PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTO CAPUYAN, ACCUSED-APPELLANT.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated May 6, 2005, the Orders dated June 2, 2005[2] and June 14, 2005[3] of the Regional Trial Court, First Judicial Region, Branch 6, Baguio City in Criminal Case No. 13941-R for Murder entitled " The People of the Philippines, Plaintiff, versus Fausto Capuyan, et al., Accused.", the dispositive portions of which read:

Decision dated May 6, 2005 -

> "WHEREFORE, the Court finds the accused Fausto Capuyan guilty beyond reasonable doubt of the offense of Murder, qualified by abuse of superior strength, defined and penalized under Article 248 of the Revised Penal Code as charged in the information and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Adolfo Pascua the sum of P75,000.00 as civil indemnity for his death; P50,000.00 as moral damages, all indemnifications are without subsidiary imprisonment in case of insolvency; and to pay the cost.
>
> The accused Fausto Capuyan, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.
>
> SO ORDERED."
>
> Order dated June 2, 2005 -
>
> "WHEREFORE, premises considered, the Motion for Reconsideration is Denied.
>
> SO ORDERED."
>
> Order dated June 14, 2005 -
>
> "Wherefore, the Second Motion for Reconsideration or Supplemental Motion for Reconsideration is DENIED.
>
> SO ORDERED."

The facts are:

On January 29, 1996, an Amended Information[4] was filed before the RTC, Baguio City charging accused-appellant Fausto Capuyan y Gamsao a.k.a. "Fausto", Leonardo Ay-Yokad y Occha-an a.k.a. "Nards" and one "John Doe" of the crime of Murder, allegedly committed as follows:

> "That on or about the 9th day of August, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a knife, with intent to kill and taking advantage of superior strength, conspiring, confederating and mutually aiding one another, did them and there willfully, unlawfully and feloniously maul and stab ADOLFO PASCUA Y DELA MASA a.k.a. "RUFINO"

> and "RUFO", thereby inflicting upon the latter stab wounds which caused hypovolemic shock secondary to multiple penetrating stab wounds over the med-scapular and paravertebral areas lacerating the left lower lobe of the lungs and the posterior border of the left ventricle, and as a result thereof, the said Adolfo Pascua y Dela Masa died.
>
> That the killing was attended by the qualifying circumstance of taking advantage of superior strength.
>
> CONTRARY TO LAW."

Upon being arraigned[5], accused-appellant Capuyan pleaded not guilty to the offense charge.

On August 5, 2003[6], the pre-trial conference was held. Thereafter, trial ensued.

The prosecution presented three (3) witnesses, namely: then SPO2 Eusebio Benmaho[7], Police Senior Inspector Gerardo Tumbaga, Sr.[8], and Dr. Antonio Bautista.

SPO2 Benmaho[*] testified[9] that: he was assigned in Precinct 7 of the Baguio City Police Office from October 1988 up to August 1997; now he is assigned at the Natonin Municipal Police Station; on August 9, 1995 at about 10:00 o'clock in the evening, from a distance of about twenty (20) meters, he saw a group of about more than five (5) men mauling another man in front of Marian Billiard Hall along Kayang Hilltop Road in Baguio City; he saw accused-appellant Capuyan repeatedly stabbing the victim Rufino Pascua ("Pascua" for brevity) with a Batangas knife while the latter was lying prostrate on the ground as the companions of accused-appellant Capuyan kicked Pascua; the companions of accused-appellant Capuyan scampered away when he made an announcement that he is a policeman and told them in Ilocano "ania dayta ar-aramiden yo, usto daytan"[10]; he collared accused-appellant Capuyan and seized the knife from him; about three (3) to five (5) minutes later, he hailed the passing taxicab driven by SPO1 Jerry Tumbaga whom he asked to bring Pascua to the hospital and took accused-appellant Capuyan with him to the police outpost of the Market Task Force where he executed an affidavit[11] and prepared a complaint assignment sheet; then, he brought accused-appellant Capuyan to the Main Headquarters of the Baguio City Police Office where the fingerprints of the latter were taken and was finally turned over to the city jail; he did not see a wound on accused-appellant Capuyan's right hand at the time of the arrest; he did not bring accused-appellant Capuyan to the hospital for physical examination; he submitted the knife used to the Baguio City Police evidence custodian; he was not the one who arrested and delivered accused Leonardo Ay-Yokad ("Ay-Yokad" for brevity) to the city jail on August 9, 1995; he later on learned from SPO1 Tumbaga that Pascua died in the hospital; he did not charge accused Ay-Yokad for mauling and stabbing Pascua; accused Ay-Yokad's name was merely mentioned in his affidavit; and he did not take the statements of other witnesses present in the crime scene.

