

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AURELIO BANDULA Y LOPEZ, ACCUSED-APPELLANT.*G.R. No. 89223. May 27, 1994*

Ponente: BELLOSILLO, J.

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After he and his wife were individually hog-tied and their house ransacked, JUANITO GARAY, a lawyer, was found dead with three (3) gunshot wounds. For his death and the loss of their things on the occasion thereof, AURELIO BANDULA, PANTALEON SEDIGO, TEOFILO DIONANAO and VICTORIANO EJAN were haled to court for robbery with homicide.

On 5 May 1989, after hearing twelve (12) prosecution and nine (9) defense witnesses, the trial court rendered judgment finding accused Aurelio Bandula guilty of the crime charged. However, his three (3) co-accused were acquitted "for insufficiency of evidence."^[1]

As found by the court a quo,^[2] on 27 January 1986, at around ten o'clock in the evening, six (6) armed men barged into the compound of Polo Coconut Plantation in Tanjay, Negros Oriental. The armed men were identified by Security Guard Antonio Salva of the plantation as Aurelio Bandula, Teofilo Dionanao, Victoriano Ejan and Pantaleon Sedigo while the two others who wore masks were simply referred to as "Boy Tall" and "Boy Short." At gunpoint, the two (2) masked men held Salva who was manning his post, disarmed him of his shotgun and tied his hands behind his back. They then went up the house of Leoncio Pastrano, Chief of Security and General Foreman of the plantation, hog-tied him, and divested him of his driver's license, goggles, wristwatch and .38 cal. snubnose revolver. From there, the six (6) armed men with Salva and Pastrano in tow proceeded to the house of Atty. Juanito Garay, Manager of the Polo Coconut Plantation. Accused Dionanao, Ejan and Sedigo stayed downstairs while accused Bandula and the two masked men with Salva and Pastrano went up the house of Atty. Garay. After forcing their way into the house, the masked men and Bandula ransacked the place and took with them money and other valuables. Thereafter, the hooded men who were bringing with them Atty. Garay locked Pastrano inside his house together with Salva. A few minutes later, Pastrano and Salva heard gunshots coming from the direction of the gate of the compound. After succeeding in untying themselves, Pastrano and Salva went to report the matter to the police. On their way, they found outside the gate the lifeless body of Atty. Garay.

In arriving at its conclusions, the trial court considered the alleged confession of accused Bandula that after the incident he gave his .38 cal. revolver for safekeeping to Jovito Marimat, Jr., from whom three handguns were recovered by the police, i.e., a .38 cal. revolver with four (4) live ammunitions and one (1) empty shell, a .22 cal. "paltik" revolver, and a revolver with M16 bullets. It likewise took into account the supposed admission of accused Victoriano Ejan that he kept a 12-gauge Winchester shotgun, a tape recorder, a bayonet and a pair of binoculars in the house of his relative Emilio Rendora who was found to have the goods in his possession. The court also noted that a sum of money suspected to be part of the loot was recovered from accused Pantaleon Sedigo.

Admitted also in evidence were the alleged extrajudicial confessions of accused Bandula and Dionanao that they were merely forced to participate in the commission of the crime by "Boy Tall" and "Boy Short." "These extrajudicial confessions made by accused Teofilo Dionanao and Aurelio Bandula extracted during custodial investigation," the trial court ruled, "have all the qualities and have complied with all the requirements of an admissible confession, it appearing from the confession itself that accused were informed of their rights under the law regarding custodial investigation and were duly represented by counsel (Atty. Ruben Zerna)."[3]

Thus the trial court disregarded the following defenses of the four (4) accused:

(a) Teofilo Dionanao - that he was arrested without a warrant and brought to the Tanjay Police Station on 28 January 1986 for no apparent reason; that there he was made to sit on a bench for about an hour when Cpl. Kagawasan Borromeo, Pat. Tomas Borromeo and Pat. El Moso arrived and took turns in mauling him until he spat blood, after which, he was locked up in the municipal jail; that his repeated requests to see a doctor were ignored; that the following morning, he was taken out of his cell and again mauled, after which, he was forced to sign a piece of paper without a counsel and the contents of which he did not know; that, prior to his detention, he did not know his three (3) co-accused as he met them for the first time only when they were detained together in the Municipal Jail of Tanjay.[4]

