

FIRST DIVISION

[G.R. No. 104663, July 24, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID
SALVATIERRA Y EGUIA, ACCUSED-APPELLANT.**

D E C I S I O N

KAPUNAN, J.:

For the fatal stabbing of Charlie Fernandez y De Guzman, the Regional Trial Court of Manila, Branch XLIX,^[1] meted accused David Salvatierra y Eguia the penalty of reclusion perpetua and the payment of the amounts of P30,183.25 as actual damages and P50,000.00 as indemnity to the heirs of the victim, plus the cost of suit (Criminal Case No. 90-88985).

At around 4:30 in the afternoon of August 17, 1990, Charlie Fernandez, a vendor of “palamig” was walking along M. de la Fuente Street,^[2] going towards the direction of Quiapo at the opposite side of the street.^[3] Suddenly, three (3) persons met him. One of them was appellant David Salvatierra, who lunged a pointed instrument at Charlie. The latter was able to parry the thrust but appellant swung the instrument anew hitting Charlie at the left breast. Thereafter, all three persons scampered away.^[4] Charlie still managed to walk home to tell his father about the incident but suddenly collapsed.^[5] He was taken immediately to the hospital where he was operated on.

The assault was witnessed by Milagros Martinez, an ambulant vendor of fish and salted eggs who stopped by to rest at the right side of J. Fajardo St. in Sampaloc, Manila near the Trabajo Market. Milagros told the incident only to her daughter.^[6] She did not immediately report the incident to the police authorities because she was afraid.

Charlie’s father, Marciano Fernandez, reported the crime to the police at Station No. 4 at about 5:40 that afternoon. Since the victim could not be interviewed as he was then undergoing operation, the police and Marciano Fernandez proceeded to the crime scene to get information about the incident but their effort was fruitless as no one in the area would volunteer to identify the culprits.^[7] A relative of the victim informed the police that appellant was one of the suspects in the crime.^[8]

The next day or on August 18, 1990, 20-year-old Charlie expired. His death was caused by hemorrhage secondary to the stab wound on the anterior chest wall.^[9] The medical report prepared by Dr. Sergio Alteza, Jr., medico-legal officer of the U.S.T. Hospital, showed that Charlie sustained, aside from the stab wound on the chest, another stab wound on the left forearm and an incised wound on the left

wrist.^[10]

Marciano Fernandez went back to Police Station No. 4 to inform the authorities that his son had died. He was advised to report the matter to the Homicide Section of the Western Police District (WPD).^[11] where an "advance information" was prepared indicating that four (4) unidentified persons perpetrated the crime.^[12]

On November 15, 1990 at about 4:35 in the afternoon, Police Station No.4 received a complaint that appellant was creating a commotion along Miguelin Street, Sampaloc, Manila. He was thereby taken in custody by Pat. Celso Tan and two other policemen who later found out that appellant was a suspect in the killing of Charlie Fernandez.^[13] Later that day, appellant was turned over to the WPD.

Milagros Martinez learned about the apprehension of appellant from her children. Later, she was approached by Marciano Fernandez who persuaded her to testify on what she witnessed on August 17, 1990. Upon being informed that appellant was transferred to the WPD, the two proceeded to said station where Milagros executed a sworn statement implicating appellant to the crime.^[14] In a police line-up, Milagros pinpointed appellant as the person who stabbed Charlie. Thereafter, Pat. Amores prepared a booking sheet and arrest order which appellant signed.^[15]

On November 19, 1990, appellant was charged with murder in an information which reads as follows:

That on or about August 17, 1990 in the City of Manila, Philippines, the said accused, conspiring and confederating with three others 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 and with treachery and evident premeditation, attack, assault and use personal violence upon one CHARLIE FERNANDEZ Y DE GUZMAN, by then and there stabbing the latter twice with a bladed weapon on the chest, thereby inflicting upon him mortal stab wounds which were direct and immediate cause of his death thereafter.

Contrary to law.^[16]

At his arraignment, appellant pleaded not guilty to the crime charged.^[17]

Appellant put up the defense of alibi alleging that at 4:30 in the afternoon of August 17, 1990, he was having merienda with his wife and children at their home in 459 Miguelin Street, Sampaloc, Manila and could not possibly be near the Trabajo Market.^[18]

Appellant further testified that in the afternoon of November 15, 1990, he had an altercation with a woman in their neighborhood who caused his arrest for the crime of malicious mischief. He was detained for a few hours at Police Station No. 4. Later. Police from WPD arrived and picked him up and brought him to the Homicide Section where he was investigated, interrogated and detained for the stabbing of one Charlie Fernandez on August 17, 1990.^[19] After two (2) days, he was brought out of his cell where a man and two (2) women were made "to view" him. One of the women was the mother of the victim while the other one was someone he was

not acquainted with. The latter was the witness against him who pointed to him as the killer of Charlie in the police line-up.^[20] Two days later, he was made to sign a document the contents of which he was not allowed to read. When he insisted on reading the document, his head was hit with a key and he was forced to sign it. The document was the booking and information sheet.^[21]

In this appeal, he makes the following assignment of errors:

I.-THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT THE ARREST, INVESTIGATION AND DETENTION OF THE ACCUSED-APPELLANT FOR THE OFFENSE CHARGED IN THE INSTANT CASE WAS VIOLATIVE OF HIS CONSTITUTIONAL RIGHTS.^[22]

