

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONRADO SAN MIGUEL, JESUS BUENAVENTURA, GONZALO PEREZ,
ALIPIO PEREZ, RICARDO PEREZ AND RAUL MENDOZA,
DEFENDANTS-APPELLANTS.**

G.R. Nos. L-30722-25. July 31, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Conrado San Miguel, Jesus Buenaventura, Raul Mendoza, Gonzalo Perez, Alipio Perez and Ricardo Perez appealed from the decision of the Court of First Instance of Manila dated May 30, 1969, finding them guilty of murder, sentencing San Miguel and Buenaventura to death and Mendoza and the three Perez defendants to reclusion perpetua and ordering them to pay solidarily an indemnity of twelve thousand pesos to the heirs of Remigio Tan (Criminal Cases Nos. 91198, 91217 and 91306).

In the same decision, San Miguel was convicted of murder in connection with the killing of Maximo P. Dacer, the alleged triggerman in the killing of Tan. For that separate offense, San Miguel was sentenced to reclusion perpetua and was ordered to pay an indemnity of twelve thousand pesos to Dacer's heirs (Criminal Case No. 90942).

Buenaventura and San Miguel died in prison on September 26, 1971 and August 16, 1978, respectively. The cases against them were dismissed as to their criminal liability in this Court's resolutions of December 14, 1971 and November 16, 1978.

Only the criminal responsibility of Mendoza, the brothers Gonzalo and Alipio Perez and Alipio's son Ricardo for Tan's murder has to be adjudicated in this appeal.

This case is about an assassination in Mafia or gangland style where the triggerman, after accomplishing his mission, is rubbed out immediately in order to silence him (Exh. SS).

At about five-thirty in the afternoon of September 3, 1968, Remigio Tan y Valdez, 47, a resident of 40 Cuneta Avenue, Pasay City (a brother of Alejandro Tankeh), was shot by Maximo P. Dacer, 27, with a .38 caliber revolver on the sidewalk of T. Pinpin Street near the Walkover Shoe Store (Natividad Building) or at the northwest corner of Pinpin and Escolta Streets, Manila (Exhs. P, S and U-1). The bullet entered Tan's nape near the right ear and exited through his left jaw or malar region of the face. He died of shock due to the mortal gunshot wound (Exh. E).

After the shooting, Dacer walked along the sidewalk of Escolta Street fronting the Ding Velayo and Yatco stores. On reaching the sidewalk in front of the vacant lot between the J. M. Tuason Building and the Lyric Theater, Dacer was shot by Conrado San Miguel, 31, a Manila policeman. The time: about five-forty. Dacer sustained three gunshot wounds one of which was a fatal wound in the chest. The wounds lacerated his heart, liver, diaphragm and lung (Exh. 1).

The main issue is whether Mendoza and the three Perez appellants conspired and cooperated with Dacer, San Miguel, Buenaventura and Ricardo de la Cruz in perpetrating Tan's murder. De la Cruz, 41, married, a driver and a native of Santa Maria, Bulacan, like the Perez brothers, was discharged as a defendant and was the star prosecution witness. The trial court based its judgment of conviction principally on his testimony.

According to the prosecution, on August 11, 1968 Gonzalo Perez, 46, went to the house of his boyhood friend, De la Cruz, located at 7379 J. B. Roxas Street, Makati, Rizal and, in the presence of Dacer, a jobless neighbor and friend of De la Cruz, residing at 7374 San Maximo Street, Olimpia, Makati, offered to them the mission of killing Remigio Tan in consideration of a reward of twenty thousand pesos. Dacer was an ex-convict and a member of the Sigue-Sigue-Sputnik gang.

Gonzalo said that the persons interested in the liquidation of Tan were Captain Jesus Buenaventura and Detective Corporal Conrado San Miguel, 31, of the Manila Police Department.

A few days later, Gonzalo brought De la Cruz and Dacer to the house of his brother Alipio located at 1067 Vizcaya Street, Barrio Obrero, Tondo where they conferred with Ricardo Perez, Raul Mendoza, Buenaventura and San Miguel.

