

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE FONTANILLA Y COLOBAN, BOBBY SORIANO Y APULINO, ACCUSED-APPELLANTS. RICARDO SIBIDAL Y PAULINO – AT LARGE, ACCUSED.

G.R. No. 93142. July 31, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On January 21, 1986, Ricardo Sibidal, Eddie Fontanilla, and Bobby Soriano were charged with the crime of murder by the provincial fiscal of Puerto Princesa City in an Information which reads as follows:

That on or about the 21st day of November 1985 at Bgy. Taritien, Municipality of Narra, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab with their bladed weapons to wit: knives and an ice pick one Federico Bangayan hitting him on vital parts of his body and inflicting upon him several mortal injuries which were the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW, with aggravating circumstance of abuse of superior strength, evident premeditation and treachery.[1]

Upon arraignment, the accused, Ricardo Sibidal, Eddie Fontanilla, and Bobby Soriano pleaded "not guilty" to the offense charged.

After trial, the court a quo rendered a decision on January 3, 1990, convicting the three accused of the crime of murder as charged, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court found and so finds all accused guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as principal(s) by direct participation without mitigating circumstances and hereby sentenced each and every accused to suffer an imprisonment of RECLUSION PERPETUA, to indemnify the heirs of Federico Bangayan the amount of Nine Hundred Seventy Three Thousand Eight Hundred Ninety-Six (P973,896.00) Pesos plus Ninety Thousand (P90,000.00) Pesos for funeral and other incidental expenses, Ten Thousand (P10,000.00) Pesos moral damages and Ten Thousand (P10,000.00) Pesos as exemplary damages, without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED.[2]

The appeal before us was filed only by Eddie Fontanilla and Bobby Soriano, as Ricardo Sibidal had escaped during his detention and remains at large up to the present as far as the records show.

The facts of the case are as follows:

On November 21, 1985, at around 6:30 o'clock in the evening, in Bgy. Taritien, Municipality of Narra, Palawan, the deceased, Federico Bangayan, had just taken a bath when he heard his name being called from outside his house. When he opened the door, three men barged in, stabbed him and dragged him through the kitchen door to the street outside. About four hours later, Federico's cadaver was found in a shallow ditch 100 meters away from his house. An autopsy of Federico's body yielded the finding, inter alia, that the cause of death was cardio-respiratory arrest due to multiple stab wounds.[3] The Autopsy Report described twelve wounds found on different parts of the body of Federico. The accused were convicted based on the exhibits presented together with the testimonies of the prosecution witnesses as summarized by the trial court as follows:

Rosalinda Bangayan, 33 years old, housekeeper and a resident of Taritien, Narra, Palawan declared that on November 21, 1985 at about 6:30 in the evening, Ricardo Sibidal knocked at their door. She was very familiar with Ricardo and could even recognize his voice because she was one of the sponsors during his wedding. Her husband, Federico Bangayan, opened the door and when Sibidal entered, he stabbed her husband followed by Bobby Soriano and Eddie Fontanilla (TSN, 7 June 13, 1986). She was then sitting at the stairs breast feeding her child. Her husband and the three (3) assailants stepped backward towards the kitchen. She put down her baby and look [sic] for a bolo. She ran downstairs but her husband and the three accused were no longer there. After three (3) minutes, Ricardo Sibidal, Bobby Soriano and Eddie Fontanilla were running back to their house and upon seeing them coming she immediately closed the door and windows and shouted for help from her neighbors. Alfonso Ducejo came and assisted them. He wanted to get the bolo she was holding but she did not give it. He got a piece of wood, ran toward the road and told his son-in-law to get a police(man). When the police arrived, they looked and searched for her husband and found the cadaver about 100 meters from their house. The police went to Estrella Village to look for the assailants. Danny Bangayan, her first cousin was the one who found her husband and told her that he is [sic] already dead. She saw the cadaver in the morning because they do not want her to see him that evening. Her husband was lying flat on the ground and sustained many stabbed wounds. (TSN 18 June 13, 1986).

