

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LI BUN JUAN ALIAS BUN HUAN, ET AL., DEFENDANTS, LI BUN JUAN ALIAS BUN HUAN AND SY TOP, DEFENDANTS-APPELLANTS.*G.R. No. L-11077. August 23, 1966*

Ponente: DIZON, J.

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In connection with the killing of Dr. Yu Kiatming on the evening of March 13, 1946, an information for murder (Criminal Case No. 24342) was filed in the Court of First Instance of Manila on October 27, 1953 against Li Bun Juan, alias Bun Huan, Sy Top, Ong Tong To and John Doe, of whom only Li Bun Juan had been arrested at that time. The other defendants were arrested subsequently, and on January 8, 1954 the case was jointly tried with Criminal Case No. 24530, also for the murder of Dr. Yu Kiatming, the accused therein being Go Kim Pak, Alfonso Go, Lao Chong Ban, Lao Bon Gan and Co Pak, they having allegedly induced the defendants in the first case to commit the crime for a promise of reward.

After the prosecution had rested its case, the defendants in Criminal Case No. 24530 and the defendant Li Bun Juan in Criminal Case No. 24342 filed separate motions to dismiss on the ground of insufficiency of the prosecution evidence. The motion filed in the first case was granted and, as a consequence, the defendants therein were acquitted, while the motion filed by Li Bun Juan was denied. Thereafter, he and the other defendants in Criminal Case No. 24342 submitted their evidence, and after due trial, the court rendered judgment convicting Li Bun Juan and Sy Top of the offense charged, but acquitting the other defendant Ong Tong To, as follows:

"WHEREFORE, this court hereby finds the accused Li Bun Juan and Sy Top guilty beyond reasonable doubt of the crime of murder, defined in and penalized by Article 248 of the Revised Penal Code, without any aggravating or mitigating circumstance, and hereby sentences each of them to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. The said accused shall be entitled to one-half of their preventive imprisonment. The accused Ong Tong To alias Tan Boon is hereby acquitted of the crime charged, and his bail bond is hereby cancelled."

Li Bun Juan and Sy Top appealed, but the latter's appeal was later dismissed upon his own motion (Resolution of November 12, 1956).

Appellant contends, in support of his appeal, that the evidence upon which the trial court based its judgment of conviction is insufficient to prove his guilt beyond reasonable doubt, and that said court erred in not taking into account, in the imposition of the penalty, the fact that, at the time of the commission of the offense on March 13, 1946, appellant was only fourteen years, nine months and nine days old.

The prosecution evidence conclusively shows that at about seven o'clock in the evening of March 13, 1946, while Dr. Yu Kiatming, hereinafter referred to as Dr. Yu, was standing, with his back near the door of his house located at 554 Alvarado St., Int. 6, Manila, he was fired upon. Taken to St. Luke's Hospital, he expired that same night as

a result of the gunshot wounds inflicted upon his person.

Ong Hoc, Dr. Yu's wife, saw a small man running away right after the first shot. Ah Chuy, the couple's five-year old daughter, approached her wounded father who had fallen on the floor of the house. At that point another shot was fired at Dr. Yu, but the assailant was himself hit on the head with a chair thrown against him by Ong Hoc. Although this blow caused the assailant to stumble, he immediately recovered from its effect and retaliated by firing at Ong Hoc and Ah Chuy, who were hit, respectively, on the stomach and on the arm. Despite her wound, however, Ong Hoc ran after the assailants who headed for a jeep parked at the corner of Alvarado St. and a callejon. After boarding the same they fled towards the direction of Reina Regente street .

Ong Hoc and her daughter were also taken to and treated at St. Luke's Hospital where they were confined for about one month.

According to Ong Hoc, the man who fired the second shot was the same person who had come to their house one night asking that Dr. Yu visit a patient, but due to threats against Dr. Yu's life, the stranger was not allowed to see him.

Due to the circumstances under which the crime was committed, the police virtually faced a blank wall and the murder remained unsolved until Det. Nestor Ponce and Pat. Alejandro Orpiano arrested Li Bun Juan on October 22, 1953 for acting suspiciously at the corner of Soler and Reina Regente streets. After his statement had been taken at the police headquarters, he was booked for concealing in his person a deadly "balisong" six inches long.

