

## SECOND DIVISION

[ G.R. No. 129211, October 02, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WILFREDO RODRIGUEZ Y CULO AND LARRY ARTELLERO Y RICO,  
[1] ACCUSED,**

**LARRY ARTELLERO Y RICO, ACCUSED-APPELLANT.**

### DECISION

#### **QUISUMBING, J.:**

On appeal is the decision dated November 13, 1995 of the Regional Trial Court of Manila, Branch 29,<sup>[2]</sup> in Criminal Case No. 91-99526, convicting appellant and his co-accused of the crime of murder, sentencing them to suffer the penalty of *reclusion perpetua*, ordering them to pay the heirs of the victim P50,000.00 as indemnity, and to pay the costs.

Appellant Larry Artellero was employed as a cement mixer and helper of co-accused Wilfredo Rodriguez, a mason in the construction of the upper floors of the Far East Bank and Trust Company, Blumentritt Branch, Sta. Cruz, Manila. Both were charged with the crime of robbery with homicide for the killing of the bank security guard, Ramon Matias y Ibay. The trial court found both guilty of murder. Both appealed. However, Rodriguez withdrew his appeal for financial reasons. Although only Artellero is the appellant now, in view of the circumstances obtaining in this case, we are compelled to review Rodriguez's conviction as well.

The facts of the case are as follows:

On October 11, 1991, early in the morning, at the Far East Bank and Trust Company branch office in Rizal Avenue cor. Batangas St., Sta. Cruz, Manila, a messenger discovered the lifeless body of Matias, inside the bank premises. The body was hogtied with a nylon cord, and bore 32 stab wounds. The chairs and tables inside the bank were in disarray. The bank's emergency exit vault bore chisel marks. At around 6:00 A.M., SPO3 Mendoza and two other officers of the Western Police District arrived after receiving a report on the incident. They interviewed the bank janitor, a Mr. Cawagdan, and the other security guard, Dionisio Vargas. Then they ordered the transfer of the body of Matias to the morgue. The police found a bloodstained scissor's mate inside a podium located near the main entrance of the bank. The head guard of the bank's security agency (Leopard) also reported that three .38 cal. revolvers and five 12 gauge shotguns were missing from the guard rostrum.<sup>[3]</sup>

At around 4:00 P.M., SPO3 Jamoralin and four other WPD policemen conducted a follow-up investigation. They learned from Vargas that there was an on-going construction on the upper floors of the bank, and that appellant and his co-accused

had access to the bank after office hours. SPO3 Jamoralin asked Vargas to accompany them to the barracks of the construction workers where they saw appellant at the ground floor of the construction site. On the third floor, they saw the co-accused, Rodriguez, packing his personal belongings. When asked why he was packing, Rodriguez replied that he had "nothing more to do (at the site)." SPO3 Jamoralin and the other police officers saw a pair of worn-out "maong" pants on appellant's bed, which had reddish stains on the right leg. The police also saw reddish stains on accused's shirt. Rodriguez explained that he had a wound on his neck. However, when the police examined his neck, they found no wound. The police then arrested Rodriguez and appellant and brought them to the police station for interrogation. The police took the maong and t-shirt and had them examined by the Chemistry Section of National Bureau of Investigation (NBI).<sup>[4]</sup>

On October 15, 1991, Rodriguez executed a sworn statement confessing that he and appellant together with one Rading Mendoza, and two other men whose names he did not know, killed Matias. Rodriguez was assisted by Atty. Procopio Lao III, of the Public Attorney's Office.

On October 18, 1991, appellant and Rodriguez were charged with the crime of Robbery with Homicide under the following Information:<sup>[5]</sup>

That on or about October 11, 1991, in the City of Manila, Philippines, the said accused, whose true names, identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of RAMON MATIAS, a security guard on duty at Far East Bank and Trust Company, by then and there stabbing the latter several times with a bladed instrument, hitting him on the different parts of the body, thereby inflicting upon the said RAMON MATIAS mortal stab wounds which were the direct and immediate cause of his death; that once the said RAMON MATIAS was attacked, assaulted and/or killed in the manner above-described, the said accused, with intent of gain, take, rob and carry away three (3) pieces of caliber .38 revolvers and five (5) pieces of 12 gauge shotguns, all valued not less than P5.00; belonging to the Far East Bank and Trust Company, to the damage and prejudice of the said bank in the aforesaid amount of P5.00, Philippine Currency.

Contrary to Law.

Upon arraignment on November 22, 1991, appellant and Rodriguez entered their respective pleas of not guilty.<sup>[6]</sup>

During trial, the prosecution presented the following witnesses: (1) SPO3 Jaime D. Mendoza, (2) SPO3 Rodolfo A. Jamoralin, Jr., both of the Crimes against Persons Division of the WPD, (3) Atty. Procopio Lao III of the Public Attorney's Office (PAO), and (4) Carolyn Y. Custodio, Supervisor of the Chemistry District of the NBI.

