Supreme Court E-Library



EN BANC

[G.R. Nos. L-49385-87. July 2, 1986]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **FELICIANO BANAAN and MARCELINO ABAD,** *defendants-appellants,* **FELICIANO BANAAN,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSEQUENTIAL STATEMENT OF SAID VICTIM.**— The defense discredits ABAD's testimony for being incredible, unnatural and inconsistent. We do not think so. While it may be that nothing in the evidence shows what happened to the father's wrist watch or the P200.00 with which to redeem it, the same is inconsequential as BANAAN is charged with triple Murder and not with Robbery. ABAD's explanation for his presence at the crime scene is plausible. As additional demerits to ABAD's credibility, the defense avers that while he could remember the green color of the father's shirt, he could not recall that of ESMAEL, Tarum, BANAAN nor his own; that neither did he notice the lamp post at the crime scene; and that his statement that he witnessed BANAAN stab Tarum once on the stomach and twice on the chest contradicts BANAAN's confession that he "chopped" Tarum on the throat. ABAD's non-recall of the color of the shirts of the other victims, that of BANAAN, nor his own does not detract from his credibility, the same being inconsequential to prove guilt. The green color of the father's shirt was impressed in his mind because it was found at the crime scene. Besides, the important consideration is that ABAD remembered and recounted other matters more crucial to the solution of the crime.

2. **ID.; ID.;** ***CORPUS DELICTI*****; MAY BE PROVED BY TESTIMONY OF WITNESSES.**— As a further bid for acquittal, the defense underscores that the prosecution failed to present the father's green shirt as an exhibit; that there was no concrete evidence that the bloodstains at the crime scene were human blood; and that no death certificates were presented to prove the deaths of the victims. It is a fact that the green

Supreme Court E-Library



shirt belonging to the father could not be exhibited in Court because it was lost when Lt. Dalupang was transferred to another PC Company. Be that as it may, it has been sufficiently established that the shirt was recovered at the crime scene, that it was extant during the investigation, was admitted by BANAAN himself in his confession, and identified by the wife/mother to the investigators. Besides, even though it could not be submitted, other incriminating evidence, just as vital, were found at the crime scene and were duly presented in evidence. Although there was, in fact, no chemical examination of the bloodstains, taken together with the other circumstances of record, particularly, that they were found on the spots pointed to by ABAD as the places where BANAAN stabbed the victims, point to the logical inference that they were, in fact, human bloodstains. The presentation of death certificates to prove the deaths of the victims is not indispensable. *Corpus delicti* is the fact of the commission of the crime, which may be proved by the testimony of eyewitnesses. ABAD's testimony, coupled with the recovery of the victim's personal belongings at the crime scene has sufficiently proven their death.

## DECISION

**MELENCIO-HERRERA, *J.*:**

Feliciano BANAAN and MARCELINO ABAD were both charged before the then Court of First Instance of Lanao del Norte, Branch IV, in Iligan City, with Murder, in three separate Informations, for the death of three (3) Muslims, a father and his two sons. However, upon motion of Special Counsel Ulysses V. Lagcao before the trial, the lower Court discharged Marcelino ABAD to become a State witness. After joint trial of the three cases, the accused BANAAN was found guilty as follows:

Cr. Cs. 559 - of Homicide, for the death of Ampuan Mariga (the father), with an indeterminate sentence.

Cr. Cs. 560 - of Homicide, for the death of Tarum Mariga (the 13-year-old son), and sentenced to an indeterminate penalty.

Cr. Cs. 561 - of Murder, for the death of ESMAEL Mariga (the 15-year-old son), and sentenced to death.

Supreme Court E-Library



Criminal Case No. 561 is now before us on automatic review because of the capital punishment imposed.

The records disclose that on March 13, 1977, at about 9:00 A.M., Ampuan Mariga (the father) and his two sons, Tarum and ESMAEL left their residence at Tambacan, Iligan City, to go to the Floro Cement Plant at Lugait, Misamis Oriental, from where the father regularly bought empty bags of cement. Before leaving, he asked his wife, Saribo, for P200.00 with which to redeem his wrist watch from BANAAN and ABAD.

