

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. POLICARPIO TIONGSON Y GARCIA AND MAURICIO NAVARRO Y ORDILLO, DEFENDANTS AND APPELLANTS.

G. R. Nos. L-15201 and L-15202. October 31, 1962

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PER CURIAM:

Compulsory review of the judgment of the Court of First Instance of Manila finding Policarpo Tiongson y Garcia (in Criminal Case No. 46085) and Mauricio Navarro y Ordillo (in Criminal Case No. 46242), guilty of the crime of robbery with homicide, committed with the aggravating circumstances of evident premeditation, treachery and abuse of confidence, and sentencing each of them to death, to indemnify the heirs of the deceased William Co Chi Chay, jointly and severally, in the sum of P6,000 and to pay the costs.

The facts found by the trial court are the following:

In the morning of Sunday, October 19, 1958, the lifeless body of William Co Chi Chay was discovered by his brother, Jacinto Velasco Co, lying on an army cot inside the Champion Watch and Jewelry Store at 657-659 Rizal Avenue, Sta. Cruz, Manila. The cot and the floor of the store were covered with blood, and empty watchboxes were found scattered all around. As the incident was immediately reported to the police authorities, three policemen arrived at the scene of the crime about twenty minutes later.

A postmortem examination of the cadaver showed that the victim died of extensive traumatic comminuted fractures of the skull, with contusions and hemorrhages in the brain caused by a blow from a hard, blunt object with an elevated edge like a monkey wrench.

Two days after the discovery of the crime, the Cavite police authorities arrested Policarpo Tiongson and Rufino Galang while trying, through the latter's sister, to sell men's and ladies' wrist watches to one Amado Rustia. After being questioned at police headquarters, they were taken for further investigation to Manila where Tiongson, in the evening of October 22, 1958, executed a sworn statement admitting his participation in the commission of the robbery in question and pointing to his co-defendant Navarro as the one who killed the deceased (Exh. A, p. 288, rec.). Galang also executed a sworn statement admitting that he was in the house of Tiongson in the morning of October 19, 1958 and that in the morning of the 21st of the same month, they agreed to sell the stolen watches in Cavite thru his sister. (Exh. Op. 314, rec.). He also implicated Navarro and Salvador Villaveles as having participated in the commission of the crime (Exh. N, p. 309, rec.). On November 3, 1958, Navarro was apprehended in Cabanatuan City. Brought to, and questioned in Manila he executed a written statement confessing his participation in the commission of the crime but pointing to Tiongson as the slayer of William Co Chi Chay (Exh. M, p. 300, rec.).

The trial court further found that defendants, being badly in need of money, planned to rob the Champion Watch and Jewelry Store on the morning of Sunday, October 19, 1958; that to facilitate their getaway after the robbery and to carry their loot to the provinces, Navarro hired a car driven by Salvador Villaveles whom he took to Tiongson's house in the early morning of October 19; that Navarro and Villaveles then proceeded to Avenida

Rizal, followed by Tiongson; that to gain entrance into the store, Tiongson, who was acquainted with the deceased, brought along a watchclock which the latter had sent him for repairs days before; that once inside, Tiongson hit the deceased on the head with a monkey wrench while the latter was sitting on an army cot, causing a fracture in the cranium and other mortal wounds which led to his death; that meanwhile, Navarro ransacked the showcase, taking 67 watches therefrom and scattering the empty boxes on the floor; that thereafter, defendants left the store and were joined by Galang and Villaveles who were on guard outside.

Tiongson claims that his extrajudicial confession, and those of Navarro and Galang were obtained through force and intimidation; that the lower court erred in giving credit to the uncorroborated testimony of accomplice Salvador Villaveles, and in not giving credit to his defense of alibi.

Navarro, for his part, alleges that the lower court erred in holding (1) that there was conspiracy to commit the crime, without requiring the prosecution to establish by independent evidence the existence of such conspiracy, and (2) that he was arrested in Cabanatuan City when the truth was that he surrendered peacefully to the authorities.

The claim that the confessions mentioned above were obtained through force and intimidation is unfounded.

Navarro signed his statement before Fiscal Cabrera who, according to the evidence, explained its contents to him before he signed it. While Navarro, on the witness stand, pointed out the portions of his confession that, according to him, were his true answers and those that were supplied by his investigators, he did not tell Fiscal Cabrera anything about this before he signed his confession. He was also physically examined by the NBI after signing his statement, but he told the examining physician nothing about the alleged duress he was previously subjected to. Indeed, that no such unlawful means was employed is demonstrated by his own admission that he was allowed to make deletions and corrections in the confession.

As far as the confession of Galang is concerned, the record shows that the contents thereof were translated and explained to him before he affixed his signature thereto. Similarly, he was subjected to a physical examination after making the statement, but no evidence of maltreatment was found in his person.

Tiongson's claim of maltreatment, on the other hand, is supported only by his testimony, and there is sufficient evidence showing that whatever injuries he had sustained during his confinement were not inflicted by the police authorities but by a brother of the deceased.

Lastly, it should be observed first, that the confession contain details that the police could not have possibly supplied or invented, and second, that the declarants tried to blame one another for the killing. These circumstances lead us to believe that the confessions were freely made.

Tiongson's claim that the lower court should not have relied on the uncorroborated testimony of Salvador Villaveles is likewise untenable. Villaveles' testimony in open court was merely confirmatory of the statements contained in his confession (Exhibit P) in which he described how Tiongson and Navarro conspired to commit the crime and how the crime was actually committed. While testimony coming from the mouth of a co-conspirator must be accepted with caution, we believe that, in this case, the trial court was justified in giving credit to that of Villaveles, no part of said testimony having been shown by appellants to be false.

