

TAN ANG BUN, PETITIONERS, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-47747. February 15, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The legal effect of a recantation is the issue in this petition for review by certiorari of a decision of the Court of Appeals.

Tan Ang Bun was charged with the crime of homicide, serious physical injuries, and reckless imprudence resulting in damage to property in an information that was filed in the Court of First Instance of Tarlac and which reads as follows:

"That on or about August 26, 1973 at about 1:30 in the afternoon, in the Municipality of Gerona, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said Tan Ang Bun, being then the driver and person in charge of a motor vehicle, a car (Camaro) with Plate No. 18-49 L Manila '72, did then and there willfully, unlawfully and feloniously drive and manage the said motor vehicle along the MacArthur Highway at Poblacion No. 2 in the said Municipality, in a negligent, careless and imprudent manner without due regard to the laws, regulations and ordinances about traffic and without taking the necessary precaution and diligence to prevent injuries to persons and damage to property and in violation of the Land Transportation and Traffic Code and as a consequence thereof the said motor vehicle driven and managed by the said accused bumped and hit a car (Datsun) with Plate No. 51-34 R-I-Manila '73 then being driven by Alfonso Go Ching Kae, and as a result of the impact, Eden Uy Po Teck a passenger of the said Datsun car, sustained serious physical injuries which directly caused her death and causing serious physical injuries to Alfonso Go Ching Kae which caused his illness and incapacity for labor for more than thirty (30) days and which physical injuries required medical attendance for the same period and also causing damages estimated at P48,000.00 to the said Datsun car, to the damage and prejudice of the owner thereof, Uy Po Chiong, in the said amount of P48,000.00, Philippine Currency." [1]

After arraignment and trial on the merits a decision was rendered by the lower court finding the accused guilty of the offense charged, the dispositive part of which reads as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of Homicide, Serious Physical Injuries and Damage to Property Thru Reckless Imprudence, judgment is hereby rendered pursuant to Article 48 in relation to Article 365 of the Revised Penal Code and applying the Indeterminate Sentence Law, hereby sentences the accused to suffer an imprisonment of ONE (1) YEAR AND EIGHT (8) MONTHS as the minimum to FOUR (4) YEARS, NINE (9) MONTHS and TEN (10) DAYS as the maximum, and to indemnify the heirs of the deceased Eden Uy Po Teck in the amount of P12,000.00, all other damages are reserved them in accordance with their reservation to institute a separate civil action by Chua Keng, father of the deceased; to pay Alfonso Go Ching Kae actual damages in the amount of P18,000.00 for Doctor's fees, medicines, and hospitalization expenses; for the loss or impairment of earning capacity of Alfonso Go Ching Kae, P10,000.00; moral damages P50,000.00 and exemplary damages by way of example for the public good P50,000.00; for the damaged Datsun car which is a total loss, to pay Uy Po Chung P11,000.00 with subsidiary imprisonment in

case of insolvency and to pay the costs. The Office of the Provincial Fiscal is hereby ordered to conduct an investigation to determine whether the accused Tan Ang Bun is a naturalized Filipino citizen and to file the corresponding action if evidence so warrant including any other person or persons who may be in cahoots with him or promoted his acquisition of Filipino citizen if not in accordance with law. Let a copy of this judgment be furnished the Commissioner of Immigration for its information and guidance."[2]

Not satisfied therewith, the accused interposed an appeal to the Court of Appeals wherein in due course a decision was rendered on August 17, 1977 by a special division of five affirming the conviction of the appellant with costs against appellant and the following modification:

"However, We agree with the observation of the Solicitor General that complainant Alfonso Go Ching Kae should be awarded the sum of P4,460.00 only, instead of P18,000.00, because 'this is they only amount supported by documentary evidence;' P3,000.00 or P50.00 daily for a period of sixty (60) days instead of P10,000.00, because 'he was confined in the hospital only for 14 days and even allowing one month to recuperate;' and P5,000.00 as exemplary damages instead of P50,000.00 — all without subsidiary imprisonment in case of insolvency. Further, the award of P12,000.00 as indemnity to the heirs of the deceased Eden Uy Po Teck should be deleted considering that a reservation was made to institute a separate civil action against herein appellant."[3]

A motion for reconsideration and/or for a new trial was filed by the appellant alleging that the four (4) alleged eye-witnesses of the prosecution to the accident namely: Jesus Centeno (the driver of the Times Transit bus), Jose de los Reyes, Alfredo de Dios and Pablo Bernabe were individually asked to read the transcript of their testimonies given in court during the trial and that after going over the same they found errors or mistakes either in the transcript, translation, clerical errors and/or omissions in their testimonies particularly on material points significant to the determination of the guilt or innocence of the accused; that they readily executed affidavits in order to point out said particular portions of the transcript of stenographic notes, the originals of which are attached to the motion showing that there is no basis for the trial court's findings of facts and it was grossly erroneous on the part of the trial court to have convicted the appellant; and that the appellant was not at fault and cannot be blamed for the accident.

However, in a resolution dated February 21, 1978 the appellate court, in a divided vote of three to two, voted to deny the motion. Hence the herein petition for review by certiorari filed by the appellant of the said decision of the Court of Appeals wherein he recites eleven (11) assigned errors the main thrust of which is that he was faultless and is entitled to acquittal of the offense charged.

The petition must rise or fall on the weight that the Court will give to the recantations of the four (4) witnesses for the prosecution in the case.