SPO1 Gerardo Tumbaga testified[12] that: he was then assigned at the Investigation Division of the Baguio City Police; on August 9, 1996 at about 10:00 o'clock in the evening he was driving his taxicab along Hilltop Road in Baguio City when SPO2 Benmaho, who was standing in front of a billiard hall, hailed him and asked him to bring the wounded Pascua to the emergency room of Baguio General Hospital where he requested for medical attendance; he left Pascua in the hospital after ascertaining his identity through an identification card which showed that he was Adolfo Pascua; he resumed plying his route within Baguio City; the following day, he went to the Baguio City Police Office, reported the said incident, which was investigated by SPO1 Cabanayan, but he had no participation in the investigation.

Dr. Antonio Bautista[13], a pathologist at Baguio General Hospital, was also called to the witness stand. However, he was excused by the lower court when accused-appellant Capuyan admitted the matters that Dr. Bautista would have testified on.

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The defense, on the other hand, presented three (3) witnesses, namely: SPO2 Benmaho, accused-appellant Capuyan and accused Ay-Yokad.

SPO2 Benmaho recanted his earlier testimony by testifying,[14] for the second time, that: he made this case appear serious and grave because accused-appellant Capuyan berated him, ignored his being a policeman when he was bringing him to the hospital[15]; his continuing resentment towards accused-appellant Capuyan for badmouthing him was what motivated or impelled him to testify against accused-appellant Capuyan earlier; his conscience bothered him for executing an exaggerated affidavit against accused-appellant Capuyan and not because he later on discovered that both of them have a common ethic origin; and the relatives of accused-appellant Capuyan did not pay him any amount for the recantation of his testimony against accused-appellant Capuyan.

Accused-appellant Capuyan testified[16] that: on August 9, 1996 between 8:00 and 9:00 o'clock in the evening, he and accused Ay-Ayokad went to the Atok Bar Twinkle in Kayang, Baguio City to unwind after a day's work and to look for his townmates who might be present there; he, accused Ay-Ayokad, and an unknown townmate drank on the same table; two (2) hours later, the latter left; he did not know whether Charlie Padong ("Padong" for brevity) and Pascua were also at the said bar because he did not know them; Henry Peralta was also unknown to him; they left for home at about 9:45 o'clock in the evening; he did not have any involvement in the alleged stabbing of Pascua; he saw a group of persons mauling an unknown person from a distance of twenty five (25) meters away from Atok Bar; while he and accused Ay-Ayokad were waiting for a taxicab to bring them home to Holy Ghost and to Quezon Hill, respectively, his path crossed with two (2) to four (4) persons, one of whom asked him if he was among those with whom they had a quarrel to which he answered in the negative; one of them suddenly punched him but he was able to parry the fist blows; another one came to punch him again; he summoned accused Ay-Ayokad for help who was then about twenty (20) steps away from him; when the latter came to the rescue, the men who tried to maul him ran away; his right hand (knuckles) was wounded as a result of parrying the blows from the men who tried to maul him; accused Ay-Ayokad inquired if he was hurt and he replied “no”; on their way home at a distance of about twenty (20) steps from where they were standing, he saw a knife stained with blood which he picked up in order to protect himself from the retaliation of the men who tried to maul him earlier; in reply to SPO2 Benmaho's query on what he will do with the knife, he answered that he just picked it up; he was handcuffed by SPO2 Benmaho and instructed to go along with him and just explain his version of the incident at the police precinct; he did not notice the wound of Pascua; he did not know whether the motor vehicle that stopped on the spot where he was arrested was SPO1 Tumbaga's taxicab because he just imbibed liquor at that time; on their way to the Market Task Force he asked SPO2 Benmaho to bring him to the hospital because he was injured, which the latter did; from the hospital they went to the city jail; he told SPO2 Benmaho that he doubted his being a policeman because the latter did not know who to apprehend; SPO2 Benmaho told him that he was ready to face whatever charges that would be brought against him; he asked SPO2 Benmaho for the basis of the charges that would be filed against him since the officer only saw him pick up a knife; when he was already detained at the city jail, it finally dawned on him that he could be accused of stabbing Pascua considering the fact that the Batangas knife that he picked up was stained with human blood and it was still open; his clothes were not stained with blood; later on he came to realize that he and accused Ay-Ayokad were behind bars when the other inmates mauled him because he was then drunk; his relatives posted bail for his release; he does not know who prepared the motion for immediate raffle[17], and he could not remember the person who brought him the said document for his signature; he did not consult a lawyer at the time of his arrest; he went home to his province after posting bail to the original charge of homicide, and stayed there for about a year; because of fear for his life brought about by a tribal conflict between the Saklit and the Sadanga, which was sparked by the stabbing to death of a certain Joseph Doroting in Baguio City, he was not able to attend the

