

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO VARROGA, ROLLY ROSAS, ROGER CABELIN (AT LARGE), JUNIOR ZARAGOZA (AT LARGE), AND ROLANDO DOE, ALIAS "LANDO" (AT LARGE)...

G.R. No. L-38100. March 15, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

At about one o'clock in the early morning of May 20, 1972, Enrique Navea was found stabbed to death inside a Sampaguita taxi-cab he was driving at Santolan Road (now Col. B. Serrano Street), Quezon City.[1]

After investigation, an information dated May 22, 1972, was filed in the Court of First Instance of Rizal, as Criminal Case No. 2105, Quezon City, Branch XVII, for Frustrated Robbery With Homicide, against Lito Varroga (arrested), Rolly Rosas (arrested), Roger Cabelin (at-large), Junior Zaragoza (at large), and Rolando Doe, alias "Lando" (at large), as follows:

"The undersigned Assistant City Fiscal accuses LITO VARROGA, ROLLY ROSAS, ROGER CABELIN, JUNIOR ZARAGOZA and ROLANDO DOE alias "LANDO" the last three accused whose true names and definite whereabouts are unknown, of the crime of FRUSTRATED ROBBERY WITH HOMICIDE, committed as follows:

"That on or about the period comprised from the 19th and 20th day of May, 1972 in Quezon City, Philippines, the aforesaid ac-cused, conspiring together, confederating with and mutually helping one another, with intent of gain, by means of violence against and intimidation of person, wilfully, un-lawfully and feloniously hailed and boarded a Sampaguita taxicab along Aurora Boulevard, this City, then driven by ENRIQUE NAVEA, and directed the driver to proceed at Santolan Road, this City, and upon reaching said place, accused at knife point demanded the earnings of said offended party but the latter refused to give, and that by reason thereof, said accused pursuant to their conspiracy, did, then and there, attack, assault, and taking advantage of superior strength, and with in-tent to kill, employ personal violence upon the person of ENRIQUE NAVEA, by then and there stabbing the latter several times on different parts of his body, thereby inflicting upon said ENRIQUE NAVEA grave and mortal wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs in such amount as may be awarded under the provisions of Civil Code.

"Contrary to law."[2]

Of the five accused, only Lito Varroga and Rolly Rosas were arrested. Upon arraignment, Lito Varroga pleaded guilty. The trial court, however, withheld judgment to give him an opportunity to present evidence on mitigating circumstances in his favor.[3] Rolly Rosas, upon the other hand, entered a plea of not guilty.

After trial, the lower court convicted both the accused in the Decision dated November 9, 1973, with dispositive portion, as follows:

"IN VIEW OF THE FOREGOING, the Court finds Lito Varroga and Rolly Rosas, both guilty beyond

reasonable doubt of the crime charged in the Information. The mitigating circumstances of a plea of guilty and voluntary surrender are present in the case of Lito Varroga, who was picked up by the PC officers on his way to the police headquarters of Quezon City to surrender. These however are offset by the aggravating circumstances of superior strength and night-time purposely sought to facilitate the commission of the offense. He is sentenced to suffer the penalty of RECLUSION PERPETUA; to indemnify the heirs of Enrique Navea proportionately with his co-accused, the sum of P12,000.00; and to pay the proportionate costs, without subsidiary imprisonment in case of insolvency by reason of the nature of the penalty imposed.

Rolly Rosas did not participate in the actual stabbing of Enrique Navea, as testified to by Lito Varroga. He jumped out of the taxi at the first opportunity. He is however likewise guilty of robbery with homicide, considering that he conspired and confederated with his co-accused, and is therefore responsible for the crime actually committed. Considering his youth, he is only sentenced to suffer an imprisonment of RECLUSION PERPETUA; to indemnify proportionately with his co-accused, the heirs of Enrique Navea in the sum of P12,000.00, and to pay proportionate costs, without subsidiary imprisonment in case of insolvency by reason of the nature of the penalty imposed.

