

EN BANC

[G.R. No. 147201, January 15, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN SAYABOC Y SEGUBA, PATRICIO ESCORPISO Y VALDEZ, MARLON BUENVIAJE Y PINEDA, AND MIGUEL BUENVIAJE Y FLORES, APPELLANTS.

DECISION

DAVIDE JR., CJ.:

Before us is the decision of 9 November 2000 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27, in Criminal Case No. 2912 finding appellant Benjamin Sayaboc guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of death; and (2) finding appellant Marlon Buenviaje guilty as principal and appellants Miguel Buenviaje and Patricio Escorpiso guilty as accomplices in the crime of homicide.

On 17 April 1995, an information was filed charging Benjamin Sayaboc, Patricio Escorpiso, Marlon Buenviaje, and Miguel Buenviaje with murder, the accusatory portion of which reads as follows:

That on or about December 2, 1994, in the Municipality of Solano, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, and who were then armed with a firearm, did then and there willfully, unlawfully and feloniously with evident premeditation, by means of treachery and with intent to kill, attack, assault and use personal violence upon the person of Joseph Galam y Antonio, by then and there suddenly firing at the said Joseph Galam y Antonio who has not given any provocation, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death thereafter, to the damage and prejudice of his heirs.^[1]

At their arraignment, appellants Benjamin Sayaboc, Patricio Escorpiso, and Miguel Buenviaje pleaded not guilty to the charge of murder. Marlon Buenviaje, who was arrested only on 10 July 1997, also pleaded not guilty upon his arraignment.

The evidence for the prosecution discloses as follows:

At about 9:00 a.m. of 13 August 1994, while prosecution witness Abel Ramos was at a vulcanizing shop in *Barangay* Quezon, Solano, Nueva Vizcaya, he heard one Tessie Pawid screaming from across the road: "Enough, enough, enough!" In front of her were Marlon Buenviaje and Joseph Galam, who were engaged in a fisticuff. By the time Pawid was able to subdue the two men by standing between them and embracing Galam, Buenviaje's face was already bloodied and Galam's shirt collar torn. As Buenviaje was leaving, he turned to face Galam and, with his right index

finger making a slicing motion across his throat, shouted: "*Putang-ina mo Joseph, may araw ka rin, papatayin kita.*" Galam retorted, "*Gago, traydor, gold digger, halika.*" Buenviaje did not respond anymore and left on a tricycle.^[2]

More than three months thereafter, or on 2 December 1994, Galam was shot to death at the Rooftop Disco and Lodging House (Rooftop, for short) owned by him, which was located at *Barangay Quezon, Solano, Nueva Vizcaya*.

According to a waitress of the Rooftop Diana Grace Sanchez Jaramillo, earlier or at 3:00 p.m. of that fateful day, a man whom she later identified as Benjamin Sayaboc rang the doorbell of the Rooftop and asked whether a woman wearing a green t-shirt had checked in. She answered in the negative. As she was about to leave, Sayaboc asked another question, "What time does your *bosing* arrive?" She replied that she did not know. She then went to the second floor of the establishment.^[3]

Tessie Pilar, the caretaker of the lodging house, narrated that between 5:30 and 5:45 p.m. Sayaboc, who was still seated in the swing beside the information counter with his hands tucked in the pocket of his jacket, ordered a bottle of beer. She then went up to the kitchen, but was delayed in delivering the beer because she gave some instructions to the dishwasher. When she gave the beer to Benjamin, the latter was angry and asked why it took her so long to bring the beer. Thereafter, she went upstairs and chatted with Jaramillo and some other waitresses. Then the vehicle of Joseph Galam arrived.^[4]

Shortly thereafter, they heard four gunbursts emanating from the ground floor of the building. When Jaramillo looked down, she saw Sayaboc shooting Galam, causing the latter to fall to the ground face up, with blood spurting out of his chest. Sayaboc forthwith ran out and disappeared into the darkness.^[5]