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scheduled hearing.

Accused Ay-Ayokad corroborated the testimony of accused-appellant Capuyan, and further testified[18] that: accused-appellant Capuyan did not possess any bladed weapon when they went in and out of Atok Bar and Restaurant because an operative of Operation Kapkap of the Bamarva Task Force subjected them to body search fifteen (15) minutes before they left the bar, and no bladed weapon was seized from them; SPO2 Benmaho did not arrest him when the former arrested accused-appellant Capuyan; neither was he arrested when he followed accused-appellant Capuyan and SPO2 Benmaho at the Bamarva Police Station and at the Baguio City Police Office; he did not follow them when SPO2 Benmaho brought accused-appellant Capuyan to the hospital; he inquired from the desk officer of the Baguio City Police Headquarters if accused-appellant Capuyan was placed behind bars, and the desk officer replied in the affirmative; when he was about to go home, a policeman arrived, conferred with the desk officer who called and asked him if he was accused-appellant Capuyan's companion at the time of the incident and replied in the negative; he requested the policemen to prepare a note stating that he had no involvement in the said incident so that he could go home; the desk officer prepared the note and when he was about to sign it, another policeman arrived and told him that he could possibly be accused-appellant Capuyan's companion; the desk officer did not allow him to go home and told him to just spend the evening at the police station with an assurance that they would allow him to go home the following day; he was also detained in the cell where accused-appellant Capuyan was detained; he did not have the chance to talk to accused-appellant Capuyan because the latter was weak after he was mauled by other inmates in the city jail; he affixed his signature in the motion for immediate raffle but he did not know the purpose of the said document; their parents assisted them in posting their bail bonds; after posting bail, someone offered him a job in Zamboanga City; he voluntarily surrendered on September 9, 2004, and was once again brought before the lower court where he was informed that there was a standing warrant for his arrest but he knew all the time that there was a pending case against him before the lower court; SPO2 Benmaho was not the one who insisted for his detention in the city jail in the evening of August 9, 1995; he was not allowed to consult a lawyer before he was detained; and he could not remember where he signed a document, and who brought it to him.

On May 6, 2005, the assailed decision convicting accused-appellant Capuyan was rendered. The assailed orders dated June 2, 2005 and June 14, 2005 denying accused-appellant Capuyan's motion for reconsideration[19] and second motion for reconsideration or supplemental motion for reconsideration[20], respectively, were issued. Hence, this appeal raising the following errors:

> I. THE LOWER COURT ERRED IN CONVICTING THE APPELLANT ON THE BASIS OF THE FIRST TESTIMONY OF POLICE OFFICER BENMAHO IN LIGHT OF THE FACT THAT SAID POLICE OFFICER RETRACTED SUCH TESTIMONY WHEN HE TESTIFIED FOR THE SECOND TIME ON JANUARY 17, 2005.
>
> II. THE LOWER COURT ERRED IN NOT ACQUITTING THE APPELLANT ON THE GROUND OF REASONABLE DOUBT DUE TO THE TWO (2) CONFLICTING TESTIMONIES OF PO BENMAHO.
>
> III. THE LOWER COURT ERRED IN CONVICTING THE APPELLANT NOTWITHSTANDING THE AFFIDAVIT OF DESISTANCE EXECUTED BY THE COMPLAINANTS, WHICH DOCUMENT WAS ATTACHED TO THE MEMORANDUM SUBMITTED BY THE DEFENSE.
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> IV. THE LOWER COURT ERRED IN DENYING THE SUPPLEMENTAL MOTION FOR RECONSIDERATION AND MOTION TO REOPEN THE CASE.

The appeal is unmeritorious.

In a string of cases, it was held that:

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"1. The Court has looked with disfavor upon retractions of testimonies previously given in court. Thus, the Court has ruled against the grant of a new trial on the basis of a retraction by a witness x x x The rationale for the rule is obvious:

Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for a monetary consideration x x x. There is always the probability that it may later be repudiated x x x. So courts are wary or reluctant to allow new trial based on retracted testimony x x x

However, when aside from the testimonies of the retracting witness or witnesses there is no other evidence to support a judgment of conviction, a new trial may be granted x x x

2. Where a witness testifies for the prosecution and retracts his or her testimony and subsequently testifies for the defense, the test in determining which testimony to believe is one of comparison coupled with the application of the general rules of evidence, as enunciated in People v. Ubina [97 Phil. 515 (1955)], where the Court said:

The testimony of Ruben Francisco for the prosecution is claimed to be unworthy of credit because later on he testified for the defense, declaring that all he had stated against the defendants is not true . . . false, as he subsequently declared it to be so, is as illogical as it is dangerous. Merely because a witness says that what he had declared is false and what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever been crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement (Rule 123, section 91); not that a previous testimony is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i. e. that contradictory testimony given subsequently does not discredit the previous testimony if the contradictions are satisfactorily explained. x x x We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one x x x. Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. If Francisco says that when he testified for the prosecution he was paid P700, what can prevent the court from presuming that subsequently he testified for the defense because the defendants also paid him to testify for them? The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized---in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth. x x x"[21]

"A recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witnesses on the stand. Moreover, it should be received with caution as otherwise it could "make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses." In the case at bar, Dela Cruz's recantation came only after a lapse of almost four (4) years from the date of his last testimony in open court. The case was submitted for decision before the trial court as early as January 12, 1990. However, promulgation of judgment had to be reset a number of times since the accused-appellants finally appeared and the decision was promulgated. Thereafter, it was only on August 6, 1991, upon filing of an Urgent Motion for Release on Bail, that accused-appellants presented the Affidavit of Recantation executed by Dela Cruz.

It is highly doubtful that the eyewitness Dela Cruz, after going through the trouble of being sworn in, testifying in open court, and being subjected to a rigid cross-examination by the defense counsel, wherein he unhesitatingly pointed to the accused-appellants as the perpetrators of the crime, would, after four years,

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> suddenly turn around and reverse himself. We have previously held that mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The Court looks with disfavor upon retractions of testimonies previously given in court. The rationale for the rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated.
>
> A testimony solemnly given in court should not be set aside lightly, least of all by a mere affidavit executed after the lapse of considerable time. In the case at bar, although the Affidavit of Recantation was executed almost a year prior to the promulgation of the decision, the accused-appellants saw it fit to inform the lower court of its existence only after the said promulgation, by attaching it as an annex in their Urgent Motion for Release on Bail filed on August 6, 1991. Moreover, the promulgation of the decision was delayed and reset a number of times due to the failure of the accused-appellants to appear as scheduled. Thus, it is clear that the retraction is an afterthought and should not be given probative value."[22]

In this case, SPO2 Benmaho's recantation by reason of bothered conscience for executing an exaggerated affidavit adverse to accused-appellant Capuyan could hardly be given credence.