II.-THE COURT A QUO ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF THE DECEASED CHARLIE FERNANDEZ.^[23]

III.-THE COURT A QUO GRAVELY ERRED IN ACCEPTING AT FACE VALUE THE VAGUE AND AMBIGUOUS TESTIMONY OF MILAGROS MARTINEZ AND UTILIZING SUCH INCONCLUSIVE TESTIMONY AS THE BASIS FOR CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER.^[24]

Anent the first error, appellant claims that his constitutional right against warrantless arrests was violated because "(t)here is nothing on record show that (his) arrest xxx for the minor offense of malicious mischief was effected by virtue of a warrant."^[25] Indeed, appellant's arrest on suspicion that he was involved in the killing of Charlie Fernandez was made almost three (3) months after the commission of the crime on August 17, 1990 and only after he had been taken in police custody for a minor offense. As such, because no warrant had been obtained during the 3-month intervening period between the commission of the crime and his apprehension, his arrest would have ordinarily been rendered unconstitutional and illegal inasmuch as even warrantless arrests made within shorter periods like ten (10) days^[26] are illegal. The element of immediacy between the time of the commission of the offense and the time of the arrest had not been complied with. It should be stressed that section 5(b) of Rule 113 of the Rules of Court has excluded situations under the old rule which allowed a warrantless arrest provided that the offense "has in fact been committed."^[27]

While these arguments may be valid, appellant's claim that the case against him should be dismissed for violation of his constitutional rights, must fail. Appellant is estopped from questioning the legality of his arrest considering that he never raised this before entering his plea. Any objection involving a warrant of arrest or the procedure in the acquisition of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived.^[28] This is the first time that appellant is raising this issue as he did not even move for the quashal of the information before the trial court on the ground of illegal arrest.^[29] Consequently, any irregularity attendant to his arrest, if any, had been cured by his voluntary submission to the jurisdiction of the trial court when he entered his plea and participated during the trial.^[30] Verily, the illegal arrest of appellant is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient

complaint and where the trial was free from error.^[31]

Neither may appellant successfully assert that the case should be dismissed because during custodial investigation and the police line-up he was deprived of his constitutional right to counsel. To bolster his assertion, appellant quotes *People v. Campos*^[32] and *People v. Vasquez*,^[33] where the Court in effect held that during custodial investigation, an accused should be assisted by counsel. Those cases, however, should be distinguished from the case at bar because in the former, the extrajudicial confessions of the accused during custodial investigation were the only bases for conviction, unlike in this case where there are other pieces of evidence by which the culpability of the appellant may be founded.

Moreover, in *People v. Lamsing*,^[34] the Court categorically stated as follows:

Finally, although it is not assigned as error, accused-appellant complains that he was made to join a police lineup where he was identified by three persons, including Elizabeth De los Santos, without the assistance of counsel. It was settled in *Gamboa v. Cruz* (G.R. No. 56291, June 27, 1988, 162 SCRA 642, 651), however, that the right to counsel guaranteed in Art. III, Section 12(1) of the Constitution does not extend to police lineups because they are not part of custodial investigations. The reason for this is that at that point, the process has not yet shifted from the investigatory to the accusatory. The accused's right to counsel attaches only from the time that adversary judicial proceedings are taken against him.^[35] (Italization supplied.)

In the same vein, appellant may not validly claim that dismissal of the case against him should be a matter of course because he signed the booking and information sheet without the assistance of counsel. Granting that affixing the signature of an accused is covered by the constitutional mandate requiring assistance of counsel to an accused during custodial investigation, this piece of evidence may be disregarded without the least diluting the prosecution's case against appellant. The booking and information sheet is not the only incriminatory evidence against appellant.

What needs scrutiny is the testimony of eyewitness Milagros Martinez. In assailing the testimony of Milagros, appellant points out that it is flawed by inconsistencies on material matters such as while she testified that she did not know the identity of the other assailants, she could delineate appellant's features – his curly hair, mustache and piercing ("nanlilisik") eyes.^[36]

On the very material point of identification of appellant as the perpetrator of the crime, she testified as follows:

FISCAL PERALTA:

Did you come to know the name of that person whom you said (was) the victim of that stabbing?

WITNESS:

A certain Charlie, sir.

FISCAL PERALTA:

What about that person whom you identified a while ago as the one who stabbed the victim Charlie? When did you come to know the name David Salvatierra?

WITNESS:

When I went to the Homicide Section and there was a police lineup made by the police officers there consisting of eight (8) persons and I was made to point to that person who stabbed the victim and I pointed to that person, sir.

FISCAL PERALTA:

Could you recall, Madam Witness, when was that police lineup conducted?

WITNESS:

November 17, 1990, sir.

FISCAL PERALTA:

Now, the incident happened on August 17, 1990. Why is it that it was only November 17, 1990, that you identified the assailant David Salvatierra?

WITNESS:

Because he was not yet arrested and I was also afraid, sir.

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FISCAL PERALTA:

Now, that person whom you said you saw stabbed the victim together with two (2) other companions and the person whom you pointed to in the police lineup conducted by the police on November 17, 1990, if you see him again, can you still identify him?

WITNESS:

Yes, sir.

FISCAL PERALTA:

Will you please look around the courtroom and point to him?

COURT:

Fiscal, what are you asking this witness?