According to the prosecution evidence, a search of Li Bun Juan's body also resulted in the discovery of a note in chinese characters which they submitted to the NBI for translation. At first Li Bun Juan claimed that he did not know anything about it, but later on he told the policemen that the note was about his indebtedness to another chinese. As translated by the NBI it is now in the record as Exhibit F-1 (p. 12, folder of exhibits). It appears to be a note addressed to Li Bun Juan on September 11, 1953 by one who signed himself as Top concerning the .45 caliber pistol allegedly used in the murder of Dr. Yu.

Interrogated anew in view of the contents of the note, Li Bun Juan broke down and confessed that he was one of the killers of Dr. Yu in 1946.

Three different written statements were made by Li Bun Juan, the first on October 24 (Exhibit G), the second on November 7 (Exhibit G-2), and the third on November 8 (Exhibit G-3), all of the year 1953, in which he disclosed his guilty participation in the commission of the crime. The first was subscribed and sworn to before Notary Public Herminio R. Noriega and the others before Notary Public Lucito Santiago.

As stated heretofore, Sy Top was arrested on October 27, 1953. After the arrest of Li Bun Juan the police had made arrangements for a tape recording of whatever conversation he would have with Sy Top - if the latter was arrested - the moment they met. So a microphone was conveniently installed near the window of the cell where they were to meet, and their conversation in chinese was thus taken and preserved in tape. The same appears to corroborate what had already been disclosed to the police authorities by Li Bun Juan.

Sy Top also signed three different statements or extrajudicial confessions (Exhibits I, I-2 and I-3) executed on October 28, November 7 and November 8 of the year 1953, respectively, but We need not discuss them in detail now, not only because Sy Top has withdrawn his appeal but also because, as against Li Bun Juan, they can only be considered as corroborative evidence.

Appellant now claims that the trial court erred in convicting him on the basis of the aforesaid confessions extracted from him by patrolmen Ponce and Orpiano whose testimonies were discredited by the same trial court

with respect to the criminal liability of his co-defendant, Ong Tong To alias Tan Bun, and further claims that the court erred in not taking into consideration the fact that, at the time of the alleged commission of the crime on March 13, 1946, he was only fourteen years, nine months and nine days old.

After a careful consideration of the contents of appellant's confessions and the testimony of the prosecution and defense witnesses in relation thereto, the trial court found that the same are sufficient to warrant appellant's conviction of the offense charged and that the only question remaining to be resolved was whether or not said confessions had been voluntarily and freely made. Said court's conclusion on this matter was that they were. It is settled in this jurisdiction that a trial court's conclusions of this nature will not be disturbed unless said court had overlooked, misunderstood or misconstrued some facts or circumstances of weight and influence sufficient to justify a reversal or modification either of the conclusion or of the decision appealed from. Due to this and the gravity of the offense charged, We re-examined the evidence concerning the circumstances under which said confessions were made.

The prosecution witnesses on the voluntary character of the extrajudicial confessions in question were Patrolmen Nestor D. Ponce and Alejandro Orpiano, besides Notaries Public Herminio R. Noriega and Lucito C. Santiago.

Ponce - who took down the statements aforesaid and acted, with Orpiano, as witness to their execution - testified substantially to this effect: that in the early morning of October 22, 1953 he and Orpiano arrested Li Bun Juan at the corner of Soler and Reina Regente streets for acting suspiciously and that upon making a search of his person they found him in possession of a deadly weapon and of a wallet containing a residence certificate, three one-peso bills and a note in Chinese characters; that when confronted with the translated contents of the note, Li Bun Juan broke down and confessed that he was one of those who killed Dr. Yu on March 13, 1946; that in the course of the investigation they took down Li Bun Juan's statement now in the record as Exhibit G in the city jail; that the questions were propounded to him in Tagalog and his answers were likewise given in the same dialect; that Li Bun Juan read the contents of the statement before he signed each and every page thereof in the presence of Ponce and Orpiano who also signed the last page thereof as witnesses; that thereafter Li Bun Juan was brought before Notary Public Noriega who, after reading the contents of the statement to Li Bun Juan, asked him if the same were true, to which he gave an affirmative answer and again signed his name immediately below his typewritten name, after which the same notary ratified the statement; that following the lead they had obtained through the confessions of appellant they eventually arrested Sy Top early in the morning of October 27, 1953 at 101 Pinagtipunan, Mandaluyong, Rizal; that the police engaged the services of a technician of the Radiowealth Inc. for the installation of a tape recording set at compartment No. 3, cell No. 5 of the City Jail where they planned to have Li Bun Juan meet Sy Top, once the latter had been arrested, in furtherance of their plan to tape record any conversation between them; that they were, in fact, able to carry out said plan and the conversation between Li Bun Juan and Sy Top was tape recorded, the box containing the printed words "Panacoustic Brand Magnetic Sound recording tape" now being in the record as Exhibit H and the tape recording spool as Exhibit H-1; that these exhibits were thereafter sent to the NBI for appropriate translation of the conversation carried in Chinese, said translations now being in the record as Exhibit N and O; that on October 28, 1953 they took down the first statement of Sy Top marked as Exhibit I following substantially the same procedure followed in the taking of the statements of appellant, except that Sy Top's statement Exhibit I was subscribed and sworn to before Notary Public Santiago.

