

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN BARROS Y DAYAP, DEFENDANT-APPELLANT.

G.R. No. L-34249. May 03, 1983

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PER CURIAM:

MANDATORY REVIEW of the death sentence imposed upon the accused Juan Barros y Dayap and Luis Trinidad y Victorino.

The said accused Juan Barros y Dayap and Luis Trinidad y Victorino were charged before the Circuit Criminal Court of Manila, docketed therein as Criminal Case No. CCC-VI-585 (71) and Criminal Case No. CCC-VI-590 (71), respectively, with the crime of Robbery with Homicide and Serious Physical Injuries committed, as follows:

"That on or about the 4th day of December, 1970 in the City of Manila, Philippines, the said accused, conspiring and confederating together with others still unknown and helping one another, and with the use of a Mercedes Benz 200 with Plate No. 36-23, and a Ford car did then and there wilfully, unlawfully and feloniously, with intent of gain and with intent to kill, and by means of violence upon persons, to wit: by shooting with armalite rifles Carlito Cardinio and Aurelio Navarro, both employed as messengers of the Citizen's Bank, Caloocan, thereby inflicting upon them mortal gunshot wounds which were the direct and immediate cause of their death, take steal and carry away the following:

One black portfolio valued at P70.00 containing P1,650.50 cash and non-negotiable checks

all valued at P1,720.50, belonging to the Citizen's Bank of Caloocan City, to the damage and prejudice of said owner in the aforesaid sum of P1,720.50, Philippine currency;

"That on the occasion of said robbery, the said accused conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon Francisco Casio, Jr. y Cabilo, by then and there shooting him with armalite rifles, thereby inflicting upon him serious physical injuries which have required medical attendance for a period of more than thirty days and have prevented him from performing his customary labor during the same period of time";

and,

"That on or about the 4th day of December, 1970 in the City of Manila, Philippines, the said accused conspiring and confederating together with Juan Barros y Dayap, who has been charged for the same offense with this Court under Crim. Case No. CCC-VI-585 (71), and others still unknown and helping one another, and with the use of a Mercedes Benz and a Ford car, did then and there wilfully, unlawfully and feloniously, with intent of gain and with intent to kill, and by means of violence upon persons, to wit: by shooting with armalite rifles Carlito Cardinio and Aurelio Navarro, both employed as messengers of the Citizen's Bank, Caloocan, thereby inflicting upon them mortal gunshot wounds which were the direct and immediate cause of their death, take, steal and carry away the following:

One black portfolio valued at P70.00 containing P1,650.50 cash and non-negotiable checks

all valued at P1,720.50, belonging to the Citizen's Bank of Caloocan City, to the damage and prejudice of the said owner in the aforesaid sum of P1,720.50, Philippine currency;

"That on the occasion of said robbery, the said accused, conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon Francisco Casio, Jr. y Cabilo, by then and there shooting him with armalite rifles, thereby inflicting upon him serious physical injuries which have required medical attendance for a period of more than thirty days and have prevented him from performing his customary labor during the same period of time."

Trial was held jointly and judgment was rendered on the cases on August 26, 1971, whereby the said accused were sentenced, under the charges aforesaid, to suffer the death penalty and "to jointly and severally indemnify, as follows: The heirs of deceased Carlito Cardenio, the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 as exemplary damages, and the sum of P10,000.00 as moral damages; the heirs of deceased Aurelio Navarro, the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 as exemplary damages, and the sum of P10,000.00 as moral damages; Francisco Casio, Jr. the sum of P5,000.00 by way of moral damages for the injuries that he suffered; Demetrio Cunanan the sum of P1,650.00 representing the cash that he gave to Cardenio for deposit; the Citizen's Bank the sum of P8,022.00 representing the checks lost and debited against it; and to pay the costs."

The accused Luis Trinidad escaped from prison on May 14, 1975 and has not yet been re-arrested.[1]

The facts of the case, as summarized in the People's brief, are as follows:

"At about 2:00 o'clock in the afternoon of December 4, 1970, Francisco Casio, Jr., Security Guard of Citizen's Bank, together with Carlito Cardenio, Aurelio Navarro, Ruben Bacani and Ernesto Lopez, were on their way from Citizen's Bank branch in Caloocan to their head Office at the Rosario Bldg., Escolta, Manila. Cardenio was bringing along checks for clearance with the Central Bank in the amount of about P477,500.00, and cash in the amount of P1,650.00 given to him as bonus which he intended to deposit with the Hongkong Shanghai Bank. The checks and bonus money were given to him by Demetrio Cunanan, branch manager of the Malabon Citizen's Bank. Cardenio left the Malabon Branch alone and he passed by the Monumento Branch to join the group which was going to the head Office (pp. 28-32, t.s.n., July 15, 1971; pp. 175-180, t.s.n., July 16, 1971).