(b) Aurelio Bandula - that in the evening of 27 January 1986 he was in the house of Jovito Marimat, Sr., a quack doctor; that he was bedridden as he was undergoing treatment for an inflamed stomach which, at that time, was fully covered with herbs; that, the following morning, at around six o'clock, he was awakened and dragged by Cpl. Borromeo and Pat. Moso from his sickbed into a waiting motorcycle and brought to the Municipal Hall where he was interrogated by Pat. Melvin Baldejera; that, later that afternoon, he was brought to a room where four (4) persons, including Antonio Salva, took turns in beating him up until he became unconscious; that that evening, he was made to sign a blank paper purportedly for his release; that he was then put behind bars; that because of the mauling, he felt extreme pain on his left rib; that he saw accused Dionanao for the first time only on 28 January 1986 in the Municipal Hall, and his two (2) other co-accused Sedigo and Ejan only the following day when they were locked up together with him in his cell; that his relatives were not allowed to see him; and, that he did not know nor ever met Atty. Ruben Zerna.[5]

(c) Victoriano Ejan - that he first met his three (3) co-accused only on 29 January 1986 when he was confined in the Municipal Hall; that after taking supper on 27 January 1986, he slept with his wife and four (4) children; that he was not aware of the incident that transpired that night until he was arrested at gunpoint by Pat. Moso, Pat. Gaste and Pat. Esparicia at around five o'clock the following afternoon; that he was brought to the Municipal Hall and there mauled until he lost consciousness; that his relatives were barred from seeing him; that during his four-month detention in Tanjay, he was never investigated; that he has no relative by the name of Emilio Rendora.[6]

(d) Pantaleon Sedigo - that on 29 January 1986, at around six-thirty in the morning, Pat. Esparicia and Cpl. Borromeo, with their guns drawn, just barged into his house, searched his belongings and arrested him without a warrant; that when he refused to go with them, he was hit on the chest and eye; that he had never met any of his co-accused prior to his detention, neither did he know the deceased Atty. Garay; and, that he did not know anything about the charges against him.[7]

On 6 June 1986, the four (4) accused were transferred from the Municipal Jail of Tanjay to the Negros Oriental Provincial Rehabilitation Center in Dumaguete City. It was there where accused Bandula asked to see a doctor; that, as a result of his request, he was brought to the provincial hospital where he was examined[8] and diagnosed to have an "[o]ld healed fracture with callous formation at the 6th and 7th rib along the mid-auxiliary line,

left;"[9] that when prosecution witness Pat. Baldejera was asked on 15 September 1987 in open court if he saw any contusions or bruises on any of the four (4) accused after their arrest, he admitted that he noticed accused Sedigo with a "black eye." [10]

Although the respective alibis of all four (4) accused were disregarded considering their positive identification by Salva as the ones who raided Polo Coconut Plantation, the trial court nevertheless acquitted Dionanao, Ejan and Sedigo on the ground that while "these three accused were present at the scene of the crime x x x from the inception of the crime to its final termination, they were merely bystanders and did not participate in one way or another in the commission thereof x x x x The mere knowledge, acquiescence or approval of the act without cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[11] Hence, the instant appeal by the lone convict.

Appellant Bandula argues that the extrajudicial confessions he and accused Dionanao executed suffer from constitutional infirmities, hence, inadmissible in evidence considering that they were extracted under duress and intimidation, and were merely countersigned later by the municipal attorney who, by the nature of his position, was not entirely an independent counsel nor counsel of their choice. Consequently, without the extrajudicial confessions, the prosecution is left without sufficient evidence to convict him of the crime charged.

The prosecution witnesses themselves disclosed that on 28 January 1986 accused Dionanao was "picked-up for investigation" and interrogated by Cpl. Ephraim Valles inside the Police Station in Tanjay where he implicated accused Sedigo.[12] The following day, on 29 January 1986, he was brought to the Office of the Municipal Attorney of Tanjay, Atty. Ruben Zerna, where he supposedly executed his extrajudicial confession in the presence of the latter.[13] On 4 February 1986, upon the suggestion of another investigator, Cpl. Valles took the Supplementary Sworn Statement of Dionanao, again in the presence of Atty. Zerna.[14] In his Sworn Statement, Dionanao supposedly admitted that he was with Bandula when the latter, together with "Boy Short" and "Boy Tall," shot Atty. Garay. He added that he was going to be killed if he did not join the group. He also said that Sedigo and Ejan were with them that evening.[15] Then, in his Supplementary Sworn Statement, he implicated three (3) more persons but they were not thereafter included in the Information.[16]

