

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABAS CALVO, JR., AND RODOLFO LONGCOP, ACCUSED-APPELLANTS.

G.R. No. 91694. March 14, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Charged with and prosecuted for robbery with homicide were herein appellant Sabas Calvo, Jr. and co-accused Rodolfo Longcop under an information reading:

"That on or about September 26, 1987, in the City of Manila, Philippines, the said accused, conspiring and confederating together with JOSE BALSOLASO Y TUBINO who has already been charged for the same crime before the Regional Trial Court of Manila under Criminal Case No. 87-58217, and one whose true name, identity and whereabouts are still unknown and helping one another, with intent to gain and by means of force and violence, that is, by strangling with a piece of cloth IGNACIA MAULEON Y JOPIA and stabbing her several times with bladed instruments, did then and there willfully, unlawfully and feloniously take, rob and carry away one bag containing P1,150.00 in cash, among other things, owned by said Ignacia J. Mauleon against the latter's will, to the damage and prejudice of said Ignacio J. Mauleon in the same sum of P1,150.00, Philippine Currency; that by reason or on the occasion of the said robbery, herein accused, with intent to kill, inflicted fatal stab wounds upon the said Ignacia J. Mauleon which were the direct cause of her death immediately thereafter."

The antecedents have been narrated in detail by the trial court, to wit:

"FACTS DEDUCED FROM THE PROSECUTION EVIDENCE:

"Spouses Felipe and Ignacia Maullon, are engaged in a bakery business with every sign of prosperity; in fact, they have stores scattered all over the City and employ a host of bakery workers.

"One of their bakeries, the Philip's Bakery is at España, Sarnpaloc, Manila where Beatriz Bido is a stay-in sales girl. On September 26, 1987 at about 9:00 in the evening after her washing chores, she went upstairs, knocked at the room of her boss, Mrs. Ignacia Maullon. Nobody answered. About five minutes later, two men barged out from the room rushing downstairs. One of them held a gun whom Bido identified as one, Sabas Calvo. He pushed her into the bath room repeatedly but she resisted. He threatened Bido not to shout else (sic) he will shoot her. Bido also identified the companion as one Bobby Gaspar, who closely followed Calvo, who was carrying a leather bag. When Bido succeeded in entering Mrs. Maullon's room she was speechless and surprised to see Mrs. Maullon's body sprawled on the floor in a pool of blood. She also saw the room in disarray - clothes and other articles were scattered all over the place. The cabinets and drawers were forced open and ransacked. Bido (sic) rushed down shouting hysterically. She saw Cora, Rosemarie, Leny, Romy, Rodolfo, Tony, Nonong, and others. She narrated to them as she gasped for breath the horrible sight she saw upstairs. Some of her companions then rushed upstairs to see for themselves what happened while the others sought immediate help. Cora, another sales girl, went to a neighbor and phone Yollie Maullon who was at another store of the Maullon's.

"Nearby the Philip's Bakery is another store owned and operated by one Lucila Gorospe, a businesswoman.

Gorospe was just in front of her store facing the Philip's Bakery when this incident happened. Her store was still opened at the time and was well lighted. By the side of the street near the store is an electric post with electric light. All these lights: the one at her store, the electric post and that of Philip's Bakery illuminated the place well. It was while facing the Philip's Bakery, a distance of about seven (7) meters away when she saw two men running as fast as their legs could carry them. The men came from the stairs of Philip's Bakery. Beatriz identified one of them as Sabas Calvo, Jr., who was running towards P. Campano Street, carrying a bag. Sabas' companion did not carry anything. One, Henry Jordan - driver of Marietta rushed out and gave the duo a chase. Calvo however, pointed his gun at Henry Jordan. He scampered for safety and gave up the chase. Bobby and Calvo made good their escape.

