

## EN BANC

[ G.R. No. 117106, June 26, 1996 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY ALBERCA, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

This case is here on appeal from the judgment dated August 11, 1994<sup>[1]</sup> of Branch 104 of the Regional Trial Court of Quezon City, finding accused-appellant Jimmy Alberca guilty beyond reasonable doubt of the crime of Robbery with Homicide and Physical Injuries<sup>[2]</sup> and sentencing him to death. Accused-appellant was in addition ordered to indemnify the heirs of Felipe Climaco in the amount of P50,000.00 and to pay the Triad Security and Allied Services, Inc. the amount of P10,000.00 for the value of one (1) .38 cal. Revolver, which had been taken from the victim by one of the malefactors, and the costs.

The information against accused-appellant alleged-

"That on or about the 11th day of April 1994, in Quezon City, Philippines, the above-named accused, conspiring, confederating and mutually helping with several others whose true names and real identities have not as yet been ascertained, did then and there, willfully unlawfully and feloniously entered the compound of Rebecca Saycon located at No. 99 Tandang Sora Avenue, this City, with intent to kill and with the use of bladed weapons stabbed FELIPE CLIMACO, a security guard on his body several times and JOEY RODRIGUEZ, a house boy thereat on his chest, respectively, thus inflicting upon FELIPE CLIMACO serious and mortal wounds which were the direct and immediate cause of his death and injuries to JOEY RODRIGUEZ and thereafter said accused with intent to gain, by means of such violence and intimidation against persons, did then and there, wilfully, and unlawfully and feloniously take, rob and carry away the service firearm of FELIPE CLIMACO, 1.38 caliber revolver with Serial No. 31897 with six (6) rounds of ammunitions of still undetermined value, belonging to Triad Security & Allied Services, Incorporated, to the damage and prejudice of the heirs of Felipe Climaco, Joey Rodriguez of the injuries sustained [sic] and Triad Security & Allied Services, Incorporated.

"Contrary to law."

The crime took place in the first hour of April 11, 1994, at the compound of Pastor and Rebecca Gaskell-Saycon at No. 99 Tandang Sora Avenue, Quezon City. At that

time, only Rebecca, her two sons and their "yaya" (nursemaid), security guard Felipe "Philip" Climaco and houseboy Joey Rodriguez were in the house.<sup>[3]</sup>

According to Joey's testimony,<sup>[4]</sup> he was sleeping in the servant's quarters when he was awakened around midnight by the footsteps of Climaco. He asked Climaco what the matter was ("Ano po 'yon?") but the latter did not answer as he proceeded to the closet to get a gun. Joey saw Climaco running towards the swimming pool. After a while, he heard a gunshot. He got up and followed Climaco to the swimming pool where Joey heard shouts. Intending to ask help from neighbors, Joey opened the gate when he was suddenly attacked by a person whom he identified as accused-appellant.<sup>[5]</sup> He fought back but he was stabbed. He ran towards the house. Along the way he met another person with a gun in one hand and a knife in the other, and inside the house he saw Climaco lying on the floor, wounded. Climaco was in pain and asked to be taken to the hospital. Climaco said his gun<sup>[6]</sup> had been taken by a person whom he described was "fatter," "taller," and heavier than Joey and who wore his hair long. Thereafter, several persons, arrived, including Danilo Saycon, Arnold Agustin, and Joey's twin brother Jonathan Rodriguez, and the police. Found dead in the garden by the police was one of the intruders, who was later identified as Diego Aruta.<sup>[7]</sup>

Climaco was taken to the Lanting General Hospital but he was dead on arrival.<sup>[8]</sup> The autopsy report<sup>[9]</sup> showed that he suffered several wounds in various parts of the body, to wit:

"Fairly developed, fairly nourished male cadaver, in rigor mortis with postmortem lividity over the dependent portions of the body. Conjunctivae, lips and nailbeds were pale.

**"EXTERNAL INJURIES: TRUNK AND UPPER EXTREMITIES:**

"(1) Stab wound, anterior left upper thorax, 130 cms. from heel, 11 cms. from anterior midline, measuring 7 x 2.5 x 6 cms. depth, directed upwards, slightly backwards, towards midline, thru the muscle tissue.

"(2) Stab wound, anterior right thorax, 121 cms. from heel, 9.5 cms. from anterior midline, measuring 5 x 1.5 x 13 cms. depth, directed slightly upwards, backwards, slightly towards lateral, fracturing the 5th right thoracic rib along the midclavicular line, piercing the middle and lower lobes of the right lung.

"(3) Stab wound, anterior right lumbar region, 107 cms. from the heel, 11 cms. from anterior midline, measuring 4 x 2 x 12 cms. depth, directed upwards, backwards, towards midline, fracturing the 9th right thoracic rib along the midclavicular line, piercing the loops and mesenteries of small intestines and portal vein.

"(4) Stab wound, right scapular region, 126 cms. from the heel, 12 cms. from posterior midline, measuring 5 x 1.5 x 12 cms. depth, directed upwards, slightly forwards, towards midline, thru the muscle tissue.

"(5) Incised wound, anterior proximal 3rd left arm, measuring 8 x 2 cms., 4 cms. from anterior midline.

"(6) Linear abrasion, anterior left lumbar region, measuring 6 x 0.1 cm., 11 cms. from anterior midline.

"(7) Abrasion, anterior left lumbar region, measuring 0.6 x 0.3 cm., 15 cms. anterior midline.

"(8) Linear abrasion, anterior left lumbar region, measuring 7 x 0.1 cm., 4 cms. from anterior midline.

"(9) Linear abrasion, anterior proximal 3rd right forearm, measuring 5 x 0.2 cm., 4 cms. from anterior midline.

