

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAQUILLO MIANA Y LINAZA, DEFENDANT-APPELLANT.

G.R. No. 91015. December 23, 1992

Ponente: NOCON, J.

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NOCON, J.:

Appeal by accused Daquillo Miana from the decision[1] dated August 18, 1991, of the Regional Trial Court of Bislig, Surigao del Sur, in Criminal Case No. 564, the dispositive portion of which reads, as follows:

"WHEREFORE, finding accused Daquillo Miana guilty beyond reasonable doubt, the crime of robbery with violence against or intimidation of persons where Juanito Palsagingin was hacked several times to death, the court impose [sic] upon him the penalty of reclusion perpetua to be served by him in the National Penitentiary, Muntinlupa, Metro Manila, with costs against him.

"The accused is hereby ordered to pay as indemnity to the heirs of the victim the amount of P30,000.00, P10,000.00 for moral damages, and P5,000.00 for exemplary damages, without subsidiary imprisonment in case of insolvency.

"SO ORDERED."[2]

Based on the evidence adduced before the court a quo, the facts of the case are as follows: On November 1, 1988, prosecution witness Eduardo Lim, a supervisor of Anchorage Wood Industries, Inc. (AWII for brevity), received a report from an employee of said company that one of the guards at the company logpond had been killed, the company bodega forcibly opened and a chainsaw stolen. Lim immediately proceeded to the company logpond at Pasadera, Palo Alto, Lingig, Surigao del Sur, and discovered the body of Juanito Palsagingin, one of the company's guards, lying outside the office with several hack and stab wounds.

Lim inspected the bodega and found that a portion of a wall thereof was forcibly detached. Near the bodega, Lim found a claw hammer with a small handle about 8 inches and with the handle made of Bahi,[3] which was later turned over to the police. An inventory of the bodega was then made, which revealed that a Stihl chainsaw belonging to the company, as evidenced by Invoice No. 11666,[4] was missing.

A police team led by P/Sgt. Felix Plaza, Jr., Station Commander of Lingig, Surigao del Sur, arrived at the scene later and immediately conducted an investigation. Shortly thereafter, Sgt. Plaza received information from Romulo Bantayan, barangay captain of Palo Alto, Lingig, Surigao del Sur, that a certain Guadalupe Garay of their barangay had knowledge of facts relative to the case.

Sgt. Plaza and his team proceeded to Palo Alto and interviewed Guadalupe Garay. She revealed that accused-appellant Daquillo Miana and Israel Dapitanon borrowed a flashlight from her on the night of October 31, 1988, and returned the same the following day. She further suggested to the investigators that they pick up accused-appellant and Dapitanon, since she believed that the two had committed the crime. Sgt. Plaza obtained the flashlight from Guadalupe Garay and which was offered in evidence as Exhibit "G".

Upon returning to the AWII logpond, Sgt. Plaza and his companions discovered a fishing spear or "pana." The "pana" and the flashlight taken from Guadalupe Garay are usually used by so-called "night divers" for fishing.

On the basis of the information he had, Sgt. Plaza ordered the arrest of accused-appellant and Dapitanon. Accused-appellant was arrested by Pat. Antonio Lagura, Jr. on the afternoon of November 3, 1988 at Sabang, Lingig, Surigao del Sur, and was brought to the Lingig Police Station for questioning where he was asked by Pat. Lagura to confess to the crime charged. Accused-appellant allegedly admitted his participation in the killing of the AWII guard and in the taking of the company's chainsaw. He likewise told Pat. Lagura that his companion in the crime was Israel Dapitanon and that they hid the chainsaw on Buhangin Island, also in Palo Alto. Pat. Lagura thereafter brought accused-appellant before Sgt. Plaza and told the latter about accused-appellant's confession.

Thereafter, a police team led by Sgt. Plaza proceeded to Nag-as, Lingag, Surigao del Sur accompanied by accused-appellant to look for Israel Dapitanon. They found Dapitanon at around 11 o'clock in the evening of November 3, 1988, at the house of a certain Normina Lauron.

Sgt. Plaza interviewed Dapitanon, who confessed that he and accused-appellant killed the guard, took the chainsaw, and hid the same on Buhangin Island. That the bolo used in killing the guard belonged to Victoriano Garay, which he took without Garay's knowledge that same night.

The police team then proceeded by pumpboat to Buhangin Island to recover the chainsaw, bringing the two suspects with them. Upon reaching Buhangin Island, Dapitanon accompanied several policemen to the spot where the chainsaw was kept, while accused-appellant remained on the pumpboat guarded by the remaining policemen.[5]

Upon the group's return to the Lingig police station, the two suspects reenacted the commission of the crime. The chainsaw was returned to AWII.

