

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEJANDRO LUCERO Y CORTEL, ACCUSED-APPELLANT.

G.R. No. 97936. May 29, 1995

Ponente: PUNO, J.

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PUNO, J.:

If the Constitution has any value, it is because it stands up for those who cannot stand up for themselves. Thus, it protected those under custodial investigation with the all-important right to counsel. We hold that the right to counsel cannot be diluted without tampering the scales of justice. For denial of his right to counsel, we acquit accused-appellant.

Alejandro Lucero, Bienvenido Echavez, Balbino Echavez, Peter Doe, Richard Doe and John Doe were charged with the crime of robbery with homicide. The Information against them reads:

"That on or about the 7th day of May, 1988, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously rob one DR. DEMETRIO Z. MADRID, in the manner as follows: on the date and in the place aforementioned, the said accused, one armed with handgun, pursuant to their conspiracy blocked the way of the said complainant who was on board a Mercedes Benz cruising along Road 14 near (the) corner (of) Mindanao Avenue, Pag-asa, this City, and did and there, by means of violence and intimidation against persons, take, rob and carry away his cash money amounting to P6,600.00; one gold necklace with cross pendant, 7 karat, worth P45,000.00; one (1) gold Rolex watch worth P155,000.00; one (1) 3 karat gold ring worth P80,000.00; one 2 karat gold ring, domino style, worth P27,000.00; one (1) solid gold bracelet worth P50,000.00; all worth P363,600.00, Philippine Currency, belonging to said DR. DEMETRIO Z. MADRID, to the damage and prejudice of the said offended party in the total amount aforementioned; that on the occasion of the robbery and pursuant to their conspiracy, the above-named accused, with intent to kill, and taking advantage of the(ir) superior strength, with the use of handgun, shot LORENZO BERNALES y ALERIA, a driver of the said offended party, thus inflicting upon him serious and mortal wounds which resulted to the insta(n)taneous death of the said LORENZO BERNALES y ALERIA, to the damage and prejudice of the heirs of said LORENZO BERNALES y ALERIA in such amount as may be awarded to them under the provisions of the Civil Code.

"Contrary to law."[1]

Only the accused Echavez brothers and Alejandro Lucero were apprehended. The others remained at large. Trial proceeded only as against the three.

The evidence on record shows that on May 6, 1988, private complainant DR. DEMETRIO Z. MADRID spent the night at his boarding house, located at #35 Ilocos Norte Street, Bago-Bantay, Quezon City. He wanted to return that night to his residence at Project 6, Quezon City. However, his driver, Lorenzo Bernaldes, advised him not to leave that night for Bernaldes overheard that the group of Balbino and Bienvenido Echavez would rob him on his way home. He heeded the advice.

It was around 7:00 a.m., the next day, that Dr. Madrid again asked his driver to bring him to his main residence in Project 6, Quezon City. While traversing Road 14, a gray-reddish car overtook the Mercedes Benz he was riding and blocked their way. Three (3) men swiftly alighted from the car blocking them and barged into his Benz. The first grabbed the driver's seat and pushed his driver to the other side of the seat. The second occupied the right side of his driver. The third sat beside Dr. Madrid at the back seat and punched him. Simultaneously, the man at the right side of his driver pulled out his gun and announced a hold-up.[2]

The man beside Dr. Madrid divested him of the following: a gold Rolex watch, studded with diamonds, worth P155,000.00, a three (3) carat diamond ring worth P80,000.00, another two (2) carat domino-style ring, surrounded with diamonds worth P27,000.00, a necklace worth P27,000.00, a bracelet worth P50,000.00, and his wallet containing P6,600.00.[3]

After driving them around the area for a couple of hours, the malefactors stopped his car and alighted. The worst came. The man at the right side of his driver shot the latter at the chest before fleeing. Dr. Madrid and his driver were rushed by concerned citizens to the Veterans Memorial Hospital. Two hours later, his driver died of hemorrhage as a result of the gunshot wound he sustained.[4] Dr. Madrid survived.[5] He reported the incident to the Quezon City police. When no action was taken on his case, he filed his complaint with the Special Operations Group of the Central Intelligence Service (CIS).[6]