SO ORDERED."[4]

Accused Rolly Rosas appealed on December 5, 1973.[5] On March 31, 1980, however, the said appellant filed a motion for the withdrawal of his appeal.[6] But when he learned that the Solicitor General had recommended the reduction of the penalty imposed upon him,[7] he withdrew his motion to withdraw appeal, which motion was granted by this Court in a resolution dated July 14, 1980.[8]

The version of the prosecution is:

In the early morning of May 20, 1972, at about 1:00 a.m., the victim, taxi driver Enrique Navea was found stabbed to death inside the Sampaguita taxi-cab he was driving in Santolan Road (now Col. B, Serrano Street), Quezon City.[9]

Dr. Felicisimo del Rosario of the P.C. Crime Laboratory, Camp Crame, conducted the post-mortem examination on the body of the victim. The injuries and cause of death are as follows:

"Head and Neck:

"(1) Cephal hematoma, parietal region, measuring 2 by 4 cm., 12 cm. left of the mid-sagittal line.

"(2) Stab wound, lower jaw, measuring 2 by 1 cm, 8 cm. left of the anterior midline, 3 cm. deep directed posteriorward, downward and to the right passing superficially just beneath the skin.

"(3) Stab wound, neck, measuring 3.6 by 0.5 cm., 5 cm, right of the anterior midline, 5 cm. deep, directed posteriorwards, downwards and to the right passing superficially just beneath the skin.

"Trunk:

"(4) Stab wound, chest, measuring 3.5 by 2 cm. left of anterior midline, 124 cm. above the heel, 3.5 cm. deep, directed posteriorwards, downwards and to the right, fracturing the third thoracic rib.

"(5) Stab wound, chest, measuring 2.5 by 0.6 cm., 2.5 cm. left of the anterior midline, 122 cm. above the heel, 3 cm. deep, directed posteriorwards, downwards and to the right, fracturing the 4th thoracic rib.

"(6) Stab wound, chest, measuring 3 x 2 cm., 7 cm. right of the anterior midline, 127 cm. above the heel, 12 cm. deep, directed posteriorwards, downwards and to the right, fracturing lobe of the right lung.

"(7) Stab wound, chest, measuring 4 by 2 cm., 6 cm. right of the anterior midline, 120 cm. above the heel, 11.5

cm. deep, directed posteriorwards and to the left, fracturing 5th thoracic rib, perforating the middle lobe of the right lung.

"(8) Staff wound, abdomen, measuring 2 by 0.5 cm., 4 cm. left of the anterior midline, 106 cm. above the heel, 5 cm. deep, directed posteriorwards, downwards and to the left, penetrating the abdominal cavity.

"(9) Stab wound, abdomen, measuring 2.2 by 0.4 cm., 4 cm. right of the anterior midline, 96 cm. above the heel, 5 cm. above, directed posteriorwards, upwards and to the left, penetrating the abdominal cavity.

"Upper and Lower Extremities:

"(10) Incised wound, proximal third of the right forearm, measuring 3 by 0.1 cm., 3.5 cm. right of the anterior midline.

"(11) Incised wound, proximal third of the left forearm, measuring 4 by 0.1 cm., just lateral to its anterior midline.

"(12) Incised wound, proximal third of the left forearm, measuring 4 by 0.1 cm., just medial to its anterior midline.

"(13) Stab wound, left wrist, measuring 2 by 1 cm. 3 cm. medial to its anterior midline, 2 cm. deep.

"(14) Stab wound, left wrist, measuring 2 by 1 cm. 0.5 cm. medial to its anterior midline, 1.5 cm. deep, passing superficially just beneath the skin.

"(15) Incised wound, distal third of the right thigh, measuring 7 by 3 cm., 4 cm. finger, measuring 2 by 0.1 cm.

"(16) Incised wound, distal third of the right thigh, measuring 7 by 3 cm. 4 cm. lateral to its anterior midline.

"2000 cc. blood and blood clots are accumulated in the right thoracic cavity. There is nothing remarkable in the unaffected organs internally.

