

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. PABLO GALLO Y CATANOY, ACCUSED-APPELLANT.

G.R. Nos. 70193-96. January 11, 1988

Ponente: CORTES, J.

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CORTES, J.:

Under separate informations, seven accused were charged of the crime of murder. One pleaded guilty to the lesser crime of homicide, and was sentenced accordingly;^[1] two were acquitted by the trial court;^[2] while the other four, including the appellant, were convicted, after trial, of the lesser crime of homicide, and “sentenced to suffer an indeterminate penalty ranging from seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as minimum, to 20 years of reclusion temporal, as maximum.”^[3] Three of the accused appealed but only appellant Gallo filed an appellant's brief. Hence, the appeals of the other two were dismissed by the Court of Appeals.

The Court of Appeals^[4] is of the opinion that the crime committed in this case was murder, as originally charged, and not the less serious crime of homicide, so that the penalty to be imposed should be raised to reclusion perpetua. Since the Judiciary Act of 1948, as amended, places in this Court exclusive appellate jurisdiction over cases where the penalty imposed is reclusion perpetua, the Court of Appeals did not enter judgment but referred the instant case to this Tribunal.

The information filed against accused-appellant reads:

“That on or about October 8, 1979, in the City of Manila, Philippines, the said accused, conspiring and confederating together with Gener Argales y Repalda, Teofilo Soriano, Jr. y Alcala, Mario Asuzano y Moral and June Bermudez y Quintero, who were already charged before the Circuit Criminal Court of Manila under Crim. Case Nos. CCC-VI-128(79), CCC-VI-146(79), CCC-VI-4(80) and CCC-VI-83(80), respectively, for the same offense, and with several others whose true names, identities and present whereabouts are still unknown, and helping one another, taking advantage of their superior strength, and with intent to kill, with evident premeditation and treachery, attack, assault and use personal violence upon one Erlinio Dacio y Servetillo by then and there mauling, stabbing and hacking him with deadly bladed weapons on the different parts of his body, thereby indicting upon the said Erlinio Dacio y Servetillo mortal stab wounds which were the direct and immediate cause of his death soon thereafter.

Contrary to law.”

The aforementioned criminal cases, together with one other case, CCC-VI-20(81), were jointly tried inasmuch as they all referred to the death of Erlinio Dacio. On October 20, 1979, Argales pleaded guilty to the crime of homicide, and was sentenced accordingly. Trial was held with respect to the other cases, and on April 15, 1983, the trial court rendered a decision finding accused Gallo, Soriano, Bermudez and Villanueva guilty of the crime of homicide, aggravated by superior strength. The accused Asuzano and Marteja were acquitted.

The evidence of the prosecution implicating accused-appellant Gallo in the crime charged consist of: (1) the

extrajudicial confessions of his co-accused Argales and Soriano, (2) the identification by Antonio Dacio, Sr. (father of the victim) of Gallo as one of the perpetrators of the crime, which identification was made in the course of police investigation while Gallo was under police custody, and (3) the testimony in court of Antonio Dacio, Jr. (brother of the victim).

(1) The extrajudicial confessions of Argales and Soriano are inadmissible against appellant Gallo. It is well settled that as a rule, a confession made by a defendant is admissible only against him but not against his co-defendants as to whom said confession is hearsay evidence. [See *U.S. v. Castillo*, 2 Phil. 17 (1903); *People v. Ferry*, 66 Phil. 310 (1938); *People v. Cabiltes*, L-18010 (September 25, 1968).25SCRA 112). More so in the case at bar if we consider that the alleged confessions were repudiated by Soriano and Argales when they took the witness stand. As these alleged confessions were properly objected to upon formal offer (Original Record, p. 55), they are inadmissible against appellant Gallo.