When she was investigated she declared that she does not know the persons who stabbed her husband because she was already weakened by fear and afraid that the killers might return and killed [sic] her and her children (TSN 24, June 16, 1986). She recognized Eddie Fontanilla from the group who returned and was wearing a hat, maong black pant [sic] and somewhat white T-shirt. She pointed Ricardo Sibidal as the mastermind because he was the one who called at their house, saying "Ninong naaksidente po ang sasakyan ninyo" (TSN 25, June 25, 1986). The three (3) accused planned to hold-up them [sic] in the house of the mother of Mario Castillo (TSN 26, June 16, 1986).

Amos Bungay, 36 years old, married, member of the INP and a resident of Calategas, Narra, Palawan, declared that on December 4, 1985, he investigated Eddie Fontanilla alias Boyet Fontanilla for he wanted to tell the truth regarding the killing of Federico Bangayan. He apprised him of his constitutional rights before he started the investigation. The investigation was done through a tape recorder. The tape recorder was placed in front and the accused answered the questions freely and voluntarily. The Court noted that in the tape recorded investigation of accused Fontanilla there was no mentioning (sic) about the right to remain silent and to get the service of a counsel of his own choice.

Santiago Nollan, 47 years old, policeman, and a resident of Narra, Palawan, testified that on December 1, 1985, he investigated Bobby Soriano and before he started the investigation he apprised him of his constitutional right(s) to remain silent, to have a lawyer of his choice and any statement he made maybe used for or against him. Accused was brought by Pfc. Deliero in [sic] the investigation room.

Alfonso Ducejo, 53 years old, married, farmer and a resident of Taritien, Narra, Palawan, declared that on November 21, 1985, at about 5:00 p.m., he was at Taritien, Narra, Palawan walking on the road along line 5 going to the store to buy medicine. He met Ricardo Sibidal, Bobby Soriano and Eddie Fontanilla who turned right side of the road passing a trail (TSN 5, February 23, 1987). He was about 10 to 15 meters when he first saw them. He knew Eddie Fontanilla and Ricardo Sibidal very well because when Fontanilla was still in elementary grade he used to go to their house and he was also present in the house of the mayor when Ricardo Sibidal got married.

When he was returning home after buying medicine, he heard the shouts of Mrs. Bangayan asking for help whose house is about 400 meters from his house. He ran toward the house of the Bangayans and when he was about 30 meters from the house of the latter he shouted, "Saying, ano ba ang nangyari" for three (3) times and he saw the three (3) accused went (sic) down and ran (sic) to the forest. He tried to wrestle the bolo from Mrs. Bangayan but she refused to give it. He kept on shouting to attract people and they responded. He was told by Mrs. Bangayan that her husband (Federico Bangayan) was brought out of their house. He told one of the people to report the incident to the police at Narra, Palawan. They searched for the victim by following the bloodstains and they found the body that evening. They did not touch the cadaver and they brought the same home the following morning when the police arrived. He reported to police Lieutenant Dimandal that the assailants were Eddie Fontanilla, Ricardo Sibidal and Bobby Soriano.

Erlinda Castillo, 20 years old, married, housekeeper and residing at Princesa Urduja, Narra, Palawan, declared that she is a resident of Princess Urduja since birth. Her husband is Mario Castillo. She knew Bobby Soriano when the latter went to their house and had a talk with her husband. She had known Ricardo Sibidal for a long time, for he is a relative of her husband. On November 17, 1985, she was in their house with her parents-in-law. In the morning of the same date, Bobby Soriano and Ricardo Sibidal visited them. They talked with her husband and persuaded him to go to a certain place where they could get money, however, her husband refused to go with them (TSN 26, July 16, 1987). They told him that they could get money and will not be caught. The two accused stayed in their house for two hours.

