

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENEE PAROJINOG Y NAMUAG, RONIE ALJO ALIAS COMMANDER TIKO, BERT DINGDING, FE MULO, MIRIAM MULO AND 18 JOHN DOES, ACCUSED, ...

G.R. No. 95850. November 18, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Renee Parojinog y Namu-ag, was charged, together with his co-accused Ronie Aljo alias Commander Tiko, Bert Dingding, Fe Mulo, Miriam Mulo and eighteen (18) John Does for the crime of triple murder before the Regional Trial Court, 10th Judicial Region, Branch XV, Ozamis City, in an information which reads:

"That or about the 31st day of March, 1984, in the boundary of Sangay Daku and Sangay Diot, City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused- twenty three (23) persons in all; the two women armed with .38 caliber pistols and the rest, with Armalite and Garand Rifles, conspiring and helping one another in planning and hatching and/or carrying into fruition a common design, lay in ambush- waiting for the combined INP-PC operative(s) who were in the actual performance of their duties and that upon the arrival of the lawmen in the place where they were hiding, the said twenty-three accused did then and there willfully, feloniously and unlawfully open fire at the lawmen, as a consequence of which, P/Sgt. Alex Velasquez, P/Cpl. Antonio Carreon, both of the INP, Ozamiz City Station and Sgt. Aludio Torres of the PC, were fatally hit and who died almost instantaneously.

"That the crime was committed with the qualifying circumstance of treachery, considering that they used means and methods, in the execution thereof, tended directly and specially to insure its execution, without risk to themselves arising from the defense which the victims might have made, and the aggravating circumstance of 'band', since more than three (3) malefactors (and in fact, 23 in this case) acted together in the commission of the offense.

"CONTRARY to Article 248 of the Revised Penal Code in connection with Article 14 of the same code." (pp. 11-12, Rollo)

Upon his arraignment on January 29, 1988, appellant Parojinog pleaded not guilty. Trial then proceeded against him alone as the other accused remained at large.

After trial, the lower court promulgated its challenged decision on September 1, 1989, the dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing considerations, this Court is of the opinion and so it holds that the guilt of accused Renee Parojinog has been proved beyond reasonable doubt, and pursuant to Article 248 of the Revised Penal Code, taken in relation to Article 14 of the same Code, there being no aggravating nor mitigating circumstance left, as the aggravating circumstance of 'band' having been offset by the mitigating

circumstance of voluntary surrender, hereby sentences the accused, Renee Parojinog, to suffer an indeterminate imprisonment ranging from TEN (10) years and ONE (1) DAY, of Prison Mayor, as its minimum, to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS, and ONE (1) DAY of Reclusion Temporal, as its maximum period, together with the accessory penalties provided for by law: to indemnify the heirs of the victims, namely: P/Sgt. Alex Velasquez, P/Cpl. Antonio Carreon and Sgt. Aludio Torres the sum of P30,000.00 for each victim; and to pay the cost of the proceedings.

"The accused must be credited of the time he was placed under preventive imprisonment.

"Without prejudice to the other accused who are not yet apprehended whose case is hereby ordered archived (sic).

"SO ORDERED." (pp. 7-8, Decision)

Dissatisfied with the aforesaid decision, appellant appealed to the Court of Appeals.

On October 31, 1990, the Court of Appeals rendered its decision, the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is affirmed, with the modification that accused-appellant is sentenced to suffer three (3) penalties of reclusion perpetua for the murder of P/Sgt Alex Velasquez, P/Cpl Antonio Carreon and Sgt. Aludio Torres.

"The Clerk of Court of this Court is directed to refrain from entering judgment, and forthwith to certify the case and elevate the entire record thereof to the Supreme Court for review. (Sec. 13, Rule 124, 1985 Rules on Criminal Procedure; People vs. Daniel, 86 SCRA 511).

"SO RDERED." (pp. 44-45, Rollo)

The facts of the case are as follows:

On March 31, 1984, Corporal Godofredo Gallardo, then the designated Chief of the Integrated National Police of Ozamiz City, accompanied by Pat. Alex Velasquez, Cpl. Antonio Carreon, Cpl. Wilfredo Garces, Pat. Branco Erquita, Pat. Dario Vente, Pat. Edgar Dalaygon, Cpl. Romulo Abellanosa, Tech. Sgt. Aludio Torres and PC and CIC Charlieman Bation, went to Barangay Sangay Daku, Ozamiz City. Along their way, they were ambushed by the members of the Communist Party of the Philippines and the New People's Army. Torres, Velasquez and Carreon died on the spot (pp. 2-13, tsn, October 14, 1988, pp. 10-11, tsn, June 24, 1988).