The testimony of Pat. Orpiano in relation to the execution of the extrajudicial confessions of appellant and Sy Top corroborates that of Pat. Ponce.

To overcome the probative value of his confessions, appellant relies on the following propositions: (a) that they were obtained from him through violence and intimidation; and (b) that the trial court having discredited the

testimony of Patrolmen Ponce and Orpiano in relation to the alleged guilt of Ong Tong To, alias Tan Bun, their testimony should have been disregarded also in connection with the matter of appellant's alleged guilt of the same offense.

Anent the alleged violence and intimidation, the affirmative prosecution evidence shows that the confessions in question were made freely and voluntarily by appellant and that before he signed them in the presence of the notary public mentioned heretofore, he was given ample opportunity to tell the latter that he had been forced and intimidated in signing the same, and yet, far from doing so, he re-affirmed the truth of the statements contained therein and signed them again in the presence of the notary public.

On the other hand, appellant's story as to the circumstances under which he and Sy Top made their respective extrajudicial confessions is so complicated and artificial that one is necessarily led to mistrust it. This must have been an important factor that induced the trial court to make the following considerations in the appealed judgment:

"From the version of the defense of Li Bun Juan and Sy Tap regarding the alleged circumstances under which they signed their main statements Exhibits G and I, respectively, which version is above summarized and set out at some length, this Court cannot bring itself to believe that the said statements had been signed by them through violence, force, intimidation, threat, promise of leniency or reward, or any other improper method. While it is true that by their said version, Li Bun Juan and Sy Tap would have this Court believe that they had been threatened or intimidated by Jimmy Young, or even boxed by Ponce, into signing Exhibits G and I, this claim is transparently inconsistent with and given the lie by other circumstances recounted by said accused, as will in a moment be shown.

"In the first place, it appears from the said version of Li Bun Juan and Sy Tap, which version was also corroborated by Ong Pai who testified for them, that the said accused went to the house of Ong Pai not less than five times, where they met and were introduced to Jimmy Young and his companions; that the said accused then and there came to know from Ong Pai and Jimmy Young that the latter wanted them to testify as government witnesses against four wealthy Chinese whom Jimmy Young wanted to implicate in the killing of Dr. Yu Kiat Ming for the purpose of getting money from the said four Chinamen; that despite this knowledge of Li Bun Juan and Sy Tap, and their alleged protestation that they refused to accede to Jimmy Young's proposition because they did not know anything about the said killing, the said accused accepted an invitation of Jimmy Young to dine downtown, which they in fact did at Mac's Restaurant on Ongpin Street; that after the said dinner, these two accused joined Jimmy Young and the latter's companions in the house of a certain Major Duque behind the Pepsi-Cola plant in Quezon City, where they took to drinking and where the said accused were again told by Jimmy Young about his plan to open up a case against the four wealthy Chinese and to utilize them (Li Bun Juan, Sy Tap, and Tan Bun) as government witnesses; that the said two accused, Tan Bun, Jimmy Young and his companions went to the said house of Major Duque not less than four times, slept there one evening and took their meals there; that members of the same party also went to Li Bun Juan's house at Grace Park at least twice, and to Sy Tap's house at Mandaluyong also twice, and that in going from one house or place to the other, they rode in Army jeeps driven by Captain Hombrebueno, in the company of Captain Polvorosa, Patrolman Orpiano, and Atty. Mores. From these circumstances, testified to by Li Bun Juan and Sy Tap themselves, it is plain to see that they freely associated and fraternized with Jimmy Young and his companions, from which it is not unreasonable to deduce that they were knowingly in league with the said Jimmy Young in the latter's criminal purpose of implicating four wealthy Chinese in the killing of Yu Kiat Ming.