(2) The identification by Antonio Dacio, Sr. is likewise inadmissible. Rule 115, Section 1(f) of the 1964 Rules of Court on Criminal Procedure (which was in effect during the trial of this case) provides:

Section 1 Rights of defendant at the trial. In all criminal prosecutions the defendant shall entitled:

(f) to be confronted at the trial by, and to cross-examine the witnesses against him. Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the defendant or his attorney, the defense having had an opportunity to cross-examine the witness, the testimony or deposition of the latter may be read, upon satisfactory proof to the court that he is dead or incapacitated to testify, or cannot with due diligence be found in the Philippines;

* * * * * (Italics supplied.)[5]

In the case at bar, Antonio Dacio, Sr. identified Gallo to be one of the culprits while the latter was under police custody for another offense. Unfortunately, Antonio Dacio, Sr. died before he could take the witness stand.

Even as Gallo candidly admitted that he was positively identified by Antonio, Sr. to be one of the killers of his son (t.s.n., November 15, 1982, p. 4.), the condition set forth under the aforesaid Rule for the admissibility of the evidence was not satisfied. At the time it was made, Gallo had no opportunity to confront and cross-examine Antonio, Sr. Hence, the identification is inadmissible evidence.

(3) Thus, We are left with no evidence against the accused other than the testimony of Antonio Dacio, Jr. to the effect that Gallo stabbed the victim with a knife.

The People would want to show by the testimony of this witness that on the night of October 8, 1979, between 10:00 and 10:30 o'clock in the evening, he was waiting for his father Antonio, Sr. and his brother Erlinio (the victim) at the corner of Dagonoy and Oro-B Streets, Sta. Ana, Manila, When Antonio, Sr. and Erlinio arrived, they were blocked by a group, among whom were accused-appellant Gallo, Argales, Soriano, Bermudez and Villanueva. Argales then poked a 'sumpak' at Antonio, Sr., while the victim Erlinio was taken away, Antonio, Jr., apprehensive and fearing that the group would also harm him, ran and hid at a place about fifteen meters away from his brother. Meantime, the victim was boxed, clubbed and stabbed to death.

As a rule, "the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been overlooked or the significance of which has been misinterpreted." [*People v. De Otero*, 51 Phil, 201 (1927)]

The Court has carefully examined the testimony of Antonio Dacio, Jr. Certain aspects of that testimony raise

serious doubt as to whether Antonio Dacio, Jr. was indeed an eyewitness to the killing of his brother, as he claims to be.

Firstly, the witness, a 16-year old high school student, admitted that he did not give any statement to the police immediately after the killing in 1979, and that it was only his father who did. He also admitted that it was only in December, 1981, when his father died that he was asked to testify in court.

Likewise, in all the police line-ups for purposes of identifying the culprits, only the father, Antonio, Sr. was present to identify the suspects. Antonio, Jr. was not.

At this point it may be noted that in his statement before the police immediately after the killing, when asked by the police as to who killed the victim, Antonio Dacio, Sr. could identify only Pilo (Soriano) and Gener (Argales). The identity of the others was not known to him although they were his neighbors.

If Antonio, Jr. really witnessed the killing, why did he not give his statement to the police, at least, to corroborate the story of his father on the killing of his brother, and help in identifying the other wrongdoers, their neighbors? Why did he not participate in the identification at the police line-ups? No explanation was offered by the prosecution.

Antonio, Jr. claims that while his brother was being clubbed and stabbed to death, he was able to run and seek cover while his father was held under the control of the assailants. He also claims that it was from his hiding place that he witnessed the incident. If that were true, then he was in a better position to observe the killing than his father, and, thus, could better shed light on the incident. Yet, inexplicably, nothing was heard from him until after his father had died.

Secondly, his testimony contains inconsistencies. For instance, on cross-examination he declared that the three of them, his father, his brother, and himself, were walking together when they were attacked (t.s.n., April 5, 1982, p. 41). This is quite discordant with his testimony on direct examination that it was while his father and his brother were walking towards his direction that the group assaulted the two.