Buenaventura assured De la Cruz, Mendoza and the Perez kinsmen that in addition to the reward of P20,000, to be paid by some rich Chinese, they would be employed as police agents or informers, that Tan was allegedly an alien communist who collected "tong" from Chinese businessmen and that the assassination could be consummated with impunity because it had the blessings of Mayor Antonio Villegas, Majors Enrique Morales, Felicisimo Lazaro and Tamayo and Captain Crame.

Buenaventura also assured De la Cruz that he and San Miguel would be present at the killing of Tan and so nothing would happen to them. Buenaventura instructed Gonzalo Perez to take De la Cruz and Dacer to the Morocco Hotel on Raon Street, Manila, which was owned by Buenaventura's son Jaime, so that they would be available during surveillance operations.

De la Cruz and Dacer stayed in the Morocco Hotel for two weeks. Upon instruction of Buenaventura, Gonzalo and Alipio Perez gave them from time to time pocket money ranging from twenty pesos, thirty pesos and fifty pesos. Gonzalo gave to Dacer the .38 caliber revolver to be used in the killing (Exh. N).

Dacer and De la Cruz during their stay in the hotel joined Buenaventura, San Miguel, Mendoza and the Perez kinsmen in the surveillance operations intended to locate Tan and assassinate him.

During the first surveillance trip, Dacer and De la Cruz rode in the jeep driven by Gonzalo Perez. Buenaventura drove his jeep with Alipio Perez, Ricardo Perez and Mendoza as his companions, while San Miguel drove a Ford Galaxy belonging to Major Lazaro.

They went to Cuneta Avenue, Pasay City where Tan resided. Gonzalo Perez parked his jeep on Cuneta Avenue near the ABS (CBN) broadcasting station on Roxas Boulevard. Buenaventura and San Miguel parked their vehicles on the street next to Cuneta Avenue. Tan was expected to pass them on his way to Manila but although the surveillants kept watch up to five o'clock in the afternoon, Tan did not appear.

The second surveillance operation was conducted in the Morning and afternoon until Tan in his Fiat car passed Cuneta Avenue on the way home from Manila and was pointed to De la Cruz. Nothing was accomplished on that day because Tan did not leave his home.

During the third surveillance operation, held on August 30, 1968, Buenaventura and his companions again stationed themselves at Cuneta Avenue. Tan and his son riding in the Fiat car passed by at six o'clock in the

evening. It was Friday. The car went to Quiapo, trailed by Buenaventura and his companions in their respective vehicles. Tan and his son entered the church. De la Cruz, Dacer, Buenaventura and San Miguel also entered the church while Gonzalo Perez, Ricardo Perez and Mendoza remained in the jeep.

De la Cruz and Dacer did not consider it proper to kill Tan inside the church. After Tan had kissed the Black Nazarene, he boarded his car and proceeded to the Gaiety Theater on M. H. del Pilar Street, Ermita. Tan entered the theater. His son and driver left him there. De la Cruz, Dacer and Gonzalo Perez also entered the theater but, although they waited up to midnight when the theater was closed, they missed Tan.

The fourth surveillance operation was held on Tuesday, September 3, 1968. Gonzalo Perez, with Dacer and De la Cruz, drove his jeep to Cuneta Avenue at eight o'clock in the morning in the expectation that, as told to them by Alipio Perez, Tan would bring his children to school. Later, Buenaventura and San Miguel, both in civilian clothes, arrived in a jeep together with Ricardo Perez and Mendoza. Buenaventura and his companions left after lunch. They instructed Gonzalo Perez to phone them if he saw Tan heading for Manila.

At about three o'clock in the afternoon, the Fiat car, with Tan and his driver inside, left Tan's residence. Gonzalo Perez, with Dacer and De la Cruz, drove his jeep and followed the Fiat car on Roxas Boulevard. Tan's car emerged on P. Burgos Street leading to the City Hall, proceeded to Jones Bridge and turned right on Escolta Street. It stopped in front of the J. M. Tuason Building. Tan alighted and entered that building. His office was at Room 303 (Exh. FF).

Gonzalo Perez parked his jeep on the opposite side in front of Botica Boie where he dropped Dacer and De la Cruz, informing them that he would alert their other companions. Dacer and De la Cruz stationed themselves near Yatco's haberdashery store and waited for Tan.

