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EN BANC

[G.R. No. 51256. August 12, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDITO PETENIA y RODA, CARLO CASTAÑEDA y SANTIAGO,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; PRESUMPTION OF VOLUNTARINESS IN EXECUTING THEREOF; NOT OVERCOME IN CASE AT BAR.—** The fundamental rule is that a confession is presumed voluntary until the contrary is proved (*People vs. Dorado*, SCRA 53). The burden is on the defense to prove that a confession was obtained as a result of violence, intimidation, threat or promise of reward or leniency (*People vs. Soligan*, 101 SCRA 264; *People vs. Castañeda*, 93 SCRA 56; *People vs. Caramonte,* 94 SCRA 150; *People vs. Ramos*, 94 SCRA 842). We have scrutinized the records and We have found no evidence whatsoever to justify the claim that the extrajudicial confessions of the accused were extracted by force. There was no attempt to discredit the same during the trial; neither did appellants challenge their admissibility on grounds that they were extracted out of violence, torture or intimidation. Moreover, both appellants affirmed on the witness stand the truth and voluntariness of their confessions.

2. **ID.; ID.; CONSPIRACY; ESTABLISHED BEYOND REASONABLE DOUBT IN CASE AT BAR.—** Contrary to appellants' claim, conspiracy among the appellants in the commission of the crime has been established beyond reasonable doubt. Each of them performed specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose or design. Appellants, together with Lugon, planned the commission of the crime a day or two before its execution. As the evidence has shown, Petenia came from behind the victim and covered her mouth with his hand. As the

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victim struggled to free herself, Luzon struck her with an adobe stone on the head. As she reeled from the blow, Petenia hit her with his fists. While she lay prostate on the ground, Lugon and Petenia took turns in hitting her with adobe stones. Castañeda did his part by entering the victim's bedroom and taking her handbag containing cash, jewelry and other valuables. After killing the victim, Lugon and Petenia carried the victim's body beside the wall and covered it with used bags. As already stated, after killing the victim, the malefactors escaped from the scene of the crime by using the victim's Ford Fiera as their get-away vehicle. They went into hiding and divided among themselves the personal effects of the victim.

3. **CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY; REQUISITES.**— For this exempting circumstance to be invoked successfully, the following requisites must concur: (a) existence of an uncontrollable fear; (b) the fear must be real and imminent; and (c) the fear of an injury is greater than or at least equal to that committed.

4. **ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.**— Petenia categorically testified that Lugon did not have a knife at the time the crime was committed. He declared that he delivered fistic blows on the victim because of his fear that Lugon and Castañeda might hit him with hollow blocks. Likewise, the claim of Castañeda that he cut the telephone connection at the victim's residence and ransacked her bedroom because Lugon and Petenia "poked" a knife at him is incredible. If it was true that he was threatened with a knife, Castañeda could have easily escaped from his companions when he was already at the house of the victim as he was by then no longer within their view. In fact this was the first of a serious of opportunities for him to run away from them and to report the crime to the authorities.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Manuel G. Montecillo and *Gregorio R. Castillo* for defendants-appellants.

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DECISION

PARAS, *J.*:

This is an automatic review of the decision of the then Circuit Criminal Court in Pasig, Rizal, finding Edito Petenia and Carlo Castañeda guilty of the crime of Robbery with Homicide and sentencing both to suffer the penalty of DEATH; to pay jointly and severally the heirs of the deceased, BONIFACIA GUANLAO, in the sum of ₱100,000; to pay ₱12,000 in moral damages, and another ₱12,000 in exemplary damages, and to pay proportional costs.

The Information alleges:

"That on or about the 1st day of May, 1978, in Quezon City, Philippines, the above-named accused, conspiring together, with intent of gain and with violence against person, did, then and there wilfully, unlawfully and feloniously, rob and divest BONIFACIA EUSTAQUIO GUANLAO, of her cash and valuable amounting to ₱75,000.00. Philippine Currency, and that by reason or on the occasion of the said Robbery said accused with intent to kill and without any justifiable cause, conspiring together, did then and there, wilfully, unlawfully and feloniously, attack, assault and employ personal violence upon the person of Bonifacia Eustaquio Guanlao, by then and there hitting her with an adobe stone on her head, thereby inflicting upon said Bonifacia Eustaquio Guanlao serious and mortal injuries which were the direct and immediate cause of her death, to the damage and prejudice of the heirs of the victim in such amount as maybe awarded under the provision of existing laws."

