

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
AGUSTIN ALQUISAR, ET AL., DEFENDANTS, AGUSTIN ALQUIZAR AND  
MARCELO LOZANO, APPELLANTS.**

*G.R. No. L-32080. May 22, 1975*

Ponente: CONCEPCION, JR., J.

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**CONCEPCION, JR., J.:**

Pursuant to the appeal interposed by defendants Agustin Alquizar and Marcelo Lozano from the judgment of conviction rendered by the Criminal Circuit Court of Zamboanga del Sur in Criminal Case No. CCC-XVI-16-2 DS (3433), the record of said case was transmitted to this Court.

On June 18, 1970, the following resolution was adopted -

"Considering the letter of transmittal of record of the Deputy Clerk Lazaro N. Baarde of the Criminal Circuit Court of Pagadian, Zamboanga del Sur, stating that stenographer Melquiades Asuncion died in a sea accident on February 6, 1969 and that he had with him in that accident the untranscribed stenographic notes he had taken in the trial of this case, THE COURT RESOLVED to require the parties herein to move in the premises, within 10 days from notice hereof."

The Solicitor General, in his comment dated July 21, 1970, stated that it is necessary to remand the case to the lower court for the reconstitution of the testimonies of the witnesses enumerated in the letter of transmittal of Deputy Clerk Lazaro N. Baarde.

Thus, in accordance with the resolution of this Court dated July 8, 1970, the original record of aforesaid criminal case was remanded to the court of origin on July 13, 1970, "for the reconstitution of the testimonies of the 10 witnesses involved or for the retaking of their testimonies."

Pending the reconstitution or the retaking of the testimonies of the witnesses, counsel for the appellants filed by mail on July 8, 1974 a motion praying —

"1. That the herein appellants be allowed to present Patricio Barrera and other witness in the re-taking of the testimonies;

2. That the appellant be granted new trial or re-trial in view of the above developments."

On being required to do so, the Solicitor General filed his comment on the said motion.[1] This Court in the case of *People vs. Castelo, et al.* (1 SCRA 461-462) had occasion to resolve a similar situation, stating that —

"The remedy, in case the transcript of the stenographic notes, containing the testimony of some prosecution witnesses has been lost, is reconstitution of the missing evidence, not a new trial. It is only when the decision itself has been lost and no authentic copy thereof obtainable that the case should be decided anew as if it had never been decided."

So that —

"In the exercise of the court's inherent power to supply deficiencies in its records and proceedings and of its discretion to adopt, in the absence of any specific procedure, any suitable process or mode of proceedings, which appears most conformable to the spirit of the Rules of Court, the Supreme Court decided to remand an appealed case to the court solely for the purpose of reconstructing the testimony of the witnesses, the stenographic notes of whose testimony had been lost, by retaking their testimony and, if deemed necessary, of some other witness who had personal knowledge of the facts testified to by the witness who is dead."

We cannot, however, countenance appellant's request for new trial or re-trial on the strength of the sworn statement of Patricio Barrera given before Special Counsel Mauro G. Macaso of the Office of the City Fiscal of Zamboanga City on December 10, 1973, exculpating said appellants of the crime for which they were charged and convicted, by claiming that he and his companions, namely, Yoyong Cumidoy, Siano Asemblea, Frank Delfero, Bernabe Morales and Daniel Mancieda, committed the said crime. We are not unfamiliar with affidavits of this nature, executed by a fellow prisoner who assumes full responsibility for the commission of a crime. And this is not the first time to discredit such kind of affidavit. This Court had occasion to make this pointed observation:

"Where the evidence against an accused is overwhelming, much importance should not be given to affidavits where persons serving long sentence for serious crimes committed by them and therefore have not much, if anything, to lose, assume responsibility for crime of which fellow prisoners had been convicted in order to save the latter from criminal responsibility. It is not improbable that said schemes are conceived and carried out for a consideration, usually monetary, and that if successful, and the person convicted is finally acquitted, it would still remain for the Government to successfully prosecute and find guilty the convict assuming responsibility because he might then repudiate the contents of his affidavit and resort to other schemes to avoid criminal responsibility himself." [2]

WHREFORE, the request of the appellants to substitute the testimony or testimonies of the ten witnesses named in the letter of transmittal of Deputy Clerk Lazaro N. Baarde is hereby granted, as long as the Provincial Fiscal shall certify that the original witness or witnesses are no longer available and the substance of the testimony of the original witness shall not be altered. The stenographer or stenographers who will assist during the re-hearing shall immediately transcribe their notes and shall file their transcripts with this Court within thirty (30) days after the conclusion of the re-trial. The request for new trial or retrial is denied.

Fernando, (Chairman), Barredo, Antonio and Aquino, JJ., concur.

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[1] Resolution of August 5, 1974.

[2] *People vs. Francisco*, 94 Phil. 975.

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