Records show that SPO2 Benmaho had already executed an affidavit[23] narrating the circumstances leading to the arrest of accused-appellant Capuyan when the latter was first brought to the Market Task Force, and before he was subsequently brought to the Baguio General Hospital for physical examination when he allegedly berated or badmouthed the policeman causing the policeman to make the statements in the affidavit which were more adverse to accused-appellant Capuyan. The fact that accused-appellant Capuyan badmouthed or berated him which SPO2 Benmaho resented and caused the execution of an affidavit which is more adverse to the former only to be withdrawn later due to a bothered conscience, is not satisfactorily shown and explained in the recantation.

To support SPO2 Benmaho's positive identification of accused-appellant Capuyan as the one who stabbed to death the victim Pascua, it should also be taken into account that both parties admitted the fact that the murder weapon used was found[24]positive for the presence of human blood.

It is established that the blood-stained Batangas knife was found in accused-appellant Capuyan's possession at the time SPO2 Benmaho arrested him. A mauling incident just occurred in the place where accused-appellant Capuyan was arrested, and the stab wounded body of the victim Pascua was also found in the said place.

Hence, the lower court ruled correctly in disregarding SPO2 Benmaho's recantation and in giving credence to his first testimony.

As regards the affidavit of desistance executed by the relatives of the deceased victim Pascua, it was held that:

> "The Affidavit of Desistance executed by the victim's father also merits scant consideration, for it is axiomatic in our jurisdiction that for such desistance to benefit the accused, it must be given prior to the filing of the criminal complaint. Here, the Affidavit of Desistance was filed long after the trial had concluded. As such, like the Affidavit of Recantation executed by Dela Cruz, Amado Zabalo, Sr.'s sworn statement cannot serve as basis for the acquittal of the accused-appellants."[25]

In this case, the said Affidavit of Desistance[26] which was subscribed and sworn to before Assistant City Prosecutor Alfredo R. Centeno on January 17, 2005 was only filed by accused-appellant Capuyan on May 6, 2005 when he filed his Memorandum[27] before the lower court on even date.

Hence, the said affidavit of desistance could not serve as basis for the acquittal of accused-appellant Capuyan. The lower court is correct in denying accused-appellant Capuyan's supplemental motion for reconsideration and the motion to reopen the case, and in convicting accused-appellant Capuyan notwithstanding the affidavit of desistance executed by the relatives of the deceased victim Pascua.

WHEREFORE, premises considered, the Decision dated May 6, 2005, and the Orders dated June 2, 2005, and June 14, 2005 of the Regional Trial Court, Branch 6, Baguio City in Criminal Case No. 13941-R are hereby AFFIRMED.

SO ORDERED.

Tijam and Tayag, JJ., concur.

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[1] Records, pp. 286-300 penned by Judge Ruben C. Ayson

[2] Records, pp. 323-329

[3] Records, pp. 341-342

[4] Records, p. 53

[5] Records, p. 83

[6] Records, pp. 96-97

[7] also referred to as Benmajo

[8] also known as Jerry Tumbaga

[*] He was holding the position of SPO1 at the time he was presented as witness.

[9] TSN dated September 25, 2003

[10] What are you doing, stop that.

[11] Records, p. 17

[12] TSN dated July 26, 2004

[13] TSN dated August 2, 2004 and January 25, 2005

[14] TSN dated January 17, 2005

[15] "Kasla gamin nga pinakarok idi diay dagsen ti kaso na kasi idi ipan ko idiay hospital nga ipaagas minuramuranak tila inbagbagana kinyak" as if I am not a police officer. "Kompormi ti inbagbagana kinyak."

[16] TSN dated February 8, 2005

[17] Records, p. 1

[18] TSN dated April 5, 2005

[19] Records, pp. 304-319

[20] Records, pp. 330-332

[21] Reano vs. Court of Appeals, 165 SCRA 525

[22] People vs. Dalabajan, 280 SCRA 696

[23] Records, p. 17

[24] Exhibit "B"

[25] People vs. Dalabajan, supra

[26] Records, p. 283

[27] Records, pp. 274-282

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