

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES LIWAG Y MORALES AND MARIO L. BOLAÑOS, ACCUSED, MARIO L. BOLAÑOS, ACCUSED-APPELLANT.

G.R. No. 89112. August 03, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision of the Regional Trial Court, Branch XXXVI, Iriga City, which (a) found the accused Andres Liwag and Mario Bolaños guilty of murder; (b) sentenced them to reclusion perpetua; (c) ordered them to indemnify the heirs of the victim, jointly and solidarily, in the amount of FIVE HUNDRED THOUSAND PESOS as actual and compensatory damages; (d) to pay THREE HUNDRED THOUSAND PESOS as moral damages; and (e) to pay the costs.

In the morning of September 9, 1979, prosecution witnesses Emilio Cerillo and Domingo Hallare were inside the Margate Building repairing the ricemill owned by accused-appellant Bolaños (TSN, April 11, 1983, p. 12). About five (5) meters away, witness Cerillo saw appellant Bolaños hand a gun to accused Liwag while talking to each other (TSN, April 11, 1983, pp. 16-19, 23). Moments later, they heard gunshots. Cerillo stood up from the dug-out of the machine where he had been and saw accused Liwag with a gun, shooting at someone, whom he later on identified as the deceased Ely A. Lee. Accused Liwag then went to the staircase and pointed his gun at Cerillo as he went up the stairs of the Margate Building. Informed of the incident, Purita Margate Lee, wife of the deceased, rushed to the ricemill and there she saw the victim lying on the ground in fetal position, in a pool of his own blood. Purita cradled her husband and asked: "Daddy, who shot you?" In his dying words, the victim uttered: "Si Mario" (TSN, August 5, 1985, pp. 5 & 11). The victim was taken to the hospital, but was pronounced dead on arrival.

Responding policemen rushed to the Margate Building and cordoned off the area after having received reports that the gunman had gone inside the building after the shooting. Appellant met with the police officers and denied that the gunman was still inside the building. However, after negotiations, appellant agreed to look for the said gunman. One hour later, appellant informed the authorities that accused Liwag was indeed there, and at the same time asked for another hour to convince the accused Liwag to surrender. After one hour, the accused surrendered to the policemen. Accused Liwag was brought to the Iriga City Police Headquarters accompanied by appellant Bolaños (TSN, September 8, 1981, pp. 17-24).

Accused Liwag refused to give any statements to the police. Sworn statements obtained from several witnesses, however, including Emilio Cerillo, Domingo Hallare, Roger Castañeda, and Dionisio Orbon, implicated accused Liwag. Based on said statements, accused Liwag was detained.

Thereafter, the police ventured to conduct a search of the Margate Building where the appellant and his family lived and where the gunman had sought refuge after the shooting but accused-appellant refused to allow the search, this time invoking the absence of a warrant therefor. One day after the shooting incident, or on September

9, 1979, the police searched the Bolaños residence after having obtained the proper search warrant. In the course thereof, the lethal weapon was found inside the wall of the bathroom, discreetly hidden behind a tile (TSN, June 4, 1985, pp. 2-16). It was a fully loaded .22 caliber Arminius with Serial No. 34683, licensed in the name of, and admittedly owned by, appellant Bolaños.

A ballistic examination was then conducted by the PC Crime Laboratory on the said firearm. Five (5) slugs which were recovered from different parts of the victim's body during the autopsy served as specimen slugs. These were compared with test slugs (bullets which were actually test-fired from the gun recovered from the Bolaños residence). It was confirmed that the specimen slugs as well as the test slugs were fired from the gun recovered from the Bolaños residence. In other words, the specimen and test slugs were all fired from the same .22 caliber Arminius owned by appellant Bolaños.

On September 10, 1979, an Information for murder was filed against accused Liwag.

On September 23, 1979, however, accused Liwag made a confession before the Station Commander of Iriga City, claiming that it was appellant Bolaños who had ordered the killing of Lee (TSN, August 13, 1981, pp. 5-8). On the same date, a sworn statement to that effect was executed (Exhibit "R", Original Records, p. 15-16) by accused Liwag as follows:

"Liwag's confession (Exhibit "R"):

Q - Ano ang dahilan at binaril mo si Mr. Ely Lee?