"Remarks:

"Cause of death is cardio-respiratory arrest due to shock and intra-thoracic hemorrhage from multiple stab wounds of the face, neck and trunk fracturing the 3rd, 4th, and 5th thoracic ribs and perforating the right lung."[10]

Prosecution witness Magno Causaren, P.C. soldier, testified that at about 1:00 a.m. of May 20, 1972, while he and another soldier, C.I.S. Constable Ernesto De Una, were on patrol along Santolan Road, Quezon City, they noticed a commotion inside a taxicab which was parked on the road. When they approached the taxicab, the occupants thereof, whom they noticed "were carry-ing some weapons", ran away, leaving behind inside the cab a wounded man (later identified as the victim cab driver Enrique Navea). Causaren brought the wounded man to the Constabulary Station Hospital at Camp Crame, but he was pronounced dead upon arrival at said hospital.[11] In the meantime, C.I.S. Constable De Una gave chase to the armed men and was able to apprehend the accused Lito Varroga, in whose possession was found a blood stained Batangas "balisong".[12] C.I.S. Constable Ernesto De Una corroborated the testimony of P.C. Soldier Magno Causaren.[13] Witness De Una also declared that they turned over the accused Lito Varroga that same morning of May 20, 1972, to the Trafcon Ancar Group Headquarters in Camp Crame for investigation.[14] Before the investigation, Varroga gave the "balisong" allegedly used in the killing of victim Navea, to De Una.[15] De Una also declared that the following morning, he and P.C. Sgts. Rancol and Gonzales, arrested the appellant Rolly Rosas in a store in Cubao, Quezon City.[16]

Sgt. Martin Caluza of the P.C. testified that he investigated and took down the statements of the accused Lito Varroga and Rolly Rosas marked Exhibits "B" and "C", respectively, in the afternoon of May 20, 1972.[17]

Prosecution witness Capt. Moises L. Quilang of the Judge Advocate General Service and Chief Legal Officer of the Constabulary Highway Patrol Group (former Trafcon Ancar Group) declared that the two accused Lito Varroga and Rolly Rosas signed and subscribed before him their respective statements Exhibits "B" and "C" on May 20, 1972.[18] Capt. Quilang also testified that when he prepared his letter to the City Fiscal of Quezon City referring the case to the latter,[19] he personally interviewed and interrogated the accused-appellant Rolly Rosas who admitted to Capt. Quilang that after Lito Varroga had stabbed the driver victim, Rosas also delivered a fist blow "on the left base of the driver's neck", a fact Capt. Quilang incorporated in his referral letter to the Quezon City Fiscal.[20] Said admission of Rolly Rosas, however, does not appear in his sworn statement Exhibit "C".

Prosecution witness Jose Pinat, a member of the "citizen police" of Barrio Silanga, Cubao, Quezon City, declared that on May 20, 1972, he saw the accused Rolly Rosas alight from a truck that had earlier been checked by a Trafcon Patrol, and that he brought said accused to their barrio captain.[21] Barrio captain Jimmy B. Cleofe affirmed that he surrendered appellant Rolly Rosas to the Trafcon Ancar Patrol that same day.[22]

The version of the defense is:

Accused Lito Varroga, who pleaded guilty, testified for himself and as a witness for the other accused, appellant Rolly Rosas.[23] Varroga declared that on May 19, 1972, he was employed at the RCA bodega located in Ermin Garcia St., Quezon City, with a work schedule starting from 8:00 a.m. to 5:00 p.m. His job was to fill up sacks with rice and for that purpose he had a Batangas knife for cut-ting ropes. On May 19, 1972, he left the bodega at 7:00 p.m. together with Rolly Rosas, Rolando alias "Lando", Roger Cabelin, and Junior Zaragoza. The group went to the house of Junior Zaragoza in Project 2, where the latter changed his clothes. They then proceeded to the Champion Restaurant in Aurora Boulevard, where Cabelin was courting one of the waitresses. In the restaurant, the group ate eggs and bread; drank soft drinks and ten bottles of beer; and played the jukebox. At about 2:00 a.m. of the following morning (May 20, 1972) they left the place and boarded a taxi-cab. Varroga was in the front seat, the driver at his left and appellant Rolly Rosas at his right. The three other companions were at the back seat, accused Rolando (at large) just behind the driver. The cab proceeded towards the direction of Sta. Mesa, supposed-ly to attend the birthday party of one of the friends of Rolando. The latter however suddenly ordered the driver to turn left at the corner of Aurora Boulevard and Highway 54 (now Edsa) towards Camp Crame.