Beatriz Lacsamana, 28 years old, married, housekeeper and a resident of Princess Urduja, Narra, Palawan declared that on November 17, 1985 at about 7:00 o'clock in the morning, she was in the house of her mother Maria Castillo. Bobby Soriano and Ricardo (Atong) Sibidal were there. The two were talking to his brother Mario Castillo and were inviting him to go somewhere. His brother did not go with them for he had many things to do. She knew Bobby Soriano and Ricardo (Atong) Sibidal for they are her relatives.[4]

The defense is denial and alibi, and the alleged violation of the constitutional rights of the accused. Thus, the witnesses for the defense testified as follows:

Eddie Fontanilla, 21 years old, single, farmer and a resident of Lapu-lapu, Narra, Palawan, declared that he does [sic] not know Ricardo Sibidal and Bobby Soriano prior to November 21, 1985. He knew them [sic] at the Municipal Jail of Narra, Palawan. On November 21, 1985, he was at Fernandez Street, Puerto Princesa City. He returned to Lapu-lapu St., Narra, Palawan on December 1, 1985 and was arrested on the same date. He was forced to admit the killing of Federico Bangayan but he denied to have participated [sic]. He was mauled by Station Commander of Narra, Palawan (TSN 5, Oct. 6, 1988). Every night he was brought out of jail, mauled and forced to admit the killing of Federico Bangayan. He claimed that during the investigation he was not represented by a lawyer. He likewise claimed that he does not know that Ricardo Sibidal and Bobby Soriano went to the house of a certain Castillo on November 12, 1985. He further claimed that he had no counsel when he was investigated by Judge Meregillano during the preliminary investigation. He finally claimed that Cesar Villejo, a policeman poked a gun to [sic] him before he was mauled and gave his confession. He does not know whether his confession was reduced into [sic] writing.

Bobby Soriano, 24 years old, single, farmer and a resident of Narra, Palawan, declared that he came from Urdaneta, Pangasinan. He contended that he does not know barangay Taritien, Narra, Palawan. On November 21, 1985, he was in his house. He does [sic] not know Ricardo Sibidal before November 21, 1985. He met him only in jail. He also met Eddie Fontanilla in jail. Until now he does not know Taritien, Narra, Palawan. He also denied having known Erlinda Castillo or have [sic] gone to their place. He never left his house on November 21, 1985. He had been a resident of Narra, Palawan [for] three months before November 21, 1985.

Roger Bucasas, 24 years old, married, farmer and a resident of Isugod, Quezon, Palawan, declared that in 1985 he was residing at Fernandez St., Puerto Princesa City. On November 15, 1985, he met Eddie Fontanilla in the house of his aunt and stayed there until December 2, 1985. That he has still a pending case at RTC Branch 48 docketed as Crim. Case No. 7523 for Murder.

On cross-examination, he declared that he did not know that Eddie Fontanilla was later on charged [sic] for Murder, however, when he himself was imprisoned in the Provincial Jail he met again Eddie Fontanilla.[5]

The accused-appellants Eddie Fontanilla and Bobby Soriano assailed the decision, assigning the following errors in their common brief:

1. The lower court erred in holding that Rosalinda Bangayan and Alfonso Ducejo, two of prosecution witnesses has [sic] positively identified the appellants as the assailants.
2. The lower court erred in holding that the plan of the assailant was to rob the victim.
3. The lower court erred in giving credence on [sic] the testimony of prosecution witnesses and in not giving credence on [sic] the testimony of defense witnesses.[6]

It is an elementary rule in jurisprudence that a judgment of conviction demands the positive identification of the accused as the perpetrator or perpetrators of the crime charged by proof beyond reasonable doubt. The identification of the offender is even more crucial in every criminal prosecution where the defense pleads alibi. Unless the identity of the culprit is established beyond reasonable doubt, the charge against the accused must be dismissed on the ground that the constitutional presumption of innocence has not been overcome.[7] In the present case, we are not persuaded that the prosecution has established unerringly the identity of the assailants, for which reason, we reverse the decision of the court a quo.

