

**MELECIO MACASIRAY, VIRGILIO GONZALES, AND
BENEDICTO GONZALES, PETITIONERS, VS. PEOPLE OF THE
PHILIPPINES, HON. COURT OF APPEALS, AND ROSALINA RIVERA
VDA. DE VILLANUEVA, RESPONDENTS.**

G.R. No. 94736. June 26, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioners seek a review of the decision of the Court of Appeals in C.A. G.R. SP No. 16106,[1] reversing the ruling of the Regional Trial Court and ordering the admission in evidence of petitioner Benedicto Gonzales' extrajudicial confession and the transcript of the proceedings of the preliminary investigation of the case, during which Benedicto allegedly made statements affirming the contents of his extrajudicial confession.

The facts are as follows:

Petitioners Melecio Macasiray, Virgilio Gonzales, and Benedicto Gonzales are the accused in Criminal Case No. 33(86) of the Regional Trial Court of San Jose City, presided over by Judge Pedro C. Ladignon. The case is for the murder of Johnny Villanueva, husband of private respondent Rosalina Rivera Villanueva, on February 9, 1986.

It appears that in the course of the trial of the case, the prosecution introduced in evidence, as Exhibit B, an extrajudicial confession executed by petitioner Benedicto Gonzales on March 27, 1986, in which he admitted participation in the crime and implicated petitioners Melecio Macasiray and Virgilio Gonzales, his co-accused. Also presented in evidence, as Exhibit D, was the transcript of stenographic notes taken during the preliminary investigation of the case on April 8, 1986 before the fiscal's office. This transcript contained statements allegedly given by Benedicto in answer to questions of the fiscal, in which he affirmed the contents of his extrajudicial confession.

When the extrajudicial confession was offered at the conclusion of the presentation of evidence for the prosecution, petitioners objected to its admissibility on the ground that it was given without the assistance of counsel. The transcript of the preliminary investigation proceeding was similarly objected to on the same ground. In its order dated April 14, 1988, the trial court sustained the objections and declared the two documents to be inadmissible.

It appears that when it was the turn of the defense to present evidence, Gonzales was asked about his extrajudicial confession (Exh. B). On cross-examination, he was questioned not only about his extrajudicial confession but also about answers allegedly given by him during the preliminary investigation and recorded in the transcript of the proceeding. As he denied the contents of both documents, the prosecution presented them as rebuttal evidence, allegedly to impeach the credibility of Gonzales. Petitioners once more objected and the trial court again denied admission to the documents. (Order, dated Oct. 17, 1988)

Private respondent then sought the nullification of the trial court's orders and succeeded. The Court of Appeals declared the two documents admissible in evidence and ordered the trial court to admit them. Hence, this petition for review of the appellate court's decision.

There is no dispute that the extrajudicial confession and the statements recorded in the transcript in question were taken without the assistance of counsel. Petitioner Benedicto Gonzales was informed of his constitutional rights in a very perfunctory manner. No effort was made to drive home to him the seriousness of the situation he was facing.[2] He waived the assistance of counsel, but did so without counsel's advice and assistance.[3] Both his confession and his statement before the fiscal were thus inadmissible under Art. IV, §20 of the 1973 Constitution. The question is whether petitioners waived objection to the admissibility of the documents, either by failing to object to their introduction during the trial or by using them in evidence. In declaring them to be admissible, the Court of Appeals said:

The documents in question (Annexes A and B to Petition), which were denied admission by respondent Judge, were marked for identification as "Exh. B" with sub-markings and "Exh. D" with sub-markings on "10-11-86" (or October 22, 1986) as appear on their face. Those markings show that the documents were introduced during the prosecution's evidence-in-chief; and, necessarily, they were testified on by a prosecution witness (not clear from the record who). The fact that the prosecution proposed to formally offer them in evidence at the close of trial implies that when the documents were first introduced through the prosecution witness at the trial, the defense did not object to their introduction. To prevent the introduction of such kind of evidence, the practice is for the defense to move for its exclusion at any time before commencement of trial. Such failure of the defense may therefore be taken as a waiver of their objection -- and the waiver was made at the trial by said accused who was in fact assisted by counsel.

Thus, because of such failure to object, the prosecution succeeded to introduce the subject documents and cause them to be marked for identification as Exhibits B and D. . .

. . . During the defense turn to present their evidence-in-chief, they called said accused to the witness stand, then through him introduced the question-and-answer statement (Exh. B) that had previously been denied admission by respondent Judge, and on direct examination asked him to testify on said statement; of course, accused denied the contents in that statement. In other words, not only did the defense waive their objection to the introduction of this statement when first introduced during the prosecution's evidence-in-chief as well as when introduced through the testimony of Cpl. Renato Bautista given during the prosecution evidence-in-rebuttal, the defense themselves -- including the counsel for accused -- introduced such statement as part of their evidence-in-chief. Hence, respondent Judge committed a grave abuse of discretion in denying admission of this statement (Exh. B) when the prosecution again proposed to formally offer it as their evidence after the defense had rested.

With respect to the transcript (Exh. D), however, the defense did not introduce it as part of their evidence-in-chief. Although the prosecution introduced this exhibit during the cross-examination on which said accused was confronted during the latter's cross-examination, the same cannot serve as an independent evidence for the prosecution. The exhibit may be admitted as prosecution evidence only for the purpose of impeachment, i.e. as a means to test the credibility of said accused and/or his testimony. Therefore, respondent Judge should not have rejected such transcript (Exh. D) when formally offered by the prosecution for that limited purpose of impeachment. In denying this exhibit admission, respondent Judge also committed a grave abuse of discretion.