After pleas of not guilty by the accused, trial ensued. After trial, the lower court rendered its decision, finding the following facts to have been proven from the evidence of record:

"Edito Petenia, Carlo Castañeda and Romeo Lugon were employees of the victim, Bonifacia Eustaquio Guanlao, in her factory located at No. 52, 12th Avenue, Cubao, Quezon City. Petenia and Lugon were factory helpers while Castañeda was the family driver (Exh. "I-1", pp. 44-45, Rec.; pp. 14-15, tsn, June 15, 1978; p. 6, tsn, June 22, 1978).

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"A day or two prior to the incident in question, particularly on April 30, 1978, Petenia, Castañeda and Lugon planned among themselves to kill Mrs. Guanlao and rob her of valuables (Exh "I-1", *Ibid.*; pp. 60, 65-66, tsn., June 22, 1978; pp. 56-58, tsn., June 13, 1978).

"At about 9:00 o'clock in the morning of May 1, 1978, while Mrs. Guanlao was inside her bag factory, Petenia approached the victim and covered the victim's mouth with his hand.' As she struggled, she was hit with an adobe stone from behind by Lugon (Exh. "A" to "A-3"). As the victim staggered from the blow, Petenia delivered fistic blows on her. While the victim was lying mortally wounded on the ground, Lugon hit her again on the head with the same adobe stone while Petenia got another adobe stone and also hit the victim's head which caused her instantaneous death (Exhs. "E" & "H", pp. 33-42, Rec.; pp. 71-72, tsn., June 22, 1978). Simultaneously, Castañeda entered the victim's house and cut the telephone wire. Thereafter, he entered the victim's bedroom and took her handbag (Exh "F-2") containing cash, jewelry and other valuables (Exh. "E-1", *Ibid*; Exh. "H-1", p. 41, Rec. p. 27, tsn., June 22, 1978). After killing the victim, Lugon and Petenia carried the corpse to a corner of the factory and covered it with used bags to prevent detection (p. 72, tsn., June 22, 1978; Exh "H-1", *Ibid*). They then drove the Ford Fiera of the victim as their get-away vehicle with Castañeda on the wheels, abandoning it later at Tejeron Street, Makati, Metro Manila (p. 13-15, 72-73, tsn., *Ibid*). From there, the three proceeded to Pasay City where they boarded a JB Bus bound for Sorsogon. They went later to Samar, from there to Tacloban, Leyte and then to Barrio Tawagan, Oras, Eastern Samar where they divided the loot (pp. 73-74 tsn., June 22, 1978). Later Petenia went to hide in Barrio Villa Alvarez, Balud, Masbate, while Castañeda went to Barrio Buenavista, Bacon, Sorsogon (pp. 18-19, 74, tsn, *Ibid*).

"The body of the deceased was discovered at about 2:00 o'clock in the afternoon of the same day the crime was committed underneath the pile of bags in the warehouse of said bag factory. Detectives led by P/Lt. Cesar Dalanon arrived at the scene and took pictures of the victim as well as the surrounding areas (Exhs. "D" to "D-19"). Police investigation and medico-legal reports revealed that the victim was hit a number of times on the head with two (2) adobe stones (Exh. "A" to "A-2") which were found at the scene of the crime and smeared with the victim's blood (pp. 49-67, tsn., June 13, 1978; pp. 3-5, June 9, 1978)."

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"On May 18, 1978, team of detectives led by P/Lt. Cesar Dalanon arrested Petenia at Barrio Villa Alvarez, Balud, Masbate. Upon his arrest, Petenia admitted to Lt. Dalanon his participation in the commission of the crime on May 1, 1978. He told Lt. Dalanon that two days before the commission of the crime, the three accused agreed to kill the victim and take her valuables (pp. 56-67, tsn., June 13, 1978). Petenia said, that after Lugon struck the victim on the head with an adobe stone, he (Petenia) delivered fistic blows on her. He volunteered to guide the police team to Oras, Eastern Samar for the apprehension of Lugon. However, the group failed to locate Romeo Lugon in said place (pp. 51-58, 59, tsn., June 13, 1978; p. 74 tsn., June 22, 1978).

"It was on May 31, 1978, when a team of policemen led again by Lt. Dalanon, with Petenia as guide, arrested Castañeda at Barrio Buenavista, Bacon, Sorsogon. Recovered from his possession at the time of arrest were personal belongings of the victim consisting of a Seiko wrist watch (Exh. "F"), a bunch of keys (Exh. "F-1"), a travelling bag ("F-2"), an abaca bag (Exh. "F-3"), a brown folder with business entries (Exh. "F-4") and assorted personal belongings, papers, pictures, letters, diary, etc. (Exh. "F-5" to "F-9"; pp. 11-13, tsn., June 13, 1979). Castañeda admitted to Lt. Dalanon having participated in the killing of the victim and having taken articles from the victim's house (p. 75, tsn., June 22, 1978; pp. 56-61, 69-70, tsn., June 13, 1978).