Two months later, the CIS' efforts paid-off. On July 23, 1988, the Special Operations Group headed by Capt. Raul Boac, after a surveillance of the suspects, interrogated Bienvenido Echavez in Camp Crame. Two days later, they apprehended Balbino Echavez and Alejandro Lucero. They turned them over to the Investigation Department of the CIS.[7]

Pfc. Alberto Pursal was assigned to conduct the investigation of the suspects. He declared that even before the investigation started, Lucero verbally admitted his participation in the crime and that he was the one who shot Bernalles, the driver of Dr. Madrid.[8]

In any event, Pfc. Pursal went thru the motions of investigation. He informed Lucero of his constitutional rights to remain silent and to counsel. When Lucero told him that he had no lawyer, Pursal informed the CIS Legal Department about Lucero's need for a lawyer.[9] In due time, Atty. Diosdado Peralta appeared at the investigator's office at around 9:00 p.m. He identified himself as the lawyer who was requested to assist Lucero and inquired about the latter's whereabouts. He was then directed to where Lucero was.

Atty. Peralta conferred with Lucero. He also apprised Lucero of his constitutional rights. He explained to Lucero that he has the right to remain silent, that he is not obliged to give any statement to the investigators, and that even if he has already given a statement, he may refuse to sign it. He observed no reaction from Lucero. Nonetheless, Atty. Peralta gathered the impression that Lucero understood his advice.

Thereafter, the CIS investigator began taking down Lucero's statement. When the investigator started asking the preliminary questions, Atty. Peralta left to attend the wake of his friend, Capt. Emilio Dacanay, at Fort Bonifacio. He gave word that in case of need, he could be reached at his residence.

The next morning, Lucero was accompanied by two (2) CIS agents to Atty. Peralta's house. The extrajudicial statement of Lucero (Exhibit "C"), was presented to Atty. Peralta. It was already signed by Lucero. In the presence of the two (2) CIS agents, Atty. Peralta examined Exhibit "C" and explained to Lucero its legal implications. He asked Lucero whether he gave the statements voluntarily. Lucero replied in the affirmative, Atty. Peralta then signed Exhibit "C".[10]

The three (3) accused denied complicity in the crime charged.

Appellant Lucero's defense is alibi. He testified that on May 7, 1988, he was at his house in Caloocan City. He woke up at 6:30 a.m., stayed at his house the whole day repairing the upholstery of a customer's chair. He was then with his cousin Marcelino Seneta and his wife Mylen Lucero. He worked until 5 p.m. that day.

Lucero was apprehended on July 25, 1988, more than two (2) months after the commission of the crime. He said he was surprised when several unidentified men accosted him while he was walking towards his house. They chased him, handcuffed and blindfolded him and pushed him into a jeep. He was blindfolded the whole night and did not know where he was taken. The men turned out to be police officers. Later, he identified one of the men to be Capt. Boak, head of the CIS Special Operations Group.

The next day, he learned he was in Camp Crame. He claimed that he was tortured. He was not informed of the offense for which he was being investigated. Neither did they reveal the identity of the complainant. A couple of days lapsed and a CIS agent brought him to a clinic inside Camp Crame. The doctor saw the contusions on his body. He advised that he be treated. The CIS agent refused and they left the clinic.

Lucero denied knowing Dr. Madrid, the Echavez brothers and the other accused in this case. He said he only met Dr. Madrid at the CIS Office during the police line-up. He was made to line-up four (4) times before Dr. Madrid finally identified him on the fourth time.

Lucero also claimed he signed the extrajudicial confession (Exhibit "C")[11] under duress. He denied engaging the services of Atty. Peralta. He likewise confirmed that Atty. Peralta was not present during his actual custodial interrogation.[12]

After trial, the court a quo acquitted the Echavez brothers for insufficient evidence. The trial court, however, convicted accused Lucero. The dispositive portion of the Decision[13] reads:

"ACCORDINGLY, judgment is hereby rendered as follows:

"1. The accused brothers BIENVENIDO ECHAVEZ y VALIDA and BALBINO ECHAVEZ y VALIDA are hereby ACQUITTED for insufficiency of evidence; and

"2. Accused ALEJANDRO LUCERO y CORTEL is hereby found GUILTY beyond reasonable doubt as principal by direct participation of Robbery with Homicide. Alejandro Lucero is hereby sentenced to suffer an imprisonment term of RECLUSION PERPETUA.