Two prosecution witnesses, namely, Rosalinda Bangayan and Alfonso Ducejo, identified the accused-appellants as the assailants. However, only Rosalinda Bangayan testified that she actually saw her husband being attacked and stabbed by three persons whom she belatedly identified as the accused-appellants. On the other hand, Alfonso Ducejo's testimony identifying the three accused as the assailants was pure conjecture and plainly speculative. He never witnessed the actual killing. The fact that he saw the three accused walking along the road and turning right to a trail upon seeing him[8] and later running away from the house of the victim into the forest, does not warrant the conclusion that they were the ones who killed Federico Bangayan. Proof to sustain conviction must survive the test of reason. Suspicion of guilt, no matter how strong, should not be permitted to sway judgment.[9]

Similarly, Rosalinda Bangayan's testimony identifying the three accused as her husband's murderers is suspect and not credible. She testified during the trial of June 13 and 16, 1986, that she knew very well the alleged mastermind Ricardo Sibidal, being her "hijado." She also said that she saw him and the two other accused kill her husband that fateful day of November 21, 1985. Thus, on direct and cross-examinations, Rosalinda Bangayan testified as follows:

(Direct Examination)

Q: Who is that somebody who called on (sic) your house?

A: Ricardo Sibidal, he is our godson in marriage.

Q: And how long have you known this Ricardo Sibidal?

A: For long time already since boyhood.

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Q: Who stabbed your husband?

A: The three accused. x x x Ricardo Sibidal, Bobby Soriano and Boyet Fontanilla.

(Cross-examination)

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Q: Madam witness, you likewise stated that you have known Ricardo Sibidal for a long time, did I get your right?

A: Yes, sir.

Q: In fact you were one of the sponsors during the wedding ceremony of Ricardo Sibidal and his wife, am I correct?

A: Yes, sir.

Q: As a matter of fact Madam witness you have been very familiar with the person?

A: Yes, sir.

Q: Even the voice, you can determine that it was his voice, am I correct?

A: Yes, sir.

Q: And even if his back was towards your front you can recognized [sic] him as Ricardo Sibidal in a distance of around 3 or 5 meters, did I get you right?

A: I can recognize, sir.

Q: More so if he will be facing you at a distance of about 3 or 4 meters?

A: Yes, sir.

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Yet, on the very night and morning of the incident, or on November 21 and 22, 1985, despite the presence of the authorities and many other persons--the close relatives and friends of the victim, her husband--Rosalinda Bangayan never disclosed the identity of the killers that she allegedly saw and with whom she was familiar, especially Ricardo Sibidal whom she could recognize even from behind. What is worse, on December 3, 1985, when she gave her sworn statement to the police authorities, barely 13 days after the killing, she never identified the killers she allegedly saw and was familiar with. Thus, in her "Sinumpaang Salaysay" taken on said date, she gave the following unequivocal answers:

05.T - Nakilala mo ba ang mga taong sumaksak sa asawa mo?

05.S - Hindi po at wala akong nakikilala sa kanila.

06.T - Ano ang suot ng taong unang pumasok sa inyong bahay? Kung iyong natatandaan.

06.S - Nakita ko pong nakasuot ng barong puti ang isa at ang isa naman ay nakasuot ng jacket na checkered na may kulay at ang isa pa ay hindi ko na po matandaan dahilan sa maliit lang po ang ilaw namin kaya hindi ko masyadong naaninagan.[11]

(Emphasis supplied.)

It was only after she had talked with one Kapitan Sison and the Castillo spouses that she named the accused-appellants as the persons who killed her husband.[12] The transcripts of the hearing on June 16, 1986 at which Rosalinda Bangayan testified bears this out:

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FISCAL: (To witness Rosalinda Bangayan)

Q: Now madam witness, you mentioned a person by the name of Lacsamana who talked with Sibidal when he was arrested, where were you when Lacsamana talked with Sibidal?