In the evening, because of the failure of the trio to return home, the wife notified the police authorities of Iligan City, who immediately dispatched an investigating team. At the cement factory, they were informed that at about 5:30 P.M., the three victims and ABAD had boarded a Ford Fiera jeepney bound for Iligan City.

The following morning, March 14, the investigating team returned to the factory and was informed that BANAAN and ABAD, who were among their factory workers, had failed to report for work and that there had been a misunderstanding between the father on one hand and BANAAN and ABAD on the other because the latter two had taken the father's watch. The police then traced the whereabouts of BANAAN and ABAD, and upon locating them, at Dalipuga, Iligan City, where they resided, invited them for questioning at the Police and later at the PC headquarters.

In the afternoon of the same day. ABAD disclosed to the investigators that BANAAN had killed the three victims. ABAD then accompanied the investigators, who took along a police photographer, to the seashore at Matab-ang, Dalipuga, Iligan City, an uninhabited place, the nearest house being 900 meters away. Thereat, he showed them where and how the killings had taken place. Photographs were taken of scattered spots of massive red stains on the ground, which appeared to be blood (Exhibit "F"). Also found by the investigators in the area were a green polo shirt punctured with holes at the back and three in front, a necklace with a horn, a pair of red slippers, and

Supreme Court E-Library



another pair of black sandals made from rubber tire. The wife/mother later identified the shirt and red slippers as belonging to her husband, and the black slippers and necklace to her son ESMAEL. Pat. Diez, a member of the investigating team, prepared a rough lay-out of the crime scene indicating particularly the locations of the bloodstains and the spots where the personal belongings of the victims were found (Exhibit "B"). Scouring the place further, PC Lt. Dalupang noticed marks on the sandy ground, which seemed to indicate the dragging of an object towards the sea.

Two days after the incident, or on March 15, Lt. Dalupang investigated accused BANAAN at headquarters and informed the latter of ABAD's disclosures. BANAAN admitted his role and agreed to give a statement. Lt. Dalupang testified that before he took that statement, he reminded BANAAN of his rights to counsel and to remain silent despite which BANAAN agreed to give his written statement and signed a written waiver of his rights (Exhibit "C"). BANAAN signed and thumbmarked his Statement (Exhibit "D") on each and every page (Exhibits "D-3"; "D-4"). On March 18, BANAAN swore to his Statement before Fiscal Ulysses V. Lagcao. The latter translated the questions again, the answers given, and after BANAAN swore to the truth of the contents, he signed the same a second time in the presence of the Fiscal (Exhibit "D-5"), after which the latter affixed his signature as subscribing officer.

Lt. Dalupang further explained that the delay in taking BANAAN to the Fiscal was because he, BANAAN himself, and the team of investigators concentrated their efforts on looking for the bodies of the slain victims in the sea where BANAAN showed them he had dumped the bodies; but even with the use of divers, the search proved futile because of the depth of the sea.

As State witness, ABAD declared that he and BANAAN were workers at the Floro Cement Plant; that he was acquainted with the victim-father who regularly gathered damaged bags from the factory; that in the afternoon of March 13, 1977, at about 3:00 P.M., BANAAN approached him to ask whether he

Supreme Court E-Library



knew the victim-father; having replied in the affirmative, BANAAN asked him to tell the father to go to Dalipuga, Iligan City, and to bring with him the money with which to redeem the wrist watch in BANAAN's possession. Seeing the father at the gate of the cement plant after time-off at around 5:00 P.M., ABAD delivered BANAAN's message. As a passenger jeepney happened to pass by at about 6:00 P.M., ABAD, the father and his two sons, boarded it bound for Iligan City as he (ABAD) himself wanted to see a movie. Upon reaching the sitio of Matab-ang, Dalipuga, Iligan City, and seeing BANAAN on the side of the road, ABAD asked the jeepney to stop. ABAD beckoned to BANAAN to join them, but the latter stayed put. The father and his sons alighted as they had forgotten something at the plant and intended to go back. ABAD also disembarked. Thereafter, BANAAN, the father and his two sons walked back towards the direction of the cement plant. The father and his 13-year old son, Tarum, walked ahead while BANAAN and the 15-year old son, ESMAEL followed behind. Meanwhile, ABAD just stood by watching the group walk away, intending to board the next vehicle for Iligan City.