"On the civil aspect, Alejandro Lucero is hereby ordered a) to pay the heirs of the deceased victim Lorenzo Bernales y Aleria the sum of P30,000.00 as actual damages and P50,000.00 as moral damages for the mental anguish suffered by his family; and b) to pay Dr. Demetrio Z. Madrid the sum of P363,600.00 representing the cash money, and money value of the jewelries and wristwatch he lost due to the robbery at bar.

"SO ORDERED. "[14]

Hence this appeal by Lucero, raising the following assignments of error:

1. THE LOWER COURT ERRED IN GIVING MORE WEIGHT TO THE EVIDENCES (SIC) OF THE PROSECUTION WHICH WERE INCONSISTENT, NOT CREDIBLE, UNRELIABLE, DOUBTFUL AND INSUFFICIENT TO SUPPORT ACCUSED-APPELLANTS CONVICTION BEYOND REASONABLE DOUBT.
2. THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE ALLEGED CRIME OF ROBBERY WITH HOMICIDE INSPITE OF THE FACT THAT CONSPIRACY WAS NOT PROVEN IN THIS CASE.
3. THAT THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME

CHARGED ON THE BASIS OF HIS ALLEGED EXTRAJUDICIAL CONFESSION (MADE IN CUSTODIAL INVESTIGATION) WHICH WAS OBTAINED THRU FORCE, VIOLENCE AND WITHOUT THE PRESENCE OF COUNSEL OF HIS OWN CHOICE OR ENGAGED BY ANY PERSON ON HIS BEHALF OR APPOINTED BY THE LOWER COURT AND THEREFORE SUFFERED CONSTITUTIONAL INFIRMITIES.

4. THAT THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED INSPITE OF THE FACT THAT THE ACCUSED-APPELLANT WAS NOT POSITIVELY IDENTIFIED WITH CERTITUDE BY THE PROSECUTION.

5. THAT THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED PRIMARILY ON THE BASIS OF THE WEAKNESS OF HIS DEFENSE OF ALIBI AND NOT ON THE STRENGTH OF THE PROSECUTION EVIDENCE; AND INSPITE OF THE LACK OF POSITIVE IDENTIFICATION OF ACCUSED-APPELLANT.

6. THAT THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT AND NOT ACQUITTING HIM LIKE HIS CO-ACCUSED AND ALLEGED CO-CONSPIRATORS [THE ECHAVEZ BROTHERS] OF THE CRIME CHARGED.

We find the appeal meritorious.

The conviction of appellant rests on two (2) facts: (a) his positive identification by the complainant, and (b) his extra-judicial confession admitting his participation in the crime. We find that the evidence proving these facts cannot stand scrutiny.

Firstly, the credibility of the main prosecution eyewitness, Dr. Demetrio Madrid who identified appellant, is seriously open to doubt. It stands un rebutted on the record that appellant had to participate at the police line-up four (4) times before he was finally identified by Dr. Madrid. There is no reason for the ambivalence. The robbery took place in broad daylight and the three malefactors wore no mask. They drove them around for three (3) hours. Considering these circumstances, there is no reason for Dr. Madrid's failure to immediately identify appellant.

We are also disconcerted by the vacillating testimony of Dr. Madrid during the trial. Initially, Dr. Madrid claimed that he could identify only one of the robbers who staged the hold-up.[15] At another point, Dr. Madrid said he could identify two of the malefactors.[16] In his Affidavit, Dr. Madrid represented he could identify all three.[17] Appellant's conviction cannot be made to rest on this nebulous identification by Dr. Madrid.

Secondly, appellant's conviction cannot be based on his extra-judicial confession.