A: Lacsamana talked with us.

Q: When you said with us, to whom are you referring (to)?

A: My companions were my brother and Cesar Deliro, sir.

Q: Where was [sic] this conversation took place?

A: In the house of Cesar Deliro, sir.

Q: And what was the conversation that you have had on that occasion with Lacsamana?

A: It has [sic] made mentioned [sic] in our conversation that they were the ones who killed my husband, sir.

ATTY. AUSTRIA: Again we move that it be stricken out of the record because it illicit hearsay answer, your Honor.

COURT: Let it remain in the record.

FISCAL: (To witness)

Q: Who told you that they were the ones who killed your husband?

A: Capitan Sison, sir, and their relatives who heard the plans that they are going to holdup and to go to our house. They are also our witnesses.

Q: You mentioned about their relatives who told you that they are going to hold up your house who [sic] is the name of the relatives?

A: Mario Castillo and his wife Erlinda Castillo and the sister Beatriz Lacsamana who is the sister of Mario Castillo and they have planned it in the house of the mother of Mario Castillo, sir.

Q: Now madam witness you said that they were the ones who killed my [sic] husband, to whom are you referring (to)?

A: Ricardo Sibidal, Bobby Soriano and Boyet Fontanilla.[13]

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(Emphasis supplied.)

While ordinarily, the failure of a witness to report at once to the police authorities the crime he had witnessed should not be taken against him and should not affect his credibility, here, the unreasonable delay in Rosalinda Bangayan's identification of the accused engenders doubt on her veracity. She only incriminated and revealed the identity of the accused during the trial on June 16, 1986, or seven (7) long months after the crime happened on November 21, 1985. We have held that the silence of an alleged eyewitness for several weeks renders his credibility doubtful x x x. The long delay in reporting the crime or its author to the authorities not caused by threat, intimidation, or coercion, renders the testimony untruthful,[14] or, at the least, doubtful. There is no showing that Rosalinda Bangayan was threatened, intimidated, or coerced not to reveal the identity of the accused-appellants as the culprits, hence, her delay in reporting the same is unjustified and makes her credibility suspect.

The positive identification of the perpetrators of an offense is required if their complicity is to be established beyond reasonable doubt. The failure to identify any of the accused would be fatal to the case of the prosecution as to the said accused.[15] Here, Rosalinda Bangayan's identification of the accused appellants as her husband's assailants is inadmissible hearsay inasmuch as it was not based on her personal knowledge but on the suggestion of third parties who were not even eyewitnesses to the crime. This raises doubt in the mind of this Court whether or not the accused-appellants were indeed the authors of the crime charged. Such doubt must be resolved in favor of the accused-appellants. The Constitution and the law are clear that in case of reasonable doubt, the accused must be acquitted. Our jurisprudence is built upon the concept that it is preferable for the guilty to remain unpunished than for an innocent person to suffer any punishment unjustly.[16]

There being no positive identification of the assailants, proof as to motive is essential, especially so when the evidence on the commission of the crime is purely circumstantial or inconclusive,[17] as in the present case. The prosecution posits that the accused-appellants planned to rob the deceased, he being the owner of two vehicles and 18 hectares of farmland in Narra, Palawan. Said plan was allegedly hatched in the house of Mario Castillo whom the accused-appellants tried to convince to go with them to a place where they could get money without being caught.[18] But the prosecution did not present even an iota of evidence to prove that the deceased, or any member of his household, was robbed. Nothing was shown to have been taken, or attempted to be taken, by the accused-appellants from the house of the latter, not even a single centavo, not a single grain of rice, nay not a farthing. Hence, the prosecution's theory of robbery must fall.