"In the meantime, the Homicide Section of the Western Police District received a telephone call from Tessie Evangelista informing them that a female unidentified body was found inside Philip's Bakery located at the corner of Morayta and España Streets. The police immediately dispatched a team of operatives composed of Pfc. Norberto Obrero, Cpl. Pedro Campano and Pat. Renato Marquez. The team immediately proceeded to the place of the incident. When they arrived, they saw a mobile patrol car of police Station No. 4 already in the premises. The patrol car with some four policemen were searching and investigating the place. The team proceeded upstairs. They found the room with the dead Ignacia Maullon. The room was in topsyturvy condition; the contents of the cabinet and drawers were scattered all over the place. The victim Ignacia Maullon lie sprawled on her back in the middle of the room. Pfc. Obrero took pictures of the scene. Ignacia Maullon sustained multiple stabbed wounds on different parts of her body. After several inquiries Pat. Obrero succeeded in getting two witnesses: Beatriz Bido and Rosemarie Libreilla. Investigation went underway and series of documents were prepared such as the Progress Report, Advanced Report (Exh. B), Progress Report (Exh. C), Booking sheet and Arrest Report, Exh. E statement of Beatriz Bido (Exh. F) Statement of Rosemarie Libreilla (Exh. G).

"Afterwards, an identified informant tipped the police on the whereabouts of the suspects. Immediately the operatives were dispatched and the proceeded to 4959 Herran, Makati, Metro Manila. They threw a cordon around the place. During the operation two persons were seen scampering for cover. The duo were followed closely and were found trying to hide in the roof. One of them made a dash for liberty but eventually fell into the clutches of the lawmen. He was brought to the headquarters. The arrested man turned out later to be Jose Balsolaso. Again the police followed the trail of the other culprits. Tips came in, that the wanted culprits could be at Barrio Obrero then at Balic-Balic. However, inspite of the concerted efforts, the hunt proved futile. The remaining suspects were not bagged. Then more information was received that suspects may have gone to their hometown at Northern Samar. On instructions from their headquarters, the operatives led by Pat. Tan, Pat Libol and relatives of the victim went to Palapag, Northern Samar. Withe (sic) assistance from the Local Police authorities they found their quarry. Sabas Calvo, Jr., was placed under their custody, brought to Manila Headquarters. On November 5, 1985, accused Rodolfo Longcop was also arrested at Philip's Bakery, Manila. Upon investigation, Rodolfo Longcop chose to remain silent and did not issue any written statement. Accused Sabas Calvo, Jr., indicated his willingness to give his statement. The police advised accused Sabas Calvo, Jr., of his constitutional rights and gve (sic) him Atty. Alfredo Feraren, Jr. of the Citizen Legal Assistance Office of Quezon City, as counsel to assist him during the custodial investigation/interrogation. The accused was adviced on his Constitutional right by both the police and his counsel Atty. Feraren, Jr., during the custodial investigation. Accused Sabas Calvo Jr. gave his statement marked as Exh. K, duly counter signed by his appointed counsel Atty. Feraren Jr. In the statement (Exh. K) he admitted having committed the crime and implicated one Bobby Gaspar and Rodolfo Longcop. Whereupon, the police closed the case with the filing of the complaint before the Fiscal's Office. In turn, the Fiscal Office filed the case against Sabas Calvo Jr. and Rodolfo Longcop for robbery with homicide under Crim. Case No. 87-58217.

"After the government witness Beatriz Bido finished testifying, where she failed to identify accused Jose Balsolaso, the Prosecution moved for the dismissal of the case as to Jose Balsolaso. the Court in its order dated March 13, 1988 under Crim. Case No. 87-58217 dismissed the case of accused Jose Balsolaso.

"On the other hand, the defense presented the lone testimony of accused Sabas Calvo, Jr.

TESTIMONIAL EVIDENCE:

"1. Sabas Calvo, Jr., 26, single, Silk screen printer and a resident of Pilarmino St., Proj. 4, Quezon City.

