

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HILARIO BAUTISTA Y VILLANUEVA, JOHN DOE ALIAS EDUARDO
SIOJO, JR. ALIAS BOY SIOJO, PETER DOE ALIAS ROMULO CRUZ,
ALIAS MOLLY...**

G.R. No. L-35855. April 28, 1983

Ponente: PLANA, J.

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PLANA, J.:

This is a criminal case[*] where the People has joined hands with the appellants in urging the reversal of the appealed judgment of conviction.

For the death of Felicisimo Dionida, Hilario Bautista, Eduardo Siojo, Jr., Romulo Cruz, Francisco Torres, Simeon Bautista, Renato Siojo, Dominador Mon, Levy Cruz and Peping Pangat Cruz were indicted for murder before the Court of First Instance of Rizal, Branch XVIII at Pasay City.

After trial, the Court rendered judgment as follows:

"Wherefore, the Court finds the accused Levy Cruz and Simeon "Meng" Bautista guilty beyond reasonable doubt of the crime of murder as defined and punished under Article 248 of the Revised Penal Code and hereby sentences each of them to life imprisonment and to indemnify, jointly and severally, the heirs of the deceased Felicisimo Dionida in the amount of P12,000.00. As to the accused Renato "Rene" Siojo, Francisco "Paking" Torres, Dominador "Doming" Mon and Hilario Bautista, the Court finds that the prosecution has failed to establish their guilt beyond reasonable doubt and hereby acquits them and orders the cancellation of their bailbonds, while Hilario Bautista is ordered released from confinement unless he can be detained for some other legal cause.

"The accused Romulo Cruz alias Molly and Peping "Pangat" Cruz having died during the pendency of this action, this case, insofar as they are concerned, is hereby dismissed subject to the presentation by the heirs of Peping "Pangat" Cruz of the death certificate.

"With respect to the accused Eduardo "Boy" Siojo, Jr. who is still at large, let an alias warrant for his arrest be issued and let final judgment be rendered against the undertaking of his bondsman."

This is the appeal of Levy Cruz and Simeon "Meng" Bautista from the foregoing judgment of conviction.

The People's case rests on the lone testimony of Proceso Cebrian who was with the deceased before the latter's death. He testified substantially as follows:

Between three and four o'clock in the early morning of December 2, 1966, Cebrian and the deceased Felicisimo Dionida went to Makati to get P100 from Charlie West in accordance with the instruction of the deceased's brother, Atty. Advincula Dionida, for whom Cebrian worked as a driver. From Makati the two proceeded to Nad's Restaurant in Pasay City where they ate together with three other persons, namely, Boy Bangit, Charlie and Rolly. Thereafter, they took a taxi and went back to Makati via Baclaran. In Makati, Charlie and Rolly got off. The three

- Bangit, Dionida and Cebrian - took another taxi and went to the Manila Polo Club. Upon arrival at the club, the security guard pointed his gun at them and forthwith, nine men appeared and confronted them. They were Eduardo "Boy" Siojo, Peping Pangat Cruz, Romulo "Molly" Cruz, Renato "Rene" Siojo, Francisco "Paking" Torres, Dominador "Doming" Mon, Hilario Bautista, and herein appellants Levy Cruz and Simeon "Meng" Bautista. Eduardo "Boy" Siojo ordered Dionida to board a black car. Cebrian and Bangit were ordered by Rene Siojo to board a jeep (TSN, pp. 12-13, May 31, 1968).

The two vehicles proceeded toward the Manila International Airport at Pasay City. With Dionida in the car were Eduardo "Boy" Siojo, Romulo "Molly" Cruz, Peping Pangat Cruz, and herein appellants Levy Cruz and Simeon "Meng" Bautista. In the jeep with Cebrian and Bangit were Renato Siojo, Hilario Bautista, Francisco Torres and Dominador Mon (TSN, pp. 13-14, May 31, 1968).