A - Dahil nga po sa utos ni Kuya Mario Bolaños, at hindi po ako nakatanggi sa dahilang ang aking familia ay nakatira sa lupa ng Nanay ni Kuya Mario sa Batangas at ako naman ay dito sa kanya sa Iriga nagtatrabaho at kung hindi ko iyon su-sundin ako at ang aking familia ay kanyang palalayasin at ako po ay wala nang mapupuntahan at ako ay kanyang pina-ngakuan na siya ang bahala sa akin.

x x x x x x x x

Q - Matapos kang sabihan ni Kuya Mario mo na tirahin mo si Ely Lee ano pa ang ibang ginawa niya?

A - Iniaabot sa akin ni Kuya Mario ang baril at siya ay umalis na at umakyat na ng bahay at ng lalabas na si Mr. Ely Lee sa loob ng bodega ito ay akin ng binaril.

x x x x x x x x

Q - Anong klaseng baril ang ibinigay sayo ni Kuya Mario mo para gamitin mo sa pagbaril ki Mr. Ely Lee?

A - Magnum 22 kulay itim walo ang lagayan ng bala (8 shooter) de bola.

Q - Ano ang pagkakaiba sa baril na ginamit mo at sa baril na ipinakita sa iyo ng pulis noong gabi ng Septiembre 9, 1979 na nakuha ng pulis sa bahay ni Atty. Mario Bolaños?

A - Iyon po ang baril na ginamit ko sa pag-baril ki Mr. Ely Lee.

x x x x x x x x"

On September 24, 1979, a re-enactment of the commission of the crime was conducted under the supervision of Fiscal Malate. The re-enactment showed how accused-appellant handed the murder weapon to accused Liwag (Exhibit "S", Original Records, p. 17) and how the latter shot the victim (Exhibit "T", Original Records, p. 18).

On February 19, 1980, an amended Information for murder was filed charging accused Liwag as principal by direct participation and appellant Bolaños as principal by inducement for the fatal shooting of Lee. It reads:

"That on or about the 9th day of September, 1979 at or about 9:45 o'clock in the morning, at San Roque, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused MARIO L. BOLANOS, motivated by hate which he harbored against one Ely A. Lee, conspiring and confederating with co-accused ANDRES LIWAG y MORALES, with intent to kill and without any justifiable cause, and having induced and ordered the said co-accused Andres Liwag y Morales to shoot Ely A. Lee, did then and there willfully, unlawfully and feloniously shoot said ELY A. LEE with a .22 caliber Magnum revolver, trademark Arminius, bearing Serial No. 346938, belonging to the said MARIO L. BOLANOS, for several times, hitting said ELY A. LEE at the different parts of his body, thus inflicting upon him injuries which directly caused his instantaneous death.

"That the commission of the crime was attended by the qualifying aggravating circumstance of treachery and the generic aggravating circumstances of evident premeditation and cruelty.

"That as a consequence of the illegal acts of the said accused, the family of the victim suffered actual, moral and other form of damages in such amount as may be proven in court.

"ALL ACTS CONTRARY TO LAW." (Rollo, p. 101).

The records show that on the basis of the Amended Information, accused-appellant Bolaños was arrested and detained, but was subsequently released on bail. Upon arraignment, accused Andres Liwag and appellant entered a plea of Not Guilty. In the course of the presentation of evidence by the prosecution before the trial court, accused Liwag escaped from jail.

The prosecution theorized that appellant's grudge against the victim Lee was the motive behind the killing. In this regard, the wife of the victim testified that appellant borrowed twenty thousand pesos (P20,000.00) from the deceased to be used as an investment for a business enterprise. Bad blood between appellant and the deceased ensued for failure of the former to pay the sum owed and to render an accounting therefor. As a consequence, the victim often berated appellant in public.

Seeking exoneration of the appellant in the commission of the crime charged, the defense presented a different version. According to its witness Simeon Margate, father-in-law of both the victim as well as appellant, the victim was fuming mad and was threatening the workers of appellant Bolaños who were suspected by the deceased as responsible for the loss of his two (2) empty softdrink bottles. Witness Margate allegedly cautioned the deceased against any such act, and even offered to pay for twice the value of the lost empty bottles (TSN, November 20, 1981, pp. 2-11). Accordingly, the defense contends, the shooting incident was the result of the confrontation between the victim Lee and accused Liwag regarding the lost empty softdrink bottles.

In addition, appellant Bolaños also presented the testimony of accused Liwag made during the preliminary investigation conducted by the City Fiscal of Iriga. During the said preliminary investigation, accused Liwag made a statement to the effect that he (accused Liwag) was recanting his testimony dated September 23, 1979, implicating appellant in the crime charged. A sworn statement of accused Liwag dated July 27, 1983, was also presented, reiterating what had been alleged during the preliminary investigation.