Custodio testified that the reddish stains on Rodriguez's pants and shirt were positive for type O human blood, which was also the blood type of Rodriguez.<sup>[7]</sup>

The testimony of Dr. Dario L. Gajardo, Chief and Medico-Legal Officer of the PNP

Crime Laboratory, was dispensed with upon admission of the defense of the authenticity of the Necropsy Report,<sup>[8]</sup> which stated that the cause of death was "cardio-respiratory arrest due to shock and hemorrhage secondary to multiple stab wounds in the body."<sup>[9]</sup>

The prosecution likewise offered in evidence the photograph of the body of the victim when it was found, the nylon cord used to tie him, the Sworn Statement of security guard Dionisio Vargas, the Certification issued by the Leopard Agency as to the missing firearms, the sworn statement of Rodriguez, the Progress Report of SPO3 Jamoralin, the Booking Sheet and Arrest Report, the Letter-Request of Chief Inspector Jose Pring addressed to the Director of the NBI, the NBI Laboratory Report No. B-91-1613, the maong pants and shirt, and the PNP Medico-Legal Report.<sup>[10]</sup>

After presentation of the prosecution's evidence, appellant filed a Demurrer to the Evidence<sup>[11]</sup> on the grounds that the prosecution failed to establish the guilt of the accused beyond reasonable doubt and that testimonies of the prosecution witnesses were hearsay. Upon the Opposition<sup>[12]</sup> of the public prosecutor, the trial court denied the demurrer for lack of merit.<sup>[13]</sup>

The evidence for the defense consists of the testimonies of the following witnesses: (1) Evangelo U. Javellano, Jr., Bank Manager of the FEBTC, Blumentritt branch, who testified that bank policy prohibits the guards from allowing persons into the bank after office hours, except for official visitors coming from higher ranks,<sup>[14]</sup> (2) appellant, and (3) Rodriguez.

On the stand, both Rodriguez and appellant admitted that they were provincemates from Masbate and co-workers in the construction site. They slept inside the building on the night before the incident but denied any participation in killing. They claimed that they learned of the killing only on October 11, 1991, at around 7:00 A.M., when they saw many people milling around the area. Rodriguez claimed that on the night of October 11, 1991, he was mauled by policemen to confess to the crime. Appellant, on his part, testified that the policemen merely placed him outside the room where Rodriguez was being interrogated, and that the police did not take any statement from him. Appellant also denied owning the maong pants which the police said were taken from his bed.<sup>[15]</sup>

After due trial, the trial court rendered a decision<sup>[16]</sup> finding appellant and Rodriguez guilty of murder, instead of robbery with homicide, disposing thus:

WHEREFORE, the accused Larry Artellero Y Rico and Wilfredo Rodriguez Y Culo are hereby found guilty of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code and each of them are (sic) hereby sentenced to suffer the penalty of *Reclusion Perpetua* and pay civil indemnity of P50,000.00 by each of them to the heirs of the victim Ramon Matias Y Ibay and to pay the costs.

The charge of Robbery with Homicide is dismissed it being not the proper charge. The accused are acquitted from the charge of Robbery for insufficiency of evidence.

SO ORDERED.

Only appellant pursued his appeal. In his brief,<sup>[17]</sup> he contends that the trial court erred in:

I. ... GIVING CREDENCE TO THE EXTRAJUDICIAL CONFESSION OF CO-ACCUSED, WILFREDO RODRIGUEZ, ALLEGED CO-CONSPIRATOR, IN PROVING CONSPIRACY AS CIRCUMSTANTIAL EVIDENCE TO SHOW PROBABILITY OF PARTICIPATION OF LARRY ARTILLERO AS CO-CONSPIRATOR.

II. ... HOLDING THAT THE MAONG PANTS STAINED WITH HUMAN BLOOD TYPE "O" IS THAT OF ACCUSED-APPELLANT, AND AS PART OF CIRCUMSTANTIAL EVIDENCE OF GUILT OR PARTICIPATION IN THE COMMISSION OF THE CRIME.

III. ... HOLDING THAT THE FACT OF WORKING AND SLEEPING TOGETHER WITH CO-ACCUSED FOR SIX (6) MONTHS, AS PART OF CIRCUMSTANTIAL EVIDENCE TO FINGER POINT GUILT TO ACCUSED-APPELLANT.

IV. ... RENDERING DECISION MORE SERIOUS THAN CHARGED IN THE INFORMATION.

Instead of filing an Appellee's Brief, the Office of the Solicitor General filed a Manifestation and Motion in Lieu of Appellee's Brief<sup>[18]</sup> contending that:

(1) THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE EXTRAJUDICIAL CONFESSION OF ACCUSED WILFREDO RODRIGUEZ AGAINST HIS CO-ACCUSED, APPELLANT LARRY ARTELLERO.

(2) ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED RODRIGUEZ'S EXTRAJUDICIAL CONFESSION IS ADMISSIBLE AGAINST APPELLANT ARTELLERO, THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY OF THE CRIME OF MURDER.

The OSG points out that the prosecution failed to prove the existence of a conspiracy between appellant and Rodriguez independent of the extrajudicial confession of the latter. The fact that Rodriguez and appellant have been working in the construction site for six months prior to the incident is insufficient to make a finding of conspiracy. Further, the fact that type O blood stains were found on appellant's maong pants and Rodriguez's t-shirt has no probative value since appellant denied owning the maong pants, and more importantly, the victim's blood type was not examined, hence there was no point of comparison. Lastly, the OSG contends that the trial court erred in convicting appellant of murder considering that the Information failed to allege the circumstances qualifying the killing to murder.

The resolution of the issue regarding the guilt of appellant, in our view, hinges on whether the extrajudicial confession of accused Rodriguez is admissible not only against him but also against appellant. We find that Rodriguez's confession is constitutionally flawed so that it could not be used as evidence against them at all.