"(10) Stabwound, posterior middle 3rd right arm, measuring 2.8 x 1.2 cms. x 10 cms. depth, directed upwards, forwards, towards lateral, thru the muscle tissue.

"(11) Stab wound, posterior proximal 3rd right forearm, 4 cms. from posterior midline, measuring 2.5 x 0.8 x 5 cms. depth, directed slightly downwards, towards lateral.

"(12) Stab wound, posterior proximal 3rd right forearm, 4 cms. from posterior midline, measuring 3.5 x 1 x 5 cms. depth, directed upwards, backwards, towards midline, thru the muscle tissue.

"(13) Incised wound, dorsum of the right hand, measuring 1.7 x 0.3 cms., 6 cms. from posterior midline.

#### **"INTERNAL FINDINGS:**

"(1) Recovered from the right thorax and abdominal cavity about 1,000 cc and 500 cc of blood and blood clots, respectively.

"(2) Recovered from the stomach 1 glass of partially digested food particles consisting mostly of rice.

#### **"CONCLUSION:**

"Cause of death is stab wounds, body."

On the other hand, Joey was taken to the Quezon City General Hospital. The medico-legal certificate of the attending physician stated that Joey suffered a "stab wound, 4 cm., 5th ICS, Ant. axillary line, chest (R)" which would require medical attendance for seven days under normal condition.<sup>[10]</sup> The wound would not have caused his death even if Joey had not been given immediate medical attendance as it did not penetrate his lungs.<sup>[11]</sup>

Accused-appellant, a "taho" vendor, was arrested by NBI agents on April 17, 1994 in San Miguel, Bulacan, in the house of his aunt, Priscilla Dagandang Mabuhay. He was

taken to the NBI Headquarters on Taft Avenue in Manila where he gave an extrajudicial confession in the presence of his wife Noemi and of an assigned counsel, Atty. Erlando A. Abrenica.<sup>[12]</sup>

In his confession, given on April 19, 1994, accused-appellant said that the plan to rob the Saycons had been conceived by Diego Aruta and Darius Caenghog and that he had been told of it on the night of Saturday, April 9, 1994. According to accused-appellant, the following night, April 10, 1994, at around 7:00, Jhonny "Almar" Alcober, Oscar "Lucas" Clariza and Bengie "Benny" Demson arrived in his house. (Accused-appellant and his family lived in a house which was just outside the Saycon compound in Tandang Sora, Quezon City.) Diego and Darius arrived at about 10:00 in the evening. The accused-appellant and the group drank two bottles of gin. All the while, they were looking over the wall which separated accused-appellant's house from the Saycon compound ("Sinisilip nila sa pader ang bahay ni Mr. Saycon"). At around midnight, the group went into action. Diego climbed over the wall, followed by Darius and accused-appellant and then by the three, Almar, Lucas and Benny. But they were noticed by the security guard who shot Diego Aruta. Diego charged ("sinugod"), embraced the security guard and then stabbed him. Diego was joined by Darius who also stabbed the guard at the front and by accused-appellant who stabbed the guard at the back. The security guard staggered into the house. Accused-appellant then noticed a little man coming from a small room near the gate. He followed the man and stabbed him. The man, though stricken, was able to run inside the house. Accused-appellant then escaped by going over the wall, while Darius, who took the security guard's gun, escaped through the gate. Greatly weakened by his wound, Diego was left behind, eventually to die from his gunshot wound.

After the incident, the group dispersed. Accused-appellant stayed in his house until 4:00 in the morning and then left for Pasay City. On April 13, 1994 he proceeded to Barrio Tiban, San Miguel, Bulacan, where NBI agents eventually found him.

Accused-appellant claimed that he signed the confession (Exhibits "B-1" to "B-3") because he had been "threatened" with harm if he did not<sup>[13]</sup> and that Atty. Abrenica, who assisted him in the execution of the confession, was not his counsel of choice but had merely been provided him by NBI Special Investigator Ramon Yap.<sup>[14]</sup> Accused-appellant claimed that he could not have committed the crime because at that time he was in San Miguel, Bulacan, having gone there on April 10, 1994 to visit an aunt.<sup>[15]</sup>

The trial court dismissed accused-appellant's alibi. It held that even without the extrajudicial confession, the prosecution's other evidence established beyond reasonable doubt accused-appellant's guilt. Hence this appeal based on the following assignment of errors:

## I

THE COURT A QUO ERRED IN NOT DECLARING AS INADMISSIBLE IN EVIDENCE THE EXTRA-JUDICIAL CONFESSION EXECUTED BY ACCUSED-

APPELLANT.

## II

THE COURT A QUO ERRED IN GIVING FULL FAITH AND CREDENCE TO THE UNRELIABLE, IMPLAUSIBLE AND UNPERSUASIVE TESTIMONY OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE EVIDENCE PROFFERED BY THE DEFENSE.

## III

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED AND IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

### **1. Art. III (Bill of Rights) of the Constitution provides in part:**

"Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

"(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

"(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

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Accused-appellant signed a document, marked Exhibit "B", which consists of two parts. The first part, marked Exhibit "B-4," shows that accused-appellant was informed that he had a right to remain silent and not to give any statement; that any statement he gave could be used against him in court; that he had a right to retain counsel of his choice and that if he could not afford to hire the services of counsel he would be given a competent and independent one. After being thus informed, he said he was nonetheless willing to give a statement and tell the truth. Thus, written in Filipino, the first part of the document reads:

"0.1 TANONG: Bago and lahat, nais kong ipaalam sa iyo Ginoong JIMMY ALBERCA Y MABUHAY na ikaw ay aming iniimbistigahan sa kasong Robbery with Homicide na nangyari noong madaling araw ng Abril 11, 1994 sa tahanan ni MR. PASTOR SAYCON sa #99 Tandang Sora Avenue,