Meanwhile, at about 5:30 p.m. of that fateful day, as Joselito Parungao, Chief *Barangay Tanod* of *Barangay Quezon, Solano, Nueva Vizcaya*, was on his way to the Kowloon Restaurant located along the national road, he saw Marlon Buenviaje with his father Miguel Buenviaje and Patricio Escorpiso. The three were aboard a tricycle parked in a vacant lot between the Rooftop and Diego Theater. The younger Buenviaje was on the driver's seat, while the older Buenviaje and Escorpiso were inside the sidecar. Parungao ordered pancit *bihon*. While he was waiting outside of the restaurant, he noticed that the tricycle was still parked in the vacant lot, and the three occupants thereof were talking with each other. After getting his order and while he was getting out of the restaurant, Parungao heard four gunshots coming from behind the Rooftop building. He thereafter saw a person, whom he later came to know as Benjamin Sayaboc, walking briskly toward the tricycle and then rode behind Marlon Buenviaje. Afterwards, the tricycle sped off towards the center of the town.^[6]

The employees of the Rooftop lost no time in bringing Galam to a hospital, where he was declared dead on arrival.^[7] Dr. Antonio R. Labasan, who conducted an autopsy on his cadaver, found four gunshot wounds and opined that the first two of which were inflicted from behind and the last two were frontal.^[8]

That evening, SPO4 Roberto Cagungao, Chief Investigator of the Solano Police

Station, assigned some investigators to go to the scene of the crime to gather evidence. At about 10:00 to 11:00 p.m., he and Lt. Alejandro Parungao brought Pilar and Jaramillo to the Philippine National Police (PNP) Crime Laboratory in Camp Crame, Quezon City. Pilar and Jaramillo were interviewed by the cartographic artist, who thereafter drew a cartographic sketch showing the face of the assailant.^[9]

On 8 March 1995, Pilar and Jaramillo identified Benjamin Sayaboc at the PNP Provincial Headquarters in Bayombong as the gunman who shot Joseph Galam to death.^[10]

On the afternoon of that day, SPO4 Cagungao was called to the Provincial Command Headquarters in Bayombong, Nueva Vizcaya, to take the statement of Sayaboc. When he arrived at the headquarters he saw Sayaboc being interviewed by reporters inside the investigation room. He then brought Sayaboc to the inner part of the room. Before taking the statement of Sayaboc, he advised the latter of his constitutional rights. Then Sayaboc told him that he wanted to have a counsel of his own choice. But since Sayaboc could not name one, Cagungao asked the police officers to get a lawyer. Half an hour later, the police officers brought Atty. Rodolfo Cornejo of the PAO, who then conferred with Sayaboc for a while. After Cagungao heard Sayaboc say, "okay," he continued the investigation, during which Atty. Cornejo remained silent the entire time. However, Cagungao would stop questioning Sayaboc whenever Atty. Cornejo would leave to go to the comfort room.

^[11] That night Sayaboc executed an extrajudicial confession^[12] in Ilocano dialect. He therein confessed to killing Joseph Galam at the behest of Marlon Buenviaje for the sum of P100,000. He likewise implicated Miguel Buenviaje and Patricio Escorpiso. The confession was also signed by Atty. Cornejo and attested to by one Fiscal Melvin Tiongson.

At the hearing on 22 June 1999, after the prosecution rested its case, 1counsel for accused Mike Buenviaje, Marlon Buenviaje and Patricio Escorpiso manifested that he be given fifteen days to file a motion for leave to admit demurrer to the evidence.

^[13] The trial court acceded. But instead of filing such motion first, he filed a Demurrer to Evidence on 12 July 1999.^[14] The motion for leave to file the pleading was filed the next day only.^[15]

The trial court denied the demurrer to evidence in an order^[16] issued on 16 August 1999. Further, it ruled that because of they did not seek nor were granted express leave of court prior to their filing of the demurrer to evidence, the Buenviajes and Escorpiso were deemed to have submitted their case for judgment in accordance with Section 15, Rule 119 of the Rules of Court. Thus, only Sayaboc was allowed to proceed with the presentation of his defense.

Sayaboc denied having committed the crime and proffered the defense of alibi. He also flatly denied having met Atty. Cornejo or having been informed of his rights. He testified to having been beaten by six or seven police officers in the investigating room, who then coerced him to confess to having killed Galam.^[17] Apart from his testimony, he submitted a handwritten statement dated 20 March 1995^[18] and an affidavit dated 10 April 1995^[19] to support his claim of police brutality and retraction of his confession.