The prosecution likewise asseverated that accused Bandula was arrested on 28 January 1986, at around six o'clock in the morning, brought to the Tanjay Police Station and there interrogated.[17] He was investigated by Cpl. Borromeo, Cpl. Esparicia, Cpl. Ebarso, Pat. Moso and Pat. Baldejera.[18] In that investigation, Bandula allegedly admitted that he together with two (2) others shot Atty. Garay with a .38 cal. revolver.[19] At that time, there was no counsel present "because that (investigation) was not yet in writing." [20] Two weeks after his arrest, Bandula allegedly gave a sworn statement in the presence of Atty. Zerna admitting his participation in the killing of Atty. Garay. In that statement, Bandula narrated that after "Boy Short" and "Boy Tall" shot Atty. Garay, he (Bandula) was ordered likewise to shoot the latter which he did.[21]

From the records, it can be gleaned that when accused-appellant Bandula and accused Dionanao were investigated immediately after their arrest, they had no counsel present. If at all, counsel came in only a day after the custodial investigation with respect to accused Dionanao, and two weeks later with respect to appellant Bandula. And, counsel who supposedly assisted both accused was Atty. Ruben Zerna, the Municipal Attorney of Tanjay. On top of this, there are telltale signs that violence was used against the accused. Certainly, these are blatant violations of the Constitution which mandates in Sec. 12, Art. III, that -

(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.

(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

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

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

In the twin cases of *Morales, Jr., v. Enrile*[22] and *Moncupa, Jr. v. Enrile*,[23] and the subsequent case of *People v. Galit*,[24] all promulgated even before the effectivity of the 1987 Constitution, we laid down the procedure for peace officers to follow when making an arrest and conducting a custodial investigation -

x x x 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.

We further said in *Gamboa v. Judge Cruz*[25] that "[t]he right to counsel attaches upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from respondent/accused. At such point or stage, the person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation for the commission of the offense." Hence, if there is no counsel at the start of the custodial investigation, any statement elicited from the accused is inadmissible in evidence against him. Custodial investigation is the stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who had been taken into custody by the police who carry out a process of interrogation that lends itself to elicit incriminating statements. It is when questions are initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[26]

Indeed, the instant case is analogous to the more recent case of *People v. De Jesus*[27] where we said that admissions obtained during custodial interrogations without the benefit of counsel although later reduced to writing and signed in the presence of counsel are still flawed under the Constitution.

The Constitution also requires that counsel be independent. Obviously, he cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to the accused. Granting that Atty. Zerna assisted accused Dionanao and Bandula when they executed their respective extrajudicial confessions, still their confessions are inadmissible in evidence considering that Atty. Zerna does not qualify as an independent counsel. As a legal officer of the municipality, he provides legal assistance and support to the mayor and the municipality in carrying out the delivery of basic services to the people, including the maintenance of peace and order. It is thus seriously doubted whether he can effectively undertake the defense of the accused without running into conflict of interests. He is no better than a fiscal or prosecutor who cannot

represent the accused during custodial investigations.[28]

What is most upsetting however is the allegation of the four (4) accused that they were mauled into owning the crime. Based on the records, we are strongly drawn to the belief that violence indeed attended the extraction of statements from the accused.

For, why did the investigators not inform the accused of their right to remain silent and to have competent and independent counsel, preferably of their own choice, even before attempting to elicit statements that would incriminate them? Why did the investigators not advise the accused that if they could not afford the services of counsel they could be provided with counsel free of charge before conducting any investigation? Why did the investigators continuously disregard the repeated requests of the accused for medical assistance? How did accused Sedigo get his "black eye" which even Pat. Baldejera admitted? How and why did accused-appellant Bandula suffer a fractured rib?

We cannot close our eyes to these unanswered questions. This Court is greatly disturbed with the way the accused were treated or maltreated. In fine, we cannot accept the extrajudicial confessions of the accused and use the same against them or any of them. Where there is doubt as to their voluntariness, the same must be rejected in toto.[29]

Consequently, the prosecution is left with nothing but the alleged positive identification of appellant Bandula by witness Salva. But this by itself does not measure up to the required standard of moral certainty.