On March 29, 1989, the trial court rendered a decision convicting the accused Andres Liwag and appellant Mario Bolaños of the crime of murder attended by the qualifying aggravating circumstance of treachery and the generic aggravating circumstance of evident premeditation and cruelty. Hence, this appeal.

In his brief, appellant assigns the following errors:

I.

"THE TRIAL COURT ERRED IN ADMITTING AND GIVING PROBATIVE VALUE TO THE EXTRAJUDICIAL CON-FESSION OF ACCUSED ANDRES LIWAG IMPLICATING DEFENDANT-APPELLANT MARIO BOLAÑOS, OVER THE VEHEMENT OBJECTION OF THE LATTER, IN THE COMMISSION OF THE CRIME NOTWITHSTANDING THE FACT THAT SAID EXTRAJUDICIAL CONFESSION. EXHIBIT 'R', HAD BEEN REPEATEDLY REPUDIATED BY THE DECLARANT AND THE LATTER HAD NEVER BEEN PLACED ON THE WITNESS STAND DURING THE TRIAL OF THE INSTANT CASE.

II.

"THE TRIAL COURT ERRED IN NOT FINDING THE TESTIMONY OF EMILIO CERILLO, ONE OF THE WITNESSES FOR THE PROSECUTION, THAT THE LATTER ALLEGEDLY SAW DEFENDANT-APPELLANT MARIO BOLAÑOS HANDED TO ACCUSED ANDRES LIWAG THE FATAL WEAPON, A .22 CALIBER, ARMINIUS, WITH SERIAL NO. 346838, AS AN AFTERTHOUGHT AND FABRICATED.

III.

"THE TRIAL COURT ERRED IN CONSIDERING AS CIRCUMSTANTIAL EVIDENCE AGAINST THE DEFENDANT-APPELLANT MARIO BOLAÑOS THE LATTER'S ALLEGED REFUSAL TO ALLOW THE POLICE AUTHORITIES OF IRIGA CITY TO SEARCH HIS HOUSE WITHOUT SEARCH WARRANT AND TO ALLOW THE POLICE AUTHORITIES TO IMMEDIATELY GET INSIDE HIS HOUSE AND IN REMAINING SILENT DURING THE PERIOD THE POLICE AUTHORITIES WERE CONDUCTING THE SEARCH FOR THE FATAL WEAPON INSIDE THE HOUSE OF DEFENDANT-APPELLANT MARIO BOLAÑOS.

IV.

"THE TRIAL COURT ERRED IN NOT DECLARING THE ISSUANCE OF SEARCH WARRANT AS ILLEGAL; AND, THEREFORE, THE ALLEGED FATAL WEAPON, EXHIBIT 'C', WAS ILLEGALLY OBTAINED AND INADMISSIBLE EVIDENCE AGAINST DEFENDANT-APPELLANT MARIO BOLAÑOS.

V.

"THE TRIAL COURT ERRED IN FINDING THAT THE ALLEGED MOTIVE FOR THE FATAL KILLING OF ELY LEE, THE VICTIM, WAS THE SUPPOSED STANDING GRUDGE BETWEEN DEFENDANT-APPELLANT MARIO BOLAÑOS, TESTIFIED BY THE WIDOW OF ELY LEE, PURITA MARGATE-LEE, WHEN IN TRUTH AND IN FACT, THE HARD EVIDENCE ON RECORD, WAS THAT THE SHOOTING INCIDENT WAS PRECIPITATED BY ELY LEE'S BEING INCENSED AND ANGERED ON SEPTEMBER 9, 1979 OVER THE LOST (sic) OF TWO (2) EMPTY BOTTLES OF SOFT DRINKS FROM THE BODEGA LOCATED ADJACENT TO THE RICEMILL OF DEFENDANT-APPELLANT MARIO BOLAÑOS WHICH LEAD (sic) TO THE CONFRONTATION BETWEEN ELY LEE AND ACCUSED ANDRES LIWAG.

VI.

"THE TRIAL COURT ERRED IN CONVICTING DEFENDANT-APPELLANT OF THE CRIME OF MURDER THERE BEING NO PROOF OF CONSPIRACY IN THE COMMISSION OF THE OFFENSE BETWEEN THE LATTER AND ACCUSED ANDRES LIWAG.

VII.

"THE TRIAL COURT ERRED IN CONVICTING THE DEFENDANT-APPELLANT MARIO BOLAÑOS ON THE BASIS OF FLIMSY, SURMISES, UNWARRANTED PRESUMPTIONS AND CONJECTURES."
(Appellee's Brief, pp. 82-83, Rollo).

