

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GAUDENCIO MANIGBAS, ET AL., DEFENDANTS AND APPELLANTS.*G.R. Nos. L-10352-53. September 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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The appellants Gaudencio Manigbas, Marcial Macalintal, Lope de Torres, Amado Ramos, Iluminado Landicho, Isabelo Egar, Alejandro Zuño, Ben Mercado, Melecio Sison, Eugenio Mendoza alias Eugenio Hernandez, and Eliseo Carandang were, together with Catalino Ramos, Modesto Leviste, Miguel Almario and Tomas Carandang, charged with the crime of murder with assault upon an agent of a person in authority in Criminal Case No. 767 of the Court of First Instance of Batangas for the killing of Esteban de Guzman, Chief of Police of the municipality of Rosario of the same province. They were also charged with frustrated murder with assault upon an agent of a person in authority in Criminal Case No. 768 of the same court for the assault and wounding on the same occasion of Cayetano Hagan, policeman and companion of the deceased Esteban de Guzman.

Before trial, the provincial fiscal filed a motion to discharge Tomas Carandang, Eliseo Caranjlang and Modesto Leviste from the informations in order that they might be utilized as state witnesses in both cases. The lower court, however, ordered the discharge of Tomas Carandang only.

By agreement of the prosecution and the defense, the two cases were tried jointly. After the prosecution had rested, the charges against Catalino Ramos, Miguel Almario, and Modesto Leviste were dismissed by the trial court for failure of the prosecution to prove a prima facie case against them.

At the conclusion of the trial, the lower court found all the other accused guilty as charged in Criminal Case No. 767 and sentenced them to suffer the penalty of death, to indemnify the heirs of the deceased Esteban de Guzman in the sum of P6,000.00 and to pay costs proportionately.

In Criminal Case No. 768, they were also found guilty, but only of attempted murder, and sentenced to an indeterminate penalty of 4 years and 2 months' of prision correccional to 10 years of prision mayor, with the accessory penalties prescribed by law, to indemnify the offended party, Cayetano Ilagan, in the sum of P200.10 and to pay costs proportionately.

Before the judgment became final, counsel for Gaudencio Manigbas filed a motion for new trial based on alleged newly discovered evidence consisting of the retractions made by Eliseo Carandang and Eugenio Mendoza of their respective confession and testimony. A joint motion for new trial and/or reconsideration was also filed on behalf of all the accused. Eliseo Carandang and Eugenio Mendoza, on their part, filed a motion for "re-trial" on the ground that the court appointed as their counsel de oficio Atty. Leandro Macatangay, who first entered his appearance in the cases as prosecutor, which in effect denied them of their fundamental right to counsel. After oppositions to the above mentioned motions had been filed by the provincial fiscal, the trial court denied the same. Hence, this appeal.

It appears that in the evening of July 9, 1954, as Esteban de Guzman, the Chief of Police of Rosario, Batangas, accompanied by policeman Cayetana Ilagan passed in front of the southern gate of the town market on their way home, they were suddenly fired upon by certain persons hidden behind the concrete posts of the gate. Esteban de Guzman was hit in the heart and lungs and fell dead on the spot. Cayetano Ilagan, who was hit on the left thigh, fell on his haunches, but he was able to fire back at their ambushers with his carbine. After the firing had ceased and the attackers had fled, Ilagan was met by a town councilor to whom he related that he and the chief of police had been ambushed. Together with the town mayor and some constabulary soldiers, whom they informed about the ambush, they went back to the scene of the shooting and there found the prostrate body of the chief of police. From behind the concrete posts of the gate, where the shots came from, they found empty shells and live ammunition for garand and carbine rifles.

In the morning of the following day, Gaudencio Manigbas, who was a confidential agent of the II Military Area and recognized leader of an armed commando unit organized by him to assist in the PC's campaign against the Huks, arrived with his men at the town of Rosario and proceeded to the compound of the constabulary detachment to make a report. To his surprise, he and his men were disarmed and their respective ammunition taken from them. Tomas Carandang, one of his men, was detained for investigation in connection with a kidnapping case and also for the killing of Esteban de Guzman. During the investigation, said Carandang made a confession admitting his participation in the killing and implicating other members of the commando unit. Based on said confession, Manigbas and his men were rounded up for investigation. As a result thereof, Eliseo Carandang, Eugenio Mendoza, Modesto Leviste and Isabelo Egar, likewise, executed affidavits confessing their guilt in the crime and incriminating the other members of the commando unit.

