472 Phil. 749

SECOND DIVISION

[G.R. No. 138335, May 20, 2004]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. OSCAR ALCANZADO, APPELLANT.

AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision[1] dated April 5, 1999 issued by the Regional Trial Court (Branch 66) of Makati City (RTC for brevity) in Criminal Case No. 98-1634, the dispositive portion of which reads:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused OSCAR ALCANZADO y ORQUEZA GUILTY beyond reasonable doubt of MURDER, with the qualifying circumstance of treachery, and the Court hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the unidentified victim the sum of P50,000.00 as moral damages.
>
> SO ORDERED.
>
> Makati City, Metro Manila, April 5, 1999.[2]

However, a careful examination of the records reveals that the assailed decision will have to be set aside and the records remanded back to the RTC for reception of evidence for the defense.

Appellant pleaded not guilty during his arraignment on July 30, 1998. Trial on the merits ensued. The prosecution rested its case on October 13, 1998.[3] Upon motion of appellant, the RTC issued an Order dated November 10, 1998 allowing appellant to file a demurrer to evidence.[4] On November 19, 1998, appellant filed his Demurrer to Evidence[5] which was opposed by the prosecution.[6] On April 22, 1999, the RTC promulgated herein assailed decision convicting appellant.[7]

The RTC committed a very serious error in promulgating a decision after denying the demurrer to evidence filed by appellant upon prior leave of court, without first giving appellant the opportunity to present his evidence.

Section 15, Rule 119 of the Rules of Court provides:

> SEC. 15. *Demurrer to evidence.* – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

> If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused filed such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Contrary to the RTC's assertion in its decision that the demurrer to evidence was denied,[8] the records of the case do not reveal that there was any prior order denying appellant's demurrer to evidence before the rendition of the assailed judgment. Evidently, the trial court violated the aforequoted provisions of Section 15, Rule 119. Appellant had filed a motion for leave to file a demurrer to evidence which was granted by the RTC and therefore upon denial of his demurrer, if indeed it was denied, the trial court should have given appellant the opportunity to present his evidence. Equally astonishing is the fact that appellant's counsel did not raise said irregularity as an issue in the RTC or in this Court. In effect, appellant has not been accorded due process.

Due to the procedural unfairness and complete miscarriage of justice in the handling of the proceedings in the RTC,[9] a remand of the case for reception of defense evidence is warranted. The constitutional right of the accused to be heard on his defense has been violated.[10]

So that appellant may be spared from further delay, the Court deems it necessary to treat the herein assailed judgment as a mere resolution denying the demurrer to evidence and ascertain whether the RTC has committed grave abuse of discretion in not granting the same.

The RTC made the following findings of fact and law, viz:

> In brief, the evidence for the prosecution show that on the early morning of June 17, 1998, the Barangay Tanods of Bel-Air, while on duty, which is adjacent to TGIF American Bar, heard two (2) shots; when they investigated they found a dead body of the victim with two (2) gunshot wounds inside the storeroom of TGIF being guarded by the accused. The accused, who was the security guard of the TGIF, surrendered his service firearm (Exhibit "D") to policeman Bagon which was found to have spent two (2) spent shells. The ballistic report states that the two (2) spent shells were fired from the gun surrendered by the accused to policeman Bagon.
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> The accused opted to file demurrer to evidence which was denied by the Court, instead of testifying and could have explained what really happened and why he surrendered his service firearm.
>
> The Court finds the presence of a qualifying circumstance of treachery, when the accused fired at the victim one on his shoulder and another at his head in close range (TSN dated October 13, 1998, p. 36).[11]

There was no eye-witness to the shooting incident. The RTC relied principally on the admission of appellant to the police officer that he shot the unknown victim when he surrendered his service firearm.

In his demurrer to evidence, appellant pointed out the following:

I. There is no evidence that the firearm marked and offered as Exhibit D belonged or was assigned to the accused.

II. There is no evidence that the accused had recently fired a gun in the early morning of June 17, 1998.

III. There is no evidence that the firearm marked and offered as Exhibit D was the same firearm that killed the unknown victim in this case.

IV. There is reasonable doubt that the body examined by the medico-legal witness was the same body recovered from the scene of the killing.

V. The extrajudicial admission made by the accused to the police officer and his alleged voluntary surrender of the .38 caliber revolver cannot be admitted in evidence against the accused for having been obtained in violation of his constitutional rights.

VI. Without any admission on the part of the accused or an unbroken chain of incriminating circumstances, the accused is entitled to acquittal since the prosecution failed to prove his culpability for the death of the unknown victim here beyond a reasonable doubt.[12]

Considering that the first four items as above enumerated involve questions of fact, the Court will not pre-empt the RTC in rendering its findings of fact after it shall have received the defense evidence as well as rebuttal and sur-rebuttal evidence, if parties find it necessary.

However, the Court is constrained to resolve the question arising from the fifth and sixth claims of appellant, which is: Whether or not the admission made by appellant to the police officer is admissible in evidence. It is the only link that would positively connect appellant to the shooting of the victim, for the service gun may belong to him and it may have been used in the shooting of the victim, but the missing link is the ascertainment of whether he was the one who shot the victim. Without the testimony of the police officer that appellant had verbally acknowledged to him having shot the victim, the herein-before quoted circumstantial evidence enumerated by the RTC do not support the conviction of appellant beyond reasonable doubt.

Section 12 (1) and (3), Article III of the 1987 Constitution provides:

> Section 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. The rights cannot be waived except in writing and in the presence of counsel.
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> . . .

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

The rights of the accused as provided therein may be invoked only when a person is under "custodial investigation" or is "in custody investigation"[13] which has "been defined as the *"questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" [People vs. Caguioa, G.R. No. L-38975, January 17, 1980, 95 SCRA 2, 9 citing Miranda v. Arizona, 384 U.S. 436]*.[14]

SPO1 Rolando Bagon, the police officer of Precinct 9, Makati City, who responded to the report of the shooting incident, testified as follows:

Q: What time did you arrive there at TGI Friday's Restaurant?
A: When we arrived there it was at around 5:15 to 6:00.

Q: A.M.?
A: June 17, Sir.

Q: When you arrived there, what did you do, Mr. Witness?
A: The barangay tanod present at that time pointed to us and turned over to us the alleged suspect who is the security guard of the said establishment then we went to the security guard and he voluntarily surrendered himself to us, together with the firearm, a .38 caliber.

Q: What did he tell you when he surrendered and gave to you his .38 caliber Mr. Witness?

. . .

WITNESS:
A: That he allegedly hold (sic) a robber inside "while stealing" according to him a cash register of the bar and some assorted goods.

COURT:
Q: Who told you that?

WITNESS:
A : The security guard, the alleged suspect Sir.

FISCAL FLORES:
Q: What else did he tell you?
A: Nothing Sir, he fired his gun at the victim.

. . .

FISCAL FLORES:
Q: After the said accused surrendered himself and his firearm, what else did you do at the said bar?
A: Sir, we invited him to our precinct to shed light or to answer what he committed.[15] (Emphasis supplied).