Well-settled is the rule that the extrajudicial confession of an accused is binding only upon himself and is not admissible against his co-accused. It is merely hearsay evidence as far as other accused are concerned (*People vs. Alegre* (94 SCRA 109 [1979])). However, this rule is not without exceptions, one of which provides that the extrajudicial confession of an accused is admissible against his co-accused where the confession is used as circumstantial evidence to show the probability of participation of the co-accused in the killing of the victim (*People vs. Alvarez*, 201 SCRA 364 [1991]; *People vs. Vazquez*, 113 SCRA 772 [1982])).

Appellant vehemently argues, however, that in a succeeding affidavit executed by accused Liwag, the latter denied the involvement of appellant in the commission of the crime.

The Court sees no merit in the argument. In the first place, accused Liwag managed to escape from jail during the trial of the case and therefore cannot be cross-examined as to the veracity of his affidavit of retraction. Just because one has executed an affidavit of retraction does by no means imply that what has been previously said is false or that the latter is true. On the contrary, affidavits of retraction can be easily secured from poor and ignorant witnesses, usually for financial considerations and such being the case, said retractions are exceedingly unreliable for there is always the probability of their being repudiated subsequently (*People v. Mindac, et al.*, G.R. No. 83030, December 14, 1992; citing *People v. Mangulabnan*, 200 SCRA 611 [1991]; *De Guzman v. Intermediate Appellate Court*, 184 SCRA 128 [1990]; *People v. Clamor*, 198 SCRA 642 [1991])).

More importantly, the extra-judicial confession of accused Liwag was made with the assistance of counsel, Atty. Rudito Espiritu, whom the police asked to assist the said accused. Under the circumstances, Liwag's earlier affidavit with the assistance of counsel implicating appellant Bolaños cannot easily be set aside. More, Liwag's confession contained details which were corroborated on material points by the witnesses for the prosecution in establishing the link of circumstantial evidence which, among others, warrant the conviction of herein appellant.

Circumstantial evidence is the evidence of collateral facts or circumstances from which an inference may be drawn as to the probability or improbability of the facts in dispute (5 Moran, p. 17, 1980 ed.). Not only the prior and coetaneous actuations of the accused in relation to the crime but also his acts or conduct subsequent thereto can be considered as circumstantial evidence of guilt (*U.S. vs. De Los Santos*, 24 Phil. 329 [1913])). To warrant conviction in criminal cases upon circumstantial evidence, such evidence must be more than one, derived from facts duly proven, and the combination of all of them must be such as to produce conviction beyond reasonable doubt (*People vs. Tiozon*, 198 SCRA 368 [1991])).

Regarding the matter of the validity of the issuance of the search warrant, we note that accused-appellant has not presented evidence to show that the same was improperly issued. In the absence thereof, the presumption is that official acts were regularly performed. Accused-appellant has not presented evidence to overcome this presumption, hence the presumption stands. Consequently, the murder weapon recovered from accused-appellant's bathroom during the search conducted at the residence of said accused-appellant, is admissible in evidence. Furthermore, even assuming arguendo that accused-appellant was able to prove that the search warrant was invalid, and in view thereof, the murder weapon is inadmissible in evidence, the fact of the recovery of the said weapon in accused-appellant's bathroom at his residence would still be admissible as part of the circumstantial evidence against herein accused-appellant.

As correctly stated by the trial court, the confession of accused Liwag with respect to the fact that

accused-appellant was the one who handed to him the murder weapon was corroborated by the testimony of witness Cerillo that he saw accused-appellant give accused Liwag a gun immediately before the shooting. Aside from this testimony of witness Cerillo, there is no direct evidence that would link accused-appellant to the crime. However, as earlier stated, circumstantial evidence that would point to accused-appellant as having taken part in the crime abound.

Thus, We see no reversible error committed by the trial court when it considered the following as circumstantial evidence to prove the guilt of accused-appellant Bolaños as principal by inducement:

"1. The giving of the gun to Andres Liwag. Why should he give his gun to his co-accused if he were not in conspiracy with him? x x x In his own words, the gun was inside the clutch bag inside a travelling bag inside a locker. The place where the gun was kept was quite secret and the locker was locked. So, if he did not give his gun to his co-accused Andres Liwag, how then, x x x did the gun come into the possession of Andres Liwag?