"Cardenio is the messenger of the Malabon Branch; Navarro is a clerk in the Monumento branch; Lopez is the security guard acting as escort; and Bacani was the driver. Casio was sitting in the front, right side of the owner jeep; at Casio's left was Navarro; while Bacani was driving; at the back, seated in the middle is Cardenio; Lopez was seated at the left side of the rear. Lopez was carrying a carbine and Casio has a .38 caliber gun. From the Caloocan branch at Caloocan City, their jeep took the Samson Road, and then turned around the Monumento to Rizal Avenue, and then to Abad Santos Street in Manila. Upon reaching the intersection of Abad Santos and Tayuman Streets, they stopped because of the red light. Suddenly, shots rang from the back of the jeep and Casio saw some of his companions slumped on the jeep. Casio drew his .38 and turning to his right, he saw appellant Juan Barros about five arms length away firing his armalite at them. Casio returned the fire but appellant Juan Barros took cover behind a passenger jeep. Casio was hit at the back and lost consciousness (pp. 30-40, t.s.n., July 15, 1971). Appellant Luis Trinidad was then on the island and was firing at the jeep with his cal. .45 pistol previously tucked on his waist. After retreating, he used his carbine. Appellant Juan Barros pulled the checks from the jeep and some of them were scattered on the street. (pp. 8-15, t.s.n., July, 16, 1971).

"As a result of the encounter Cardenio died from multiple gunshot wounds; Navarro died likewise because of multiple gunshot wounds, while Casio suffered several injuries, but lived to tell the incident. (Decision, pp. XXVIII-XXXIII, Trinidad's Brief)."

The accused Juan Barros y Dayap in a separate brief, denied participation in the commission of the crime and claimed that at around 2:00 o'clock in the afternoon of December 4, 1970, he was at his restaurant located at Santolan Road, Malabon, Rizal, which was then being repaired because of the damage caused by a typhoon. He further claimed that the lower court erred in giving weight to the testimony of Francisco Casio and Bayani Lugto, and in not setting aside his alleged written confession which was obtained from him involuntarily. The accused pointed to the alleged contradictions and inconsistencies in the testimony of the prosecution witnesses which he claimed are material and sufficient to render their testimony unworthy of belief.

The accused Luis Trinidad y Victorino also denied participation in the commission of the crime. He claimed that between 1:00 o'clock to 5:00 o'clock in the afternoon of December 4, 1970, he was in the Municipal Jail of Talavera, Nueva Ecija, where he was being investigated in connection with a fight he had with Isabelo Bernardo earlier that day. He further claimed that the lower court erred in giving credence to the testimony of Bayani Lugto and in considering his alleged confession which was extracted from him involuntarily.

The case hinges on the credibility of witnesses and, as in such cases, the trial court's opinion as to which of them should be believed is entitled to great respect. The trial judge who heard the witnesses testify and had occasion to observe their demeanor on the stand was of the opinion that those of the prosecution witnesses were the ones that deserve credence. We have examined the records with great care and we find nothing which might justify our taking a different view. As the trial court said, the witnesses for the prosecution, Francisco Casio, Jr. and Bayani Lugto testified in a very categorical, straightforward, spontaneous and frank manner and were consistent throughout despite the rigid cross-examination to which they were subjected. While it would appear that the witnesses might have committed contradictions in their testimony before the Court and their declarations during the re-investigation of the case by the Fiscal, the trial court found it to be trivial and do not detract from the fact that the two defendants are among the malefactors. The trial court, thus, said:

"These aforesaid witnesses might have committed contradictions in their testimony as indicated by accused Barros in his memorandum, like for example, that Casio declared in the direct examination that he heard shots from the back and the right but the direction of the shots he heard was from the middle; that he did not know how many shots he heard before he saw Barros but in the Fiscal's Office, he said that it was after the second shot that he turned his head and saw Barros; that Barros was wearing an ROTC fatigue, long sleeve and he did not notice whether Barros was with a hat or not but he affirmed that he answered in the Fiscal's Office that Barros was wearing a hat. As to Lugto, he stated in the cross-examination that Barros is of the mestizo type but in his statement before the police, he said that the person who alighted is 'kayumanggi ang kulay' (Exhibit '3-a-Barron'). The contradictions indicated, however, by the defense are evidently trivial and do not pertain to the principal fact that Casio and Lugto positively, categorically and unwaveringly identified the two accused as among the holduppers. As to Lugto's claim in his statement (Exhibit 'C') that one was 'kayumanggi ang kulay' while Barros is of the mestizo type, the court can take judicial notice of the fact that so many factors affect the difference in complexion of Barros during the commission of the offense and his complexion during the trial like for example Barros is lighter in complexion during the trial because of his detention while before detention he is ordinarily exposed to the heat of the sun, his attire during the trial is orange short sleeves thus making more prominent his lighter complexion than when he was in long sleeves with an ROTC cap. Besides, it is the observation of the court that Barros' being a mestizo is not strikingly different from an ordinary 'kayumanggi'. On the additional declaration of Lugto in his statement (Exhibit '2') that he did not notice very much the other one as he was somewhat covered by the jeep (Exhibit '2-a 'Trinidad') but was positive of his identification of Trinidad in court suffice it to state that Lugto's memory was refreshed when he saw the person of Trinidad in court. After all, Lugto did not declare in his statement that he did not absolutely notice the other one. He declared that he did not notice him very well. But whatever it is, it has been held that 'it is a truism that the most candid witness oftentimes commits mistakes and incur in inconsistencies in his declarations, but such honest lapses do not necessarily impair his intrinsic credibility. Far from being evidence of falsehood they

could justifiably be regarded as a demonstration of good faith and a confirmation of the fact' that the witness is not rehearsed. (People vs. Alcantara, 33 SCRA 812)."[2]

Indeed, the discrepancies in the testimony of the witnesses for the prosecution, pointed out by the attorneys for the defendants, are not of the nature that would tend to impair their credibility. The discrepancies in the testimony of the said witnesses of what they saw are precisely what we think gave their stories the seal of authenticity. The discrepancies were natural and to be expected from witnesses recounting what they had noticed and what they experienced in an event full of confusion, excitement, and fear.

Besides, the record does not show, and the defendants herein had not even suggested, that the prosecution witnesses had any possible motive to falsely implicate them in the commission of the crime.

Moreover, as the lower court said, the testimony of the prosecution witnesses are corroborated by the extrajudicial confessions of the accused wherein they admitted their essential participation in the commission of the crime. The defense, to be sure, exerted great efforts to discredit the confessions by attempting to prove that they were extorted by torture and maltreatment of the accused. But, as the trial court remarked in its decision, the extra-judicial confessions of the accused are not only replete with details that the police could not be interested in, but that the defendants did not complain of irregularity in the execution of their statements to the persons to whom they swore to its veracity; that no evidence was presented to corroborate the testimony of the defendants that they were forced or maltreated into giving their statements; and that the social standing of the defendants would deter the police investigators from using unfair methods in their investigation of the case, the accused Juan Barros being the brother of a police lieutenant in the Malabon Police Department, while Luis Trinidad is the nephew of the owner of the Victory Liner and its Assistant Traffic Manager.

Our study of the record also reveals that the extra-judicial confession of the accused Luis Trinidad is self-exculpatory in nature and he throws the blame to his companions, a thing which would not have been permitted if the extra-judicial confession had been put in his mouth by the investigating officers. Thus, in his extra-judicial confession, the accused Luis Trinidad stated:

.....

"16. T: Ikaw ba ay namaril ng oras ng holdup na ito?

S: Hindi ho.

"17. T: Sino sa kasama mo sa kotse ninyo ang nakita mong namaril?

S: Ang mga kasama ni BREEZE ang bumaba at namaril.

"18. T: Ay ano naman ang ginawa mo sa oras ng hold-up?

S: Naiwan po ako sa tabi ng kotse at nakatayo. Alalay ako."[3]

.....

If the police did resort to brutality to secure a written statement from him, they would have made him admit that

he was one of the active participants in the commission of the crime. It does not stand to reason that the police would have been satisfied with the self-exculpatory answer given by him. The result is too disappointingly meager for the alleged excessive display of brutality and inhumanity on the part of the police investigators.