Nonetheless, if indeed the three of them were walking together when the group attacked, his testimony that a 'sumpak' was poked at his father (presumably so he would not be able to come to the rescue of the victim), whereas nothing was done to him (Antonio, Jr.) as he was able to run and hide, is unsettling. It seems out of the ordinary that the assailants, allegedly eleven of them, all armed, would let Antonio, Jr. loose and not put him under restraint as his father was.

For these reasons, this Court is not prepared to accord Antonio, Jr.'s testimony the same weight the trial court accorded it.

(4) One other circumstance leads this Court to acquit appellant Gallo: the lack of motive on the part of the appellant to commit the acts imputed to him.

It has been held that if there is doubt as to whether the defendant is or is not the person who committed an act, the existence or non-existence of a motive for the doing of the act is a circumstantial evidence leading to the inference that he is or is not the author of the act done. [U.S. v. McMann, 4 Phil. 561 (1905)]

Argales and Soriano, in their confessions, admitted that the reason why they and their group killed the victim was that a member of their gang, the Bahala na Gang, had previously been killed by a member of the Commando Gang. Believing the victim to be member of the latter gang, Argales group killed him to avenge the death of their confederate.

Gallo alleges, and the prosecution does not dispute, that he is not a member of the Bahala na Gang. No reason,

thus exists why Gallo should participate in the killing.

(5) Gallo interposed the defense of alibi. He claims that on that fateful night, he was in their house waiting for vendors of his father to turn in their earnings. He presented as witness Consuelo Soriano who testified that she is an ambulant vendor whose financier is Pablo Gallo, Sr., and that at about 10:00 to 10:30 on October 8, 1979, on her way to the Gallos' residence, there was a commotion along Dagonoy St., Sta. Ana, Manila, so she asked the driver of the taxi she was riding in to speed up. And that upon reaching the Gallos' place, she saw the accused-appellant Pablo Gallo, Jr. to whom she turned over her earnings for the day.

Granting that the defense of alibi was indeed weak, that fact alone does not justify the judgment of conviction. The burden of proof in criminal cases is on the prosecution. [Rule 131, Sec. 2]. Failing in its task to prove the guilt of the accused beyond reasonable doubt, the prosecution cannot rely on the weakness of the defense to secure a conviction. [People v. Ola, L-47147 (July 3, 1987); People v. Formentera, L-30892 (June 29, 1984), 130SCRA 114; People v. Somontao, L-45366- 68 (March 27, 1984), 128 SCRA 415; Duran v. CA, L-39758 (May 7, 1976), 71 SCRA 68]. Considering that the evidence of the prosecution has not proven Gallo's guilt beyond reasonable doubt, the trial court should have acquitted the appellant notwithstanding the weakness of his defense.

WHEREFORE, the decision of the trial court is hereby REVERSED. Pablo Gallo y Catanoy is ACQUITTED of the crime charged.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Crim. Case No. CCC-V1-128 (79) [People v. Cener Argalesy Repalda].

[2] Crim. Cases Nos. CCC-VI-4 (80) [People v. Mario Asuzano v Rosal]. CCC-VI-.127 (80) [People v. Renato Marteja y Torres].

[3] Crim. Cases Nos. CCC-VI-146 (79) [People v. Teofilo Soriano, Jr. y Alcala], CCC-VI-83(80) [People v. June Bermudez y Ouintero]. CCC- VI-8 (81). [People v, Pablo Gallo y Catanoy, CCC-VI-20 (81) [People v Zoilo Villanueva y Morabe].

[4] Borromeo. J.. ponente, concurred in by Gancayco. and Lombos-De la Fuente. JJ.

[5] The counterpart provision in the 1985 Rules on Criminal Procedure provides:

Section 1. Rights of the accused at the trial'. — In all criminal prosecutions, the accused shall be entitled:

* * * * *

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having had the opportunity to cross- examine him.

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