The car proceeded to the dumping area at the Manila International Airport, while the jeep stayed behind, about 130 meters away. Then, while seated in the jeep, Cebrian heard three gun shots coming from the direction of the car. Shortly thereafter, the five men in the car - Eduardo "Boy" Siojo, Romulo "Molly" Cruz, Peping Pangat Cruz, and herein appellants Levy Cruz and Simeon Bautista - came back. Dionida was no longer with them. (TSN, pp. 15-16, May 31, 1968).

The two vehicles then left the airport. Upon reaching Tambo, Parañaque, Bangit and Cebrian were ordered to get off.

Between 7:00 and 8:00 o'clock that morning, the Homicide and Investigation Division of the Pasay City Police Department received a telephone information that a corpse had been found in the dumping area of the Manila International Airport. Responding to the call, Captain Alfredo Angeles and Patrolman de Leon went to the site and saw a dead male lying face down with both hands and feet bound together by abaca rope. They recovered four empty shells and three slugs of a .45 caliber gun, as well as one empty shell and one live bullet of a .38 caliber gun. Found in the right pant pocket of the deceased were three empty cartridges of a .38 caliber gun. (TSN, p. 3, December 3, 1969). In the evening of that day, Atty. Advincula Dionida identified the corpse to be that of his half-brother Felicisimo Dionida (TSN, p. 3, December 3, 1969).

The body was turned over to the National Bureau of Investigation for autopsy. Dr. Plaridel Vidal, NBI medico-legal officer, found several abrasions and contusions on the different parts of the body of the deceased, as well as lacerated wounds on the frontal region, left side, upper portion; on the parietal region, left side; and on the occipital region, right side. The fatal wounds were the gunshot wounds on the head. Death was caused by these wounds which produced fracture of the skull and laceration of the brain (Exh. "B", necropsy report, (TSN, pp. 6-7; 13, February 21, 1969).

Like their co-accused, herein appellants invoked alibi as their defense. Appellant Levy Cruz claimed he was a Parañaque policeman. On December 1, 1966 he went to Olongapo City pursuant to a mission order to serve a warrant of arrest on a certain Andres Cruz, Jr. He was not able to apprehend the subject, so he came back to Parañaque, arriving at noontime of December 3, 1966.

Simeon Bautista claimed that on the day of the incident he was in his hometown, General Tinio, Nueva Ecija for the observance of his wedding anniversary. He left Manila where he worked as an employee of the Bureau of Public Works on November 30, 1966 and returned after the New Year of 1967.

In their brief, appellants aver among others that the trial court erred in giving full credence to the lone testimony of Proceso Cebrian, and in finding that there was conspiracy among four of the accused in the commission of the crime.

The People, after an analysis of the evidence, noted that the testimony of prosecution witness Cebrian is too slender a basis upon which to rest a finding of guilt. Cebrian heard three gunshots from a distance of 130 meters, but did not see who fired the shots. As he heard nothing else and saw absolutely nothing of the incident, Cebrian could not say if the shots he heard were fired at Felicisimo Dionida and, whether the latter was hit. The insufficiency of his testimony is evident.

Q What happened when you were already there in that place?

A

They brought Felicisimo Dionida, that is, these Boy Siojo, Molly Cruz, Peping Pangat Cruz, Meng Bautista, Levy Cruz took Felicisimo Dionida to that place which was being bulldozed.

Q After the five brought Dionida there, what happened?

A I heard three shots.

Q And after you heard three shots, what happened?

A They returned at once. They came back at once.

Q Who came back immediately?

A

Boy Siojo, Levy Cruz, Molly Cruz, Peping Pangat Cruz, Meng Bautista.

Q Do you know who fired those three shots which you heard?

A No, sir. (TSN, p. 14, May 31, 1968).

.....

Q

Was there anybody who told you that the late Felicisimo Dionida was shot by any of the accused?

A None, sir.

Q

Nobody told you and you have not seen anybody of the accused having shot the deceased Felicisimo Dionida, is it not?