The 1987 Constitution[18] requires that a person under investigation for the commission of a crime should be provided with counsel. We have constitutionalized the right to counsel because of our hostility against the use of duress and other undue influence in extracting confessions from a suspect. Force and fraud tarnish confessions and render them inadmissible.[19] We take pride in constitutionalizing this right to counsel even while other countries have desisted from elevating this right to a higher pedestal. We have sustained the inviolability of this precious right with vigor and without any apology.

The trial court did not display the required sensitivity to appellant's right to counsel. Indeed, it did not impose a rigorous respect for the right. It was satisfied that there was "substantial" compliance with the requirements of right to counsel. This is far from the intent of the Constitution. The records show that Atty. Peralta, who was not the counsel of choice of appellant, arrived at the CIS Office on the second night of appellant's detention. More exactly, he arrived at the CIS Office at around 9:00 p.m. and talked with appellant about his rights. Atty. Peralta himself admitted he received no reaction from appellant although his impression was that appellant understood him.[20] Worse, Atty. Peralta left appellant in the custody of the CIS agents when his real interrogation started.

He said he had to attend the wake of a friend. His attitude did not speak well of the importance he gave to his role as counsel to a person under custodial interrogation for the commission of a very serious offense. It was during his absence that appellant gave an uncounselled confession. They tried to cure his uncounselled confession for the next day, appellant was brought by two (2) CIS agents to Atty. Peralta's house. In the presence of these agents, Atty. Peralta asked appellant if he understood the statements he gave and if he signed it voluntarily. Appellant, of course, affirmed the voluntariness of the execution of the confession. Atty. Peralta was satisfied and the trial court ruled that appellant's right to counsel was not infringed. We disagree.

We hold that when the Constitution requires the right to counsel, it did not mean any kind of counsel but effective and vigilant counsel. The circumstances in the case at bench clearly demonstrate that appellant received no effective counseling from Atty. Peralta. In *People v. De Guzman*,^[21] we held that in custodial investigation, the right to counsel attaches from the moment the investigation starts, i.e., when the investigating officer starts to ask questions to elicit information and confessions or admissions from the accused. In this case, at the crucial point when the interrogation was just starting, Atty. Peralta left appellant to attend the wake of a friend. At that critical stage, appellant gave his uncounselled extra-judicial confession. Surely, such a confession where appellant was unprotected from mischief cannot convict.

Neither can the trial court convict appellant on the ground that alibi is inherently a weak defense. Chiseled in our jurisprudence is the rule that the onus is on the prosecution to prove the guilt of the accused beyond reasonable doubt. Given the uncertainty of appellant's identification and the inadmissibility of his uncounselled confession, there is no thread of evidence to criminally inculcate appellant.

IN VIEW WHEREOF, the Decision in Criminal Case No. Q-88-201 of the Regional Trial Court of Quezon City, Branch CIII, convicting appellant Alejandro Lucero y Cortel of robbery with homicide is hereby REVERSED AND SET ASIDE.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Original Records, pp. 1-3.

[2] TSN, January 12, 1989, pp. 4-7.

[3] *id.*, pp. 8-10.

[4] TSN, May 22, 1989, p. 9; Autopsy Report No. N-88-1295, Original Records, p. 260.

[5] TSN, January 12, 1989, pp. 12-14.

[6] *id.*, p. 17.

[7] TSN, March 15, 1989, pp. 4-10.

[8] TSN, February 15, 1989, p. 6.

[9] *id.*, pp. 7-10.

[10] TSN, September 11, 1990, pp. 9-28.

[11] Original Records, pp. 253-256.

[12] TSN, January 31, 1990, pp. 3-38.

[13] Penned by Judge Jaime N. Salazar, Branch CIII, Regional Trial Court, National Capital Judicial Region, Quezon City.

[14] Rollo, at p. 47.

[15] TSN, January 12, 1989, p. 14.

[16] *id.*, p. 18.

[17] Exhibit "A", Original Records, at p. 248.

[18] Section 12 (1), Article III.

[19] *People v. Rous, et al.*, G.R. Nos. 103803-04, March 27, 1995.

[20] TSN, September 11, 1990, p. 12.

[21] G.R. Nos. 98321- 24, June 30, 1993, 224 SCRA 93.

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