"In the second place, if it is true, as also testified to by Li Bun Juan and Sy Tap, that they had nothing to do with, and knew nothing about, the killing of Yu Kiat Ming; that for this reason they at first refused to consider and accede to Jimmy Young's criminal proposition, and that they even blamed Ong Pai for introducing them to Jimmy Young, who is a bad man, why did they repeatedly join and keep the company of the said Jimmy

Young and the latter's companions? If said Li Bun Juan and Sy Tap were peace-loving and law-abiding, their natural reaction to Jimmy Young's evil overtures would have been to detest the man, Jimmy Young, and to avoid him as much as possible -- instead of consorting, dining, drinking and sleeping with him. Being free men, there was absolutely no reason why Li Bun Juan and Sy Tap did not shake off Jimmy Young's company and influence, or report him to the proper authorities if he should persist in his felonious purpose. The admitted fact therefore that the said accused freely associated with, instead of avoiding, the said Jimmy Young clearly indicates that they were in on Jimmy Young's unlawful plot, and that they just as freely aided and abetted in the furtherance thereof. It will be noted that Jimmy Young's attempt to implicate the four rich Chinese and his alleged coercion of Li Bun Juan and Sy Tap into falsely testifying against said Chinese are both reprehensible and unlawful acts. Yet the said two accused apparently teamed up with, instead of keeping away from, said Jimmy Young -- a circumstance which goes a long way to show that the alleged intimidation is a farce.

"In the third place, Li Bun Juan and Sy Tap had hardly any reason to be afraid of Jimmy Young or to yield to the latter's alleged intimidation, since Jimmy Young was and is a prisoner serving sentence in Muntinglupa, and the kidnapping case in which the said accused were allegedly to be implicated was one that had long been solved and terminated. Moreover, the confessions signed by Li Bun Juan and Sy Tap have to do with the crime of murder, and it is simply unbelievable that they would falsely confess to this grave crime because of the vague fear that, if they did not do so, they might be implicated in a kidnapping case, which is like saying that they wittingly and knowingly jumped from the frying pan to the fire, so to speak. For this reason, the alleged intimidation becomes a tremendous strain on rational belief, let alone the fact that if it were true, Li Bun Juan and Sy Tap would not have consorted and held repeated confabs with Jimmy Young on the matter of incriminating four wealthy Chinese in the Yu Kiat Ming killing. Needless to state, one keeps away from and does not associate with another bent on doing the former harm.

"In the fourth place, from the demeanor, behavior, manner of testifying and resulting testimonies of Li Bun Juan and Sy Tap, this Court has observed and noticed that they are not the illiterate or gullible type who could be intimidated into admitting a crime -- least of all, the grave crime of murder -- that they have not committed. The said accused appear to be intelligent, young and cocksure; as a matter of fact, there is intimation of record that Li Bun Juan has had previous minor brushes with the law. And certainly Jimmy Young would not utilize dullards as witnesses who would be called upon to testify falsely, but convincingly and with a semblance of truth, against four moneyed Chinese whom he wanted to fleece.

"In the fifth place, Li Bun Juan and Sy Tap would have this Court believe by their concurrent testimony that they had absolutely no hand in the preparation of their respective statements, Exhibits G and I, because it was Jimmy Young and Ponce alone who fabricated the same. This testimony, however, is discredited by the fact that Exhibit G contains three pages, while Exhibit I contains four pages, both of which are typed single space in fine type. They are so full of details which the authors alone of the subject matter of the confessions could have furnished and supplied, and this Court cannot believe that the said details could all be drawn from the imagination of Ponce and Jimmy Young, without the aid of Li Bun Juan and Sy Tap.

"In the sixth place, aside from Exhibit G, Li Bun Juan also subsequently executed two other statements, Exhibits G-2 and G-3, wherein he also confessed having taken part in the killing in question. This court has noted that the circumstances under which Exhibits G-2 and G-3 were executed were not touched upon in Li Bun Juan's direct testimony, hence, he had not carried the burden of overcoming and disproving the evidence for the prosecution that the two documents last mentioned had been voluntarily executed by him.

"In the seventh place, aside from Exhibit I, Sy Tap also subsequently executed two other statements, Exhibits I-2 and I-3, wherein he also confessed having taken part in the said killing. Of course, he claims that he was beaten and maltreated by Ponce in Pateros, Rizal, into executing these two last statements. This Court, however, cannot place any stock on this claim for the good reason that, inasmuch as Sy Tap had already made a full confession in Exhibit I, there was hardly any need for torturing him into executing Exhibits I-2 and I-3, which are only partly confirmatory of the statements appearing in Exhibit I. Neither was there any necessity for

Ponce to take Sy Top to Pateros, Rizal, for the purpose of executing Exhibits I-2 and I-3, since they could have been conveniently executed in the City Jail or in Quezon City as was allegedly done with Exhibit I.