"Thereafter, appellants were brought back to Manila. When investigated by Detective Prudente Kaabay of Quezon City Police, Petenia and Castañeda voluntarily gave written statements admitting their participation in the commission of the crime."

Both Edito Petenia and Carlo Castañeda assail the decision against them and submit that the lower court erred (1) in not rejecting their extrajudicial confessions (Exhs. "E", "G", "G-1", "H"); (2) in finding that the crime was committed in conspiracy; and (3) in not acquitting them of the crime charged despite the presence of the exempting circumstance of uncontrollable fear.

We find no reason to disturb the finding of conviction.

Setting aside for the moment the constitutional requisites for the validity and admissibility of extra-judicial confessions,

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the fundamental rule is that a confession is presumed voluntary until the contrary is proved (*People vs. Dorado*, 30 SCRA 53). The burden is on the defense to prove that a confession was obtained as a result of violence, intimidation, threat or promise of reward or leniency (*People vs. Soligan,* 101 SCRA 264; *People vs. Castañeda*, 93 SCRA 56; *People vs. Caramonte*, 94 SCRA 150; *People vs. Ramos*, 94 SCRA 842). We have scrutinized the records and We have found no evidence whatsoever to justify the claim that the extrajudicial confessions of the accused were extracted by force. There was no attempt to discredit the same during the trial; neither did appellants challenge their admissibility on grounds that they were extracted out of violence, torture or intimidation. Moreover, both appellants affirmed on the witness stand the truth and voluntariness of their confessions.

Carlo Castañeda testified in part as follows:

"COURT: So it is true that what you have stated now is in accordance with that statement marked as Exhibit "H"?

A. Yes, Your Honor.

Q. There is question here. 'Sino ang pumatay kay Mrs. Bonifacia Guanlao? Si Edito Petenia na isang kasamahan namin.' Right?

A. Yes, Your Honor.

Q. Everything here you affirmed, everything you stated here?

A. Yes, Your Honor."

(p. 13, tsn., June 22, 1978).

Similarly, appellant Edito Petenia also confirmed this point when he testified as follows:

"COURT: Do you affirm and confirm his statement of yours marked as Exhibit "E"?

A. Yes. Your Honor.

Q. You were asked question and the answers appearing in Exhibit "E" are all true and correct?

A. Yes, Your Honor.

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Q. As a matter of fact you are not intimidated, coerced, or promised any leniency by the investigating officer, Det. Kaabay?

A. No, Your Honor.

Q. You were treated nicely by Det. Kaabay?

A. Yes, Your Honor." (p. 63, tsn., June 22, 1978)

With respect to the claim that the lower court erred in finding that the crime was committed in conspiracy, suffice it to say that the circumstances under which the crime was committed show a single purpose and in unison with each act of the accused to the attainment of said purpose, clearly showing a concerted intention to achieve a common goal. Edito Petenia in both his extrajudicial confession (Exhibit "E") and testimony in court admitted his presence in the planning to kill the victim. He also admitted that he delivered fistic blows on her while Romeo Lugon hit her with an adobe stone. Also in his confession, Petenia declared that Castañeda participated in the planning of the crime, the truth of which he subsequently affirmed on the witness stand.

Thus:

"ATTY. AGOOT:

You said that this Carlo and Romy were the two persons responsible for the death of Mrs. Guanlao, why did you say that.

A. Because they planned it that night.

Q. Who planned the killing of Mrs. Guanlao?

A. Carlo and Romy, Sir.

x x x x x x x x x

ATTY. HILL:

x x x x x x x x x

In other words, you will also to understand that the plan was already made by Romy and Carlo Castañeda to kill Mrs. Guanlao?

A. Yes, sir.

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Q. And you said they plan in the evening, how long before May 1, 1978?

A. That evening, sir.

Q. Could it be April 30, 1978?

A. Yes, sir.

Q. How about you, what was your participation in this plan to kill Mrs. Guanlao and rob her?

A. What I did is to help in giving fist blows.

ATTY. HILL:

Now, how did you come to know the place of the killing and robbery before May 1? Were you present during the planning?

A. Yes, sir

x x x x x x x x x

COURT:

But you heard them plan clearly?

A. Yes, Your Honor.

Q. The full detail, accurate planning of Romy and Carlo Castañeda?

A. Yes, Your Honor." (pp. 60, 65-66, tsn, June 22, 1978).

The existence of the conspiracy to kill and rob Mrs. Guanlao is substantially corroborated by Castañeda in his testimony.