Shortly thereafter, Gonzalo Perez returned to Escolta Street with Ricardo Perez and Mendoza in a white Impala car which he parked near the Walkover Shoe Store. San Miguel and Buenaventura also arrived in a jeep which stopped in front of the Madrigal and the old Philippine National Bank Buildings. Buenaventura, San Miguel, Gonzalo Perez, Ricardo Perez and Mendoza stationed themselves near the sidewalk in front of Botica Boie (Exh. S).

When Tan came out of the J. M. Tuason Building and walked hurriedly to the northwest corner of Escolta and T. Pinpin Streets, Dacer and De la Cruz followed him. They caught up with Tan as the latter turned left at the corner. Dacer drew his revolver, which was tucked in his waist and was covered by a newspaper, and shot Tan in the nape. Dacer fired two or three shots. Tan fell on the street near the sidewalk with a bloody head (Exh. O).

Dacer covered the revolver with a newspaper. He berated De la Cruz, who was behind him, for not taking the wallet and watch of Tan which was the role assigned to De la Cruz by Buenaventura.

Dacer retraced his steps and returned to Escolta Street, followed by De la Cruz. Dacer passed by the Walkover, Velayo and Yatco stores and the J. M. Tuason Building. When he reached the sidewalk in front of the vacant lot adjacent to the Lyric Theater, he was grabbed from behind by Patrolman Julian Gatmaitan who was patrolling on Escolta Street, looking for call girls frequenting the Botica Boie, and whose suspicion was aroused by Dacer's behavior and deportment. While Gatmaitan was holding Dacer, San Miguel arrived and pushed Dacer, elbowed out Gatmaitan and shot Dacer.

Dacer fell on the vacant lot. He was brought by Buenaventura to the Philippine General Hospital. His gun was taken by Buenaventura and delivered to the police (Exh. N).

The prior agreement was that Dacer and De la Cruz would escape in the jeep of Gonzalo Perez parked on Escolta

Street which would pass Soda Street and Muelle del Banco Nacional and go to the house of Alipio Perez on Vizcaya Street, Barrio Obrero where the conspirators would rendezvous after the killing.

Sensing that he might be killed also, De la Cruz fled to Plaza Sta. Cruz and then to Echague Street. He hid in Sta. Maria, Bulacan. He surrendered on September 27, 1968 in Malolos, Bulacan to Congressman Teodulo Natividad. The reward of P20,000 was not paid (p. 23, Exh. U).

San Miguel followed Buenaventura to the hospital. He confessed to Corporal Eladio Diego that he shot Dacer because he thought that Dacer might shoot Gatmaitan and his companion, Patrolman Jose Pasco (Exh. BBB and CCC).

Mendoza and the three Perez appellants contend in this appeal that (1) conspiracy had not been proven, (2) that the testimony of De la Cruz, upon which the judgment of conviction was based, was not corroborated, (3) that the trial court totally disregarded their evidence, (4) that Mendoza's failure to testify should not be taken against him and (5) that appellants' guilt was not proven beyond reasonable doubt.

Gonzalo Perez interposed an alibi as his defense. He testified that he was in Sta. Maria, Bulacan when Tan was killed. He admitted that San Miguel, the assassin of Dacer, was the compadre of his nephew Ricardo Perez.

Gonzalo testified that De la Cruz had a grudge against him because he (Gonzalo) instigated the filing of an estafa case by his cousin Mario Perez against De la Cruz and that, notwithstanding the request of De la Cruz, Gonzalo did not ask Mario to withdraw the case.

Gonzalo also testified that De la Cruz was his political enemy because he (Gonzalo) worked for the election of his cousin, Alfredo Perez as vice-mayor, whose opponent was Conrado Ignacio. De la Cruz was Ignacio's bodyguard. More over, Gonzalo intervened in behalf of the complainant in the theft of a pig which De la Cruz was suspected of having stolen.

Gonzalo also attacked the character of De la Cruz by presenting two witnesses who testified on the involvement of De la Cruz in an extortion case and on his attempt to blackmail Gonzalo and Alipio by threatening to implicate them in this case if they did not pay De la Cruz P15,000.

