336 Phil. 206

THIRD DIVISION

[G.R. No. 118607, March 04, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.JULITO FRANCO Y TIANSON, ACCUSED-APPELLANT.

D E C I S I O N

FRANCISCO, J.:

Appellant JULITO FRANCO y TIANSON was charged with[1]and convicted[2] of the crime of robbery with homicide.[3] He was sentenced to reclusion perpetua and directed to indemnify Dunkin' Donut and the heirs of Aurelio Cuya, in the amounts of P12,000.00 and P30,000.00, respectively. Contending "that the trial court erred in convicting x x x him x x x [based] on evidence illegally obtained,"[4] appellant now interposes this appeal. For its part, the Solicitor General recommended appellant's acquittal on the ground that "his guilt was not proven beyond reasonable doubt."[5]

The appeal is impressed with merit.

Quoted hereunder is the narration of the factual antecedents of this case, as summarized by the Solicitor General in its Manifestation,[6] and duly supported by the evidence on record:

> On August 9, 1991 at around 6:45 a.m., Angelo Tongko, then an employee of Dunkin Donut located at Quintin Paredes [Street], Binondo, Manila, discovered the lifeless body of Aurelio Cuya, a security guard of the said establishment (tsn, Nov. 19, 1991, pp. 2-3). Upon discovery of the lifeless body, Tongko informed his co-workers, (ibid, p. 3) who then reported the matter to the police (ibid. p, 3).
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> Upon investigation by the police, the branch supervisor of Dunkin Donut informed the police that the total sales of the establishment on August 8, 1991 in the amount of P10,000.00 and which was allegedly kept in the safety locker in the same place where the dead body was found, was missing (ibid, p., 7, Exh. K). The supervisor of the security agency where the victim was employed also informed the police that he suspected the appellant as the culprit (ibid, p. 15, Exh. K). Acting on this allegation by the supervisor, the police proceeded to the place of appellant and were able to interview Maribel Diong ("Diong") and Hilda Dolera ("Dolera") (ibid, p. 15; Exh. L). The police then tried to convince Diong and Dolera, who allegedly told the police that appellant allegedly confessed to them that he killed somebody in the evening of August 8, 1991 (ibid). Diong and Dolera were not presented in court to substantiate their affidavits.
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> Based on the alleged statements of Diong and Dolera, the police formed

> a team to apprehend the appellant who allegedly had an agreement to meet Dolera (Exh. L). On August 10, 1991, appellant was apprehended by the police in front of Jollibee Restaurant in Caloocan City (ibid, pp. 9, 16). Allegedly recovered from the appellant were the amount of P2,415.00 and one handgun which was in his cousin's residence (ibid, p. 16).
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> Thereafter, appellant was brought to the police headquarters where his confession (Exh. N) was taken on August 12, 1991 allegedly on his freewill and with the assistance of a lawyer (ibid, pp. 13-14). A booking and arrest report was also prepared by Pat. Nestor Napao-it on August 12, 1991 (Exh. J).[7]

The trial court convicted the appellant on the basis principally of his alleged extra-judicial confession.[8] This is evident from the assailed decision which even quoted the pertinent portions of the aforementioned extra-judicial confession.[9] But gospel truth as it may seem, we cannot stamp with approval the trial court's undue consideration and reliance on this extra-judicial confession for, as the records reveal, the same was not offered in evidence by the prosecution.[10]Neither were its contents recited by the appellant in his testimony.[11]It was a grave error for the trial court, therefore, to have considered the same, let alone be the basis of appellant's conviction.

We thus reiterate the rule hat the court shall consider no evidence which has not been formally offered.[12] So fundamental is this injunction that litigants alike are corollarily enjoined to formally offer any evidence which they desire the court to consider.[13] Mr. Chief Justice Moran explained the rationale behind the rule in this wise:

> x x x "the offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties to the suit."[14]

It cannot be argued either that since the extra-judicial confession has been identified and marked as Exhibit "N" by the prosecution in the course of the cross-examination of the appellant,[15] then it may now be validly considered by the trial court. Indeed, there is a significant distinction between identification of documentary evidence and its formal offer.[16] The former is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit, while the latter is done only when the party rests its case. Our settled rule incidentally is that the mere fact that a particular document is identified and marked as an exhibit does not mean that it has thereby already been offered as part of the evidence of a party. [17]

From the records, it appears that not a single person witnessed the incident. In fact, aside from the testimony of police investigator Pat. Nestor Napao-it, none of the other three prosecution witnesses, to wit: (1) Angelo Tongko — a Dunkin' Donut employee who testified to have found the body of Aurelio Cuya inside the supervisor's room of the establishment in the early morning of August 9, 1991,[18]

(2) Dr. Marcial Cenido — the physician who autopsied the body of Aurelio Cuya, and who testified on the cause of the latter's death;[19] and (3) Teresita Cuya — the wife of Aurelio Cuya who testified on the civil aspect of the case,[20] ever imputed, directly or indirectly, to the appellant the commission of the crime. With respect to the testimony of Pat. Nestor Napao-it,[21] there is no dispute that his testimony on the conduct of the investigation is admissible in evidence because he has personal knowledge of the same.[22]However, his testimony on appellant's alleged separate confession/admission to Hilda Dolera and Maribel Diong, which the trial court invariably considered in its decision as establishing the truth of the facts asserted therein, is hearsay. In the terse language of Woodroffes, said testimony is "the evidence not of what the witness knows himself but of what he has heard from others"[23] And whether objected to or not, as in this case, said testimony has no probative value[24]. To repeat, the failure of the defense to object to the presentation of incompetent evidence, like hearsay, does not give such evidence any probative value.

Anent the issue of admissibility of Exhibits "F"[25] and "G"[26] — original and additional sworn statements of Maribel Diong, and Exhibits "H"[27] and "I"[28] — original and additional sworn statements of Hilda Dolera, it assumes significance to note that their admission in evidence has been seasonably objected to by the appellant on the ground that they are hearsay.[29] The trial court nonetheless admitted them "as part of the testimony of Pat. Nestor Napao-it".[30] While we agree that these exhibits are admissible in evidence, their admission should be for the purpose merely of establishing that they were in fact executed [31] They do not establish the truth of the facts asserted therein.[32] In this case, our reading of the assailed decision, however, reveals that the foregoing exhibits were undoubtedly considered by the trial court as establishing the truth of the facts asserted therein. And herein lies another fatal error committed by the trial court because, without Maribel Diong and Hilda Dolera being called to the witness stand to affirm the contents of their sworn statements, the allegations therein are necessarily hearsay[33] and therefore inadmissible. A contrary rule would render nugatory appellant's constitutional right of confrontation which guarantees him the right to cross-examine the witnesses for the prosecution.

Truly, it is our policy to accord proper deference to the factual findings of the court below especially when the issue pertains to credibility of witnesses. But no such issue is involved here. Instead, the principal issue raised herein is whether or not the evidence adduced by the prosecution are sufficient to overcome appellant's constitutional right to be presumed innocent. We believe in the negative, hence, we acquit.

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 33, convicting the appellant of the crime of robbery with homicide is **REVERSED**. Appellant JULITO FRANCO y TIANSON is hereby **ACQUITTED** and his immediate release from prison is ordered unless he is being held on other legal grounds. No costs.

It is **SO ORDERED.**
Narvasa, C.J., Davide, Jr., Melo, and Panganiban, JJ., concur.