"Finally, if it is true, as testified to by Li Bun Juan and Sy Tap, that their understanding with Jimmy Young was that they were only going to be witnesses for the Government against the four rich Chinese and that they had nothing to worry because no harm would befall them, then it goes without saying that they must have been greatly surprised when Jimmy Young and Ponce allegedly prevented them from reading the contents of Exhibits G and I before signing the same, Ponce even going to the extent of boxing them. And their surprise and rude awakening must have been multiplied when they were put to jail, where they were still confined up to the present time, after signing the said Exhibits G and I. In these circumstances, their natural impulse must have been to protest vigorously the trickery that was allegedly foisted upon them by Jimmy Young and Ponce through intimidation and force, not to mention their being thrown to jail. Yet there is nothing of record to show that they registered such a protest, either verbally or in writing, or that they have lodged any complaint against Jimmy Young and Ponce for the alleged intimidation and maltreatment, a circumstance that goes to show that the alleged intimidation and maltreatment have no factual basis.

"In the light of the foregoing considerations, viewed singly or collectively, this Court finds from the very evidence and version of Li Bun Juan and Sy Tap--let alone the evidence for the prosecution elsewhere set out in this decision -- that their main extrajudicial confessions Exhibits G and I, respectively, had been voluntarily executed by them. In view of this finding, it also appears evident that Li Bun Juan's subsequent statements marked Exhibits G-2 and G-3 and Sy Tap's subsequent statements marked Exhibits I-2 and I-3 were likewise voluntarily executed, since the four statements last mentioned were taken down only for the purpose of having the said accused identify, as they in fact identified, two persons mentioned in their main confessions Exhibits G and I, namely, Go Kim Pac and Alfonso Go."

We also find appellant's contention that the testimony of patrolmen Ponce and Orpiano should be disregarded completely to be without merit. While it is true that upon considering the evidence bearing on the execution of the extrajudicial confession of Ong Tong To (Exhibit J) the trial court expressed some doubts as to the voluntariness of its execution, this can not be taken to mean that said court completely discredited the testimony of said police officers including the portions thereof that had reference to appellant's own extrajudicial confessions. As a matter of fact, it appears no where in the decision of the trial court that both or either one of said police officers had knowingly perverted the truth in any particular respect. To the contrary, the fact that their testimony in relation to the execution of appellant's extra-judicial confessions was accepted as truthful goes to show that, in the opinion of the trial court, said policemen were credible witnesses. In this connection it must be borne in mind that the principle *falsus in uno falsus in omnibus* is not an absolute one, and that it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts (*People vs. Dasig et al.*, 49 O. G. No. 8, p. 3338). In *People vs. Keller* 46 O. G. No. 7 pp. 3222-3223, the following was quoted with approval by the Court of Appeals from 1 Moore on Facts, p. 23:

"18. Testimony May Be Partly Credited and Partly Rejected.- Triers of facts are not bound to believe all that any witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances, to be the truth. xxx xxx xxx xxx Even when witnesses are found to have deliberately falsified in some material particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they deem worthy of belief."

Lastly, with respect to the trial court's failure to take into account, in relation to the imposition of the penalty, the fact that at the time of the commission of the offense appellant was only fourteen years, nine months, and nine days old, the Solicitor General (Brief, pp. 23-24) agrees that such error was committed and recommends the corresponding modification of the penalty imposed upon appellant. As a consequence of the presence of the privileged mitigating circumstance of minority, the penalty to be imposed upon appellant should be the penalty

next lower in degree to reclusion temporal in its maximum period to Death - which is the penalty for murder. This penalty next lower in degree is prision mayor in its maximum period to reclusion temporal in its medium period. As the killing was obviously attended by evident premeditation and treachery, either of which necessarily raises the crime to murder, the other shall be considered merely as a general aggravating circumstance. Applying the provisions of the Indeterminate Sentence Law, the penalty imposed upon appellant is, therefore, reduced to an indeterminate penalty of not less than ten years of prision mayor, nor more than twelve years and one day of reclusion temporal.

Modified as above indicated, the appealed judgment is affirmed in all other respects.

Concepcion, C.J., Reyes, J.B.L., Barrera, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave.

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