An information for robbery with homicide was subsequently filed against the two suspects. During their arraignment on January 24, 1989, Dapitanon pleaded guilty to the crime charged while accused-appellant pleaded not guilty. Israel Dapitanon was correspondingly sentenced on February 8, 1989.[6]

During the trial, the prosecution presented as its witnesses, Sgt. Plaza, Pat. Lagura, barangay captain Bantayan, and Eduardo Lim.

Accused-appellant's defense was based on alibi. He claimed that from October 28, 1988 to November 2, 1988, he was at the Davao Savory House in Davao City where he works as a waiter. On the morning of November 3, 1988, accused-appellant was asked by his brother to go to Lingig to get some fish. Upon arriving at Lingig sometime in the afternoon of the same day, he met Pat. Lagura who invited him to the police station where he was detained for twenty minutes. He was later asked where they could find Israel Dapitanon. Accused-appellant told the officers that Dapitanon could be found at Nag-as, Palo Alto. A police team brought him to Palo Alto, where they eventually found Israel Dapitanon. Accused-appellant claims that it was Dapitanon who told the officers where the chainsaw could be found on Buhangin Island and who actually pointed out the exact hiding place thereof.

In support of his defense, accused-appellant presented Israel Dapitanon, who affirmed his (Dapitanon) participation in the commission of the crime, but that his companions were one Bobong Cero and one Rey Padilla. Accused-appellant was not with them at the time they committed the crime and at the time they hid the chainsaw on Buhangin Island.

The trial court brushed aside the defense, holding that the same could not prevail in view of the positive statement of the witnesses. Hence this appeal.

We reverse.

None of the prosecution's witnesses testified that they saw accused-appellant committing the crime. Sgt. Plaza and Pat. Lagura's testimony were to the effect that accused-appellant confessed to the crime upon his arrest. However, accused-appellant points out that his alleged confession was taken while he was being interrogated without the assistance of counsel, in violation of his constitutional rights which provide:

[a]ny 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.[7]

The fact that accused-appellant had verbally confessed to the crime is immaterial. He was under custodial investigation at the time he made his alleged confession, and therefore the police officers should have complied with this Court's ruling in *People vs. Galit*[8] to the effect that --

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.[9]

Since the confession was obtained in violation of the aforestated constitutional provision, the same is inadmissible in evidence against him.[10]

Without the extra-judicial confession of the accused-appellant, his conviction cannot stand. The items used in the commission of the crime, such as the hammer, the flashlight, the fishing spear and the bolo, were not recovered from accused-appellant nor was there evidence linking him to these items. In fact, it was Dapitanon who revealed to the investigators where they could find the bolo used in killing Juanito Palsagingin.

The information which led to the recovery of the chainsaw was provided by Dapitanon, as testified to by Dapitanon himself, Sgt. Plaza, and Pat. Lagura. It was Dapitanon who led the police team to the spot on Buhangin Island where the chainsaw was actually hidden.

The trial court took into consideration the testimonies of Sgt. Plaza and Barangay Captain Batungan regarding the information provided by Guadalupe Garay that accused-appellant and Dapitanon borrowed her flashlight during the night of the crime and probably used it to commit the same. This is in error as their testimonies are hearsay,[11] in the light of the prosecution's failure to present Guadalupe Garay to corroborate the same.

While it is true that alibi is an inherently weak defense, the same assumes importance when faced with the uncertainties and inconsistencies of the prosecution's evidence.[12] Conviction of the accused cannot be justified even if the defense of alibi was not satisfactorily proven, since conviction must be based not on the weakness of the defense, but on the strength of the prosecution's evidence.[13]

In view of the foregoing, the acquittal of accused-appellant is in order.

WHEREFORE, the decision of the trial court is hereby REVERSED and SET ASIDE, and accused-appellant Daquillo Miana ACQUITTED of the crime charged.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Penned by Judge Martin V. Vera Cruz.

[2] Decision, pp. 7-8.

[3] Exhibit "F".

[4] Exhibit "D".

[5] Testimony of Pat. Lagura, T.S.N., March 8, 1989, pp. 45-55.

[6] Records, 62-64.

[7] 1987 Const., Art. III, Sec. 12 (1).

[8] L-51770, 135 SCRA 465 (1985).

[9] 135 SCRA at 554.

[10] 1987 Const., Art. III, Sec. 12 (3).

[11] People vs. Tiozon, G.R. No. 89823, 198 SCRA 368, 381 (1991).

[12] People vs. Viray, G.R. No. 87184-85, 202 SCRA 320, 331 (1991).

[13] Id.

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