To support his alibi, Tiongson testified that on the morning of October 19, 1958 he had several visitors in his house located at 2316 Misericordia, Manila, one of whom was a certain Rufino Galang who asked him to sell an outboard motor; that another visitor named Adelaida Viray arrived between 9:30 and 10:00 o'clock and still another named Esperanza Guhit arrived at about 10 o'clock, both having left the house only before lunch time; that his co-accused Navarro and Villaveles were among his visitors at about 11 o'clock that morning, and they

offered to sell him 65 brand new watches for P2,000 which, according to them, were smuggled goods; that he was able to pay them only P750 and agreed to pay the balance in two or three days; that Viray and Guhit saw him pay for the watches and even offered some to them but they refused to buy.

Tiongson's alibi was correctly disregarded by the trial court. While his testimony is somewhat incoherent, it sufficiently establishes the fact that among his alleged visitors about 11 o'clock in the morning of October 19, 1958 were Navarro and Villaveles, who brought with them a bag full of watches. As the crime was committed at an earlier hour that same morning, it would seem reasonable to assume that Tiongson and his confederates had repaired to his house with their loot after committing the crime.

Appellant Navarro, for his part, testified that in the morning of October 17, 1958, he went to Novaliches to visit his friend, Simeon de Jesus; that he and the latter went to witness a basketball game in Novaliches at about 8 o'clock a.m., having left the game only at 12 o'clock noon when they went to de Jesus' house in Barrio Gulod; that at 2 o'clock that afternoon he witnessed another basketball game at the public plaza of Novaliches, and spent the night in the house of de Jesus; that on the following day he went to the Forest Hills with some friends; that it was only on November 1, 1958 that he learned from his sister in the house of de Jesus that he was being charged with murder.

It is obvious that Navarro's testimony is hard to believe. In the first place, why he stayed for so many days in the house of de Jesus in Novaliches has not been satisfactorily explained. In the second place, while he claims that his purpose in going to Novaliches was to witness basketball games, he admitted that, in reality, he did not know that such games were to be played until he arrived in said municipality. On the other hand, Navarro's witnesses do not seem to be reliable ones. His intimate friend, Simeon de Jesus, could not even tell how many players there are in a basketball team; while he and Navarro testified that they were present at the start of the games at 8 o'clock in the morning, Navarro's other witness and friend, Manuel Austria, said that Navarro invited him to the games only at 8:30 a.m. and that they arrived at the place where the basketball games were being played at 8:40 a.m. To this we must add the circumstance that, according to appellant Tiongson, Navarro went to his house at Misericordia st., Manila at 11 o'clock in the morning of October 19. This precludes the possibility of Navarro being in Novaliches that same morning. Indeed, that Navarro was in Manila that morning is admitted in his sworn statement given to the police after his arrest in Cabanatuan City (Exhibit M).

Lastly, Navarro's contention that the alleged conspiracy to commit the crime had not been established by evidence other than the confessions mentioned heretofore is without merit. After going over the testimony of Salvador Villaveles, we are satisfied that the same is quite sufficient to establish the conspiracy.

Appellant Tiongson filed in this court a motion for new trial based on newly discovered evidence consisting of the affidavit of Villaveles in which latter recants his previous testimony implicating Tiongson. Petitions of this nature have heretofore been denied by us because of the untrustworthiness of similar evidence coming from the mouth of convicts or ex-convicts who have nothing or not much to lose by recanting previous testimony given under oath. For this same reason Tiongson's motion should be, as it is hereby, denied.

Wherefore, the decisions appealed from being in accordance with law and the evidence, the same are affirmed, with costs.

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

RESOLUTION

May 31, 1963

PER CURIAM:

The decision of this court in the above entitled cases promulgated on October 31, 1962 having become final and executory, the records were remanded below for execution.

It appears, however, that before said decision could be executed, counsel for defendant Tionson filed on January 11, 1963 an urgent petition alleging therein that notice of the decision was received by said party only on that date, and praying, as a consequence, that the entry of judgment be set aside; that said defendant be allowed to file a motion for reconsideration within fifteen (15) days from January 11, 1963, and that a writ of preliminary injunction be issued restraining the Director, New Bilibid Prisons at Muntinlupa, Rizal from, carrying out the execution of the judgment already set for January 19, 1963.

Considering the peculiar circumstances obtaining in the cases, this court issued the preliminary writ of injunction prayed for, and granted counsel for defendant Tionson fifteen (15) days from January 11, 1963 within which to file a motion for reconsideration. Said motion was filed on January 31, 1963, within the extension granted to the aforesaid defendant in the resolution of this court of January 29, 1963, but the same was denied on February 7 of the same year. Notice of the order of denial was received by counsel on February 27 the same year.

With leave of court, defendant Tionson filed on February 28, 1963 a second motion for reconsideration, but again the same was denied on March 4 of the same year. Notice of the denial was received by counsel on the 25th of the same month and year.

The cases are again before us now upon request of the Honorable Judge Morfe of the Court of First Instance of Manila so that we may clarify the status of the preliminary writ of injunction mentioned heretofore. In connection therewith, it is the sense of this court that, with the denial of the motions for reconsideration already referred to above, the preliminary writ of injunction is deemed set aside.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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