

NERIO BELVIS III, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-38907-09. November 14, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

By separate informations, four (4) related criminal actions were instituted in the Court of First Instance of Manila.[1] One, Criminal Case No. 8953, accused petitioner Nerio Belvis III, together with Rodolfo Donate and Antonio Reyes, of robbery. The second, Criminal Case No. 8954, charged the three with murder. The other two, Criminal Cases Numbered 8955 and 8956 did not involve Belvis -- Case No. 8955 accused only Rodolfo Donate of the felony of assault upon an agent of a person in authority; and Case No. 8956, only Antonio Reyes, of illegal possession of firearm and ammunition.

The cases were jointly tried on motion of the accused.[2] Belvis was found guilty beyond reasonable doubt of the felony of homicide (in Crim. Case No. 8954), together with his two co-defendants, and each was sentenced "to suffer an indeterminate term ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, with the accessory penalties of the law, to indemnify the heirs of Hermenegildo Monta alias 'Peklat' in the sum of P12,000.00, and to pay the costs." He was acquitted (in Crim. Case No. 8953) of the accusation of robbery, on reasonable doubt. The other cases resulted in the conviction of the other accused.

Only Belvis and Donate appealed the conviction of homicide to the Court of Appeals.[3] The appeals met with no success, were in fact quite infelicitous. They resulted in an increase in the penalties imposed on both of them for the crime of homicide. The judgment of the Appellate Tribunal[4] affirmed their conviction and ordained[5] that "with the only modification *** that in Criminal Case 8954 the appellant Nerio Belvis III y Soliven and appellant Rodolfo Donate y Daquila are hereby sentenced each to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, the decision appealed from in the three cases (Crim. Cases Nos. 8953, 8954 and 8955) is hereby affirmed in all respects." [6] Nerio Belvis moved for reconsideration, but his motion was denied.[7]

Only Nerio Belvis III took an appeal to this Court. For a third time, he pleads for acquittal. But again the verdict must go against him.[8] He has not succeeded in demonstrating any serious error in the decision of the Court of Appeals. On the contrary, a review of the evidence shows him to have been properly convicted and correctly sentenced.

There is no dispute about the fact that the victim, Hermenegildo Monta @ Peklat, was shot eight (8) times at close range and killed with two hand guns, one a .45 caliber, and the other, a .38 caliber pistol. It is in the manner of his shooting and the reason therefor that disagreement exists between the prosecution and the defense.

It appears that Peklat's slaying was immediately preceded by the robbery ("hold-up") of a taxi driver, Geronimo Maderal, who was driving a "Midori" cab in the evening of March 13, 1972.[9] The robbery was reported by

Maderal to the police that same night.[10] According to him, while he was driving his cab along Pasay Road, he was stopped near the cockpit on that street by four (4) persons who boarded his vehicle -- later identified as Nerio Belvis III @ Tisoy, Antonio Reyes, Rodolfo Donate @ Dolfo, and Hermenegildo Monta @ Peklat; that Dolfo and Peklat seated themselves beside him, Peklat being in the middle, while the other two, Tisoy Belvis and Reyes, got in the back; that on Dolfo's instructions, Maderal drove his cab to Libertad Street, turned right on Roxas Boulevard going towards Manila, and then right again on Vito Cruz; that at Vito Cruz Street, Dolfo told him, "Para mo, pare, hold up ito," pointing a gun at him at the same time; that he had forthwith given Dolfo the money he had, P30.00, and alighted from the vehicle on being told to do so by Dolfo, so that no harm would come to him; and that he lost no time in proceeding on foot to the nearest place where he believed he could obtain assistance, the Philippine Navy Headquarters at Roxas Boulevard, and afterwards informing his employer, Liberato Domingo, of the occurrence.[11]

Now, shortly after driver Maderal had left his taxicab and gone to seek police succor, Patrolman Oscar I. Rosal -- of Precinct No. 4, MMP, then on duty as security guard of the building housing the IBM Budget Commission situated at the corner of Vito Cruz and Adriatico Streets -- heard gunshots coming from the direction of the nearby Vietnamese Embassy. He forthwith went to that place, together with Severino Rodriguez, an IBM machine operator. They saw two persons running from Vito Cruz towards them: Belvis (Tisoy) and Reyes. Belvis had a gun in his hand. When the two were about 50 feet away, Pat. Rosal fired a warning shot, blew his whistle, and identified himself as a peace officer. The duo did not stop, however. Instead they turned back towards Pasay City, and ran into a vacant lot, jumping over a bougainville hedge. Rosal and Rodriguez followed but did not go into the area. They waited. Another person came, Dolfo. Again Rosal identified himself. Dolfo raised his arms and said, "Boss, hindi ako kasama;" but he suddenly leaped backwards two steps, drew his gun and fired at them twice. They were not hit however. Rosal himself fired four times at Dolfo, who thereupon ran to the same vacant lot and disappeared from view. After a while, Rosal went to the place whence he surmised the first shots had come, leaving Rodriguez to watch the area where Tisoy, Reyes and Dolfo had taken refuge. Rosal found a man lying beside a taxicab, dead to all appearances: this was Peklat, as was afterwards established. Rosal then went to the Vietnamese Embassy and used its telephone to report the incident to the Homicide Division. Homicide Operatives soon arrived, and Rosal turned over the case to them. Other policemen also came and apprehended Tisoy, Reyes and Dolfo. Tisoy was found in a house under construction in an adjoining lot; Reyes, crouching under some talahib grass; and Dolfo, near a burned restaurant at the corner of Saygan and Vito Cruz Streets. Rosal thereafter made his own official report of the events.[12]

