Danggagan, Bukidnon. After convincing him, the group went to the house of Julian Ancis, the mastermind, at Kauswagan, Danggagan, Bukidnon (TSN, September 15, 1981, p. 198).

"They were informed by Julian Ancis that they would rob the house of Calixta Gepitacio. This house was thirty (30) meters across the road from Julian Ancis' house (TSN, Sept. 15, 1981, p. 201). They planned the robbery sometime in the middle of April, 1976 in order to allow the participants to obtain firearms (TSN, Sept. 15,

1981, p. 202).

"In the middle of April, 1976, Nonoy Formadas, Bernardino Hermocilla and Nestor Ricafort again met Julian Ancis at Kauswagan, but since no firearms were yet available for them, they returned to their respective homes (TSN, September 15, 1981, p. 210). However, they agreed to meet on April 30, 1976 at Mibantang, Quezon, Bukidnon, then proceed to the house of a certain Alberto Jumawan to meet the rest of the group (TSN, September 15, 1981, pp. 210 and 218).

"On April 30, 1976, at Mibantang, Quezon, Bukidnon, Nestor Ricafort was summoned by Dionisio Alpuerto and Alfredo Ponce. Ricafort was informed that they (Alpuerto and Ponce) were to participate in the planned robbery (TSN, Sept. 15, 1981 p. 212). Since Formadas and Hermocilla did not arrive at the meeting place, they proceeded to Alberto Jumawan's house at Kauswagan, Danggagan, Bukidnon, reaching the place at one o'clock in the afternoon (TSN, September 15, 1981, p. 281). Upon their arrival, Alberto Jumawan went to fetch Hermogenes Tagotongan (TSN, September 15, 1981, p. 222). Then at 4:00 p.m., they began outlining the details of the planned robbery. Appellant Alfredo Ponce instructed Nestor Ricafort and Alberto Jumawan to take charge of the upper portion of the house. Hermogenes Tagotongan was to act as lookout and appellant with Dionisio Alpuerto were to cover the lower portion of the house (TSN, September 15, 1981, p. 224).

"Thereafter, at around 5:00 P.M. of the same day (TSN, February 18, 1982, p. 379), the group proceeded to the house of Calixta Gepitacio, passing the side of her house. Then appellant said 'pasok' and the group barged into the house, appellant entering first, followed by Dionisio Alpuerto. Ricafort and Jumawan proceeded upstairs and Tagotongan acted as lookout (TSN, September 15, 1981, pp. 226-227).

"Downstairs, as testified by Calixta Gepitacio, her son Cornelio Gepitacio was stabbed from behind with a knife, then hit successively on the left cheek and forehead by the robbers (TSN, February 16, 1982, pp. 381-382). Then she was hit by a pistol below the right ear. Money was demanded of her, but when she refused, she was threatened with death. Calixta Gepitacio then handed One Thousand Five Hundred (P1,500.00) Pesos to the robbers. While this was going on, she heard a commotion at the sala, after which, she heard one of the robbers said (sic) 'Let's go' (TSN, February 16, 1982, p. 385).

"Nestor Ricafort who was then upstairs, heard the moaning and cries of a woman. Then he heard Dionisio Alpuerto shout 'pasigo' or 'escape'. Nestor Ricafort and Alberto Jumawan rushed downstairs where Nestor Ricafort saw Gaudencio Gepitacio on his back his intestines protruding out of his abdomen. Nestor Ricafort followed the others out of the house, in the process passing by the house of Julian Ancis.

"As the robbers were fleeing, Calixta Gepitacio peeked into the sala and saw her husband Gaudencio Gepitacio seriously wounded in the shoulders and abdomen (TSN, February 16, 1982, p. 385). As they fled, the robbers ran past the Culob bridge toward Mibantang, Bukidnon. When they passed over the bridge, Ricafort saw appellant throw a scythe into the river. They then proceeded to the house of Pantaleon Ortiz at Mibantang, Bukidnon, where they divided the money among themselves (TSN, September 15, 1981, pp. 234-237).