After the group had walked for about ten (10) meters, ABAD saw BANAAN place his left hand on ESMAEL's shoulder. Then, without any warning, BANAAN suddenly stabbed ESMAEL in the stomach with a stainless knife, eight (8) inches long. ESMAEL fell by the roadside. After sensing what had happened, the father and the 13-year old son, Tarum, scampered away. The father ran towards the hillside while Tarum ran towards the seashore. BANAAN chased the latter and overtaking him, he stabbed the latter twice on the chest and once on the stomach. Tarum fell on the ground. BANAAN then went after the father towards the hillside and, catching up with the latter, stabbed him repeatedly at his front and back until the father fell. Shocked, ABAD ran and headed for home where he arrived at about 8:00 P.M.

Continuing, ABAD narrated that at about 9:00 P.M. that same evening, BANAAN's brother went to his house to inform him that BANAAN wanted to talk to him outside. Proceeding to

Supreme Court E-Library



about fifteen (15) meters from the house where BANAAN was waiting, the latter told him "ayos na pare." BANAAN then requested ABAD to help him dispose of the bodies of the three victims, but ABAD refused so BANAAN left.

The following morning, March 14, at about 5:30, ABAD met BANAAN in the street while he (ABAD) was on his way to take a bath. BANAAN approached and told ABAD that he (BANAAN) had dumped the bodies of the three victims into the sea after placing weights on them. BANAAN thereafter left.

About 9:00 o'clock the same morning, since he (ABAD) did not report for work and while still at home, policemen arrived and invited him to go with them. The police also inquired where BANAAN's house was and as they were proceeding there they saw BANAAN walking along the road in the same locality. The latter was also invited by the police to go with the group.

ABAD confirmed that he told the investigators that BANAAN was responsible for the death of the three Muslims, and that he accompanied the police to the crime scene and pointed to the specific spots where BANAAN stabbed the three victims one after the other, stating that they still found the blood spots on the ground where the stabbings took place.

During his testimony, ABAD also drew a sketch of the place where the incident occurred showing the relative positions of the victims and BANAAN as they were walking in the direction of the cement plant, as well as the spot where he was at the time.

Presented in evidence by the prosecution was BANAAN's extrajudicial confession (Exhibit "D") wherein he revealed that he had a misunderstanding with the father who suspected him of stealing his watch in the afternoon of March 11, 1977 and that he killed the victims as an act of revenge because he "was maltreated by the Muslims at Zamboanga City in 1975 in fact there is now a scar in my left arm as a result of that incident." As to what he did with the dead bodies, he disclosed:

Supreme Court E-Library



"Q – What did you do with their dead bodies and the rope you got?

"A – I dragged their dead bodies at the seashore and I used the rope in tying their legs with a stone.

"Q – After dragging their bodies at the seashore and after tying with a stone what did you do next?

"A – I got a banca and pulled them towards the deeper portion of the sea and upon reaching about 250 meters away from the seashore I sank their dead bodies down the sea with a big stone tied at their bodies."[1]

In the same Statement, BANAAN identified the polo shirt and red slippers as belonging to the father, the necklace with a little horn pendant, which was found in his (BANAAN's) possession, and half a slipper made of rubber tire as belonging to ESMAEL, which identifications tallied with those made by the wife/mother during the investigation and in open Court. BANAAN denied, however, that the blood-stained coral stone picked up at the crime scene was used by him to smash the head of the father explaining that the latter hit that stone when he fell down.

Over the opposition of defense counsel, on the ground that the extrajudicial confession was violative of the accused's right to self-incrimination, the lower Court admitted the same in evidence "it having been satisfactorily shown that the accused gave his statement freely and voluntarily and that before he did so, he was informed by the PC investigator of his constitutional rights, such as to remain silent and the right to have counsel. It was also established that the accused subsequently affirmed this statement before Fiscal Ulysses Lagcao of the Office of the City Fiscal of Iligan City before whom he swore to the truth of the contents thereof after the latter translated and explained to him everything contained in the same statement."[2]

---

[1] p. 70, Orig. Record with Exhibits.

[2] Decision, p. 17.