Upon reaching Santolan Road (Col. B. Serrano Street), Rolando grabbed Varroga's Batangas knife from the back right side pocket of the latter's pants, poked said knife at the taxicab driver and told the driver to stop. Rolando (Lando) took the wallet of the driver, but finding it empty, threw it at the driver's face. Rolando demanded for the driver's earnings. When the driver insisted that he had no earnings, Rolando stabbed the former repeatedly. Varroga also stabbed the driver once with the same knife used by Rolando as the latter allegedly threatened Varroga if he would not do so. Varroga said that among the five, only Rolando was drunk. Appellant Rolly Rosas did not take part in the stabbing as he ran away as soon as the stabbing started.[24]

Varroga stated that it was the accused Junior Zaragoza who invited him and their other companions, first to Zaragoza's house, and later to the Champion Restarant.[25]

On cross examination by the Fiscal and in answer to the questions of the trial court, Varroga declared that as Rolando (Lando) was repeatedly stabbing the victim, Roger Cabelin and Junior Zaragoza also boxed said driver. Zaragoza held the right arm of the driver. Appellant Rolly Rosas ran away.[26]

Appellant Rolly Rosas corroborated the testimony of Lito Varroga.[27] Appellant started working at the RCA bodega in Garcia St., Quezon City, only on May 14, 1972. He came to know Lito Varroga for the first time only on May 15, 1972. Rosas came to know Roger Cabelin and Junior Zaragoza only on May 17, 1972. He came to

know Rolando one night before they went out as a group on May 19, 1972.[28] Rosas went with the group to the Champion Restaurant on the night of May 19, 1972, because being new in that place, he wanted to be their friend.[29] When the accused Rolando started stabbing the driver, Rosas opened the door of the taxi-cab and ran away. Rolando never told the group before the incident that he intended to rob and kill a taxi driver that morning.[30]

Appellant Rolly Rosas principally contends in the alleged nine assignments of errors committed by the trial court, that he never conspired with his companions in the commission of the crime charged against them and that no evidence exists to prove that conspiracy.[31] He emphatically points out that the testimony of the confessed accused Varroga and appellant's own testimony clearly show that Rosas never participated in the crime. That evidence is uncontradicted.[32] Appellant argues that the prevailing jurisprudence is that his mere presence at the scene of the crime without any overt act on his part showing that he helped the other accused in the commission of the crime could not make him liable either as co-principal or accomplice in the crime.[33]

The trial court convicted the appellant Rosas as co-conspirator in the crime on the reasoning that even if Rosas did not participate in the stabbing of the victim, there is no evidence that Rosas tried to dissuade Lito Varroga and Lando from stabbing repeatedly the victim Enrique Navea.[34]

It is however, the prevailing doctrine by this Court that conspiracy must be shown to exist as clearly and convincingly as the commission of the offense itself.[35]

Both the prosecution represented by the Solicitor General and the defense concur in their views that the trial court committed an error in this case when it held there was conspiracy proven in the commission of the crime.[36]

No less than the appellee advances the following arguments to support the view that appellant could not be convicted as a co-conspirator in this crime. Thus the Solicitor General argues:

"First of all, the actuations of appellant in going with the other four accused has been reasonably explained by him when he testified that he went with them to the Champion restaurant upon their invitation because being "new at the place", he wanted to be better acquainted with them (p. 10, t.s.n., June 22, 1973). And if his companions had chosen to go to the Champion restaurant, it was because the waitresses there were their friends (p. 10, t.s.n., Id.). As to why appellant later boarded the same taxicab with his companions, he did so because his companions told him that they were going towards Sta. Mesa, which was likewise the way to his home (pp. 16-17, Id.). The above explanations of appellant are, we submit, plausible and consistent with normal human behavior, so that in the absence of any contradictory evidence, his mere going with his four co-accused on the night in question can hardly justify the inference that he had also planned or plotted with them to rob and kill the deceased.

"Second, there is no evidence whatsoever that the appellant knew beforehand that the accused Rolando and/or his other co-accused had intended and planned to rob and kill a taxi driver on the evening in question. On the other hand, appellant denied that he knew of any such plan of his co-accused (pp. 19-20, t.s.n., June 22, 1973).

