

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNULFO CENDANA Y REYES, ACCUSED-APPELLANT.

G.R. No. 84715. October 17, 1990

Ponente: CORTES, J.

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CORTES, J.:

In the early morning of November 24, 1986, the Police Station at Sta. Barbara, Pangasinan received a report that a man was found dead on the field near the ricemill of a Mrs. Thelma Bautista at Barangay Ventinilla West, Sta. Barbara, Pangasinan. Upon investigation, policemen found the cadaver, identified to be that of Dominador Manongdo, lying prostrate on the ground with one gunshot wound on the head.

Subsequently, accused-appellant Arnulfo Cendana y Reyes was apprehended and later charged with the crime of murder "thru illegally possessed firearm" on the basis of the following information:

That on or about November 23, 1986, in the evening at a ricefield in barangay Ventinilla West, municipality of Sta. Barbara, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed shotgun, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously shoot one Dominador Manongdo y Loresco, inflicting upon him a gunshot wound which caused his instantaneous death, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code. [Record, p. 1.]

Upon arraignment, accused-appellant pleaded not guilty. The pre-trial conference was terminated on November 2, 1987 after which, trial proceeded.

The trial judge convicted accused-appellant in a decision dated June 3, 1988, the dispositive portion reading as follows:

WHEREFORE, the Court finds accused Arnulfo Cendana y Reyes guilty beyond reasonable doubt of the crime of Murder thru Illegally Possessed Firearm, and considering that the Crime of Murder was committed with the use of an unlicensed firearm (shotgun, Exhibit "H"), the accused is sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law, to indemnify the heirs of the deceased Dominador Manongdo y Loresco the sum of P30,000.00, and to pay the costs.

The firearm is ordered confiscated and forfeited in favor of the Government, and the Clerk of this Court is ordered to turn over the firearm to the nearest Constabulary Command. [Record, p. 121.]

Not agreeing with the findings of the trial court, accused-appellant appeals to this Court raising the following assignment of errors:

- I. The trial court erred in convicting the accused even without proof beyond reasonable doubt.
- II. The trial court erred in not appreciating the defense of the accused.

III. The trial court erred in convicting the accused based on shaky and crude circumstantial evidence. [Rollo, p. 43.]

At the outset, it is noted that the Solicitor General filed a manifestation recommending the acquittal of accused-appellant. He asserts that the alleged admission made by the accused-appellant and the gun seized from him are both inadmissible in evidence for having been obtained in violation of accused-appellant's constitutional rights. He further asserts that after the exclusion of such evidence, the remaining evidence of the prosecution is clearly insufficient to support a conviction based on proof beyond reasonable doubt. [Rollo, pp. 84-85.]

We agree.

To support its judgment of conviction, the trial court relied mainly on the testimonies of the Police Station Commander Sgt. Amadeo Asuncion, Pat. Alden Poserio, and Pat. Fernando Quinto, who were the police officers investigating the case. Their testimonies sought to prove the following: After the cadaver was brought to the morgue and later to a funeral parlor for autopsy, they went back to the place where the body was found and after interviewing some people, received information that accused-appellant was seen before the incident carrying a gun [TSN, November 3, 1987, p. 8.] When they went to accused-appellant's house, he was not around and so they picked up one of his brothers, Antonio Cendana, who informed them that accused-appellant was at Pogo District in Dagupan City [TSN, November 3, 1987, pp. 8-9; February 1, 1988, pp. 5-6.] Not knowing where such place was, they forced Antonio Cendana to accompany them to the house where accused-appellant could be found [TSN, November 3, 1987, p. 9; February 1, 1988, p. 6.] Upon their arrival, Sgt. Asuncion and Pat. Quinto entered the house while Pat. Poserio remained outside [TSN, November 3, 1987, p. 10.] They were able to arrest accused-appellant who afterwards admitted to them that he was the one who shot the victim [TSN, February 1, 1988, p. 7.] They also recovered a homemade shotgun which, according to Pat. Quinto, was voluntarily handed to them by accused-appellant [TSN, November 4, 1987, p. 4] but according to Sgt. Asuncion was handed to them by a woman relative of accused-appellant upon the latter's instructions [TSN, February 1, 1988, p. 7.] They then proceeded to the NBI, Dagupan City where accused-appellant was subjected to a paraffin test and the recovered firearm surrendered for ballistics examination [TSN, November 3, 1987, p. 11; February 1, 1988, p. 8.] From the NBI, they proceeded to the Sta. Barbara Police Station where accused was thereafter detained [TSN, November 3, 1987, p. 12; February 1, 1988, p. 8.] No written statement was taken from accused-appellant [TSN, November 3, 1987, p. 12.]