The Court likewise notes with disgust and condemnation the widow's act of giving money to the police authorities, and the receipt thereof by the latter, in the amount of P4,000.00 to cover the expenses in their quest for the alleged mastermind of the killing of her husband.[19] We can not countenance this "generosity" as it is nothing short of a bribe to the police. Moreover, having thus been bribed, the latter can not thereafter be expected to act fairly in investigating the crime and the accused-appellants. This lack of fairness was evident during the custodial investigation of the latter which was conducted perfunctorily and without due regard to the rights of an accused guaranteed in the 1987 Constitution. No less than the court a quo acknowledged this fatal defect. Thus the court said:

x x x The Court noted that in the tape recorded investigation of accused Fontanilla there was no mentioning [sic] about the right to remain silent and to get the service of a counsel of his own choice.[20]

It is therefore clear that the extrajudicial confession of Eddie Fontanilla admitting his participation in the murder of Federico Bangayan was taken without the assistance of counsel, and his alleged waiver of the assistance of counsel was not made in the presence of counsel.[21] The fatal omission renders the accused-appellant Fontanilla's extrajudicial confession inadmissible in evidence. We said in Decierdo:[22]

There is no doubt that the accused's alleged extrajudicial confession is in the nature of an uncounselled confession and hence, inadmissible in evidence. Section 20 of Article IV of the 1973 Constitution applies. It provides:

Section 20. 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.

That the aforequoted provision applies has been affirmed in a long line of decisions, the confession in question having been obtained during the effectivity of the 1973 Constitution, although the incumbent Chief Justice of this Court insists that coerced confessions obtained either prior to or after the effectivity of the 1973 Charter are equally inadmissible in evidence.

While the right to counsel is a right that may be waived, such waiver must be voluntary, knowing, and intelligent. The waiver must furthermore be in the presence of the accused's lawyer.

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It is not enough that the accused be informed of his constitutional rights. That is but the first step. It is necessary, in addition, that he be convinced that notwithstanding the fact that he is in "enemy" territory, he is not a doomed man. That is the essence of Section 20 of the 1973 Bill of Rights.

Indeed, the hostile environment of police headquarters (the "police-dominated atmosphere" referred to in *Duero*, supra) or similar venues are enough to overwhelm one, who, out of resignation, may execute a "confession" not truly his own. In *People v. Navoa* we said that "coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional confession."

All told, the prosecution has failed to convince this Court of the guilt of the accused-appellants beyond reasonable doubt.

WHEREFORE, the judgment appealed from is REVERSED and the accused-appellants are ACQUITTED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 6.

[2] *Id.*, 66.

[3] Exhibit "A", Original Record, 239.

[4] Decision, Regional Trial Court of Palawan and Puerto Princesa, Judicial Region, Branch 49, Hon. Sabas R. Acosta, Presiding Judge, 58-61.

[5] *Supra*, 61-62.

[6] Appellee's Brief, Rollo, 100.

[7] *People v. Acosta*, G.R. No. 70133, July 2, 1990.

[8] TSN, p. 126.

[9] *People v. Torre*, G.R. 44905, April 25, 1990.

- [10] TSN, 8, hearing on June 13, 1986, and hearing on June 16, 1986, 31-32.
- [11] Exhibit 1, Original Record, 243.
- [12] TSN, hearing on June 16, 1986, 26 and 29.
- [13] TSN, hearing on June 16, 1986, 53-55.
- [14] People v. Besa, G.R. No. 78899, March 22, 1990.
- [15] People v. Tumale, G.R. No. 89116, August 22, 1990.
- [16] People v. Libag, G.R. No. 68997, April 27, 1990, citing People v. Alcaraz, G.R. No. 66509, April 25, 1985.
- [17] People v. Ariel, No. L-34416, February 21, 1980.
- [18] TSN, hearing on July 17, 1987, 26-28; September 22, 1987, 4.
- [19] TSN, hearing on June 13, 1986, 24.
- [20] Decision, *supra*, note 4, 6.
- [21] TSN, hearing on January 23, 1985, 115.
- [22] People v. Decierdo, No. L-46956, May 7, 1987.

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