"Back in Kauswagan, immediately after the robbers fled, Calixta Gepitacio called to her neighbor Julian Ancis for assistance (TSN, January 16, 1982, p. 385). Julian Ancis did not immediately respond. It was only later that Julian Ancis came out of the house and inquired of the victims. Calixta Gepitacio requested use of Julian Ancis' jeep to fetch the doctor, but Julian Ancis refused saying that his jeep did not have crude oil. It was only after Calixta Gepitacio offered to provide fuel that he agreed to her request (TSN, Feb. 16, 1982, p. 388).

"When Dr. Cenon N. Tiongson arrived, he began to treat Gaudencio Gepitacio. However, he died while being treated. Cornelio Gepitacio was already dead when Dr. Tiongson arrived. . . ."[5]

On the basis of the foregoing account of events, the following information, as amended, for "robbery in band with double homicide and physical injuries" was filed against the accused, to which all of them pleaded not guilty:[6]

"That on or about the 30th day of April, 1976, in the afternoon, at sitio Miaray, barrio Kauswagan,

municipality of Dangcagan, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused and ALBERTO JUMAWAN who is still at large, conspiring together and mutually helping one another, with intent of gain and with the use of assorted bladed weapons (and firearms) with which they provided themselves, by means of force and intimidation, did then and there wilfully, unlawfully and criminally rob, take and carry away One Thousand Five Hundred (P1,500.00) Pesos, Philippine Currency, owned by Gaudencio Gepitacio, to the damage and prejudice of said owner of said amount.

"That in (sic) the occasion of said Robbery, the above-named accused, acting on the same conspiracy, helping one another, with intent to kill and with the use of bladed weapons with which they were conveniently provided for the purpose, did then and there wilfully, unlawfully and criminally assault, attack and hit Gaudencio Gepitacio, Cornelio Gepitacio and Calixta Gepitacio, inflicting on their person(s) the following, to wit:

"GAUDENCIO GEPITACIO:

- Wound over the left side of the abdomen around 18 inches wide, injuring the intestines, kidney and spleen causing internal hemorrhages.
- Wound over the left shoulder at the upper part of the right arm around 6 inches wide injuring the muscles and the bone.
- Wound over the upper part of the right arm injuring the muscles and bone around 4 inches wide.
- Wound over the left palm between the forefinger and thumb.

"CORNELIO GEPITACIO:

- Wound over the upper part of the back around 10 to 12 inches wide and 3 to 3-1/2 inches deep cutting the vertebral column injuring both lung and liver.
- Contusion over the right side of the upper lip extracting the right incisors (sic) tooth and 2 right canine teeth.
- Superficial wounds over the forehead and face 5 number (sic) due to splinters (sic) glasses.

"CALIXTA GEPITACIO:

- Contused wound over the right side of the jaw, right arm and forearm.
- Contused wounds over the back of the head and left side of the chest.
- Contused wounds will take around 10 to 15 days to heal.

which directly caused the death of Gaudencio Gepitacio and Cornelio Gepitacio and which caused illness to Calixta Gepitacio for a period of more than 15 days and incapacitated her for labor for the same number of days.

"Contrary to and in violation of Article 294 in relation to Article 48 of the Revised Penal Code.

"Malaybalay, Bukidnon, Jan. 4, 1979." [7]

Appellant Alfredo Ponce, denied having participated in the commission of the crime charged and interposed the defense of alibi. The trial court summarized his evidence, as follows:

"By way of defense, the accused Alfredo Ponce (alias Persing/Tarsing) testified that before April 30, 1976 he was a resident of Mibantang, Quezon, Bukidnon, he does not know Kauswagan in Dangcagan, the place of the robbery incident. After April 30, 1976 he left Mibantang for Cagayan de Oro to seek for (sic) a job. While in Cagayan de Oro City, he was apprehended on August 8, 1977 by the police authorities and was placed in jail. He was investigated in connection with this robbery case which took place in Kauswagan on April 30, 1976. For refusing to admit or confess about his participation, he was mauled and was about to be thrown to (sic) a

river beside the jail where he was made to sign a prepared affidavit, Exhibit 'A', by force and intimidation. Before he was arrested and placed in jail, he did not know any of the accused. He saw all the accused for the first time, in the Provincial Jail. He also does not know the store of Calixta Gepitacio. On April 30, 1976 about 5:00 o'clock in the afternoon he was in Mibantang, Quezon, Bukidnon, and did not leave Mibantang during the whole afternoon and night of said April 30, 1976 as he was plowing the field from 8:00 in the morning to 5:00 o'clock in the afternoon. From 5:00 p.m. till morning on the following day, he stayed in (the) house." [8]