A

I did not see, sir, but the ones who took him were Boy Siojo, Molly Cruz, Peping Pangat Cruz, Meng Bautista and Levy Cruz. They brought him to the place being bulldozed, and then I heard three shots. (TSN, p. 22, May 31, 1968)

.....

Q

Do you mean to say that when you heard those three shots Dionida was at the dump site?

A

He was on board the black car which took him to that place, your Honor.

Q

You mean to say that the black car was at the dumping ground?

A

Yes, the black car proceeded to that place of the dump site, sir.

Q

When you heard those three shots Dionida was inside the black car?

A

He was taken on board that car but I did not see him anymore because I was far.

Q

Where was Dionida particularly in relation with the car when you heard those three shots?

A He was with them on board the black car, sir.

Q He was inside the car when you heard those three shots?

A

I did not see him anymore, Your Honor. Felicisimo Dionida was taken by Boy Siojo to the dump site.

Q

You mean to say that Dionida was taken from the black car to that dump site?

A

I did not see anymore because I was far but maybe, as I saw that the car proceeded towards the direction of the dump site. (TSN, pp. 6 & 6-a, July 5, 1972)

The trial court found appellants guilty on the assumption that they were principals either by direct participation or by indispensable cooperation, reasoning that the unbroken chain of events so indicates. But the most that could be culled from the evidence are that both appellants were in the same car with the deceased together with others, and that they were among those who came back from the dumping site. These meagre facts hardly support the conclusion arrived at by the trial court. Said court was not even certain as to what kind of principals appellants are. Indeed, there is absolutely nothing to show that they have as much as uttered a word to or laid a hand on the deceased.

It is a fact that Dionida did not die of natural causes. He met a violent death but questions as to when, how and who caused the same do not find any answer from the People's evidence.

To quote the People's brief:

"Several aspects of this case bother the mind. Going over the record, several items appear to be missing, puzzling, at the same time preventing the impartial mind from attaining the moral certainty required respecting the killing of Felicisimo Dionida.

"ITEM: When did Felicisimo Dionida die? The testimony of NBI's Dr. Plaridel E. Vidal, Medico Legal Officer, perfectly described Dionida's cause of death, but at the same time, frankly admitted that it was impossible to approximate, much less fix the time of the victim's death. (pp. 2-20, t.s.n., Feb. 21, 1969).

"ITEM: What weapon or weapons, were used to inflict the mortal wounds on the victim? Again, while the NBI Necropsy Report (Exh. "B") explicitly declares that the fatal wounds were caused by bullets fired on the victim's head, there is no evidence as to what gun, or guns, caused such wounds. Captain Alfredo C. Angeles of the Pasay City Police Department testified that they forwarded to the NBI the following: "Four (4) empty cartridges of .45; .38 which are found at the crime scene, sir." (p. 3, t.s.n., Dec. 3, 1969). From the raw data, nothing was developed, nor introduced in evidence. Which gun fired the slugs? Were the slugs recovered, slugs that hit and caused the death of the victim?

"ITEM: Who fired the fatal shots against the victim? In Cebrian's testimony, only "Boy" Siojo of the group riding the black car with the RP car plate, was said to possess a gun. (p. 5, t.s.n., July 5, 1972). Did "Boy" Siojo fire the fatal shots? Did someone else? The record does not disclose?

.....

"By their first assignment of error, appellants seek to undercut the trial court's reliance on the testimony of lone prosecution witness Proceso Cebrian, and thus isolate its decision from its factual moorings.

"It would seem, however, that granting Cebrian's testimony the full weight and credit accorded it by the trial court, there would yet remain a persistent, nagging doubt that Cebrian's evidence achieves in the objective mind, the moral certainty that a crime was indeed committed, and that appellants did, in fact, perpetrate the same (along with the other accused).

.....

