

## THIRD DIVISION

[ G.R. No. 110397, August 14, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARMANDO BINAMIRA Y ALAYON, ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

In acquitting the accused, this Court stresses two doctrines: (1) a violation of the accused's right to retain a counsel of his own choice during custodial investigation renders his extrajudicial confession inadmissible even where such confession was extracted on October 3, 1985, i.e., before the effectivity of the 1987 Constitution, and (2) to sustain a conviction anchored on circumstantial evidence, the prosecution must convincingly prove an unbroken chain of events from which only one fair and reasonable conclusion can be inferred -- that of the guilt of the accused beyond reasonable doubt. Where such circumstances can be the subject of two possibilities, one of which is consistent with innocence and the other with guilt, then such evidence has not fulfilled the test of moral certainty and the constitutional presumption of innocence must thus be upheld.

#### Statement of the Case

Appellant Armando Binamira y Alayon<sup>[1]</sup> appeals the May 5, 1989 Decision<sup>[2]</sup> of the Regional Trial Court of Makati, Metro Manila, Branch 164,<sup>[3]</sup> in Criminal Case No. 19504 convicting him of the crime of robbery with homicide, sentencing him to reclusion perpetua and ordering him to pay the heirs of the victim, Jessie Flores y Cledar,<sup>[4]</sup> P30,000.00 as indemnity and P25,000.00 as actual or compensatory damages.

On October 7, 1985, an Information,<sup>[5]</sup> dated October 4, 1985, was filed by Second Assistant Fiscal Dennis M. Villa Ignacio accusing appellant of robbery with homicide allegedly committed as follows:

That on or about the 2nd day of October, 1985, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a fan knife, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take and divest from one Jessie Flores y Cledera her 14K Gold Necklace worth P1,000.00 and One (1) Lady's Citizen wrist watch worth P1,000.00 all belonging to Jessie Flores y Cledera in the total amount of P2,000.00 to the damage and prejudice of the latter in the aforementioned amount of P2,000.00; that on the occasion of said robbery, the accused stabbed the said Jessie Flores y Cledera on her neck, as a result thereof, the said

victim suffered mortal wound which directly caused her death.

Contrary to law.”

Arraigned on October 25, 1985, the accused, assisted by Counsel de Oficio Elpidio R. Calis, pleaded not guilty to the charge.<sup>[6]</sup> Trial ensued in due course.

Based on circumstantial evidence and on Appellant Binamira’s extrajudicial confession, the court a quo rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the court finds the accused guilty beyond reasonable doubt of the crime of robbery with homicide and hereby sentences him to the penalty of reclusion perpetua; to indemnify the heirs of the victim the amount of P30,000.00 for the death of Jessie Flores and P25,000.00 as actual or compensatory without subsidiary imprisonment, in case of insolvency.

SO ORDERED.”<sup>[7]</sup>

Aggrieved, appellant interposed this appeal.

### **The Facts According to the Prosecution**

The prosecution presented four witnesses; namely, NBI Medico-Legal Officer Nieto Salvador, who testified on the autopsy results; Nicasio Rosales, a security guard who testified on the arrest and turnover to the police authorities of Appellant Binamira; Makati Police Officer Wilfredo Cruz, who testified on the custodial investigation and extrajudicial confession of appellant; and Narciso Flores, the husband of the deceased, Jessie Flores y Cledera. In the appellee’s brief, the Solicitor General summarized the facts as presented by the prosecution, thus:

On 02 October 1985, at about 6:50 P.M., in Magallanes Village, Makati, Metro Manila, Security Guard Nicasio Rosales of the RAPSA Security Agency assigned thereat together with his co-guards were alerted by a report regarding the death of a woman by the name of Jessie Flores y Cledera at No. 68 Margarita St., Magallanes Village, Makati. They hurried to the scene of the crime where they saw the lifeless body of a woman lying on the ground (pp. 4-6, tsn, February 14, 1986).

They immediately conducted a search of the immediate surroundings hoping to find the person responsible for the killing and they saw a man wearing short pants, walking very fast. When the guards approached him, the man who turned out to be herein appellant, casually pretended to be urinating. Suspicious, they searched him and found a pair of pants and undershirt inside his bag soaked with blood (pp. 6-7, id).

Thereupon, the guard brought appellant to the Galleria de Magallanes Hall where he, as well as the bloodied clothings, were turned over to Police Investigator Wilfredo Cruz whom they had called to respond to said incident. On the same day, appellant was brought to the Criminal

Investigation Division (CID) of the Makati Police Station for further investigation (pp. 7-8. id).

On the following day, 03 October 1985, Cruz conducted an investigation of appellant's complicity in the Magallanes robbery-killing incident. Before the investigation proceeded, Pfc. Cruz first apprised appellant of his constitutional rights while under custodial investigation by explaining to him his right to counsel, his right to remain silent and, that any statement that he would give during the investigation may be used for or against him in any court of law, and that in case he did not have a lawyer, the State would provide him with one who will assist him in the investigation. At this juncture, the services of Atty. Romeo P. Parcon of the Citizen's Legal Assistance Office (CLAO) of Makati was offered to which appellant agreed (pp.5-7, tsn, 1986; pp.4-6, tsn, May 14, 1986; pp.84, Record).