In fine, the introduction and admission of the two documents in question per se was not violative of Sec. 20 Art. IV of the 1973 Constitution nor of Sec. 12, Art. III of the 1987 Constitution. As stated above, with respect to the sworn statement (Exh. B), this was introduced by the defense themselves at the trial as their evidence-in-chief; hence, in effect this became part of their evidence. As regards the transcript taken during the

preliminary investigation of the complaint against said accused and his co-accused (Exh. D), this too was deemed admitted, not by a positive act of the defense but by their default for failure to object to its introduction at the trial during the cross-examination of said accused who was assisted by counsel. (Emphasis added)

We think the Court of Appeals erred.

First. Objection to evidence must be made after the evidence is formally offered.[4] In the case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified,[5] specifying the purpose for which the evidence is being offered.[6] It is only at this time, and not at any other, that objection to the documentary evidence may be made.

In this case, petitioners objected to the admissibility of the documents when they were formally offered. Contrary to the ruling of the appellate court, petitioners did not waive objection to admissibility of the said documents by their failure to object when these were marked, identified, and then introduced during the trial. That was not the proper time to make the objection. "Objection to the documentary evidence must be made at the time it is formally offered, not earlier." [7] Thus, it has been held that the identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.[8]

It may be mentioned in this connection that in one case,[9] objection to the admissibility of a confession on the ground that no meaningful warning of his constitutional rights was given to the accused was raised as soon as the prosecution began introducing the confession, and the trial judge sustained the objection and right away excluded the confession. This Court, through Chief Justice Fernando, upheld the action of the trial court over the dissent of Justice Aquino, who argued that the trial court's ruling was premature, considering that the confession was merely being identified. It was not yet being formally offered in evidence.[10] On the other hand, Justice Barredo, concurring, while agreeing that objection to documentary evidence should be made at the time of formal offer, nonetheless thought that to faithfully carry out the constitutional mandate, objections based on the Miranda right to counsel at the stage of police interrogation should be raised as early as possible and the ruling on such objections made just as soon in order not to create prejudice in the judge, in the event the confession is found inadmissible.[11]

But the ruling in that case does not detract from the fact that objections should be made at the stage of formal offer. Objections to the admissibility of documents may be raised during trial and the court may rule on them then, but, if this is not done, the party should make the objections when the documentary evidence is formally offered at the conclusion of the presentation of evidence for the other party.

Indeed, before it was offered in evidence, the confession in this case cannot even be considered as evidence to which the accused should object.

Second. Nor is it correct to say that the confession was introduced in evidence by Benedicto Gonzales himself when it was his turn to present evidence for the defense. What happened is that despite the fact that in its order of April 14, 1988 the court sustained the objection to the admissibility of the confession and the statements given by Benedicto Gonzales at the preliminary investigation, the defense nonetheless asked him questions regarding his confession in reference to his denial of liability. It was thus not for the purpose of using as evidence the confession and the alleged statements in the preliminary investigation but precisely for the purpose of denying their contents that Gonzales was asked questions. Gonzales denied he ever gave the answers attributed to him in the TSN allegedly taken during the preliminary investigation.

The defense did not really have to ask Gonzales questions regarding his confession inasmuch as the court had already declared both the confession and the transcript of stenographic notes to be inadmissible in evidence, but certainly the defense should not be penalized for exercising an abundance of caution. In fact, the defense did not mark the confession as one of its exhibits, which is proof of the fact that it did not adopt it as evidence. There is, therefore, no basis for the appellate court's ruling that because the defense adopted the confession by introducing it in evidence, the defense waived any objection to the admission of the same in evidence.

Third. Private respondent justifies the use of the confession and TSN on the ground that they are necessary for the purpose of impeaching the credibility of Benedicto Gonzales and not for the purpose of presenting them as evidence in chief. But as already stated, there was really no need for Gonzales to deny the contents both of the confession and the TSN since they had already been excluded in evidence. There was therefore no use for impeaching his credibility.

WHEREFORE, the decision of the Court of Appeals is REVERSED and SET ASIDE and the orders dated April 14, 1988 and October 17, 1988 of the Regional Trial Court of San Jose City are REINSTATED.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Per Justice Jesus M. Elbinias and concurred in by Justice Pedro A. Ramirez and Justice Regina G. Ordoñez Benitez.

[2] People v. Caguioa, 95 SCRA 2 (1980); People v. Ochavido, 132 SCRA 304 (1986); People v. Nicandro, 141 SCRA 289 (1986); People v. Duhan, 142 SCRA 100 (1986).

[3] People v. Galit, 135 SCRA 465 (1985); People v. Sison, 142 SCRA 219 (1986).

[4] Rules of Court, Rule 132, §36.

[5]Id., Rule 132, §35.

[6] Id., Rule 132, §34.

[7] Interpacific Transit, Inc. v. Aviles, 186 SCRA 385, 389 (1990). Reiterated in Quebral v. Court of Appeals, 252 SCRA 353 (1996).

[8] Interpacific Transit, Inc. v. Aviles, *ibid.*

[9] People v. Caguioa, 95 SCRA 2 (1980).

[10] Id., at 21.

[11] Id., at 16.

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