

MARCOS ENAGE, PETITIONER, VS. THE PROVINCIAL WARDEN OR DAVAO CITY, RESPONDENT.*G.R. No. L-2496. October 29, 1948*

Ponente: PERFECTO, J.

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These two cases have been heard and submitted for decision jointly. The petitioner In the first case, prays for a writ of habeas corpus to be released on bail. The six petitioners in the second case pray that the order of respondent judge, dated September 11, 1948, cancelling the bonds for provisional release of petitioners and ordering their re-commitment into custody, be declared null and void. The petitioner in the first case was denied bail in the same order of September 11, 1948, complained of in the second case. On April 15, 1946, Alfonso Ang Liongto, merchant, was murdered in front of his establishment in Davao City.

On April 29, 1946, an information for said murder was filed against Dy Too and five others whose names are not identified, the information alleging that Dy Too shot the deceased from "behind using a .45-caliber firearm, while his co-accused posted themselves at places calculated to afford protection for themselves and insure the success of the murder. On August 23, 1946, the information was amended to include Chu Che Beng as accused. The two accused were recommended to bail in the amount of P40,000 each.

On November 30, 1946, after trial, Dy Too and Chu Che Beng were found guilty and sentenced to reclusion perpetua, and to indemnify the heirs of the deceased in the amount of P5,000.

On December 18, 1947, another information for the same murder was filed against James Young as co-conspirator of Dy Too and Chu Che Beng. In the information against Young, Carlos Cheng, Ang Chu Yeng, and Uy Quet Guan were also mentioned as co-conspirators.

On February 3, 1948, James Young was found guilty and sentenced to reclusion perpetua and to indemnify the heirs of the deceased in the sum of P2,000.

Thereafter, a special prosecutor, Filemon Saavedra, detailed by the Department of Justice, filed on June 9, 1948, a third information for the same murder naming nine new accused, besides the three others mentioned in the information filed against James Young and including 27 other Chinese Davao residents, without mentioning their names. This third information covers, therefore, 39 persons as accused, including the six petitioners, Ang Tiong, et al., in L-2497 who were all admitted to bail at P40,000 each and accordingly released.

On August 5, 1948, said third information was amended by including Marcos Enage as one of the accused. No bail was recommended for his provisional release.

Immediately after his arrest, a petition for bail, dated August 6, 1948, was filed in Ms behalf. On the same day, the special prosecutor filed an opposition to the petition, and at the same time., moved for the cancellation of the bonds filed by the other accused, and for their re-arrest.

The special prosecutor alleged that when he filed the original information he did not wish to have the strength of his evidence known to the defense for fear that it may prejudice the success of the prosecution and it was the reason why he recommended that each of the accused be allowed to file a bond of P40,000 each, but on June 25, 1948, the prosecution was able to discover damaging evidence against the accused and after the discovery of written documents, strongly showing the guilt of the accused, the special prosecutor felt that he could reveal a portion of the evidence without any fear that it may prejudice the success of the prosecution.

Hearing took place on September 11, 1948.

The trial court issued the order of September 11, 1948, denying bail to Marcos Enage and cancelling the bonds filed by Ang Tiong, Go Cam, Lem Peng, Te Chaye, Lo Bok, and Sy Bio.

The trial court declared that the prosecution supplied "sufficient" evidence that shows the guilt of said accused.

It is stated in the lower court's order that James Young, the accused in the second information, admitted having participated in the crime and pointed to the six petitioners in L-2497 and others, among those who, with offer of payment induced him and companions to kill the deceased, and that at the hearing of September 11, 1948, Young testified that Ang Tiong and companions, petitioners in L-2497, had several conferences with him and his companions in different parts of Davao City to determine how the murder of Ang Liongto was to be executed and the amount that Young and his companions would receive as reward, and that the last conference took place in Daliao and the amount agreed upon was definitely fixed at P50,000, which was accepted by Young and his companions.

The order mentioned also the fact that Pedro Dayot, stenographer of prosecutor Saavedra, testified that he saw in the Immigration Office a document signed by Marcos Enage in which he asked for the deportation of Ang Liongto.

No other evidence is mentioned in the order.

We have perused the transcript of the evidence taken at the hearing. There appears the testimony of stenographer Dayot on the alleged reconstitution of the crime, his declarations in this respect being all hearsay based on statements made by Young, and on the affidavit he alleged to have seen in the Indignation Office that had been subscribed to by Marcos Enage on May 26, 1945, alleging that he was apprehended by the Kempel-tai on June 3, 1944, because of the complaint of Ang Liongto. The affidavit was not exhibited in court and the testimony of Dayot on said affidavit was objected to by the defense. The second witness was Alejandro Zacarias, technical sergeant of the PC, but his testimony is reduced to the alleged reconstitution of the crime and is all hearsay based on the declarations of James Young and Dy Too, the defense having objected strenuously to the admission of said hearsay evidence.