In this connection, it would do well to remind judges, fiscals and other officers to whom persons accused of a crime are brought for swearing to the truth of their statements "to adopt the practice of having the confessants physically and thoroughly examined by independent and qualified doctors before administering the oath, even if it is not requested by the accused. Or, if no doctor is immediately available, the swearing officers should themselves examine the entire bodies of the confessants for marks of violence, particularly the portions covered by their clothing. Such examination, if regularly required, and the results officially noted, would not only deter attempts to secure confessions through violence, but ultimately shorten and speed up criminal trials (where accused persons almost invariably repudiate their confessions) by precluding future controversies on whether the statements were obtained through torture or not. Common sense advises that the swearing officers should not be content with affirmations by the accused that their statements are voluntary, nor with denials that they were improperly procured. Manifestations of this kind are to be expected if the accused is to return to the custody of the agents who obtained the confessions, since repudiation of the statement would only result in the infliction of further punishment by those charged with improperly extracting the challenged statements." [4]

The accused Luis Trinidad would have us believe that on December 4, 1970, he was in the municipality of Talavera, Nueva Ecija, he having been arrested for alleged disorderly conduct, owing to drunkenness and fighting with one Isabelo Bernardo, and detained in the municipal jail of that locality, from 1:00 to 5:00 o'clock in the afternoon. Although the testimony of policemen Saturnino Peña and Carlito Martinez, as well as the police blotter and incident report were introduced by the said accused to support his pretence, the lower court gave no credence thereto, and we think correctly, because, as the lower court said, the statements contained in the police blotter and incident report are inconclusive as it was easy to make an intercalation and insertion thereon. The lower court said:

"As to Trinidad, the court sees in him a shrewd attempt to use the records of the municipal police of Talavera, Nueva Ecija, especially the police blotter (Exhibit '3') to support his alibi. But even a passing glance of said police records will show their inherent weakness. On pages 9, 11, 13, 15, 23, 25, 31, 33, 39, 41, 49, 51, 57, 59, 61, 67, 71, 73, 75, 77, 81, 85, 87, 94, 95, 101, 103, 109, 111, 113, 117, 123, 127, 131, 135, 143, 145, 151, 155, 157, 159, 163, 167, 169, 173, 175, 177, 179, 183, 185, 187, 189, 191, 192, 195, 199, 203, 205, 207, 215, 219, 223, 233, 265, 237, 239, 243, 245, 261, 263, 265, 267, 281, 285, 289, 293, 295 and 299 of the police blotter (Exhibit '3') the space after the title 'Report of the Policemen and Record of Events in the Municipality' is in blank. This is also true with respect to the title 'Record of Arrest and Prisoners in the Municipal Jail' in the aforementioned pages wherein the space under said title is also in blank or only with one or two prisoners listed. In other words, it is very easy to make any insertion in the aforementioned pages especially so that there is no cancellation or appropriate mark immediately below the aforesaid titles to prevent any insertion or tampering thereof. The possibility even of disregarding the original police blotter and preparing an entirely new one is not remote.

"With respect to the incident report (Exhibit '6'), the court finds the same to be inconclusive as it is easy to make any intercalation thereof. So with the police statements (Exhibits '7', '8', '9', '10', '11' and '13'). It is easy to execute them or have them dated on such date that will suit one's purpose. It may not be amiss to state that said police records easily crumble in the light of the testimony of Casio and Lugto who had passed the test of credibility because of their frank and spontaneous declaration in a very natural and easy manner. Finally, it is worthy to note that originally the police did not know Trinidad. He was apprehended only because of the implication of his co-accused Barros and the two accused testified that they knew each other already before the incident. In the absence of any strong motive why Barros will implicate Trinidad, the logical conclusion is that

Barros implicated Trinidad because that is the truth."[5]

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the accused.

SO ORDERED.

Teehankee, Acting C.J., Concepcion Jr., Guerrero, Abad Sanos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., is on official leave.

Makasiar, J., I join Justice Aquino in his concurrence.

Aquino, J., I concur. The robbery with homicide and physical injuries was aggravated by treachery, use of a motor vehicle and band. Hence, the death penalty was properly rendered.

Relova, J., I vote for reclusion perpetua.

[1] Rollo, p. 157.

[2] Decision, pp. 42-44.

[3] Exhibit "R".

[4] *People vs. Castro*, 120 Phil. 669, 681-682.

[5] Decision, pp. 49-51.

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