Alipio Perez denied that he had any complicity in the conspiracy to kill Tan. He denied that there was a conference in his house where the conspiracy was hatched and finalized, that he gave money to Dacer and De la Cruz and that he took part in one surveillance mission. Alipio denied that he was acquainted with De la Cruz.

However, Alipio admitted that Buenaventura was his compadre, being a sponsor at his daughter's wedding, and that San Miguel was the compadre of his son, Ricardo, being the godfather of Ricardo's son (61-62 tsn March 5, 1969; 55-56 tsn March 12, 1969).

Ricardo Perez, like his father Alipio, denied having conspired with his co-accused to kill Tan. He corroborated his father's testimony as to the attempt of De la Cruz to extort P15,000. He denied having taken part in the four surveillance operations. He said he was not on Escolta Street when Tan was killed. He was in the South Harbor doing his job as manager of the family trucking business.

Raul Mendoza, the driver of the family of Alipio Perez, did not present any evidence.

The trial court characterized the alibi of Gonzalo Perez as a fabrication. Gonzalo mentioned the birthday of his son as a reason for his alleged presence in Santa Maria, Bulacan on the day when Tan was killed but because he could not tell the dates of birth of his wife and other children, the trial court did not believe his alibi.

The trial court also disbelieved the alibi of Ricardo Perez. It reasoned out that from the South Harbor Ricardo

could have gone to Escolta Street in a short time.

As to the defense of Alipio Perez, the trial court observed that his denials cannot prevail over the positive testimony of De la Cruz. It noted that there was no showing that Alipio desisted from having any further participation in the implementation of the conspiracy. It also noted that the plan was for the conspirators to meet in Alipio's house after the assassination. A fertile imagination is not required to surmise that the purpose of that last rendezvous would be the payment of the reward and its apportionment among the conspirators.

Appellants Perezes and Mendoza assail the trustworthiness of the testimony of De la Cruz because it came from a "polluted source" and was not entirely corroborated.

The testimony of De la Cruz is a confirmation of his 24-page extrajudicial confession (Exh. U and U-1) made to Congressman Natividad and Fiscal Francisco C. Burgos on September 27, 1968 (24 days after the killing) and before he was discharged as defendant in the trial court's order of October 18, 1968.

His confession and testimony contain details that would be difficult to fabricate. He was utilized as a State witness because the prosecution had no evidence on the conspiracy.

The testimony of a co-conspirator should be received with caution because, as is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others and thus minimize his culpability.

However, the uncorroborated testimony of a co-conspirator may be sufficient for conviction when it is shown to be sincere in itself, because given unhesitatingly and in a straight-forward manner, and in replete with details which, by their nature, could not have been the result of a deliberate afterthought or concoction (People vs. Sarmiento, 69 Phil. 740, 742).

The trial court found the testimony of De la Cruz to be satisfactory and convincing. He had not been convicted of any crime involving moral turpitude. He testified at eight hearings between October 21 and November 29, 1968. He withstood the rigorous cross-examination of able defense lawyers.

Two bellboys of the Morocco Hotel, Tan's driver and an eyewitness, Jesus Pallan, corroborated portions of the testimony and confession of De la Cruz. No error was committed by the trial court in giving credence to his testimony and written ad-missions.

Appellants argue that there was no motive for them to conspire to kill Tan. That contention cannot be taken seriously. There was the reward to be paid for the killing of Tan. If those interested in the liquidation of Tan were willing to pay P20,000 to the triggerman, it stands to reason that they would pay another amount to the Perezes and their driver, Mendoza, who cooperated in looking for the triggerman and who took part in the surveillance operations in order to enable the triggerman to consummate the assassination.

There can be no doubt that Buenaventura and San Miguel were the two persons contacted by the enemy or enemies of Tan to encompass his death. The two strove hard to fulfill their commitment. They sought the assistance of the Perez family. The Perez appellants cooperated with them because Alipio was a compadre of Buenaventura while Ricardo was a compadre of San Miguel.

The compadre relationship is a strong bond of loyalty and friendship which binds a person to his compadre. That circumstance plus the opportunity to make money on the side is the motive which impelled the Perezes and Mendoza, Alipio's driver, to take part in the liquidation of Tan.