ATTY. GALVAN:

You often see this Romy in the house of Mrs. Guanlao, will you please inform the Court if you have talked to him?

A. Yes, sir.

Q. What was the subject matter of your conversation?

A. They said that they kill Mrs. Guanlao." (p. 11, tsn., June 22, 1978)

Appellants' extrajudicial confessions and testimonies categorically pointing to each other's actual participation in the conspiracy and in the execution of the crime are admissible in evidence and worthy of full credit.

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Contrary to appellants' claim (pp. 10-15, Petenia's Brief; pp. 19-21, Castañeda's Brief), conspiracy among them in the commission of the crime has been established beyond reasonable doubt. Each of them performed specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose or design. Appellants, together with Lugon, planned the commission of the crime a day or two before its execution. As the evidence has shown, Petenia came from behind the victim and covered her mouth with his hand. As the victim struggled to free herself, Lugon struck her with an adobe stone on the head. As she reeled from the blow, Petenia hit her with his fists. While she lay prostrate on the ground, Lugon and Petenia took turns in hitting her with adobe stones. Castañeda did his part by entering the victim's bedroom and taking her handbag containing cash, jewelry and other valuables. After killing the victim, Lugon and Petenia carried the victim's body beside the wall and covered it with used bags. As already stated, after killing the victim, the malefactors escaped from the scene of the crime by using the victim's Ford Fiera as their get-away vehicle. They went into hiding and divided among themselves the personal effects of the victim.

In *People vs. Dalusag*, 133 SCRA 15, We made this pronouncement:

> "There is conspiracy where several accused by their acts aimed at the same object, one performing one part and another performing another part so as to complete it with a view to the attainment of the same object, and their acts, though apparently independent are in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments."

We come now to the last error imputed to the trial court, namely, that the appellants committed the crime "under the impulse of an uncontrollable fear of an equal or greater injury," This defense does not deserve serious consideration. For this exempting circumstance to be invoked successfully, the following requisites must concur: (a) existence of an uncontrollable fear; (b) the fear must be real and imminent; and (c) the fear of an injury is greater than or at least equal to that committed.

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Petenia categorically testified that Lugon did not have a knife at the time the crime was committed. He declared that he delivered fistic blows on the victim because of his fear that Lugon and Castañeda might hit him with hollow blocks. This is his testimony:

"COURT:

As a matter of fact it was Carlo Castañeda who testified who pointed to you a sharp pointed instrument that is why you did not participate in bumping the head of the victim?

A. It is not true that there is a knife, your Honor.

Q. How was you threatened by Carlo Castañeda?

A. Tinakot po nila ako at baka bagsakan ng hollow blocks, your Honor.

x x x x x x x x x

COURT:

It is not true that Carlo Castañeda was being threatened by a knife or sharp pointed instrument by Romy?

A. No, your Honor.

Q. As a matter of fact, they are very close friends with each other after this incident?

A. Yes, Your Honor." (pp. 6-61, tsn., June 22, 1978)

Likewise, the claim of Castañeda that he cut the telephone connection at the victim's residence and ransacked her bedroom because Lugon and Petenia "poked" a knife at him is incredible. If it was true that he was threatened with a knife, Castañeda could have easily escaped from his companions when he was already at the house of the victim as he was by then no longer within their view. In fact this was the first of a series of opportunities for him to run away from them and to report the crime to the authorities.

The decision of the court *a quo* is in accord with the law and facts of the case. Independently of the extrajudicial confessions involved (with their constitutional infirmities) it

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is clear from the admissions in open court, from the circumstances leading to the arrest of the accused, and the discovery of part of the loot (including valuables) in their possession, that the guilt of the accused has been proved beyond reasonable doubt. Accordingly, the appropriate penalty is death but in view of the lack of necessary votes to impose it, We are constrained to impose the penalty of *reclusion perpetua.*

WHEREFORE, the judgment of the trial court is modified by the imposition of the penalty of *reclusion perpetua* in lieu of death but AFFIRMED in all other respects.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and *Cruz, JJ.*, concur.

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[G.R. No. 63070. August 12, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GIL JUMADIAO, VIRGILIO CORILLO alias VIRGILIO AGUILLON alias BEBOT SPUTNIK AND JOHN "Doe" (ROMEO CINCO),** *accused,* **GIL JUMADIAO & ROMEO CINCO,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INSIGNIFICANT DISCREPANCY IN TESTIMONY, INDICATIVE OF CREDIBILITY.— Appellants' reading of the recorded testimony is wrong. Gatela never said that it was only one photograph, but several or a "bunch of pictures" that was exhibited to him, and it was from