"Third, although the other accused Lito Varroga pleaded guilty to the charge herein, yet it appears from the testimony of this accused as well as the understanding of the court a quo his plea and testimony, that he did not unqualifiedly admit the existence of conspiracy among all the accused. This is apparent from the following portion of the transcript:

"Court:

Did you understand when you pleaded guilty that according to the information you conspired with Rolly Rosas in the commission of the offense charged here?

A. My admission is voluntary on my part only sir.

COURT:

You did not understand my question. My question is according to the information to which you entered a plea of guilty, you conspired with Rolly Rosas and the other accused like Roger Cabelin, Jr. Zaragoza, Lando and others, all the five of you conspired to commit the crime charged in the information. Do you understand that when you pleaded guilty?

A. There was no agreement among us, sir.

ATTY. LUKBAN: You mean to say you are withdrawing your plea of guilty to the charge?

ATTY. LEGASPI:

Objection -

COURT:

Do you mean to say you are withdrawing your plea of guilty with reference to the conspiracy mentioned in the information?

A. I do not understand the question, your Honor.

COURT:

Apparently because of lack of communication – the court understands that from his answers he is pleading guilty only as far as his participation is concerned. As to whether he admits the conspiracy or not, considering his testimony, I believe he did not mean to admit the conspiracy angle." (p. 3, t.s.n., May 16, 1973)

Fourth, even in their statements Exhibits "B" and "C" (pp. 205-208, rec.), both the accused Lito Varroga and appellant Rolly Rosas made no admissions that the latter actually participated in the killing of the deceased Enrique Navea or was aware of any plan to rob and kill said taxi driver. On the contrary, it appears in both statements that appellant ran away from the crime scene as soon as the taxicab had stopped and when accused Rolando started stabbing the deceased taxicab driver.

Fifth, there is no clear indication from the description of the wounds of the deceased made by Dr. Felicisimo del Rosario that said wounds or injuries had been caused by more than one weapon or by different kinds of weapons. With more reason, then, that we can believe the un rebutted testimonies of the two accused Varroga and appellant Rosas that the accused Rolando repeatedly stabbed the deceased with Varroga's knife, and that thereafter, Varroga also stabbed said deceased once with the same knife used by Rolando.

Considering then, the absence of clear proof that the robbery and killing of the taxi driver Enrique Navea had in fact been plotted and planned by all the accused, including appellant Rolly Rosas, and considering likewise that the facts relied upon by the trial court do not show appellant Rolly Rosas' concurrence to the criminal designs of Rolando and the other accused in robbing and then killing the deceased Enrique Navea, then it is respectfully submitted that the court a quo was in error in holding that appellant was a party to the conspiracy to commit the crime charged, and, therefore, a co-principal in its commissions."^[37]

Notwithstanding the aforementioned views, the appellee contends nevertheless that the appellant must be held liable as an accomplice to the crime perpetrated as he supplied "material or moral aid in the consummation thereof."^[38] The reasoning on the supposed "material or moral aid" allegedly given by the appellant to the principals in that crime, is predicated on the testimony of prosecution witness Capt. Moises L. Quilang of the P.C. and his referral letter (Exh. I) to the Quezon City Fiscal, wherein the appellant admitted to Capt. Quilang that he

"boxed the left base of the driver's neck" after the accused Lito Varroga had stabbed said deceased.[39]

Appellant denied this imputation.[40] It is clear from appellant's testimony that when Rosas saw Rolando stab the victim, the appellant immediately opened the door of the taxi-cab and ran away.[41] This testimony corroborates appellant's sworn statement Exhibit "C", Exhibits 2 and 2-A, which was taken on the very day of the incident.

The material portion reads thus:

"05: T: Sabihin mo nga ang iyong nalalaman tungkol sa sinabi mong pagkapatay ng isang driver ng taxi?