"The accused testified and claimed that on February 26, 1987, he was at home at Palapag, Northern Samar. On November 1, 1987 while in his hometown (sic) he was arrested by three men — Pat. Abil Orio, policeman from Palapag and two other policemen from Laoang Northern Samar and he was brought to the Municipal Hall of Palapag and later to Laoang. Then he was turned over to Manila Police authorities who in turn brought him to Manila. On November 3, 1987 (sic). On November 5 1987, he was investigated. He does not know he was represented by a counsel and does not know Atty. Ferraren Jr., of the CLAO. According to him he was placed in a police line-up, made to go outside where a woman looked at him and identified him while inside the jail. He claimed to have asked protection from the police and to wait for his mother to get a lawyer for him. He disclaimed participation in the robbery at Philip's Bakery and the killing of Ignacia Maullon. Unlike the other accused, Rodolfo Longcop, an employee of Philip's Bakery and employed by victim Ignacia Maullon did not go into hiding after the killing and when the authorities were hot on the trail of the suspects he chose to stay put and continue his work at Philip's Bakery. When accused Sabas Calvo, Jr. was arrested at his hometown at Northern Samar and during the investigation pointed at Rodolfo Longcop as one of their companions in the dastardly crime that he had committed, accused Rodolfo Longcop was immediately arrested and placed on detention. During the trial while accused Rodolfo Longcop was in detention, he died of sickness."[1]

With the death of accused Longcop during the pendency of the trial and the dismissal of the case as against Jose Balsolaso, only appellant Calvo was found guilty of the crime charged, sentenced to reclusion perpetua or life imprisonment and ordered to indemnify deceased Ignacia Mauleon's heirs in the amount of P50,000.00. The bases for conviction were (1) appellant's extrajudicial confession dated November 5, 1987 (Exhibit "K") wherein he recounted how the plan to rob the bakery was hatched and his participation as look-out while his companions Longcop and one Bobby Gaspar did the actual heist and killing of Ignacia Mauleon, and (2) the identification of appellant by prosecution witnesses Beatriz Bido and Lucila Gorospe.

Now before us pleading for his acquittal, appellant assails the admissibility of his alleged extrajudicial confession, as well as the credibility of the prosecution witnesses.

Anent extrajudicial confessions, this Court reiterates its pronouncement in "People vs. Deniega"[2] that "under rules laid down by the Constitution and existing law and jurisprudence, a confession to be admissible must satisfy all of four fundamental requirements: 1) the confession must be voluntary; 2) the confession must be made with the assistance of competent and independent counsel; 3) the confession must be express; and 4) the confession must be in writing." The "irregularities" which appellant claims to have attended his extrajudicial confession principally relate to the second requirement.

The first "irregularity" concerns the competence of Atty. Alfredo Ferraren, the CLAO lawyer who assisted appellant in the preparation of his extrajudicial confession. Appellant claims that Atty. Ferraren utterly failed to protect his rights during the custodial investigation as shown by the following advice given by said lawyer which, to borrow appellant's counsel's words, "threatened the accused and further pushed him deep to the mud." [3]

"FISCAL PATAG (to witness):

Q: Now, you said you have assisted him in the preparation of this Extra Judicial Confession, will you kindly tell this Court as to how you assisted him there?

A: (Atty. Ferraren) I talked with him, asked him his involvement in this case. I advice (sic) him if he really committed this offense. It is better that he execute an Extra Judicial Confession. I told that if he does not, then he maybe suspected of having fabricated facts after a long time.

COURT (to witness):

Q: You advice (sic) him that?

A: I advice (sic) him that if he really committed the offense, it would be better for him to execute an Extra Judicial Confession, otherwise if he will not execute an Extra Judicial Confession, Your Honor, he maybe placed in a situation were they maybe thinking that he fabricated facts."[4]

We cannot see how this kind of advice rendered Atty. Ferraren incompetent, or could ever be considered as telltale sign of the involuntariness of the confession. It was nothing more than a straight-forward exhortation for appellant to tell the truth as to his participation in the crime, if he indeed had something to do with it. A confession is not rendered involuntary merely because defendant was told that he should tell the truth or that it would be better for him to tell the truth.[5] Stated elsewhere, telling the accused that it would be better for him to speak or tell the truth does not furnish any Inducement, or a sufficient inducement, to render objectionable a confession thereby obtained, unless threats or promises are applied.[6] These threats or promises which the accused must successfully prove in order to make his confession inadmissible, must take the form of violence, intimidation, a promise of reward or leniency.[7] Atty. Ferraren's proposition that appellant may be suspected of merely fabricating facts if he does not execute a confession hardly qualifies as a "threat" or "promise" as herein contemplated. Surely then, no temptation to appellant to falsely accuse himself can be found in the tenor and language of Atty. Ferraren's advice.