The case is now before us on appeal with the accused-appellant faulting the court below with the following errors, to wit: (1) The trial court overlooked certain facts of substance and value which if considered might affect the result of the case in favor of appellant; and (2) There is misappreciation of facts with respect to the evidence adduced for and against accused-appellant. [9]

The assigned errors assail the trial court's appreciation of the evidence presented by the prosecution. Appellant delves into the propriety of the trial court's conclusion that said evidence was sufficient to establish his guilt beyond reasonable doubt. It is evident, however, that such a conclusion or finding, arrived at by comparing the body of proof presented by the prosecution with that offered by the defense and assessing or weighing their relative merits, is without doubt one of fact. [10]

It is well-settled that except in cases where the lower court's findings are not supported by the record or are not based on substantial evidence, this Court is not expected to re-weigh its findings of fact which should properly assume the character of finality. [11] Absent any substantial proof that the trial court's decision was grounded entirely on speculations, surmises or conjectures, the same must be accorded full consideration and respect. [12]

Appellant contends that the testimony of Nestor Ricafort, the accused who turned state witness, on the participation of appellant appears fabricated and that his credibility is open to question, considering that he was an interested witness.

The contention is bereft of merit.

When it comes to the matter of credibility of a witness, there are established guiding rules, some of which are that (1) the appellate court will not disturb the factual findings of the lower court, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, which showing is absent herein; (2) the findings of the trial court pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand and, therefore, can discern if such witness is telling the truth or not; and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness. [13]

The testimony of state witness Nestor Ricafort establishes clear indicia of conspiracy among the perpetrators of the crime to rob. Ricafort supplied the trial court the minutiae of the incident which only a participant could provide. He testified that prior to April 30, 1976, he had several meetings with a group of men who planned the said robbery at Kauswagan. [14] In fact, on that fateful day, they even outlined the details of the planned robbery, each one being assigned his respective position in the different parts of the house of their victim. [15]

It is true that there are doctrines to the effect that the testimony of a co-conspirator is not sufficient for conviction, unless supported by other evidence. The reason is that it comes from a polluted source. It must be received with caution because, as is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others rather than himself. But the aforesaid rule is not without exceptions. The testimony of a co-conspirator may, even if uncorroborated, be sufficient as when it is shown to be sincere in itself, because given unhesitatingly and in a straightforward manner and full of details which by their nature could not have been the

result of deliberate afterthought.[16]

Besides, it is a familiar rule that a co-accused in a criminal case is a competent witness for or against any of his co-accused.[17] As a matter of fact, the candid admission of an accused, of his participation in a crime is a guaranty that if he will testify in court he will testify truthfully; so that even if an accused actually participated in the offense charged in the information, he may still be made a witness.[18] These considerations and a careful scrutiny of the records justify our acceptance of the testimony of self-confessed felon Ricafort.

Appellant further contends that he was coerced into admitting participation in the felonies charged and that his sworn admission, besides lacking in credibility as to contents, becomes further inadmissible in the absence of a counsel to assist appellant during the custodial investigation, despite a waiver on his part to be assisted by a counsel. He interposed the rule that the right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel.[19]

We are far from persuaded. His claim that the confession in question was obtained under duress or by force and prepared beforehand is contradicted by the presence of details which only the declarant could have known. As appositely observed by the Solicitor General:

"The evidence on record shows that appellant's sworn statement was not fabricated by the police since it contains details not previously known to the police authorities. On cross-examination, appellant admitted:

‘Q

Who was the police officer who prepared this affidavit for your signature?

A

I did not recognize them.