S: Noon pong bandang hapon ng mga alas 6:00 P.M. kahapon petsa 19 ng Mayo 1972, ako at ang aking mga kaibigang sina Roger Cabelin, Lito Varroga, Jun at Rolando ay nagkainuman sa may Champion Restaurant sa Aurora Bulivard, Lunsod Quezon. Pagkatapus naming mag-inuman ay naganyaya si Rolando na kami ay umuwi na at siya ay pumara ng isang taksi at kami naman ay sumakay. Pagdating namin sa may ma-lapit sa Gate ng Campo Crame sa kalye Colonel B. Serrano ay bigla na lamang na sinaksak ni Rolando ang taksi driver pagkatapus na tunigil ang taksi. Nabigla ako at binuksan ko agad ang pintuan ng taksi at ako ay tumakbo sa haywe at sumakay ng jeep at ako ang nag-tungo sa RCA na pinagtatrabahohan namin. Hindi pa ako gaanong nagtagal ng pagdating doon ng dumating naman ang mga alagad ng PC Trafcon na dumakip sa akin at dinala nila nga ako dito."[42]

It is doubtful if appellant really stated to Capt. Quilang that he (appellant) boxed the victim during the incident as contained in his referral letter to the Quezon City Fiscal, because aside from the denial of the appellant and the inconsistency existing in the contents of the referral letter of Capt. Quilang and the written statements of the accused Varroga and the appellant, Capt. Quilang admitted he never personally investigated the accused and the appellant.

Thus, Capt. Quilang said:

"Q There appears a discrepancy between the report of the captain and the statement now. The question is why does his report differ from this statement which is the basis of his report. (Referring to Exhibit "I" the referral letter)

COURT:

He is not explaining why there is a discrepancy. He has nothing to say about the contents of the statement. All that the questioner wants to know why - he made a report like this when the basis of his report says different. He can explain that, no other person can explain. He made a poor report if it is poor or if it is a good report. The objection is overruled. All right answer.

A I will do that, sir. When I prepared my referral letter of his case to the City Fiscal of Quezon City my basis was not the affidavit of Rolly Rosas. The basis used by me was my personal interrogation and interview of the accused Rolly Rosas at that time immediately preceding my preparation of this referral, because the accused Rolly Rosas stated that fact to me. I had to incorporate it as one of the facts contained in my referral letter. (Sten. Notes, pp. 5-6, hearing of March 21, 1973, underscoring supplied.)

Q So that you did not, Capt. Quilang, inso-far as your knowledge is concerned, it is only limited to that which was conveyed to you by CIC De Una and the accused.

A Yes, sir.

Q You would further admit you were not the one who personally investigated the accused, is that correct?

A No, I will not say I investigated and in-terviewed personally the accused Rolly Rosas and Lito Varroga for the purpose of my preparation of the referral letter.

Q Did you go to the alleged scene of the crime?

A I did as commander of the special action unit. May I tell that the investigators who took down the statement in question and answer form are personnel directly under my com-mand of the special action unit of the Trafcon Ancar group.

Q May I ask what was your position when you intervened in this investigation?

A Commander or chief of the Special Action Unit of the Trafcon Ancar Group, Camp Crame, Quezon City.

Q Now as Chief or commander of the Special Action Unit were you ever present when Exhibit "C" which is the statement of Rolly Rosas was taken? A. I was in the same group where the statements were taken in fact these statements were in the office of the Special Action Unit.

Q As a matter of fact you heard the questions propounded to the accused Rolly Rosas, is that correct?

A I did not hear them, I did not hear the in-vestigator propound the questions, neither did I hear the affiant answer those questions.

Q Now Capt. Ouilang before you prepared this referral letter dated May 20, 1972, now marked as Exh. "I" did you have occasion to read this affidavit, sworn statement of Rolly Rosas which is marked as Exhibit "C"?

A Yes, I did that.

Q And did you go over the contents of Exhibit "C"?

A Yes, I did sir that.

Q But you admit Exhibit "C"?

A Yes for purposes of subscription.

Q Now this referral letter which you prepared, now marked as Exhibit "I" you based this re-port on the report given to you by CIC Ernesto de Una?

A No, my basis in my incorporation of this fact is the statement personally given to me by Rolly Rosas when I interviewed him immediately preceding the preparation of this referral letter.

Q You did not make him sign to signify what you stated here is correct.