In its decision dated 9 November 2000,^[20] the trial court found Benjamin Sayaboc guilty of the crime of murder, with treachery as the qualifying circumstance and craft and price or reward as aggravating circumstances. It then sentenced him to the maximum penalty of death. As for Marlon Buenviaje, Miguel Buenviaje, and Patricio Escorpiso, the court held that the treachery employed by Sayaboc could not be taken against them and, therefore, declared them guilty of the crime of homicide only, with the first as principal and the two others as accomplices. Each was sentenced to suffer an indeterminate penalty and to pay solidarily with Sayaboc the amounts of P115,000 as actual damages; P25,000 as moral damages; and the costs of the suit in favor of the heirs of Joseph Galam.

From this decision, the appellants raise the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT SAYABOC GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER AND SENTENCING HIM TO DEATH.

II

ASSUMING ARGUENDO THAT ACCUSED SAYABOC IS GUILTY, HE IS GUILTY ONLY OF THE CRIME OF HOMICIDE.

III

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE EXTRAJUDICIAL CONFESSION OF ACCUSED SAYABOC WHEN IT WAS TAKEN WITHOUT THE ASSISTANCE OF A COMPETENT AND INDEPENDENT COUNSEL NOR BY AN EFFECTIVE AND VIGILANT COUNSEL.

IV

THE TRIAL COURT ERRED IN FINDING FATHER AND SON BUENVIAJE AND ACCUSED ESCORPISO LIKEWISE GUILTY WHEN IT DENIED THEM THEIR CONSTITUTIONAL RIGHT TO BE HEARD BY THEMSELVES AND COUNSEL AFTER THEY FILED THEIR DEMURRER TO EVIDENCE ALLEGEDLY WITHOUT FIRST SEEKING EXPRESS LEAVE OF COURT.

In the first and second assigned errors, the appellants contend that the crime committed by Sayaboc was homicide only, there being no proof of treachery because the two eyewitnesses did not see the commencement of the shooting. Besides, treachery, as well as evident premeditation, was not specifically designated as a qualifying circumstance in the information. Neither can the aggravating circumstances of craft and price or reward be appreciated because they were not alleged in the information, albeit proved during trial. Sections 8 and 9 of Rule 110 of the 2000 Rules of Criminal Procedure, which require aggravating and qualifying circumstances to be alleged in the information, are beneficial to the accused and should, therefore, be applied retroactively.

As to the third assigned error, the appellants argue that the extrajudicial confession of Sayaboc may not be admitted in evidence against him because Atty. Cornejo, the

PAO lawyer who was his counsel during the custodial investigation, was not a competent, independent, vigilant, and effective counsel. He was ineffective because he remained silent during the entire proceedings. He was not independent, as he was formerly a judge in the National Police Commission, which was holding court inside the PNP Command of Bayombong, Nueva Vizcaya.

Finally, appellants Marlon Buenviaje, Miguel Buenviaje, and Patricio Escorpiso claim that they were denied due process because they were not able to present evidence in their defense. They ask this Court to relax the rule of criminal procedure in favor of enforcing their constitutional right to be heard by themselves and counsel.

On the other hand, the Office of the Solicitor General (OSG) maintains that Sayaboc's extrajudicial confession that he shot the victim in the back is adequate proof of treachery. Invoking *People v. Aquino*,^[21] the OSG contends that for treachery to be considered as a qualifying circumstance, it needs only to be specifically alleged in the information and does not have to be preceded by the words *qualifying* or *qualified by*. As to the proven circumstances of craft and price or reward, the same cannot be appreciated because they were not specifically alleged in the information, as required by the 2000 Rules of Criminal Procedure, which are applicable to actions that are pending and undetermined at the time of their passage.

The OSG further asserts that Sayaboc's extrajudicial confession is admissible in evidence against him, since it was made after he was informed of, and accorded, his constitutional rights, particularly the right to an independent counsel of his own choice. No evidence was adduced during the trial to substantiate the claim that Atty. Cornejo used to be connected with the NAPOLCOM. Moreover, this claim was made for the first time in this appeal, and was based merely on an information furnished by defense counsel Atty. Virgil Castro (now deceased) to Sayaboc's counsel in this appeal, which makes the said information hearsay twice removed.

As to the fourth assigned error, the OSG counters that no exceptional circumstance exists in this case that may warrant the relaxation of the rule that the denial of a unilateral demurrer to evidence carries with it a waiver of the accused's right to present evidence.

Beginning with the admissibility of Sayaboc's extrajudicial confession, we hold that such cannot be used in evidence in this case.

Section 12 of Article III of the 1987 Constitution provides:

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

...

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.