

SECOND DIVISION

[G.R. No. 132374, August 22, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCIO ALBERTO Y DANA, ACCUSED-APPELLANT.

DECISION

QUISUMBING, J.:

Subject of this appeal, which we find meritorious, is the judgment^[1] dated August 21, 1997, of the Regional Trial Court, Branch 18, Pagadian City, convicting Lucio Alberto of the special complex crime of robbery with homicide, allegedly committed as follows:

That on or about the 18th day of October 1993 at about 7:30 o'clock in the evening at Barangay Gandiangan, Municipality of Imelda, Province of Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to gain and by means of violence did then and there willfully, unlawfully, and feloniously take and rob one Teresa^[2] Semic of cash money and by reason and on the occasion of said robbery, the above-named accused did then and there willfully, unlawfully, and feloniously attack, assault and stab said Teresa Semic thereby inflicting upon the latter mortal wounds which caused her death immediately thereafter.^[3]

During his arraignment, appellant entered a plea of not guilty. Trial on the merits then followed.

The prosecution presented as its first witness VIRGILIO ALAP-AP, barangay captain of *Barangay* Israel, Imelda, Zamboanga del Sur. He testified that on the morning of October 19, 1993, he was informed by members of his *Bantay Bayan* that there was a killing at *Barangay* Gandiangan. He was also informed of the suspicious acts of Lucio Alberto, who would take out his bag from a sack whenever there was no one around but would place it back when people were around. On the basis of this information, he brought Lucio Alberto and Titing Medel to the house of the *barangay* captain of *Barangay* Gandiangan, where they were investigated. He was informed by Titing Medel that the slippers which were recovered near the body of Teresa Semic used to belong to him before he exchanged it for a necklace from Alberto by way of barter. Alap-ap then accompanied Alberto to the PNP Police station of Imelda where he was turned over to SPO1 Francisco dela Cruz. He alleged that he was present when the police conducted a physical examination on Alberto. They discovered blood-stained currency bills amounting to a total of P950, believed to be stolen from the victim.^[4]

JOEL MEDEL @ TITING followed on the witness stand. He testified that on October 18, 1993, he saw appellant Lucio Alberto outside the store of Teresa "Isang" Semic. Appellant stayed behind, said the witness, when he went home at around 6:00 P.M.

He was at the house of the *barangay* captain of Gandiangan when he found out that Aling "Isang" was already dead. He stated that the slippers found near the body of Aling "Isang" were originally his, but he bartered them to Alberto for a necklace. He was present when the police recovered several bloodied bills in the amount of P950 from the shoes of appellant Lucio Alberto.^[5]

SPO1 FRANCISCO DELA CRUZ testified that he was in his house in the evening of October 18, 1993 when he received a report that there was a killing in *Barangay* Gandiangan. He immediately went to the place of the incident and saw below the stairway of her kitchen outside her house the body of Teresa covered in her own blood. He saw a pair of slippers about three meters away from the body. He brought the slippers to their station. The following day, October 19, 1993, he went back to *Barangay* Gandiangan, talked with the *barangay* captain, and arrested appellant on the request of the *barangay* captain. Upon reaching the police station, he asked appellant to open the bag which he brought with him. Inside was a pair of short pants with bloodstain near the zipper, a bandana, and a medallion necklace. He then asked appellant to take off his shoes wherein an envelope was found containing P950 in different blood-stained denominations. Three days later, he also recovered a knife from a certain Payna. Witness Dela Cruz admitted that he was not sure whether the slippers he recovered really belonged to the person who killed Teresa.^[6]

On June 26, 1996, the trial court issued an order dismissing the case for failure of the prosecution to submit its formal offer of exhibits. The said order was lifted after the prosecution filed a motion for reconsideration on July 1, 1996. Thereafter, the prosecution continued to present its evidence.

ATTY. PACIFICO T. CIMAFRANCA, of the Public Attorney's Office (PAO), testified that he assisted appellant at the time he executed his extrajudicial confession^[7] on January 14, 1994. He identified said extrajudicial confession^[8] which was placed into the record of the trial by the court.

The last witness for the prosecution, ERNESTO PAYNA, testified that he was informed of the death of his aunt, Santiaga Theresa^[9] at around 7:00 P.M. of October 18, 1993. He saw the body of his aunt at the balcony near the stairs of her kitchen. He also saw a pair of slippers about one meter from the body of the victim.^[10]

On March 26, 1997, the defense orally asked for leave to file demurrer to evidence. On April 25, 1997, the demurrer was filed but it was denied on May 13, 1997. On June 25, 1997, the trial court issued an order declaring that the accused should be deemed to have waived his right to present evidence for the defense, and that the case be considered submitted for decision.