The record does not disclose who instigated Buenaventura and San Miguel to stultify themselves and engineer the killing of Tan. De la Cruz in his confession said that he was not aware of any person surnamed Tankeh nor any

employee of the Ace Line (p. 23, Exh. U) who, as intimated in the questions of Fiscal Burgos, might be involved in Tan's killing.

The trial court took an unfavorable view of Mendoza's failure to take the witness stand. The rule is that a defendant's "neglect or refusal to be a witness shall not in any manner prejudice or be used against him" (Sec. 1[d], Rule 115, Rules of Court).

What the trial court meant was that Mendoza did not present any evidence at all to controvert De la Cruz's testimony that he was a co-conspirator who took part in the surveillance missions and was present at the scene of the crime and, therefore, had community of design with Dacer and De la Cruz. Mendoza's failure to present evidence means that the testimony of De la Cruz against him remains unrebutted or uncontradicted.

We hold that the complicity of the Perez brothers and of Ricardo Perez and Mendoza in the killing of Tan was proven beyond reasonable doubt. (See Resolution of January 29, 1969 in *Perez vs. Robles*, L-30089-90, sustaining the trial court's order denying bail to the herein four appellants).

The trial court correctly characterized the killing of Tan as murder qualified by evident premeditation. The aggravating circumstance of treachery is offset by the mitigating circumstance of voluntary surrender to the authorities. Hence, the trial court imposed reclusion perpetua on Mendoza, Gonzalo Perez, Alipio Perez and Ricardo Perez.

As to Gonzalo Perez, there is ample justification for convicting him as a co-principal of San Miguel and Buenaventura and for sentencing him to reclusion perpetua. Gonzalo was very active in planning the killing and implementing the conspiracy to liquidate Tan. He contacted the triggerman and his collaborator, De la Cruz. He took part in the surveillance missions, using his jeep for that purpose. He was present at the scene of the crime, having brought thereto Dacer, De la Cruz, Ricardo Perez and Mendoza.

As to the other three appellants, it is true that they were co-conspirators and had community of design with Dacer, San Miguel and Buenaventura. At first blush, they should be re-garded as co-principals. Once conspiracy is established, the act of a co-conspirator is the act of all.

The three appellants must have been induced to take part in the conspiracy because of the promised reward. It is reasonable to assume that they must have received already some advance payment, like Dacer and De la Cruz.

Nevertheless, the stubborn fact remains that their participation in carrying out the conspiracy was not very indispensable. Alipio Perez was not present at the scene of the crime. His house was used as a meeting place of the co-conspirators. He took part only in the first surveillance operation. There is testimony that he suggested surveillance in the morning at Cuneta Avenue because Tan would bring his children to school. Alipio allegedly gave money to Dacer and De la Cruz.

Ricardo Perez, the son of Alipio, was drawn into the conspiracy because he was San Miguel's compadre. On the other hand, Mendoza was the family driver of Alipio. That circumstance explains why he was embroiled in the conspiracy.

It is doubtful whether the roles of Alipio Perez, Ricardo Perez and Mendoza in the assassination of Tan are sufficient to justify their conviction as co-principals. We hold that the rule in *People vs. Tamayo*, 44 Phil. 38, that in case of doubt the courts lean to the milder form of criminal responsibility, applies to this case. Those three appellants should be regarded as accomplices. (See *People vs. Nierra*, L-32624, February 12, 1980, 96 SCRA 1).

WHEREFORE, the judgment as to Gonzalo Perez is affirmed. The lower court's judgment as to Mendoza, Alipio Perez and his son Ricardo Perez is modified. As accomplices, they are each sentenced to an indeterminate penalty

of ten years of prision mayor as minimum to fourteen years of reclusion temporal as maximum, to pay solidarily to the heirs of Remigio Tan an indemnity of eight thousand pesos, as their quota, with subsidiary solidary responsibility for the sum of four thousand pesos which is part of the civil liability of Gonzalo Perez. Costs de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., concurs in the partial dissent of J. Makasiar.

Concepcion, Jr., J., no part.

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