Q

Does anybody from the police department know that your middle name is Gayuha?

A

None Sir.

Q

Does anybody from Cagayan police department know that you are from Mibantang?

A

No one Sir.

Q

Does anybody know that your age when you signed this affidavit is 26 years old?

A

Nobody Sir.

Q

Until now, you don't know who prepared this affidavit?

A.

I did not Sir.'

(TSN, October 29, 1985, p. 972).

It should also be noted that the sworn statement was made in the vernacular, precluding any suggestion that appellant did not understand the statements he made therein."^[20]

It is also significant that the records make no mention whatsoever of the alleged coercion and maltreatment of appellant. In fact, appellant did not lodge any complaint before the clerk of court of the City Court of Cagayan de Oro City when he was brought there for the signing of his statement.

The rule in *People vs. Galit*^[21] that the waiver of the right to counsel can be made only with the assistance of counsel cannot be made to apply to the case at bar. Appellant waived his right to counsel on March 16, 1977, long before the aforesaid guideline was enunciated. It was only after the pronouncement of the Galit doctrine that this Court prospectively applied the said rule in its decisions. The requirements and restrictions under this doctrine, however, have no retroactive effect and do not apply to confessions taken before the date of its pronouncement.

We agree with the submission of the Solicitor General, citing *People vs. Nabaluna, et al.*^[22] on the applicability of the Galit doctrine, that "(t)he trial court was then sufficiently convinced that the accused had waived assistance of counsel and there was at that time no pronounced guidelines requiring that the waiver of counsel by accused can be properly made only with the presence and assistance of counsel. It may also be added that the facts of the present case can be differentiated from those stated in the cited case of *People vs. Galit* where the acquittal therein was due to the absence of any other evidence aside from the supposed confession of the accused."^[23] In the case at bar, the conviction of appellant was not solely on the basis of the disputed extrajudicial confession. There are other findings independent of the said confession which, standing by themselves, are sufficient to establish the participation of appellant in the crime imputed to him.^[24]

Appellant also makes much of the fact that accused Hermogenes Tagotongan testified that appellant was never with them at the scene of the crime and there appears to be no reason why Tagotongan should deny appellant's participation and save him from liability in the crimes charged. The records, however, indicate that Tagotongan gave false testimony.

Accused Tagotongan identified his companions as "Boy, Rudy, Victor and Alberto Jumawan." He declared that

appellant and accused Ancis, Ricafort, Alpuerto, Ortiz and Hermocilla never participated in the commission of the crime.[25]

Subsequently, Tagotongan retracted his statements when he admitted that the person called "Boy" was Dionisio Alpuerto and "Victor" was Nestor Ricafort.[26] However, the person named "Rudy," who hacked Gaudencio Gepitacio, as believed by Tagotongan, was not identified.[27] Worthy of notice is the fact that at the time Tagotongan testified, Ricafort had already been discharged as a state witness and Alpuerto had jumped bail, hence they were not under the custody of the law. To top it all, Tagotongan expressly admitted in open court the following day that he actually fabricated his preceding testimony, wherein he admitted that he alone committed the crime and denied the participation of his co-accused, by reason of and upon payment by Julian Ancis of P400.00 which money he surrendered to the trial court, adding that he had been promised P2,000.00 more.[28]

Appellant further asserts that Calixta Gepitacio did not recognize him as one of the participants of the crime and that there is no proof that he was the one who stabbed Cornelio Gepitacio.

We need merely reflect on the fact that there is no standard form of behavior when one is confronted by a shocking occurrence.[29] The working of human minds, when placed under emotional stress, are unpredictable and people react differently.[30] The fact that Calixta Gepitacio could identify only one of the accused does not render the identification of other perpetrators of the crime made by other prosecution witnesses incredible where said complaining witness was surprised by the suddenness of the attack. It could not be expected that Calixta Gepitacio should remember all the participants. Moreover, since the prosecution has established the conspiracy among the accused, the question as to who actually robbed or who actually killed is of no moment since all of them should be held accountable for the robbery and the physical assaults.[31]