On August 21, 1997, the trial court promulgated its judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt. He is hereby sentence (sic) to the penalty of reclusion perpetua to death and to pay the private offended party as indemnity the sum of P50,000.00, without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[11]

Hence, this appeal. In his brief, appellant assigns the following as errors:

I

THE TRIAL COURT GRAVELY ERRED IN REINSTATING THE CASE AFTER JUNE 26, 1996 AFTER IT HAS DISMISSED THE CASE FOR INSUFFICIENCY OF EVIDENCE FOR FAILURE OF THE STATE TO SUBMIT ITS FORMAL OFFER OF EXHIBITS FOR ALMOST A YEAR WHEN REQUIRED TO BY THE TRIAL COURT OVER THE OPPOSITION/OBJECTION OF THE ACCUSED AS THE SAME HAD PLACED THE ACCUSED IN DOUBLE JEOPARDY FOR THE SAME OFFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN RENDERING JUDGMENT FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT.^[12]

Appellant contends that he was placed in double jeopardy when the trial court reconsidered its order dismissing the case against him. More importantly, he contends that without the extrajudicial confession placed on record,^[13] the evidence of the prosecution would not be able to meet the needed quantum of proof to establish his guilt. He assails said extrajudicial confession on the ground that it was not duly established that it was he who signed it. He also argues that at the time said confession was executed, he was not assisted by a competent counsel of his choice.^[14]

The Office of the Solicitor General, for the appellee, counters that there was no violation of the right of appellant not to be placed in double jeopardy. The OSG argues that the order of the trial court dismissing the case was illegal and void for being issued with abuse of discretion. The trial court did not afford any opportunity to the prosecution to be heard before it decided to dismiss the case, contrary to Section 15, Rule 119 of the Revised Rules of Court.^[15] It did not even consider that even without the said formal offer of exhibits, the prosecution could still prove its case on the basis of the testimonial evidence alone. Being void, the said order cannot have the effect of terminating the trial and, hence, cannot serve as basis for the claim of double jeopardy.

On the claim of the defense that the needed quantum of proof to convict appellant has not been met, the OSG maintains that appellant's extrajudicial confession and the other pieces of evidence presented by the prosecution are more than enough to convict appellant.

However, the OSG recommends that the appellant should be convicted of two distinct crimes of homicide and theft, not robbery with homicide, because from the tenor of the extrajudicial confession, it was clear that the appellant intended to kill the victim and that the taking of the P950.00 was a mere afterthought.^[16]

The pertinent issues for resolution in this case are: (1) whether or not appellant was placed in double jeopardy when the trial court reconsidered its order dismissing the case; (2) whether or not the extrajudicial confession was admissible against

appellant; and (3) whether or not the guilt of appellant has been proved beyond reasonable doubt.

The three requisites before double jeopardy can be invoked are: (1) the first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof.^[17] As to the first jeopardy, it only arises (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was acquitted, convicted, or the case was dismissed.

In our view, it is clear that no double jeopardy has attached in this case. We agree with the Solicitor General that the dismissal order made by the trial court was not valid and cannot be used as basis for a claim of double jeopardy. The said right cannot be grounded on an error of law. As held in *People vs. Navarro*: ^[18]

The State is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The Court has always accorded this right to the prosecution, and where the right had been denied, had promptly annulled the offending court action. We have heretofore held that a purely capricious dismissal of an information deprives the State of fair opportunity to prosecute and convict; it denies the prosecution its day in court. For this reason, it is a dismissal (in reality an acquittal) without due process, and, therefore, null and void. Such dismissal is invalid for lack of a fundamental prerequisite, that is, due process, and, consequently, will not constitute a proper basis for the claim of double jeopardy...

We agree with the OSG's contention that the trial court exceeded its authority when it dismissed the case without giving the prosecution a right to be heard, hence there was a violation of due process. Further, the failure of the prosecution to offer its exhibits is not a ground to dismiss the case. Even without any documentary exhibits, the prosecution could still prove its case through the testimonies of its witnesses. Thus, we find that when the trial court reconsidered its order of dismissal, it merely corrected itself.

On the second and third issues, appellant asks this Court to disregard the extrajudicial confession which he had allegedly executed before and with the assistance of Atty. Cimafranca, but which confession he denies. If disregarded, he claims that the prosecution's evidence would not be sufficient to warrant a conviction beyond reasonable doubt.

A counsel-assisted and voluntary confession is sufficient to establish the guilt of the accused especially when it is corroborated on material points by the prosecution witnesses.^[19] However, it is essential that the person making the confession must be assisted by a "competent" counsel. The meaning and standards of a "competent counsel" were explained in *People vs. Deniega*^[20] as follows:

...[T]he lawyer called to be present during such investigation should be as far as reasonably possible, the choice of the individual undergoing questioning. If the lawyer were one furnished in the accused's behalf, it is