From the above-mentioned confessions and from the testimony of state witness Tomas Carandang, the following facts were established: In the afternoon of July 9, 1954, when the crime was committed, Manigbas gathered his men—all the accused charged in the information, except Ben Mercado and Melecio Sison—at the house of Catalino Ramos in barrio Macalamcam, Rosario. There he told them that Esteban de Guzman, chief of police of Rosario, must be liquidated, because he was responsible for the conviction and sentence to double life imprisonment of their "boss" Isaac Farol. He then called for volunteers who would be the trigger men. Marcial Macalintal, Lope de Torres and Amado Ramos responded and volunteered to perform the job. With the exception of Miguel Almario and Catalino Ramos, who remained behind, Manigbas and his men¹ (composed of Tomas Carandang, Eliseo Carandang, Lope de Torres, Isabelo Egar, Marcial Macalintal, Alejandro Zufio, Eugenio Mendoza, Modesto Leviste, Amado Ramos and Iluminado Landicho) all armed with firearms, then proceeded to barrio Bucal of the municipality of Padre Garcia, Batangas. Arriving there at about dusk, they stayed at the barrio school building, proceeded to the house of the barrio lieutenant where they took their supper, and then returned to the school building. Upon Gaudencio Manigbas' order, the group under the leadership of Marcial Macalintal proceeded to the poblacion to carry out their plan, with instructions to wait for Ben Mercado and Melecio Sison at a place north of the market who would show them the place where to lay in ambush for their victim. Only Manigbas and Modesto Leviste remained at the school building. Between 9:30 and 10:00 p.m. Marcial Macalintal and his men arrived at the place north of the market, where they waited for Mercado and Sison. The two subsequently came and accompanied, Macalintal, Torres and Ramos to the southern part of the market where they strategically posted themselves behind the posts of the gate to the market. The others deployed themselves at the northern part of the market to prevent any help that might be sent for the victim. A short time later, volleys of fire were heard coming from the direction where Macalintal and his companions went. After a while, Macalintal, De Torres and Ramos withdrew and ran to the place where his companions were deployed. From there they all returned to the school house. Upon being asked by Manigbas if the chief of police was killed, De Torres and Ramos answered in the affirmative. This was confirmed by Macalintal who arrived a little later. When they were about to leave the place

on the following morning, Manigbas instructed his men on what to say in case they would be investigated.

On cross-examination by one of the defense counsel, : Tomas Carandang revealed that Marcial Macalintal did not present himself at the PC headquarters because Gaudencio Manigbas had earlier ordered him to alight from the truck they were riding. This fact was confirmed by Modesto Leviste on cross-examination when he took the stand as a rebuttal witness for the prosecution.

Unlike Isabelo Egar, who repudiated his confession claiming that he was tortured to make the same, Modesto Leviste confirmed the truth of the contents of his extra-judicial confession. Eugenio Mendoza and Eliseo Carandang, likewise, confirmed the truth of the contents of their respective extra judicial confessions when they testified in their behalf, 'claiming, however, as their defense, that they acted under the impulse of uncontrollable fear of an equal injury, because Gaudencio Manigbas and some of the other accused were capable of killing them for merely refusing to take part in the plan to kill the chief of police.

The accused-appellants, putting up the defense of alibi, denied the testimony of Tomas Carandang and in effect, the contents of the confessions of Eugenio Mendoza, Eliseo Carandang and Modesto, Leviste.

Thus, Gaudencio Manigbas—testifying in his own behalf and that of his co-accused except Marcial Macalintal, Ben Mercado and Melecio Sison—admitted the gathering of his men at the house of Catalino Ramos, but claimed that their purpose was to discuss their forthcoming operation against the Huks. He also declared that he spend the whole night of. July 9, 1954 at the school premises of barrio Bucal supervising over his men who were strategically deployed in said place.

Marcial Macalintal, on the other hand, claimed in his testimony that he was not with Manigbas on the day of the incident as he had previously been permitted by Manigbas to go to barrio Alupay, where he stayed until the morning of July 10, 1954.

Ben Mercado and Melecio Sison likewise maintained that they were at some other place at the time of the commission of the crime.

The defense also presented in their behalf the testimony of a ballistics expert of the Philippine Constabulary, who stated that not one of the firearms confiscated from the accused on July 10, 1954 had been fired prior to that date. He also testified that not one of the empty shells found behind the concrete posts of the gate was discharged from any of the-guns confiscated from the accused and submitted to him for examination and ballistic test.

On rebuttal, however, the prosecution presented Modesto Leviste, who declared that in his conversation with Manigbas on the night of July 9, 1954, the latter told him that different guns would be used in the killing and that Ben Mercado and Melecio Sison knew about those guns.