Pat. Joaquin Uy, investigator, was one of three police officers of the Homicide Division,[13] the others being Pat. Javier and Corporal Yanguiling, who went to investigate the killing reported by Pat. Rosal. On arriving at the corner of Saygan and Vito Cruz Streets, they came upon Dolfo Donate, on his knees, bleeding from a bullet wound on his left thigh, and had him brought to the Ospital Ng Maynila. Uy then went to the place in front of the Vietnamese Embassy where the victim was lying on his stomach, beside the "Midori" Taxicab. The vehicle still had its headlights on. Uy saw that the victim had bullet holes in the back of the head and the left temple. He also found some empty shells. Uy had the official police photographer take pictures of the scene. That done, Uy proceeded to the Ospital Ng Maynila and interrogated Dolfo Donate. Uy asked Dolfo who his companions were and the latter named them, Tisoy and Tony; who had shot Peklat, and the answer was, "Kami;" where the gun was, and the answer was that it had been thrown away at the vacant lot when Dolfo was being pursued by uniformed policemen; who the victim was, and the answer was, "Peklat;" and why Peklat was shot, and the answer was, because of a previous grudge in connection with a robbery.

Tisoy Belvis and Reyes were thereafter brought to the hospital from the Homicide Division; and once there, Reyes identified Dolfo and Tisoy as his companions during the taking of the taxicab and the shooting of

Peklat.[14] Nerio (Tisoy) Belvis and Antonio Reyes were also both identified at the Homicide Division by taxi driver Geronimo Maderal.

Reyes' statement was taken that same night, as also, those of Maderal, and Pat. Rosal.[15] Reyes' written statement, taken without assistance of counsel, was subscribed by Corporal Yanguiling and Pat. Javier, as witnesses, and signed and sworn to before Assistant City Fiscal Chavez.[16] The next morning, Antonio Reyes was subjected to a paraffin test. But Belvis refused the test, on advice of counsel.[17]

No license to possess or permit to carry a firearm had ever been issued to Antonio Reyes y de Guzman.[18]

In his statement, Reyes related how the shooting of Peklat had taken place, as follows:[19]

"Ganito po yon. Kanina pong alas 5:30 ng hapon pumunta sa bahay sina Dolfo at Tisoy, at sinabi ni Dolfo sa akin na may 'trouble.' Tinanong ko sa kanila kung ano yong 'trouble,' at sinabi nila sa akin na may atraso sa kanila si Peklat at kailangan daw mayari si Peklat. * * Sumama ako sa kanila at dinala ko yong baril kong trentay-ocho. Pumunta kami sa Pasay at pinaikot-ikot namin yong taksi dahil hinahanap namin si Peklat; at seguro ng bandang alas 10:30 ng gabi nakita na namin si Peklat at bumaba kami sa taksi.

Naglakad kami ng kaunti at mayroon taksing dumaan (obviously, the Midori Taxicab driven by Maderal) Isinakay namin si Peklat at pinatuloy namin yong taksi papuntang Dewey. Pagkatapos pinakanan namin yong taxi sa Vito Cruz at pagkatapos pinababa namin yong driver doon sa pagliko. * * Pagkababa ng driver, pumalit si Tisoy sa manebela at pinatakbo ng kaunti pagkatapos hininto yong taxi at pagkatapos tinulak si Peklat sa labas ng taxi at pagkatapos pinagbabaril nila Tisoy at Dolfo si Peklat. Nakita ko ng ilang beses tinamaan si Peklat at pagkatapos ay tumakbo na kami.

*** **

Tumakbo kami papunta doon sa Taft at pagkatapos nakasalubong namin yong maraming tao at pagkatapos tumakbo ako pakanan (at) pumasok ako doon sa looban at nagtago ako roon sa isang bahay. * * Mamayang kaunti may dumating na pulis at sumurender po ako."