On August 1, 1987, appellant was investigated by Pcpl. Benjamin de los Santos at the INP station in Ozamiz City. During which investigation, he confessed that he surrendered to Governor Fortunato Sagrado of Misamis Occidental in connection with the ambush of a group of police and PC soldiers at Barangay Sangay on March 31, 1984 which resulted in the death of two policemen and a PC soldier (Exh. A, Records).

In his extra-judicial confession, he admitted that he was a member of the NPA, having joined the same on December 5, 1982; that while a member of the NPA, he was assigned to collect rice from people in the barrio; that in March, 1984, his group consisting of 23 persons, two of whom were women, staged an ambush of the PC soldiers and the police at Barangay Sangay, Ozamiz City; that the ambush was planned by Bert Dingding and Ronie Aljo; that the men carried armalite or garand while the women carried .38 caliber guns; and that he learned that PC Sgt. Torres was one of the casualties.

The records show that before the start of the investigation, Pcpl. Santos apprised appellant of his constitutional rights to counsel of his own choice and if he did not have one a certain Atty. Fernando Fuentes III of the CLAO will be his lawyer who will help him. He agreed to have Atty. Fuentes as his lawyer. Thereafter, he was informed of his right to remain silent or not to answer any questions if he did not like to answer or if he had nothing to

answer. Finally, he was warned that his statement may be used as evidence against him before the court (Exhibit "A," pp. 4-6, tsn, September 16, 1988).

The records also show that Atty. Fuentes III assisted appellant during the entire investigation which lasted for about an hour (pp. 5-6, tsn, September 16, 1988; p. 7, tsn, February 17, 1989). After the investigation, appellant signed his extra-judicial investigation. Atty. Fuentes III also signed the document (Exh. "A," p. 6, tsn, September 16, 1988). Thereafter, two policemen escorted appellant to the Office of City Fiscal Luzminda Uy for him to swear to his written confession. Before swearing in appellant, Fiscal Uy verified whether the statements therein were indeed his.

At the trial, the prosecution presented the following witnesses, Benjamin delos Santos, Luzminda Uy, Magdaleno Velasquez, Teresa Carreon, Atty. Fernando Fuentes III, and Cpl. Godofredo Gallardo and offered Exhibit "A" which was the affidavit executed by appellant.

On the other hand, the defense evidence consisted only of the testimony of appellant who said that he was in his house and worked on his cornfield the whole day of March 31, 1984. He alleged that although he was given a lawyer before the investigation, he had none during the investigation because Atty. Fuentes went out. Besides, he claimed that Atty. Fuentes was not his choice but the policemen's choice.

In his appeal to the Court of Appeals, appellant raised the following errors:

I

The Lower Court erred in basing its decision of conviction of appellant solely on Exhibits "A" and "A-1" alleged extra-judicial confession of accused during the investigation at the city jail.

II

The Lower Court erred in relying on the testimony of the witnesses for the prosecution instead of weighing the evidences adduced during the trial in favor of appellant. (Rollo, p. 30, pp. 2-3, Appellant's Brief)

Before this Court, he reiterated the following assignment of error:

Respondent Honorable Court of Appeals grievously erred in affirming the decision appealed from and in admitting and giving credence (to) the extrajudicial confession, marked (as) Annexes "A" and "A-1" (Rollo, p. 50).

It is evident that the fate of the appellant in this case lies with the admissibility or non-admissibility of his extra-judicial confession. Appellant impute involuntariness to said confession because he was allegedly denied his constitutional right to counsel during his custodial investigation by the police. He claims that the lawyer assigned to him did not actually attend the investigation as the latter went out and that said lawyer was not his choice and was only forced on him.

The records of the case belie this claim. Atty. Fuentes III, who was presented by the prosecution, categorically testified:

FISCAL YBANEZ:

x x x.

Q: Atty. Fuentes III, before affixing your signatures, do you remember if the accused in this case was ever asked some questions with respect to this affidavit taken?

A: Yes, sir.

Q: Will you kindly tell the Honorable Court as to what was asked?

A: Before the investigation started there in the City Jail, the investigating officer inquired to the accused his right and that he was asked if he is willing to be assisted by counsel of the government and he said yes. So that person subject of that investigation whose name Parojinog, assisted by this representation was then investigated. In fact the confession of the accused was typewritten (pp. 3-4, tsn, September 16, 1983).

On cross-examination, Atty. Fuentes III reiterated:

COURT: (to witness)

Q: You said you assisted a person during the investigation, were you asked by the accused to assist him?