Upon the evidence thus adduced, the trial court in a 46-page decision found all the appellants guilty as stated in the early part of this opinion.

After going over the records, we find no reason for disturbing this verdict. The alibi set up by the appellant Gaudencio Manigbas for himself and his men (excluding Marcial Macalintal, Ben Mercado and Melecio Sison) is not convincing, and in the face of the evidence presented by the prosecution, must be rejected. As pointed by the Solicitor General and observed by the lower court, said alibi was carefully planned by Manigbas, who is experienced in intelligence work, a former soldier, guerrilla, chief of police and confidential agent of the PC, even previous to the commission of the crime. This is evident from this acts before and after the commission of the crime. Furthermore, Manigbas' claim that he and his men were at barrio Bucal on the night Esteban de Guzman was treacherously killed is not incompatible with the fact that they committed the crime as established by the

evidence for the prosecution. Considering that the distance from barrio Bucal to the poblacion where the crime was committed will take only about 2 hours to negotiate by walking, it was not improbable for Macalintal and his group as instructed by Manigbas to have gone to the poblacion, killed Esteban de Guzman and wounded Cayetano Ilagan, and then returned to barrio Bucal, all in the same evening.

For similar reasons, the alibis respectively set up by the appellants Marcial Macalintal, Ben Mercado and Melecio Sison cannot be given weight and credence. Macalinta's testimony, moreover, is uncorroborated and contradicts that of Manigbas on material points, while the testimony of Mercado is self-contradictory and glaringly inconsistent with those of his corroborating witnesses. This renders their alibis unsatisfactory and unconvincing. As regards the alibi of appellant Ben Mercado, who did not take the witness stand, there is the declaration of Rosario's town mayor that after the shooting, Mercado together with others arrived at his house and told him that they came from the market where the shooting took place. This cannot mean, however, that he did not participate in the execution of the crime as shown by the evidence of the prosecution. On the contrary, it proves that he was at the scene of the offense and connects his presence thereat and that of Sison, to their function of spying upon the whereabouts of Esteban de Guzman and in supplying the arms used to liquidate him.

The records also show that on September 21, 1951, Manigbas was appointed chief of police of Rosario, Batangas, but he had served only 4 months in that position when he was replaced by Esteban de Guzman. In a quo warranto proceeding, he alleged that De Guzman without lawful authority usurped his office. The action, however, was dismissed, which dismissal was affirmed by this Court on appeal. This incident strained their relations and caused enmity between them. Their enmity was further accentuated by the fact that they belonged to irreconcilable political factions, Manigbas being affiliated to that headed by Isaac Farol, De Guzman to that headed by Arias now deceased. And for the apprehension and conviction of Isaac Farol as the leader of an organized gang of kidnappers, Manigbas had blamed Esteban de Guzman, who was instrumental in securing valuable information regarding the identities of the kidnappers and relaying the same to the authorities. These circumstances constitute strong and compelling motive for appellant Manigbas to plan the liquidation of De Guzman and to induce his men to execute it.

Appellants claim that the trial court erred in denying their joint motion for new trial and/or reconsideration based upon the retraction made by Eugenio Mendoza and Eliseo Carandang of their testimonies insofar as the same confirmed their confessions. We find this claim untenable. Affidavits of recantation made by the accused after conviction are very unreliable, especially since they usually involve a confession of perjury. It is indeed a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions calculated to discourage and forestall falsehood simply because the witnesses who had given them later on changed their minds. Such a rule constitutes a mockery of solemn trials and places the investigation of truth at the mercy of the unscrupulous. Unless there be special circumstances, which, coupled with the retraction of the witness, really raise a doubt as to the truth of the testimony given by him at the trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to a criminal litigation. In the present case, the retractions of Eliseo Carandang and Eugenio Mendoza, considered with the other circumstances of the case, are not enough to raise a doubt as to the truth of what they testified in court, which testimony is, merely corroborative. Moreover, the contents of their extrajudicial confessions were found by the lower court to be true in view of the testimony of the constabulary soldier who took the said statements and of the testimony of the Justice of the Peace before whom the statements were sworn and subscribed to.