In *People vs. Lao Wan Sing*,^[4] this Court had occasion to set the standards by which the recantation of a witness shall be considered, as follows:

"Although a recanting testimony is oftentimes regarded as unreliable, especially so where the recantation relied upon involves a confession of perjury, and motions for new trial based on subsequent retraction by a witness are not favorably considered, yet when aside from the testimonies of the retracting witnesses there is no evidence to support the judgment of conviction, a new trial may be granted (*People v. Bocar*, 97 Phil. 398). We must consider, furthermore, that in a criminal case the State is 'not less interested than the individual accused of a crime in his acquittal if he is innocent.' (*U.S. v. Raymundo*, 14 Phil. 416, 419). In passing, therefore, upon the instant prayer for new trial, the rules governing the matter should be construed and applied liberally, especially so when the presentation and admission of the retractions of the prosecution witnesses might show that the State's evidence against appellant is weak and unsatisfactory, when the retractions might tip the scales in favor of the appellant, and when the retractions might produce at least a reasonable doubt as to the guilt of

the appellant.

"The retractions of witnesses Narce and Vidal constitute an evidence that was discovered by the appellant after the lower court had tried and decided the case, and while this case was pending appeal before this Court. The statements made by these two witnesses after the trial in the court below was (sic) evidence which the appellant could not have secured during the trial, such that, they can be considered as (a) newly discovered evidence that may properly be presented in a new trial, More so, because those statements appear to be (a) material evidence that may change the judgment that had been rendered.

"x x x The practice of this court has been to grant new trial in such cases only in very exceptional instances, as for example, in cases wherein it is made to appear that there was no evidence sustaining the judgment of conviction on other than the testimony of a witness who is shown to have made contradictory statements as to material facts, and where it appears further that under all the circumstances of the case proof that the witness had varied or modified his testimony out of court and after the trial could lead the trial judge to a different conclusion. (U.S. v. Dacir, et al., 26 Phil. 204-508) x x x."

The general rule is that recantations are hardly given much weight in the determination of a case and in the granting of a new trial. The rare exception is when there is no evidence sustaining the judgment of conviction other than the testimony of a witness or witnesses who are shown to have made contradictory statements as to material facts under which circumstances the court maybe led to a different conclusion so that a new trial or a reversal of the judgment may be called for.

In this case the appellate court found the petitioner to be negligent in that in the afternoon of August 26, 1973 while he was driving a green Camaro car along MacArthur Highway in Gerona, Tarlac going towards Baguio City, he tried to overtake a Times Transit by occupying the opposite lane hitting the Datsun car then being driven by Alfonso Go Ching Kae, as a result of which Eden Uy Po Tek, a passenger of the Datsun car suffered serious physical injuries which caused her death while Alfonso Go Ching Kae also suffered serious physical injuries for which he was hospitalized while the Datsun car was a total wreck. All these facts were attested to by prosecution witness Alfonso Go Ching Kae corroborated by Jose de los Reyes, Alfredo de Dios, Pablo Bernabe and Jesus Centeno.

In the said dissenting opinion of two justices, they found that on the contrary it was the Datsun car that hit the Camaro as corroborated by the damages to the two (2) vehicles.

By the recantations of prosecution witnesses Centeno, de los Reyes, de Dios and Bernabe, the findings of the minority in the appellate court are thereby bolstered, projecting the fact that the petitioner was not at fault or negligent under the circumstances of the case. The testimony of these witnesses are summarized in the petition as follows:

" x x x petitioner was not at fault or negligent; that what they said as found in the transcript of stenographic notes was not the truth — the true facts being what are now narrated by them in their sworn statements or recanting testimonies. Among other material facts, they now state that immediately before the collision, the petitioner was on the proper lane of the highway travelling at slow speed and that he was not in the act of overtaking when the collision took place. According to all these prosecution eye-witnesses the petitioner was in his proper lane (that he was on the right side of his lane and not on the left lane of the road or highway as appears in their testimonies in the lower court) immediately before and during the collision. Their sworn statements or recanting testimonies pointed to other material facts of their testimonies in the trial court which according to them are not true or did not reflect the truth (especially such portions of their testimonies in the trial court pointing to petitioner as being at fault and upon which the trial court based its findings in convicting petitioner). The truth is according to them now-petitioner was not at fault." [5]

Moreover, even complaining witness Alfonso Go Ching Kae executed an affidavit to the effect that the petitioner is free from any fault and liability by reason of said accident and he further asserted his waiver and quitclaim of any and all claims for damages, and indemnity that he might have against the petitioner as a result of the accident.[6]

Even the civil case for damages which was filed against the petitioner and his father before the Court of First Instance of Rizal (Quezon City Branch), docketed as Civil Case No. Q-23404, as a result of the death of Eden Uy Po Tek (lone fatality during the accident), has been dismissed by the said court.

Likewise the Solicitor General in his comment concurs with the petitioner and recommends that the petition be given due course.

WHEREFORE, the petition for review is hereby GRANTED and the questioned decision of the respondent appellate court dated August 17, 1977 and its resolution dated February 1, 1978 are hereby REVERSED AND SET ASIDE and another judgment is hereby rendered ACQUITTING the petitioner of the offense charged, with costs de oficio.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdia, JJ., concur.

[1] Pages 18 to 19, Rollo.

[2] Pages 19 to 20, Rollo.

[3] Page 33, Rollo; Mr. Justice Lorenzo Relova was the ponente, concurred in by Justices Lourdes P. San Diego and Vicente G. Ericta. Messrs. Justices Pacifico de Castro and Guardson Lood dissented.

[4] 46 SCRA 298, 302-303 (1972).

[5] Page 122, Rollo.

[6] Annex "E" of Annex "B", Petition.

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