The other "irregularity" apparently relates to a denial of the right to have an independent counsel of one's own choice, inasmuch as appellant claims that the police authorities ignored his initial request to wait for his mother who was scouting for a lawyer. Appellant thus testified:

Q: When you were brought by the policemen to the General Headquarters, did you ask some favors for your protection?

A: Yes, sir.

Q: What protection did you ask from the policemen?

A: While I was investigated I was telling them to wait for my mother who was then looking for a lawyer for me.

Q: To whom did you ask this request?

A: To Corporal Bagallon, sir.

Q: What was the response of Corporal Bagallon?

A: Never mind."[8]

Appellant is nonetheless deemed to have waived this defect when, as shown by the following excerpts from his extrajudicial confession (Exh. "K") he agreed to be represented by Atty. Ferraren in lieu of a counsel of his own choice.

Thus:

"PAALAA(sic):. Ikaw SABAS CALVO Jr., ay nasa ilalim ngayon ng isang pagsisiyasat hinggil sa isang krimen na naganap noong petsa 26 ng Setyembre, 1987, sa loob ng isang bakery shop sa kalye España,

Sampaloc, Manila, na kung saan ay may nasawina nagngangalang IGNACIA MAULEON. Bago ka namin isailalim sa pagsisiyasat, ikaw ay aming pinaaalalahanan na may mga karapatan ka sa ilalim ng ating bagong Saligang Batas, bilang isang taong nasasailalim ng isang pagsisiyasat o imbestigasyon, tulad ng mga sumusunod:

01. T: Ikaw ay may karapatang manatiling tahimik, huwag magbigay ng isang salaysay o tumangging sumagot sa anumang katanungan, ano ngayon ang iyong masasabi?

S: Magbibigay po ako ng salaysay. Isasalaysay mga pangyayari.

02. T: Ikaw ay may karapatan pa ring kumuha ng serbisyo ng isang abogado para makatulong mo sa imbestigasyong ito at dahil din sa nasabi mo sa amin kanina na pansamantala ay wala kang makukuhang abogado ikaw ngayon ay aming bibigyan ng libreng abogado sa pamamagitan ng pamahalaan o gobierno natin at ito ay nasa katauhan ni ATTY. ALFREDO FERRAREN, tinatanggap mo ba na maging abogado mo ngayon si Atty. Ferraren?

S: Opo.

03. T: Naiintindihan mo ba ang lahat ng mga karapatan mo na ipinaliwanag namin sa iyo?

S: Opo.

04. T: Sa kabila ng mga karapatan mo na aming ipinaliwanag sa iyo. ikaw pa rin ba ay nakahandang magbigay sa amin ng isang malaya at kusang loob na salaysay sa harap ni ATTY. FERRAREN?

S: Opo. (Underscoring supplied).

(At this juncture, ATTY. ALFREDO FERRAREN, JR., conceded to push thru with the taking down of declarant's statement after the latter signified his willingness and voluntariness to give a free and voluntary statement)

SGD. _____ SGD. _____

ATTY. ALFREDO FERRAREN, JR. SABAS CALVO, JR.

Citizens Legal Assistance Office (Declarant)

QUEZON CITY DISTRICT OFFICE

646 Perlas Building

Quezon Avenue, Q. C. "

Having been cleared of any irregularity, we therefore uphold the admissibility of appellant's extrajudicial confession which, by itself, is sufficient basis for his conviction. A confession, to recall, constitutes evidence of high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience. This presumption of spontaneity and voluntariness stands unless the defense proves otherwise.[9]

Even if the extrajudicial confession be ignored by assuming, for argument's sake, that the alleged "irregularities" indeed marred its execution, there is nonetheless other evidence — particularly the identification made by prosecution witnesses Beatriz Bido and Lucila Gorospe — upon which appellant's guilt was duly established. Witness Bido identified appellant as one of the two (2) men (the other was Bobby Gaspar) who went out of deceased Ignacia Mauleon's room and who angrily told her not to shout otherwise she will be shot. She further testified that after appellant and Bobby Gaspar left the room and went downstairs already carrying a bag, she went inside the room which was already in disarray and saw the bloodied, lifeless body of Ignacia Mauleon sprawled on the floor.[10] Witness Gorospe corroborated Bido's identification of appellant when she testified that from her vantage point (in front of her own store which is just seven (7) meters away from deceased Ignacia Mauleon's

bakery), she identified appellant who was carrying a shoulder bag, as one of the two (2) men coming down from the stairs of deceased Mauleon's bakery and who thereafter ran away at a very fast pace, with one Henry Jordas giving chase. Henry Jordas, according to Gorospe, nonetheless gave up his pursuit when appellant pointed a gun at him. Witness Gorospe also stated that she was familiar with appellant, having seen the latter in front of deceased Mauleon's bakery on three (3) previous occasions.[11]