From the foregoing narration of events, we note the following:

- (1) That there was no eye witness to the killing of the victim Dominador Manongdo;
- (2) That the accused-appellant was apprehended by the police investigators on the basis of information obtained from unidentified persons that accused-appellant was seen carrying a gun before the incident;
- (3) That the accused-appellant was apprehended by the police officers without any warrant of arrest;
- (4) That the shotgun was recovered without a search warrant from the house where accused-appellant was arrested; and
- (5) That the alleged statement made by accused-appellant to the police officers admitting to the commission of the offense and made after his arrest, was used as the main basis for his conviction.

I.

Section 5. Rule 113 of the 1985 Rules of Criminal Procedure enumerates the instances when a peace officer or a private person may arrest a person without a warrant:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The facts of the case do not warrant the applicability of paragraphs (a) and (c). Moreover, in paragraph (b), the only instance under which accused-appellant's case could possibly fall, what is essential is that the person making the arrest has personal knowledge of the facts indicating that the arrestee is responsible for an offense which has just been committed [People v. Burgos, G.R. No. 68955, September 4, 1986, 144 SCRA 1.] Accused-appellant was arrested one day after the killing of the victim and only on the basis of information obtained by the police officers from unnamed sources. These above-mentioned circumstances clearly belie a lawful warrantless arrest.

Considering that the arrest of accused-appellant herein was unlawful, any search conducted on his person or place of arrest which is an incident thereof, was also unlawful [People v. Burgos, supra.] Perforce, any evidence recovered during the unlawful search, being made without a warrant, becomes inadmissible in evidence against accused-appellant and the shotgun which was allegedly the fatal weapon cannot be presented against him [Nolasco v. Pano, G.R. No. 69803, January 30, 1987, 147 SCRA 509.]

Section 20, Article IV of the 1973 Constitution ordains that:

No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.

The Court elaborated on the scope of this right in the case of Morales, Jr. v. Enrile [G.R. No. 61016, April 26, 1983, 121 SCRA 538], thus:

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. [At p. 554.]

This procedure served as the guideline in subsequent cases (People v. Ramos, G.R. No. 59318, May 16, 1983, 122 SCRA 312; People v. Galit, G.R. No. 51770, March 20, 1985, 135 SCRA 465.) In the present case, it is clear from

the record that at the time that accused-appellant was arrested, he was not apprised of the right to remain silent and to counsel, and to be informed of such rights, before he supposedly admitted to the killing of the deceased. As can be gleaned from the testimony of Sgt. Asuncion:

Q: Were you able to locate Arnulfo Cendana?

A: Yes, sir.

Q: Where?

A: At the house of one of his relatives, sir.

Q: What happened when you arrived in that house?

A: When we arrived in the house I asked one of the occupants of the house the whereabouts of Arnulfo Cendana and I told one of my men to surround the house. I tried to went (sic) up to the house but I saw Arnulfo Cendana trying to escape so I told him "agka ombabatik ta paltogen taka", which means don't run or else I will shoot you".

Q: What happened when you warned Arnulfo Cendana not to escape?