In the same statement, he reiterated the intention to liquidate Peklat: ".. yayariin namin si Peklat dahil may atraso siya kay Dolfo," the plan simply being, "basta't babarilin na lang namin," and he had agreed to go along with the plan because Dolfo was his friend. He also declared that in fact he, too, had shot at Peklat but his gun misfired (nagmintis).

Nerio Belvis argues that the Court of Appeals erred in appreciating Antonio Reyes' extra-judicial statement, Exhibit L, against him, and in finding that there was adequate circumstantial evidence to establish a conspiracy among him and his co-accused.

Reyes' extra-judicial confession having been taken on March 13, 1972, its legal status should be determined by the jurisprudential standards existing prior to January 17, 1973, the date of the effectivity of the 1973 Constitution.[20]

By these standards, no impropriety can be ascribed to Reyes' statement. There is, in the first place, affirmative testimony of its voluntary character, given by the police officers present at its taking. This testimony finds corroboration in the opening paragraphs of the statement, in which Reyes affirmed his willingness freely and voluntarily to make a narration (salaysay) without being forced, threatened or promised anything (na kindi ka pinipilit, tinatakot o pinapangakuan ng ano mang bagay), and after being informed (1) that what he would say might be later used against him or others before any court (pagkatapos malaman mo na ano mang sasabihin mo ** ay maaaring gamitin laban sa iyo o kanino man tao sa harap ng alin mang husgado **), and (2) that he had not only the right to retain counsel to assist him in the interrogation but also the right to give or not to give any statement. Reyes' final response to all these cautionary admonitions was clear and categorical: "Opo. Total

katutuhanan lang naman ang sasabihin ko." [21] The voluntariness of the statement is also cogently indicated by the fact (1) that it is replete with details that only the confessant could have supplied; [22] (2) that it is also corroborated by proof of the statements of Dolfo Donate at the Ospital Ng Maynila that he and his companions, Tisoy and Tony (Reyes), had shot Peklat because of a previous grudge; [23] (3) that it is entirely consistent with the subsequent written statement of the taxicab driver, Maderal; [24] and (4) that there is no proof whatever of any maltreatment of Reyes, or any undue pressure or influence to extract involuntary statements from him. [25] There is thus no cause for the exclusion of Reyes' statement on the ground of its involuntariness, even assuming that such an objection might properly be raised by a party other than Reyes himself, e.g., Nerio Belvis. [26]

To be sure, Tisoy Belvis could have objected to the admission of Reyes' statement against him -- as well as to the testimonial proof of Dolfo Donate's extra-judicial admissions that he (Dolfo), Tisoy, and Tony (Reyes) had shot Peklat because of a previous grudge [27] -- on the well known *res inter alios acta* rule. [28] He did not. The trial ended without any protest from him against the admission as to him of Reyes' written statement and Dolfo's oral declarations, whether on the ground of the involuntariness of Reyes' confession, or of *res inter alios acta* as regards both Reyes' and Dolfo Donate's declarations or either of them. Neither did he raise the question in the course of the appellate proceedings before the Court of Appeals. Indeed, the issue was conspicuously absent even in his petition filed with this Court for the review on certiorari of the judgment of said Appellate Court. The question was set out for the very first time in his motion for reconsideration dated September 3, 1974. This is much too late. Under the circumstances, the objection to the admissibility of Reyes' confession on the avowed ground must be deemed waived, must in truth be considered as nothing but an afterthought, quite apart from the demonstrated lack of merit thereof.

The Court of Appeals has made it clear, in any event, that the conviction of Belvis and Donate for the slaying of Peklat may be sustained independently of the extra-judicial confession of Reyes, there being other adequate proofs on record establishing their guilt beyond reasonable doubt as co-conspirators in the crime of homicide. The Court of Appeals is quite correct.

Petitioner's impugnation of the foundation of the Appellate Court's finding, in affirmance of those of the Trial Court, that a conspiracy to kill Peklat did exist among him (Belvis) and his co-accused, Donate and Reyes, must also be spurned as devoid of merit. The Court of Appeals based its conclusion (as the Trial Court did) on circumstantial evidence which it went to some pains to detail in its decision. It specified no less than eight (8) circumstances established by the evidence (substantially set out in this opinion), and concluded that "Grouped together, these stubborn facts and circumstances form a strong and formidable chain of evidence from which the malefactors *** can not claim innocence ***, (and which) (s)ingly and collectively *** serve to corroborate, the statement of Antonio Reyes that he and appellants confederated in killing the deceased." [29] The conclusion is clearly a factual one, and in line with established and familiar doctrine, cannot and should not be reviewed by this Court, absent, as here, a showing of any compelling reason therefor. [30] At any rate, the correctness of the factual conclusion of the existence of a conspiracy cannot be gainsaid, given its asserted premises.

It thus results that the conviction of Nerio Belvis III @ Tisoy must be upheld. However, the indemnity which he must give to Peklat's heirs must, consistently with established case law, be increased from P12,000.00 to P30,000.00.