Lastly, appellant vigorously asserts that on that fateful day, he was allegedly working on his farm at Mibantang from 7:00 A.M. to 4:00 P.M.; that he pastured his carabao at 5:00 P.M.; then he fed his pigs from 5:00 to 6:00 P.M. and thereafter took his supper with his parents.[32] On March 7, 1977, he supposedly went to Cagayan de Oro City to look for a job and was apprehended by the authorities the next day.[33]

The People's observation on the foregoing is apropos:

"Strangely, appellant could remember the exact details of his activities on April 30, 1976 when he testified on October 29, 1985, such as his time schedule, the color of his mother's dress, prompting the cross-examining lawyer to observe:

'ATTY. VILLAROYA

I just want to test his credibility your Honor because it seems that he has a retentive memory.'

However, appellant could remember little about his alleged sojourn to Cagayan de Oro City on March 8, 1977 to look for a job. He could not even remember the person with whom he applied for a job (TSN, Oct. 29, 1985, p. 966)."[34]

As can be gleaned from appellant's testimony, he interposes the defense of alibi. Time and again, this Court has consistently held that alibi is the weakest defense. Once more, we reiterate that in order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the time of the commission of the crime.[35] To establish an alibi, a defendant must not only show that he was present at some other place at about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place.[36] Appellant miserably failed to substantiate the requisites that could lend a semblance of acceptability to an already discredited defense.

The Court, consequently, has perforce to deny appellant's prayer for the reversal of the judgment of the court below. Furthermore, in accordance with the current policy of this Court, a death indemnity in the amount of P50,000.00 for each victim in this case is hereby ordered to be paid to their respective heirs by accused-appellant.

WHEREFORE, except for the foregoing modification, the judgment of the trial court is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

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- [1] Per Judge Ernesto M. Mendoza; Original Record, 1685.
[2] Ibid., 536.
[3] Ibid., 750.
[4] Ibid., 1276-A
[5] Brief for the Plaintiff-Appellee, 1-7; Rollo, 101.
[6] Original Record, 297.
[7] Original Record, 363-365.
[8] Rollo, 95.
[9] Brief for Accused-Appellant, 8; Rollo, 90.
[10] People vs. Alitao, et al., G.R. No. 74736, February 19, 1991.
[11] Cruz vs. Villarin, 181 SCRA 53 (1989).
[12] People vs. Martinada, et al., G.R. Nos. 66401-03, February 13, 1991.
[13] People vs. Clores, 184 SCRA 638 (1990).
[14] TSN, September 15, 1981, 198-210.
[15] Ibid., id., 224.
[16] People vs. Cuya, Jr., 141 SCRA 351 (1986).
[17] People vs. Robante, 178 SCRA 552 (1989).
[18] Lugtu, et al. vs. Court of Appeals, et al., 183 SCRA 388 (1990).
[19] Brief for Accused-Appellant, 11-12; Rollo, 90.
[20] Brief for the Plaintiff-Appellee, 18-19; Rollo, 101.

[21] 135 SCRA 465 (1985).

[22] 142 SCRA 446 (1986).

[23] Brief for the Plaintiff-Appellee, 18; Rollo, 101.

[24] *People vs. Gimongola*, 170 SCRA 632 (1989).

[25] TSN, October 4, 1984, 631-633; 638-639.

[26] *Ibid.*, *id.*, October 5, 1984, 698.

[27] *Ibid.*, *id.*, 684.

[28] *Ibid.*, *id.*, 699.

[29] *People vs. Salufrania*, 159 SCRA 401 (1988).

[30] *People vs. Brago*, 182 SCRA 411 (1990).

[31] *People vs. Salvador*, 163 SCRA 574 (1988); *People vs. Bartulay*, G.R. No. 83696, December 21, 1990.

[32] TSN, October 29, 1985, 953.

[33] TSN, October, 29, 1985, 962.

[34] Brief for Plaintiff-Appellee, 32-33; Rollo, 101.

[35] *People vs. Cinco, et al.*, G.R. No. 79497, February 27, 1991.

[36] *People vs. Pacia, et al.*, 186 SCRA 529 (1990).

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