Supreme Court E-Library



When the turn of the defense came to present its testimonial evidence, it did not introduce any but merely offered Exhibit "2", the sketch drawn by ABAD showing the relative positions of the victims, BANAAN, and himself; and Exhibit "3", the signatures of Sgt. Aranas and Sgt. Macas as witnesses to BANAAN's confession "to show that there was some suspicion unfavorable to the accused which leads him to sign the confession."[3] The defense withdrew Exhibit "1", ABAD's Sworn Statement.

After evaluation of the evidence, the lower Court rendered judgment in the three cases as follows:

"WHEREFORE, and in view of all the foregoing, this Court renders judgment in these cases as follows:

1. In Crim. Case No. IV-559, this Court finds the accused Feliciano Banaan guilty beyond reasonable doubt of the crime of Homicide, instead of murder as charged, x x x the accused is hereby sentenced to suffer the indeterminate penalty of imprisonment of ten (10) years and 1 day of *Prision Mayor*, as minimum, to seventeen (17) years, four (4) months and 1 day of *Reclusion Temporal*, as maximum, to indemnify the heirs of Ampuan Mariga, in the amount of P12,000.00 for the death of Ampuan Mariga, and to pay the sum of P20,000.00, likewise, to the heirs of Ampuan Mariga, as moral damages, with costs against the accused.

x x x x x x x x x

2. In Crim. Case No. IV-560, the accused Feliciano Banaan is found guilty beyond reasonable doubt of the crime of Homicide, instead of murder as charged, x x x, the accused is hereby sentenced to suffer the indeterminate penalty of imprisonment of ten (10) years and 1 day of *Prision Mayor*, as minimum, to seventeen (17) years, four (4) months and 1 day of *Reclusion Temporal* as maximum, to indemnify the heirs of Tarum Mariga in the amount of P12,000.00 for the death of Tarum Mariga and to pay the sum of P20,000.00, likewise, to the heirs of Tarum Mariga, as moral damages, with costs against the accused.

x x x x x x x x x

---

[3] T.s.n., November 4, 1977, p. 55 (143).

Supreme Court E-Library



3. In Crim. Case No. IV-561, the accused Feliciano Banaan is found guilty beyond reasonable doubt of the crime of murder x x x the said accused is hereby sentenced to the maximum penalty of Death, to pay the heirs of Esmael Mariga, the sum of P12,000.00 for the death of Esmael Mariga, and the amount of P20,000.00, likewise, to the heirs of Esmael Mariga, as moral damages, and costs.

SO ORDERED."

*De officio* counsel now submits:

I.

"The trial court erred in admitting and in not totally rejecting the void, invalid and inadmissible extrajudicial confession, Exh. D, for being grossly violative of the Constitutional right to counsel of a person under custodial interrogation.

II.

"The trial court erred in giving weight and credence to the utterly incredible, unnatural and directly inconsistent testimony of prosecution witness Marcelino Abad.

III.

"The trial court erred in convicting the accused-appellant guilty beyond reasonable doubt on the basis of the evidence on record and in not acquitting him of all the three charges."

Under the factual and attendant circumstances of this case, we find that BANAAN's waiver of his right to remain silent and to counsel and his extrajudicial confession were a product of his own free will. BANAAN not only signed but also thumbmarked each and every page of his Statement (Exhibits "D-1", "D-2", "D-3", "D-4"). He subsequently affirmed it before Fiscal Lagcao before whom he swore to the truth of its contents after the latter had translated and explained to him the questions propounded and the answers he had given. Thereafter, BANAAN again signed his Statement in the presence of the Fiscal (Exhibit "D-5"). In fact, the Fiscal certified that "I have examined the affidavit of the affiant and that the same was given voluntarily and understood by him."

Lt. Dalupang also testified that during the investigation, BANAAN rode with him and other policemen in a banca to

Supreme Court E-Library



the open sea and guided them to the spot where he had dropped the bodies of the victims, but unfortunately the area was 80 yards deep such that the cadavers could not be recovered even by divers.

Significantly, too, BANAAN's written confession contained admissions as well as a denial. He denied that the coral stone containing blood stains was used by him to smash the head of one of his victims. He explained that the father hit his head on that stone when he fell, which explains the presence of blood.

Topping it all, BANAAN never repudiated his extrajudicial confession, whether prior to or during the trial, when he was already assisted by counsel. The logical explanation is that it was voluntarily made. Its validity and efficacy, therefore, may be sustained.