WHEREFORE, the petition for review is DENIED, and, with the sole modification of the increase to P30,000.00 of the civil indemnity to be paid by the petitioner to the heirs of Hermenigildo Monta alias Peklat, the appealed judgment is AFFIRMED in all respects, with costs against the petitioner.

Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

Cruz, J., in the result.

[1] All allegedly committed in the night of March 13, 1972

[2] Original records, pp. 115-116

[3] Id., pp. 135, 138, 143-144

[4] Promulgated on June 3, 1974, the ponente being Hon. Jose G. Bautista, J., with Lucero and Melencio-Herrera, JJ., concurring

[5] Rollo, p. 154

[6] Emphasis supplied to indicate the increase in penalty

[7] Resolution, July 5, 1974

[8] His petition was initially denied, by Resolution of the Court dated July 31, 1974, "the questions raised being factual, and for insufficient showing that the findings of fact by respondent court are unsupported by substantial evidence." (Rollo, p. 170) His motion for reconsideration was denied, by Resolution of January 8, 1975. However, his second motion for reconsideration was granted and his petition was given due course, by the Resolution of September 17, 1975. (Rollo, p. 259)

[9] Maderal's employment as driver was confirmed by Liberato Santos Domingo, operator of Midori Taxicab, who also deposed that the value of the taxicab being driven by Maderal was around P15,000.00 (TSN, June 23, 1972, pp. 5-7)

[10] He reported the incident first to an officer at the Philippine Navy Headquarters at Roxas Boulevard, but was told to go to Precinct 4 at UN Avenue; at Precinct 4, however, he saw no one who could attend to him, everyone seemed busy; on going out, he saw a "radio patrol" to whom he attempted to make his report but who told him to go to Camp Crame (to the ANCAR); he did; afterwards he went to his employer who accompanied him to the Manila Police Headquarters where his (Maderal's) written statement was eventually taken, this at about 3:15 AM, March 14, 1972, at which time the stolen vehicle and the suspects, were already in police custody. TSN, May 4, 1972

[11] TSN, May 4, 1972, pp. 28-35

[12] TSN [Rosal testimony], May 4, 1972, pp. 64-77; TSN [Rodriguez testimony], pp. 79-91, 115

[13] Later, Crimes Against Persons Division

[14] TSN, May 4, 1972, pp. 4-78

[15] Id.

[16] Exh. L (Original Exhibits, pp. 11-12)

[17] TSN, May 31, 1972, pp. 4-78, *supra*

[18] TSN, May 31, 1972, pp. 77-78

[19] Emphasis and parenthetical statement supplied; corrections made in spelling, punctuation, paragraphing

[20] *Magtoto v. Manguerra*, 63 SCRA 4; *Peo. v. Jimenez*, 71 SCRA 188; *Peo. v. Feliciano*, 58 SCRA 383; *Cudiamat v. Peo.*, 84 SCRA 248; *Gumawa v. Espino*, 96 SCRA 402; *Peo. v. Hispolito*, 106 SCRA 610; *Peo. v. de*

la Cruz, 115 SCRA 184

[21] Original Exhibits, p. 11

[22] Peo. v. Pingol, 33 SCRA 73

[23] See footnote 3, p. 4, *supra*

[24] See footnote 2 p. 3

[25] SEE Peo. v. Mada-I Santalani, 93 SCRA 317; Peo. v. Balane, 123 SCRA 614; Peo. v. Villanueva, 128 SCRA 488, to the effect that "where the defendants did not present evidence of compulsion, or duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies and where they did not have themselves examined by a reputable physician to buttress their claim, all these (negative circumstances) were considered ** as factors indicating voluntariness"

[26] SEE Peo. v. Obedoza, et al., 105 SCRA 694, 704, and Peo. v. Plaza, et al., 140 SCRA 277

[27] Footnote 3, p. 4, *supra*

[28] "The rights of a party cannot be prejudiced by an act, declaration, or omission of another, and proceedings against one cannot affect another, except as hereinafter provided." Sec. 25, Rule 130, Rules of Court. SEE Sec. 29 of the same rule, treating of confessions as evidence against the confessant, and the rulings holding confessions inadmissible against persons other than the confessant because hearsay (collated in Moran, Comments on the Rules, 1980 ed., Vol. 5, p. 265), although said confessions are also excludible as violative of the rule of *res inter alios acta*.

[29] Rollo, p. 151

[30] Peo. v. Martinez, 144 SCRA 303; Peo. v. Royeras, 130 SCRA 265; Peo. v. Adones, 144 SCRA 364; Peo. v. Patag, 144 SCRA 429; Peo. v. Arhis, 144 SCRA 687 [treating, particularly, of evidence of conspiracy]

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