While being investigated with the assistance and presence of Atty. Parcon, appellant readily cooperated to give his statements. He admitted that he stabbed the victim in the neck with a fan knife after divesting her of one (1) wristwatch and a gold necklace. Appellant revealed that he killed the victim when she began screaming for help despite his instructions to keep silent. Midway during the investigation, Pfc. Cruz showed to appellant a gold necklace and asked him the connection thereof to the investigation to which appellant, despite being told that he was at liberty not to proceed with the investigation, admitted that the necklace was the same one he took from the victim. After the investigation, the extrajudicial confession was subscribed and sworn to by appellant (Exh. 'C' to 'C-2') before the office of the then Fiscal of Makati (pp.84-84, Records; p.10, tsn, March 21, 1986; p.7, tsn, May 14, 1986).

Dr. Nieto Salvador, the NBI Medico-legal Officer, who conducted an autopsy examination on the body of the victim on October 3, 1985, found as per autopsy report no. N-85-2078 (Exh. 'F' to 'F-3') dated December 2, 1985, the following:

'Lips and nailbeds, pale. Abrasions, reddish brown, 1.5 x 0.5. cm. right infraclavicular region.

'Wound stab, 2.0 cm. in size, lower extremity rounded, running downward and medially, edges clean cut; located at the left side of the suprasternal, 1.0 cm. to the left anterior median line directed backward, downward and laterally, involving skin, underlying soft tissues, cutting carotid artery and vein, approximate depth artery and vein, approximate depth, 7.0 cm.

'Other visceral organs pale.

'Stomach is filled up to 2/3 with partially digested food particles.'

Dr. Salvador testified that the victim's cause of death was due to acute hemorrhage on account of a frontal stab wound she sustained at the base of her neck just above the subtraclavicular notch. He further opines that

the instrument used in the stabbing is a sharp pointed object. Appellant's clothings soaked with the victim's blood were also submitted to Dr. Salvador for examination (pp. 6-9, tsn, April 25, 1986)."[8]

### **According to the Defense**

Appellant, as lone defense witness, admitted his presence at Magallanes Village that fateful night but unequivocally denied participation in the crime. The following counter-statement of facts is narrated in Appellant's Brief:

The evidence for the defense eloquently shows that accused-appellant was formerly connected with the National Food Authority (NFA) as messenger from 1983 to 1985. On October 2, 1985, coming from his work at Baclaran, Paranaque, Metro Manila, at around 7:00 o'clock in the evening, more or less, he went to Magallanes Village at the back of Bulwagang Pilipino for the purpose of taking a merienda which he usually did after office hours. While walking all alone at the vicinity of Magallanes Village, accused-appellant did not notice any unusual incident nor seen (sic) anybody until the security guards who, without legal and justifiable grounds searched and apprehended him. Accused-appellant was brought by the security guards at their headquarters where they beat, mauled, maltreated and tied him to the post. They forced him to admit that he was the one who killed the woman whose body was lying at their guardhouse. But the accused-appellant maintained his innocence. After the lapse of several minutes, the security guards untied the accused-appellant from the post and they brought them back to their headquarters. The security guards then pointed to accused-appellant a person lying at their guardhouse. They forced accused-appellant to carry the dead body to be placed inside the funeral car. Helpless, accused-appellant followed their order. After he has placed the body at the funeral car, the security guards ordered him to take off the clothes he was wearing. Accused-appellant consented. Afterwards, the security guards brought him once more to their headquarters where accused-appellant saw Pfc. Willy Cruz. From their headquarters, they brought him to the Criminal Investigation Division (CID), Makati Police Station for interrogation.

At the Makati Police Station, the police investigators assigned that time investigated the accused-appellant relative to the death of a woman at the Magallanes Village, Makati, Metro-Manila. When the investigation was being conducted by the police investigator, accused-appellant did not see one of his relatives at the police station nor was he provided a lawyer of his choice. Subsequently, the police investigators blindfolded him. He was thereafter mauled by the police investigators, forcing him to admit the commission of the crime which happened in Magallanes Village. After maltreating the accused-appellant, they detained him and was made to sign a statement the following day.

When his wife visited him at the detention cell, accused-appellant told her what the security guards and police officers did to him during the

apprehension and investigation. The wife, due to fear, did not report the maltreatment committed on the accused-appellant to the higher authorities.

Accused-appellant denied having divested Jessie Flores of one gold necklace worth P1,000.00 and Ladys's (sic) Citizen wrist watch also worth P1,000.00 or a total of P2,000.00 and having stabbed Jessie Flores on her neck which resulted to her untimely death. On August 2, 1986, accused-appellant wrote his lawyer on record reiterating thereto the mishandling committed by the security guards and police investigator when he denied the killing of a woman whose body was found in Magallanes Village, Metro-Manila. (Exh. '1'). (TSN, September 11, 1987, pp. 3-11)"<sup>[9]</sup>

### **The Issues**

In his brief, appellant assigns the following errors allegedly committed by the trial court:

#### **"I**

The trial court gravely erred in giving full credence to thhe [sic] testimonies of the prosecution witnesses despite of [sic] its improbabilities.

#### **II**

The trial court gravely erred in holding that the extrajudicial confession of accused-appellant Armando Binamira is admissible in evidence.

#### **(III)**

The trial court gravely erred in totally disregarding the defense interposed by the accused-appellant.

#### **IV**

The trial court gravely erred in convicting the accused-appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt."<sup>[10]</sup>

In the ultimate, the foregoing boil down to whether the evidence on record establishes beyond reasonable doubt the guilt of Appellant Binamira. Two points will be addressed: first, the admissibility of appellant's extrajudicial confession; and second, the sufficiency of the circumstantial evidence to sustain appellant's guilt.

### **The Court's Ruling**

The appeal is meritorious.

### **Extrajudicial Confession Inadmissible**