The defense discredits ABAD's testimony for being incredible, unnatural and inconsistent. We do not think so. While it may be that nothing in the evidence shows what happened to the father's wrist watch or the P200.00 with which to redeem it, the same is inconsequential as BANAAN is charged with triple Murder and not with Robbery. ABAD's explanation for his presence at the crime scene is plausible. He rode with the father and the latter's two sons in the same passenger jeepney at about 6:00 P.M. of March 13, 1977 not to accompany them to BANAAN, since he had already given the latter's message to the father, but in order to see a movie at Iligan City. It just so happened that along the way ABAD saw BANAAN on the road and beckoned him to board the vehicle, but the latter remained on the side of the road. Father and sons disembarked from the vehicle to go back to the factory. Puzzled probably by BANAAN's attitude, ABAD decided to get off, too, knowing that, anyway, he could board another means of transportation to go to Iligan City.[4]

As additional demerits to ABAD's credibility, the defense avers that while he could remember the green color of the father's

---

[4] T.s.n., October 18, 1977, pp. 24-25.

Supreme Court E-Library



shirt, he could not recall that of ESMAEL, Tarum, BANAAN nor his own; that neither did he notice the lamp post at the crime scene; and that his statement that he witnessed BANAAN stab Tarum once on the stomach and twice on the chest contradicts BANAAN's confession that he "chopped" Tarum on the throat.

ABAD's non-recall of the color of the shirts of the other victims, that of BANAAN, nor his own does not detract from his credibility, the same being inconsequential to prove guilt. The green color of the father's shirt was impressed in his mind because it was found at the crime scene. Besides, the important consideration is that ABAD remembered and recounted other matters more crucial to the solution of the crime.

The inaccurate detail regarding Tarum's stabbing is neither damaging to his testimony, the pivotal consideration being that there is no question that Tarum was stabbed and killed by BANAAN.

As a further bid for acquittal, the defense underscores that the prosecution failed to present the father's green shirt as an exhibit; that there was no concrete evidence that the bloodstains at the crime scene were human blood; and that no death certificates were presented to prove the deaths of the victims.

It is a fact that the green shirt belonging to the father could not be exhibited in Court because it was lost when Lt. Dalupang was transferred to another PC Company. Be that as it may, it has been sufficiently established that the shirt was recovered at the crime scene, that it was extant during the investigation, was admitted by BANAAN himself in his confession, and identified by the wife/mother to the investigators. Besides, even though it could not be submitted, other incriminating evidence, just as vital, were found at the crime scene and were duly presented in evidence.

Although there was, in fact, no chemical examination of the bloodstains, taken together with the other circumstances of record, particularly, that they were found on the spots pointed to by ABAD as the places where BANAAN stabbed the victims,

Supreme Court E-Library



point to the logical inference that they were, in fact, human bloodstains.

The presentation of death certificates to prove the deaths of the victims is not indispensable. *Corpus delicti* is the fact of the commission of the crime, which may be proved by the testimony of eyewitnesses. ABAD's testimony, coupled with the recovery of the victim's personal belongings at the crime scene has sufficiently proven their death.

Overall, even disregarding BANAAN's extrajudicial confession, we find that ABAD's declarations as an eyewitness pinpointing the situs of the crime, describing the sequence and manner of stabbing, corroborated as they were during the ocular inspection by the blood stains on the spots where the victims were respectively killed as pointed to by him, the drag marks confirming the manner of disposition of the bodies, and the recovery of personal belongings of the victims at the crime scene, decisively determine beyond reasonable doubt BANAAN's guilt.

The evidence on record sustains the finding of the Trial Court that the crime committed in Criminal Case No. 561 is Murder, qualified by treachery, and attended by the aggravating circumstance of uninhabited place.

**WHEREFORE**, the judgment under review is affirmed with the modification that the death penalty in Criminal Case No. 561 is commuted to *reclusion perpetua* for lack of the necessary votes, and the indemnity to the heirs of Esmael Mariga is increased to P30,000.00. Costs against accused-appellant Feliciano Banaan.

**SO ORDERED.**

*Abad Santos, Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr.,* and *Paras, JJ.*, concur.

*Teehankee, C.J.*, and *Cruz, J.*, in the result.