"There is, of course, no doubt that the crime charged had in fact been committed; the documentation of this fact is unassailable. May we say the same thing about the crime having been committed by appellants, with the other accused? Cebrian had, himself, declared that he was in the jeep 130 meters away from the black car with the RP plate in which Felicisimo Dionida was. He was thus 130 meters away from the alleged scene of the crime. Moreover, in the mantle of darkness that prevailed in that hour (between 3:00 and 4:00 o'clock A.M. of a December morning, the hours of darkness being longer than ordinary), Cebrian saw nothing of the victim's

alleged death. All he heard was three shots. Cebrian could not tell who fired the shots. Nor which gun, or guns, were used. (And no weapon used in the crime was ever presented in the trial). Even the slugs and shells recovered by Pasay City Police Captain Alfredo Angeles were not presented at the trial neither identified as to which firearm they were fired from, nor whether the slugs were those that lodged in the victim's head.

"Cebrian did not even see that Dionida was dead after he heard the three shots. Neither did he see that Dionida was hit, nor wounded, at the time that Cebrian alleged that he heard the shots. All that he did testify to was that when the black car with the RP plate returned, he did not see the victim in the car with the accused.

"Was Felicisimo Dionida killed at the time that Cebrian alleged that he heard the shots? If the victim was indeed shot then, who did fire the shots? What acts did any of the accused perform to execute the crime?

"We believe that appellants' constitutional right to the presumption of innocence has not been overcome by competent and credible proof. Again, we advert to *People vs. Macaraeg*, where this Court declared:

'2. Nor is the scope of the constitutional presumption of innocence a matter left unresolved. As was held in the recent case of *People v. Dramayo*: 23 That is a right safeguarded both appellants. Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason: the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.'

.....

"Appellants in their second assignment of error claims that the court a quo erred in finding the existence of conspiracy in the commission of the crime charged.

"The trial court stated that 'the welter of the evidence fails to establish that all the accused conspired and confabulated in the commission of the crime such that the act or acts of some of them can be considered also to be those of the others. It, therefore, becomes relevant to inquire into the actual participation of each of the herein accused in the commission of the offense to determine their respective liability.'

"The trial court thereafter concluded that only the first group of Eduardo "Boy" Siojo, Peping Pangat Cruz, Simeon "Meng" Bautista and Levy Cruz 'directly participated and/or cooperated in the killing of the victim.' And consequently, excluded the second group, composed of Renato "Rene" Siojo, Pelagio Bautista, Francisco "Paking" Torres and Dominador "Doming" Mon from the dragnet of conspiracy. What fails to convince the objective mind that moral certainty had been established linking the accused Simeon "Meng" Bautista and Levy Cruz, either as principals by direct participation or indispensable cooperation, to the crime charged in the information, is the lack of evidence as to the very acts that would constitute the participation of each of the appellants in the commission of the crime charged.

"When Felicisimo Dionida was stopped by the group led by Eduardo "Boy" Siojo at the Manila Polo Club, it was only Boy Siojo who acted with respect to the victim, making him get out of the taxi he was riding in, and transferring him to the black car with the RP plate. (p. 5, t.s.n., July 5, 1972). And as to what the other accused did

or performed in evidence of an agreement between and among them, leading to the execution of the crime charged, we are at a loss, for the record shows nothing.

.....

"We are reluctantly compelled to come to agreement with appellants that the established proof does not justify the lower court's findings of the existence of conspiracy. There is simply absent in the record, any evidence as to the acts attributable to any of the appellants resulting in the killing of Felicisimo Dionida in that cold, dark early morning of December 2, 1966.

.....

"WHEREFORE, PREMISES CONSIDERED, the undersigned counsel join appellants in praying that the portion of the trial court's judgment of July 14, 1972 convicting them of murder be set aside, without pronouncement as to costs." (Appellee's brief, pp. 10-19, 27 & 28.)

After a careful review of the record, and finding the People's stand to be amply supported by law and the evidence, the conviction of the appellants in the appealed judgment is reversed on reasonable doubt. The appellants are ordered released, unless held for some other cause. No costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[*] Reassigned to the First Division on February 18, 1983.

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