A I did not do that, sir. (Sten. Notes, pp. 7-8, hearing of March 21, 1973) (Underscoring supplied)[43]

In the light of the arguments advanced by the appellee that no conspiracy existed pointing to the appellant as a co-conspirator, that he immediately ran away when he saw Rolando stabbed the victim, there is no evidence beyond reasonable doubt to hold him liable as an accomplice to the commission of the crime for supplying material or moral aid in its consummation. The evidence clearly points to the conclusion that appellant never participated in the criminal acts. The presumption of innocence favoring the appellant has not been overwhelmed by evidence constituting moral certainty.

FOR ALL THE FOREGOING, the decision dated November 9, 1973 in Criminal Case No. Q-2105, by the Court of First Instance of Rizal, Branch XVII, Quezon City, is hereby MODIFIED, REVERSING and SETTING ASIDE the judgment of conviction against the appellant Rolly Rosas, and entering another declaring his acquittal on the ground of reasonable doubt, without costs.

SO ORDERED.

De Castro, and Ericta, JJ., concur. Barredo, J., (Chairman), he concurs and if in any degree appellant could be guilty, he has already paid for his lower part in it. Aquino, J., in the result. Abad Santos, J., on official leave. Escolin, J., no part.

- [1] p. 4, Appellee's Brief.
- [2] p. 1, Original Record, Crim. Case No. 2105, CFI, Quezon City, Branch XVII.
- [3] pp. 1-2, Decision, pp. 182-183, Original Record.
- [4] p. 8 of Decision, p. 189, Original Record to p. 9, of Decision, p. 190, Original Record.
- [5] p. 199, Original Record.
- [6] p. 165, rollo.
- [7] p. 170, Id.
- [8] p. 173, Id.
- [9] pp. 6-7, t.s.n., Dec. 1, 1972; pp. 3-4, t.s.n., March 2, 1973; pp. 13-15, t.s.n., May 4, 1973.
- [10] pp. 209-210, Original Record.
- [11] p. 7, t.s.n., Dec. 1, 1972.
- [12] Exh. "A"; pp. 1-3, t.s.n., Nov. 20, 1972.
- [13] pp. 2-6, t.s.n., Dec. 1, 1972.
- [14] p. 8, Id.
- [15] pp. 6-7, 16-17, Id.
- [16] pp. 8-10, 18-22, Id.
- [17] pp. 1-4, t.s.n., Jan. 29, 1973; pp. 205-208, Original Record.
- [18] pp. 1-4, t.s.n., March 21, 1973.
- [19] Exh. I, pp. 216-217, Original Record.
- [20] pp. 4-6, 9, t.s.n., March 21, 1973.
- [21] pp. 2-5, t.s.n., April 6, 1973.
- [22] pp. 17-13, Id.
- [23] pp. 1-19, t.s.n., May 4, 1973 and p. 3, t.s.n., May 16, 1973.
- [24] pp. 2-17, t.s.n., May 4, 1973; p. 5, t.s.n., May 16, 1973; p. 12, Appellee's Brief.
- [25] p. 44, Id.
- [26] p. 5, t.s.n., May 16, 1973.
- [27] pp. 11-19, t.s.n., June 22, 1973.
- [28] pp. 7-9, t.s.n., June 22, 1973.
- [29] p. 10, Id.
- [30] p. 19, Id.
- [31] pp. 3-4, Appellants' Brief.

- [32] p. 14, Appellee's Brief.
- [33] pp. 4-10, Appellants' Brief.
- [34] p. 189, Original Record; p. 14, Appellee's Brief.
- [35] pp. 14-25, Appellee's Brief.
- [36] pp. 4-39, Appellants' Brief; pp. 15-19, Appellee's Brief.
- [37] pp. 16-19, Appellee's Brief.
- [38] pp. 19-21, Appellee's Brief.
- [39] pp. 4-6, 9, t.s.n., March 21, 1973; pp. 216-217, Original Record.
- [40] p. 29, t.s.n., June 22, 1973.
- [41] pp. 15-20, t.s.n., June 22, 1973.
- [42] p. 2, Reply Brief; p. 207, Original Record.
- [43] p. 25, Appellant's Brief; pp. 7-8, t.s.n., March 21, 1973.

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