

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO COLANA Y AVARICIO, ACCUSED-APPELLANT.

G.R. Nos. 62617-18. November 28, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

Leonardo A. Colana appealed from the decision of the Circuit Criminal Court of Manila, finding him and Jorge Magabilen guilty of murder in connection with a fraternity rumble, sentencing them to reclusion perpetua and ordering them to indemnify solidarily the heirs of Librado de la Vega in the sum of P84,000. Magabilen did not appeal.

Magabilen, 22, was the president of the Phi Lambda Epsilon fraternity while Colana, 26, was an officer thereof. Both were students of the Philippine College of Criminology. Marcelino Cañeda and Carlito Bravo were students of the Far Eastern University. Cañeda (Tañeda or Jekjek) was the head of the FEU chapter of the fraternity and Bravo was a member thereof.

According to Colana's Confession (Exh. A) and the testimony of Bravo, who became a State witness, at about eight o'clock in the evening of August 6, 1979, Magabilen, Colana, Bravo and Cañeda, proceeded to the corner of Claro M. Recto Avenue and Oroquieta Street (near the Manalili Bookstore) where some members of the Alpha Kappa Rho, another fraternity in the FEU, were to pass after dismissal. After waiting for about quarter of an hour, a student came along Recto Avenue. He was Librado de la Vega. Cañeda pointed to De la Vega as a member of the Alpha fraternity.

Magabilen suddenly held De la Vega's left arm, pushed him to the wall of the building nearby and stabbed him. Colana, armed with an icepick, and Cañeda also stabbed De la Vega, who shouted that he was not a member of the Alpha fraternity. Bravo, who stood behind the assailants, allegedly did not take part in the assault. They left the victim after he fell down.

De la Vega, 21, sustained seven wounds in the chest which perforated his lung and heart, two wounds on the right arm and two wounds on the left arm (Exh. H to H-5, I, J and J-1). He died due to internal hemorrhage (Exh. K).

Motive for the killing was revenge. On a prior occasion some members of the Epsilon fraternity were beaten allegedly by members of the Alpha fraternity.

At the trial, Magabilen and Colana denied any complicity in the killing. Colana repudiated his confession (Exh. A) and Magabilen disowned his statement, Exhibit B. They pointed to Bravo and Cañeda as the actual perpetrators of the killing.

In this appeal, Colana contends that the trial court erred in holding that his guilt was established beyond reasonable doubt.

The crucial point in Colana's case is the admissibility of his extrajudicial confession which would dispel any

doubt as to his guilt. It was taken by Patrolman Reynaldo H. Jaylo on September 19, 1979 after the arrest of Colana. The confession contains the following reminder or caveat and waiver of his rights under section 20, Article IV of the Constitution:

"PAALAALA NI PFC. R. H. JALOY KAY LEONARDO COLANA:

"Ikaw Leonardo Colana ay iniimbistigahan ngayon tungkol sa pagkakasaksak at pagkakapatay kay Librado de la Vega noong Agosto 1979 doon sa Oroquieta St. na malapit sa Recto Ave., Sta. Cruz, Manila, ngunit bago kita tanungin ay nais ko munang malaman mo na sa ilalim ng ating Bagong Saligang Batas ay mayroon kang mga karapatan na kagaya ng mga sumusunod:

1. Karapatan mo ang manahimik o huwag kumibo o kaya ay sumagot sa aking mga itatanong;
2. Karapatan mo ang kumuha ng isang abogado na tutulong saiyo o kung hindi mo kaya o wala kang kakilala ay bibigyan ka namin ng isang walang bayad;
3. Karapatan mo rin ang malaman na ang lahat ng mga sasabihin mo dito ay maaaring gamiting katibayan laban o pabor saiyo o sa kanino pa mang tao sa alin mang hukuman dito sa Pilipinas, (nauunawaan mo ba itong mga karapatan mo?)

"UNANG TANONG (ni Pfc. R.H. Jaylo kay Leonardo Colana): Lalagda ka ba sa ibaba nito bilang patunay na ang lahat ng mga karapatan mo na binanggit ko ay nauunawaan mo nga?

"UNANG SAGOT (ni Leonardo Colana): Opo, lalagda po ako at nauunawaan ko po ang lahat ng mga karapatan ko na binanggit ninyo.

(Sgd.) Leonardo A. Colana

LEONARDO A. COLANA

(nagpapatunay)

"02 - T: Ngayong naunawaan mo ang iyong mga karapatan, ikaw ba ay nangangailangan ng isang abogado, gusto mo bang kumuha o bigyan namin ng isang abogado na tutulong saiyo?

S: Hindi na po, alam ko naman po ang aking ginagawa.

"03 - T: Muli kong ipinaalam saiyo na ang lahat ng mga sasabihin mo dito ay maaaring ga-miting katibayan laban saiyo, kahit ba wala kang abogado ay magbibigay ka pa rin ba ng salaysay?

S: Opo, para lumabas na ang katotohanan.

"04 - T: Bakit mo na ba naman gustong lumabas ang katotohanan?

S: Para po medyo gumaan naman ang aking kalooban.

"05 - T: Baka naman tinatakot ka lang, o kaya ay pini-pilit o kaya ay pinangakuan ng anumang pabuya o kaluwagan sa buhay, kaya mo ginagawa ito?

S: Hindi po, kusang loob po itong pagtatapat ko ng katotohanan." (Exh. A)

In his confession, Colana admitted that he assaulted De la Vega with an icepick which he identified when shown to him by Patrolman Jaylo. The confession was sworn to before Fiscal Andaya. Colana also signed the Booking and Information Sheet wherein he was implicated in the killing of De la Vega (Exh. D). On the other hand, Bravo's testimony is substantially the same as his statement to the police, Exhibit O.

The confession was corroborated by the evidence of the corpus delicti. It is a fact that the victim sustained some

punctured wounds. An icepick, the wea-pon admittedly wielded by Colana, causes punctured or "circular wounds".

What is lamentable is that De la Vega was not an FEU student, much less a member of the Alpha fra-ternity. He used to be an engineering student at the Feati University. At the time of his death, he was studying typing (5 tsn, January 6, 1982).

We hold that Colana, a third year criminology student (born on March 21, 1953, Exh D), "voluntarily, knowingly, and intelligently" waived his rights to remain silent and to be assisted by counsel during custodial police interrogation. Such waiver is allowed (Miranda vs. Arizona, 16 L. ed, 694, 697). His guilt was proven beyond reasonable doubt.

The crime was murder qualified by treachery and abuse of superiority. No other modifying circumstance can be appreciated in this case. Hence, the penalty is reclusion perpetua.

The amount spent by the victim's family consisted of P6,000 for bringing the body to Cuenca, Batangas, P15,000 for funeral expenses and P9,000 paid to the police informer who investigated the case, or a total of P30,000 (5-7 tsn, January 6, 1982). To this amount should be added the indemnity, which, including moral damages, we fix at fifty thousand pesos.

WHEREFORE, the trial court's judgment is affirmed with the modification that the civil liability is fixed at P80,000. Costs de oficio.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

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