Appellants also impugn as improper the discharge of Tomas Carandang from the informations in order that he

may be utilized as a state witness. The rule is that the discharge of a co-accused in order that he may be utilized as a state witness is a matter within the discretion of the trial court to be exercised upon the conditions set forth in the law (*People vs. Judge Ibanez*, 92 Phil., 933). In this case, it has not been shown that such discretion has been misapplied. At any rate, an error of the court in the discharge of an accused does not affect the competency of the accused as a witness nor the admissibility of his testimony. (*People vs. Pardo*, 79 Phil., 568; 45 Off. Gaz. 2023; *People vs. Faltado, et al.*, 84 Phil., 89; 46 Off. Gaz. 6079.) Such testimony may warrant conviction if corroborated to such an extent that its trustworthiness become manifest (*People vs. Riparip*, 86 Phil., 526; 47 Off. Gaz. [12th Supp.] 159.) In the present case, Tomas Carandang's testimony finds ample corroboration in the written confessions of Eugenio Mendoza and Eliseo Carandang, as well as in that of Modesto Leviste, who confirmed the truth of their contents in open court. Moreover, the question as to whether Tomas Carandang's testimony should be given full weight and credit rests primarily upon the sound judgment of the trial judge who saw him testify and observed his demeanor throughout the entire proceeding. In this connection, it should be stated that after his direct testimony, Carandang was subjected to extensive and searching cross-examination by the defense during five sessions, but he was able to weather the same.

Appellants also contend that the lower court erred in overruling their objection against the presentation of Modesto Leviste as a rebuttal witness and in allowing him to testify on allegedly new matter inappropriate for rebuttal. We see nothing irregular, however, in the admission of Modesto Leviste's testimony whether as rebuttal or additional evidence. Such admission, depending upon the particular circumstances of the case, falls within the sound discretion of the trial court. (See Section 3 [c], Rule 115, Rules of Court.) Anyhow, counsel for appellants had all the opportunity to cross-examine Modesto Leviste and expose him if he was not telling the truth.

Appellants further contend that the appointment of Atty. Leandro Macatangay as counsel de oficio for Eliseo Carandang and Eugenio Mendoza is tantamount to denial of their fundamental right to be assisted by counsel, said attorney having previously appeared as private prosecutor in the cases. In answering this contention, the lower court said that the party who should have objected to the appointment should be the prosecuting fiscal, and in making said appointment, it considered the preference and choice of the above-named accused. It appearing, further, as expressly found by the lower court, that the accused were properly defended, we hold that the appointment, if it be erroneous, is not a reversible error. Neither could it be a ground for a new trial.

Appellants also question the finding of conspiracy among them by the lower court. All their acts, however, as established by the evidence, unerringly point to no other conclusion but that they conspired to commit the crime and each performed his assigned task in pursuance to that unity of purpose and intention of getting rid of Esteban de Guzman, tytanigbas, who planned the assassination and successfully induced his men to execute it in accordance with his instructions, is guilty as principal by induction, (*People vs. Alcaraz*, 103 Phil., 533; 55 Off. Gaz. [33] 6669), while the other appellants are guilty as principals by direct participation.

The crime committed as correctly found by the lower court is murder with direct assault in Criminal Case No. 767 and attempted murder in Criminal Case No. 768, both crimes being qualified by treachery. The Solicitor General alleges that the penalties imposed upon appellants in both cases are in accordance with, law, there being present the aggravating circumstances of evident premeditation and in band in the first case, the latter circumstance being also present in the second case, and recommends that the sentence of the lower court be affirmed in toto. But while we agree that the penalty imposed for the crime of attempted murder in Criminal Case No. 768 is correct, there is, however, no sufficient vote for meting out the penalty of death for the complex crime of murder with direct assault in Criminal Case No. 767, so that the same must be reduced to the penalty of reclusion perpetua.

Prior to the submission of their briefs, appellants Gaudencio Manigbas and Marcial Macalintal filed before this Court a motion for new trial on the ground of newly discovered evidence consisting of affidavits executed by

three captured Huks, namely, Gerardo de los Reyes alias "Commander White", Romeo Bagtas alias "Commander Sanchez", and Glicerio Comia. Said affidavits purport to show that Huk Commander Gomez and his men were responsible for the murder of the deceased Esteban de Guzman, as told to or heard by them from Commander Gomez himself. None of the affiants having any personal knowledge about the killing, their declarations are evidently hearsay and therefore inadmissible in evidence. Moreover, it has not been shown that said declarations could be substantiated. In fact the alleged Huks to whom the murder is attributed are merely identified by their aliases and appear to be still at large. Furthermore, statements like the above-mentioned affidavits would, presumably not be hard to get from persons, who, like these affiants, are detained or facing serious criminal charges. Courts must therefore be wary of accepting such affidavits at their face value.

In view of the foregoing, with the modification that appellants are hereby sentenced to reclusion perpetua in Criminal Case No. 767, the judgment appealed from in all other respects is affirmed. With costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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