We cannot give credence to the lone identification by witness Salva of all four (4) accused who were supposedly bold enough to bare their faces. For, Maria Paz Garay, widow of the victim, recounted that except for Pastrano and Salva whose hands were tied behind their backs, she could not recognize any of the men as all their faces were fully covered, although according to Salva only two (2) were hooded. She could only see their eyes.[30] Thus, even Pastrano who witnessed the crime together with Salva was not able to recognize any of the armed men as they were hooded. In fact, even if there was light, he said he would not be able to recognize the malefactors.[31] Contraposed with the testimonies of Garay and Pastrano, the alleged positive identification by Salva crumbles.

With the failure of the prosecution to prove the guilt of accused-appellant Bandula beyond reasonable doubt, acquittal should follow as a matter of course. We have oftentimes said that while the alibi of the accused is easily fabricated, this claim assumes importance when faced with the inconsistencies and the rather shaky nature of the prosecution evidence.[32] The prosecution must rely not on the weakness of the defense evidence but rather on its own proof which must be strong enough to convince this Court that the prisoner in the dock deserves to be punished. In this, the state has utterly failed.

Indeed, it is unfortunate that the investigators who are sworn to do justice to all appear to have toyed with the fundamental rights of the accused. Men in uniform do not have blanket authority to arrest anybody they take fancy on, rough him up and put words into his mouth. There is a living Constitution which safeguards the rights of an accused,[33] a penal law which punishes maltreatment of prisoners[34] and a statute which penalizes the failure to inform and accord the accused his constitutional rights.[35]

WHEREFORE, on reasonable doubt, the conviction of accused-appellant AURELIO BANDULA Y LOPEZ by the court a quo is REVERSED and SET ASIDE and a new one entered ACQUITTING him of the crime charged.

Costs de officio.

SO ORDERED.

Davide, Jr., and Quiason, JJ., concur.

Cruz, (Chairman), and Kapunan, JJ., on leave.

[1] Decision penned by Judge Jesus L. Tabilon, Regional Trial Court of Dumaguete City, Br. 42.

[2] Decision of the court a quo, pp. 35-37.

[3] Id., p. 38.

[4] TSN, 15 June 1988, pp. 18-34.

[5] Id., 25 July 1988, pp. 2-27.

[6] Id., 16 September 1988, pp. 4-22, 32; 10 October 1988, pp. 5-6.

[7] Id., 10 October 1988, pp. 16-26.

[8] Id., 25 July 1988, pp. 28-30.

[9] Id., 23 August 1988, p. 6.

[10] Id., 15 September 1987, pp. 31-32.

[11] Decision of the trial court, pp. 39-40.

[12] TSN, pp. 20 October 1987, pp. 7-9.

[13] Id., 1 March 1988, pp. 10-11.

[14] Id., pp. 19-20.

[15] Sworn Statement of Teofilo Dionanao taken on 29 January 1986 (Exh. "R").

[16] Supplementary Sworn Statement of Teofilo Dionanao taken on 4 February 1986 (Exh. "T").

[17] TSN, 15 September 1987, pp. 55-57.

[18] Id., 19 May 1987, pp. 4-7.

[19] Ibid.

[20] Id., 15 September 1987, pp. 32-33.

[21] Sworn Statement of Aurelio Bandula taken on 11 February 1986 (Exh. "N").

[22] G.R. No. 61016, 26 April 1983, 121 SCRA 538.

[23] G.R. No. 61107, 26 April 1983, 121 SCRA 538.

[24] G.R. No. 51770, 20 March 1985, 135 SCRA 465.

[25] G.R. No. 56291, 27 June 1988, 162 SCRA 642, cited by Mr. Justice Teodoro Padilla in his Separate Concurring Opinion in *Sampaga v. People*, G.R. No. 62305, 23 November 1992, 215 SCRA 839.

[26] *Miranda v. Arizona*, 384 U.S. 436, 444.

[27] G.R. No. 91535, 2 September 1992, 213 SCRA 345.

[28] *People v. Matos-Viduya*, G.R. No. 60025, 11 September 1990, 189 SCRA 403.

[29] *People v. Galit*, see Note 24.

[30] TSN, 3 May 1988, pp. 5-22.

[31] *Id.*, 7 January 1987, pp. 21-33, 50-51.

[32] *People v. Malakas*, G.R. No. 92150, 8 December 1993; *People v. Ambih*, G.R. No. 101006, 3 September 1993.

[33] Sec. 12, Art. III, 1987 Constitution.

[34] Art. 235, The Revised Penal Code.

[35] R.A. 7438, "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations thereof."

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