A: Because according to the policemen, there was somebody who was willing to give confession, so when I arrived there, the accused in this case was introduced to me so I inquired them whether the accused was willing to be assisted by counsel.

COURT:

Q: What did they say?

A: They said, yes, he agreed.

Q: You did not advise him what to do as assisting counsel under custodial investigation?

A: I told him that he has the right to remain silent but the accused told me that he was willing to give his confession voluntarily, so they proceeded the investigation in my presence. (p. 5, tsn, ibid)

The above testimony sufficiently discredited appellant's denial that he agreed to be assisted by Atty. Fuentes III during his custodial investigation and his claim that Atty. Fuentes III was not present during said investigation.

Fiscal Luzminda V. Uy before whom accused-appellant swore his testimony declared in court that she first informed him of his constitutional right to be assisted by counsel to which appellant replied that he was assisted by Atty. Fuentes III during the investigation. She then read the contents of the affidavits in the dialect one by one and asked appellant if all the answers given were his, to which appellant answered yes. (p. 9, tsn, June 24, 1988).

Anent his claim that Atty. Fuentes was not his choice, Section 12(1) of Article III of the 1987 Constitution provides:

"Sec. 12(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."

It is very clear from the aforequoted provision that a person under investigation for the commission of an offense may choose his own counsel but if he cannot afford the services of counsel, he must be provided with one. While the initial choice of the lawyer in the latter case is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. In the instant case, the records show that no objection was voiced by the accused throughout the entire proceedings of the investigation and afterwards when he subscribed to its veracity before City Prosecutor Luzminda V. Uy. Thus, he apparently acquiesced to the choice of the investigators. He complained for the first time that Atty. Fuentes was not his choice only during trial. Thus, it was too late.

Worthy of note is the fact that accused did not categorically claim that he was intimidated or forced to give his extra-judicial confession. Neither did he claim that he was promised any reward or leniency. The settled rule is that a confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat or promise of reward or leniency (*People v. Francisco, et al.*, G.R. No. L-4258, May 15, 1953; *People v. Candava*, G.R. L-18517; March 31, 1964; *People v. Dorado*, G.R. No. L-23464, October 31, 1969). For failure of the accused to successfully assail the voluntariness of his confession, this Court cannot set it aside.

Besides, accused's uncorroborated alibi that he was elsewhere at the time of the ambush could not prevail over his own admission that he was one of those who ambushed the group of police and PC soldiers in March, 1984. Alibi is a weak defense in the light further of the fact on record that accused himself surrendered to Governor Fortunato Sagrado of Misamis Occidental in connection with the aforesaid ambush. The accused did not assail this fact nor explain that he came into the fold of the law in some other way. This circumstance serves to underscore the veracity of the voluntary confession. The defense of alibi apparently is due to the change of heart of the accused upon learning of the afflictive penalty for such a grievous crime.

The trial court convicted the accused to only one crime of murder and sentenced him to suffer an indeterminate imprisonment ranging from ten (10) years and one (1) day of prision mayor, as its minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as its maximum, together with the accessory penalties provided by law. The respondent court found the penalty erroneous. It said that appellant should be found guilty of three murders as charged in the information. The penalty for murder, without any modifying circumstance is reclusion perpetua. Thus, it held that appellant should be sentenced to suffer three (3) penalties of reclusion perpetua for the murder of P/Sgt. Alex Velasquez, P/Cpl. Antonio Carreon and Sgt. Aludio Torres, correctly refraining from entering judgment and forthwith, certified the case and records for review of this Court.

We agree with the foregoing observations of the respondent court anent the penalty to be imposed on appellant. Article 248 of the Revised Penal Code provides that the crime of murder is punishable by reclusion temporal in its maximum period to death. Considering that the aggravating circumstance of band has been offset by the mitigating circumstance of voluntary surrender, the penalty that should be imposed on appellant is reclusion perpetua, conformably with *People v. Munoz, et al.*, G.R. Nos. L-38969-70, February 9, 1989, 170 SCRA 107. Additionally, the civil indemnity for the death of the three lawmen should be increased to P50,000.00 each, conformably with the latest policy of the Court.

ACCORDINGLY, the judgment of conviction against accused-appellant is AFFIRMED with the modifications that the accused-appellant is sentenced to suffer three (3) penalties of reclusion perpetua for the murder of P/Sgt. Alex Velasquez, P/Cpl. Antonio Carreon and Sgt. Aludio Torres and to pay P50,000.00 each to the heirs of the victims as civil indemnity.

SO ORDERED.

Narvasa, (Chairman), Cruz, Feliciano, and Grino-Aquino, JJ., concur.

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