Contrary to appellant's claim, the credibility of witness Bido is not at all shattered by the fact that during the police line-up held on September 30, 1987, she pointed to Jose Balsolaso as Bobby Gaspar's companion in the crime committed at the Mauleon bakery. She has offered a satisfactory explanation by saying that she has honestly mistaken said Balsolaso for appellant, as both have similar facial features.[12] Besides, what is more determinative is her identification, in open court, of appellant as the one present at the scene of the crime with Bobby Gaspar. Thus,

Q: Now, before this Court, will you kindly point to the person whom you saw the presence at the scene on September 26, 1987 whom you saw at that time held a gun whom you said pointing at you saying that you should not shout?

A: It was Sabas Calvo.

Q: For purposes of identification . . .

ATTY. POTOT:

It was already answered, Your Honor, Sabas Calvo.

FISCAL PATAG:

For purposes of identification, Your Honor.

COURT:

Let the witness answer.

WITNESS:

Witness pointing to a person who identify himself as Sabas Calvo."[13] (undersoring supplied)

With the identification of appellant made by witnesses Bido and Gorospe whose testimonies appear credible and who have not been shown to have been driven by any ill-motives in implicating him in the crime, appellant's claim of non-involvement must therefore fail. Alibi and denial, to repeat, cannot prevail over positive identification.[14]

In fine, appellant's conviction for robbery with homicide as charged, is in order. We nonetheless have to correct that portion of the appealed decision (specifically in the dispositive portion) where the trial court, while correctly imposing the penalty of reclusion perpetua pursuant to the first paragraph of Article 294 of the Revised Penal Code, apparently equated such penalty with life imprisonment. Both are different and distinct penalties.[15] As explained in "People vs. Baguio."[16]

"The Code does not prescribe the penalty of 'life imprisonment' for any of the felonies therein defined, that penalty being invariably imposed for serious offense penalized not by the Revised Penal Code but by special laws. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as 'life imprisonment' which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration."

WHEREFORE, save for the slight modification removing from its dispositive portion the alternative reference to "life imprisonment", the assailed decision dated March 31, 1989 convicting appellant Sabas Calvo, Jr. of the crime of robbery with homicide, is hereby AFFIRMED in all other respects.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Decision, pp. 3-6, Rollo, pp. 48-51.

[2] 251 SCRA 626.

[3] Appellant's Brief, p. 13.

[4] TSN of September 27, 1988, Atty. Ferraren, p. 7.

[5] Underhill's Criminal Evidence, 5th Ed., Vol. II, p. 992, Cited in Evidence by V.J. Francisco, Volume VII, Part 1, 1990 Ed., p. 458.

[6] 20 Am. Jr. 438, 439, cited in Evidence by V.J. Francisco, Ibid., p. 457

[7] See People vs. Rous, 242 SCRA 732, citing People vs. Dasig, 221 SCRA 549.

[8] TSN of October 14, 1988, Sabas Calvo, Jr., p. 15.

[9] People vs. Pamon, 217 SCRA 501 citing People vs. Salvador, 163 SCRA 574 and People vs. Alvarez, 201 SCRA 364

[10] TSN of May 13, 1988, pp. 5-11.

[11] TSN of June 27, 1988, pp. 3-8.

[12] TSN of May 13, 1988, pp. 19-20.

[13] TSN of May 13, 1988, p. 20).

[14] People vs. Ferrer, 255 SCRA 19; People vs. Panlilio, 255 SCRA 503; People vs. Porras, 255 SCRA 514; People vs. Laurente, 255 SCRA 543.

[15] People vs. Penillos, 205 SCRA 546

[16] 196 SCRA 459.

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