The last witness was James Young himself who testified that Ang Liongto died around April 15, 1946 "because we killed him. The people of Davao told us to kill him". He arrived in Davao from Manila on March 27, 1946. His companions were Dy Too, Chu Che Beng, Ang Cho Eng, Uy Quet Guan, Carlos Cheng, They arrived by plane. Go Tiong, Lem Peng, Te Chaye, Lo Ma Co, Lo Gok and some others, escorted them to Claveria street, where they stayed. Lo Ha Co is a Chinese mestizo named also Marcos Enage. Young and companions were met by those people at the landing field. Go Tiong, Lira Chan and Lem Peng visited them the first night. They rode in a jeep around the city, after which the killing of Ang Liongto was proposed. The proposal was made in "many places", first at the hotel, then at Matina, then at Bonifacio street, and sometimes in Kwong Lee restaurant and at Chicago restaurant. Tan Bon Siong was also connected in the plan to kill Ang Liongto. The final agreement for the killing took place at Daliao and the amount of reward was agreed at P50,000. The witness was not able to

receive the amount. Those present in the final conference were Lem Peng, Lo Ma Co, Te Chaye, Tan Bon Siong and others "I could not remember anymore". Those implicated in the killing of Ang Liongto were ten, "we were six" from Manila, and "four from here in Davao". Cross-examined on details, the witness alleged to have lapses of memory and that there were things that he could not remember.

The defense called Antonio Baz, clerk of court., to identify pages 32 and 33 of the records which were presented as Exhibits I and I-A, where the only tiling that James Young testified is that he did not know the house of Marcos Enage, this being the only instance in which such name has been ever mentioned during his whole testimony in his own trial.

With regards to Marcos Enage, not a single piece of evidence has been presented. Whether he signed or not the affidavit seen by stenographer Pedro Dayot in the Immigration Office or whether or not he sought the deportation of Ang Liongto, the facts intended to be proved are based only on the hearsay and uncorroborated testimony of said stenographer, which was timely objected by the defense. Even if it is true that Enage signed said affidavit and sought the deportation of Ang Liongto, such isolated facts do not show that Enage had any connection with the murder in question. Under the circumstances, the lower court committed a grave abuse of discretion in denying Enage's petition to "bail, to which he is entitled as a constitutional right. (Sec. 1 [16], Art. III of the Constitution.)

As to the six petitioners in L-2496, the lone testimony of James Young implicating them appears not to satisfy the constitutional requirement that the evidence of guilt must be strong in a capital offense in order that a court may be justified not to grant bail. The lower court itself could not pronounce the evidence strong. It considered it only "sufficient", a word that does not convey the idea involved in the constitutional requirement. Besides coining from a source inherently polluted, Young's testimony is not supported by any kind of corroboration and is weakened by some contradictions and improbabilities. The uncorroborated testimony of a self-confessed killer for regard, when tainted with contradictions and improbabilities, is not a strong evidence of a capital offense against his co-accused.

When the lower court, upon the prosecution's recommendation allowed the six petitioners to be bailed at P40,000 each, it is because the evidence attached to the information was not strong to justify denying bail. The testimony given by Young at the hearing of September 11, 1948, has not changed the situation. It has not added anything new to the affidavits already attached to the information, which included those signed by James Young and Dy Too, where they ratify their declarations in the cases in which they were convicted, copies of which are attached to said affidavits.

The lower court was not justified in cancelling the "bonds filed by the six petitioners and in doing so committed a grave abuse of discretion that we must correct.

In view of the result arrived at, there is no need of passing upon the other questions raised by petitioners, such as the direction of the prosecution at the hearing by the private lawyer of the offended party in the absence of the special prosecutor.

The order of the lower court of September 11, 1948, is set aside and it is ordered that Marcos Enage be allowed to bail in the sum of P40,000 and that, on approval of the bond he may accordingly file, he be immediately released and the cancellation of the bonds of petitioners Ans Tiong, Go Kam, Lim Peng, Te Chaye, Lo Bok and Sy Bio be revoked and that said petitioners be immediately released upon said bonds.

This decision shall be executed immediately upon its promulgation.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, and Briones, JJ., concur.

TUASON, J.:

I dissent. I don't find sufficient ground for departing from the salutary rule the findings of facts of the trial judge must be respected.

Order set aside.

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