A: He stopped and he raised his hands.

Q: What happened next?

A: I asked him if he was the one who is responsible about the incident, the killing incident. At first he denied it but later on when I talked to him in calm manner he admitted that he was responsible and then I asked him where is the gun that he used.

Q: What did he tell you?

A: At first he denied it but later on he told to one of his relatives to get the gun, sir. [TSN, February 1, 1988, pp. 6-7; Underscoring supplied.]

The failure of the police investigators to apprise accused-appellant of his constitutional rights makes inadmissible their testimonies that the accused-appellant admitted to the commission of the offense and pointed to the location of the shotgun [Art. III, sec. 12, par. 3, Constitution.]

With the exclusion of these alleged admissions of the accused-appellant, we must look into the other evidence taken against the accused-appellant which led to a judgment of conviction against him by the trial court. Only if this is sufficient to convince the Court without any reasonable doubt that he committed the offense charged can the judgment of conviction rendered against him be affirmed.

II.

The trial court took into account the following reports as clear indications that it was accused-appellant who fired the shotgun which killed Dominador Manongdo: (1) the postmortem report, as testified to by the Municipal Health Officer, Dr. Leonard Carbonell, to the effect that "the cause of death of the deceased is intracranial injuries with intracranial hemorrhage secondary to gunshot wound" [TSN, November 5, 1987, p. 43]; (2) Chemistry Report No. C-86-1205, as testified to by Ma. Carina Javier, an NBI Forensic Chemist, to the effect that the examination of the paraffin casts of accused-appellant yielded positive results for specks in both hands, indicating that gunpowder nitrates were present [TSN, December 22, 1987, pp. 53-54]; and (3) the ballistics report, as testified to by Irineo Ordiano, Jr., an NBI Senior Ballistician, to the effect that the homemade shotgun allegedly recovered from the accused-appellant is serviceable [TSN, January 20, 1988, p. 64.]

A careful analysis of the postmortem report will show that the gunshot wound sustained by the deceased Dominador Manongdo is indeed compatible with what could be inflicted by a shotgun. However, such a finding assumes no significance in connection with a finding of the guilt of accused-appellant unless the firing of the shotgun could positively be linked to him.

Neither is the ballistics report any support to the conclusion that accused-appellant is guilty of the commission of the offense. All that the NBI ballistics report establishes is that the shotgun which was submitted to it for examination is still serviceable. Although this could have been done facily by the crime laboratory, there was no finding as to whether or not the shotgun has just been recently fired. Therefore, instead of bolstering the case for the prosecution, it instead raises the doubt that the tested shotgun may not have been the same shotgun which was used to shoot at and kill the deceased Manongdo.

The only other evidence left with which to establish the guilt of accused-appellant is the positive result obtained from the paraffin casts taken from his hands. If this was supported by other evidence before the Court, then the presence of gunpowder nitrates on the hands of accused-appellant could have been a strong indication that it was he who fired the gun which killed the deceased. However, this does not obtain in the case at bar. Likewise of note is the plausible reason proffered by the accused-appellant that he tested positive for gunpowder burns because he took a turn at firing at coconut fruits with an armalite of a military man who was likewise a guest at a party given by his kumpare [TSN, April 6, 1988, p. 7.]

The absence of any eyewitness to the commission of the offense and the exclusion of the admissions allegedly made by accused-appellant and the fruits thereof, calls into application Rule 133, section 5 of the Rules of Court which states:

Sec. 5. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

There being only one circumstance indicative of the guilt of the accused, i.e. the paraffin casts of accused-appellant's hands yielded positive for gunpowder burns, the above requisites are not satisfied. The case of the prosecution definitely fails.

WHEREFORE, finding that the guilt of the accused-appellant has not been proved beyond reasonable doubt, the decision of the lower court is reversed and the accused-appellant is hereby ACQUITTED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., and Bidin, JJ., concur.
Feliciano, J., on leave.

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