"2. Why Bolaños refusal to allow the police officers to capture Andres Liwag inside his residence and his asking for one hour for him to find out if the culprit was inside his house and another hour to talk to him to surrender? x x x. Did he not also use the two hours to conceal the instrument of the crime and give his instruction to Liwag?

"3. Why his refusal to allow the police to search his house for the gun without a search warrant?

"4. Why his nonchalance while the police were searching for the gun inside his residence? Is it not more natural to help in search if he had no feeling of guilt?

"5. x x x why was the gun fully loaded when it was found inside the walling of the bathroom despite its having been discharged of its bullets after Liwag had fired them against the victim? x x x. Was Liwag also in possession of the bullets so that he was able to reload the gun before he hid it in the hole between the wall, or was it not Bolaños himself who reloaded the gun in order to conceal the fact that it had been used?

"6. The motive. x x x The testimony of Mrs. Purita Margate-Lee positively shows that there was bad blood between the victim Ely Lee and the accused Mario Bolaños which was the result of the jueteng venture, in which the victim always lambasted the said accused even in public. The humiliation and embarrassment caused the said accused by the victim must have been enough reason for him to desire to kill the victim. Andres Liwag having stayed for a very short time (about two weeks) in Iriga and known (sic) Ely Lee for such short duration could not have easily nurtured such a desire. Bolaños assertion that Andres Liwag killed Ely Lee on his own x x x is unbelievable. It implies that Andres Liwag already had the gun in his possession when he was subjected to karate by Ely Lee. Which again poses the question: Did Liwag arm himself for the confrontation with Ely Lee just because of the lost soft drinks of which he was suspected to have stolen? And to repeat, Fiscal Bolaños himself testified that his gun was placed inside a clutch bag x x x and that it was not an easy matter for anybody to get the gun. Besides, there is no evidence to show that Andres Liwag was hurt x x x in the hands of Ely Lee. If there was a con-frontation x x x how come the persons in the ricemill were not able to hear or witness the same, considering that Cerillo and Hallare were just a few meters away, repairing the screen?

"7. The accused Andres Liwag being a 'boy' of Mario Bolaños, a provincemate, and more especially because his family was living in a place owned by Bolaños mother, shows that Bolaños had a great ascendancy over Andres Liwag that he could exert sufficient influence upon the said accused to impel the latter to commit the crime according to his instruction."

The Court therefore agrees with the conclusion of the trial court that accused Andres Liwag and accused-appellant Bolaños are guilty beyond reasonable doubt of the crime of Murder, for the fatal shooting of the victim Ely A. Lee. Accused Liwag is guilty as principal by direct participation, while accused-appellant Bolaños is guilty as principal by inducement.

That the crime was attended by treachery is borne out by the records. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend direct-ly and especially to insure its execution, without risk to himself arising from the defense which the offended party might make (Art. 14, No. 16, Revised Penal Code). Treachery may exist even if the attack is frontal if the same is sudden and unexpected (*People v. Liston*, 179 SCRA 415 [1989]). Accused Liwag, after being instructed by accused-appellant, killed the victim with treachery, the details of which he narrated in the affidavit he executed (Exhibit "R"), thus:

"Pagharap ko po ki Mr. Ely Lee kinalabit ko lang ng kinalabit ang baril at hindi ko po matandaan kung ilang beses ko pong kinalabit ang baril at kung saan ko tinamaan si Mr. Lee. x x x." (Sinumpaaang Salaysay of Andres Liwag, 23 Sept. 1979, first par., p. 2).

Likewise, evident premeditation was present in the commission of the crime. To appreciate the circumstance of evident premeditation, it is necessary to establish the following: (1) the time when the offender determined to commit the crime; (2) the act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to harken to its warnings (*People vs. Gravino*, 122 SCRA 123 [1983]). In the case at bar, all requisites were present. Appellant had sent for accused Liwag from Batangas ostensibly to gain an honest living. But far from it. Moments before the tragic incident, appellant was seen talking to accused Liwag and in the course thereof, handed a gun to the latter. After the victim was killed, accused Liwag was likewise seen running upstairs leading to the residence of appellant Bolaños. This notwithstanding, responding policemen were refused entry by appellant on the lame excuse that the assailant did not seek refuge there. As it turned out, however, accused Liwag did indeed hide inside the residence of appellant.

All told, and guided by the corroborative testimonies of the prosecution witnesses vis-a-vis Liwag's counselled confession, as well as the other circumstantial evidence convincingly linking appellant as principal by inducement to the commission of the crime, the Court finds appellant guilty of the offense charged.

WHEREFORE, the judgment of conviction is hereby **AFFIRMED** in toto. Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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