

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO ROBLES, RODOLFO ROBLES, CONRADO LUNA AND
ANTONIO SARMIENTO, ACCUSED. CONRADO LUNA,
ACCUSED-APPELLANT.**

G.R. Nos. L-39523 and L-39524. May 15, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

Conrado Luna appealed from the decision of the Circuit Criminal Court of Manila, finding him guilty of murder, sentencing him to reclusion perpetua and ordering him to pay an indemnity of twenty thousand pesos to the heirs of Rodolfo Mendoza (Criminal Cases Nos. 1451 and 1622).

Antonio Sarmiento, who was convicted as a co-principal of Luna and sentenced to a similar penalty, withdrew his appeal. The withdrawal was granted in this Court's resolution of September 29, 1980.

Rogelio Robles was acquitted. The fourth accused, Rodolfo Robles, is at large. He is now in the United States.

There is no controversy as to the fact that at around ten o'clock in the evening of November 22, 1966, Rodolfo Mendoza, 24, was shot and killed by two persons inside the Old Gold Restaurant located at 1450 Sande Street, corner Perla Street, Tondo, Manila.

The slaying was a front-page story in the issue of the Manila Times on the following day, November 23. The victim, known as Roding Ulo, was the son of Bienvenido Mendoza, alias Ben Ulo, a bodyguard of former Defense Secretary Oscar Castelo, who was convicted of having killed Manuel Monroy and who was then confined in the national penitentiary (Exh. 1-Luna. See *People vs. Castelo*, 120 Phil. 221).

The autopsy disclosed that the victim suffered ten entrance gunshot wounds consisting of three fatal wounds in the head, four wounds in the chest, a wound in the arm, another wound in the parietal region of the head and a wound in the abdomen which lacerated the pancreas, stomach and liver (Exh. D).

Three persons, Tony Pangan, Conrado Luna or Boy Luna and Renato Ramirez were suspected of having taken part in the killing (Exh. I or 4-Robles). However, no arrests were made. The case remained dormant for around six years. After the release from prison of Ben Ulo in 1972 (10-11 tsn May 30, 1974), the police reinvestigated the case.

According to Antonio Sarmiento (Tony Pangan), the killing was instigated by the brothers Rogelio and Rodolfo Robles who gave him five hundred pesos and two guns. On the day before the killing, Sarmiento contacted Luna at the vessel Bupri, which was docked at the North Harbor, and informed him that Rogelio Robles wanted Luna to take part in the assassination of Mendoza (Exh. J).

Rogelio ordered the liquidation of Rodolfo Mendoza because Rogelio was allegedly apprehensive that as a matter of vengeance Ben Ulo would order his son Rodolfo to kill Rogelio because Rogelio testified against Ben Ulo in

the case wherein Ben Ulo was convicted (Exh. J, p. 166, Record). Rogelio's residence at 1411 Sande Street was three houses away from the scene of the crime (24 tsn May 30, 1974).

Rogelio was employed as a foreman in the city engineer's office, Manila while Rodolfo Robles was the head of the social welfare department in the City Hall during the term of Mayor Antonio Villegas.

The police investigator got the sworn statements of Ernesto de Guzman dated November 20, 1972 and March 26 and 28, 1973 and the sworn statements of Renato Manlapit dated December 6, 1972 and March 27 and 28, 1973, pointing to Sarmiento and Luna as the killers and to Rogelio Robles as the person who wanted to be assured that Mendoza was dead (Exh. G, O, P, Q, R and S).

Crisanta Gonzaga, an alleged common-law wife of Sarmiento, executed a sworn statement dated March 26, 1973 wherein she declared that the Robles brothers induced Sarmiento to kill Mendoza by paying him five hundred pesos and furnishing him the two guns to be used in the killing. That amount was turned over to Crisanta by Sarmiento (Exh. T).

From the testimonies of De Guzman and Manlapit, which confirmed the allegations in their six sworn statements, it may be gathered that between eight and nine o'clock in the evening of November 22, 1966, Mendoza invited De Guzman to take a snack in a restaurant located at Coral Street, Tondo, Manila. After they finished eating, Luna arrived and invited them to have some drinks in another restaurant. (See Exh. J, pp. 163-166, Record.)

The three proceeded to the Old Gold Restaurant. On the way, they were joined by Manlapit. At the restaurant, they seated themselves on the stools near the counter. De Guzman sat near the door. Seated next to him were Mendoza, Luna and Manlapit in that order (Exh. F).

Mendoza ordered drinks. While waiting for his order, he took off his eyeglasses and cleaned them. Suddenly or without any preliminaries, Luna drew his gun and fired at Mendoza's head, causing the latter to fall on the floor. Luna fired other shots at the prostrate victim.

At that juncture, Sarmiento emerged from the comfort room and also fired several shots at Mendoza. Rogelio Robles entered the restaurant and advised Luna and Sarmiento to make sure that Mendoza was dead. ("Siguruhin ninyo yan. Baka buhay pa yan".) Acting on that suggestion of Rogelio, Luna, using his foot, turned the body of Mendoza, who was lying down on his side, so that the latter assumed a supine position. Luna and Sarmiento fired other shots.

Luna, Sarmiento and Robles left the restaurant. De Guzman and Manlapit also left. They did not report the killing to the police and they remained silent for a long time because they were afraid that they might be killed. Renato Robles, a policeman, the son of Rodolfo Robles and nephew of Rogelio, and Romeo Robles, also a policeman, and a cousin of Renato, told them to remain silent. (Nos. 32 to 36, Exh. G.)

Sarmiento surrendered to the Constabulary Metro-politan Command (Metrocom) on March 23, 1973 while Luna surrendered to Judge Manuel R. Pamaran on November 6, 1973 (p. 6, Record of Criminal Case No. 1622).

Sarmiento executed an extrajudicial confession before a Metrocom officer dated March 24, 1973 wherein he declared that he and Luna killed Mendoza at the instigation of Rogelio Robles who supplied two guns and to whom they returned the same after the killing (Exh. BB).

Sarmiento executed a more detailed confession dated March 25, 1973 before a Manila police investigator (Exh. L), another confession dated March 26, 1973 wherein he implicated Rodolfo Robles as the mastermind and inducer (Exh. M) and a fourth confession dated March 28, 1973 wherein he confirmed his identification of Rogelio Robles at a police lineup (Exh. N).

All the four confessions were sworn to by Sarmiento. However, he was not assisted by counsel when he made the confessions and he was not informed of his constitutional rights against self-incrimination and to remain silent (Sec. 20, Art. IV, Constitution). He did not waive those rights. Hence, those four confessions, taken during custodial interrogation, are inadmissible in evidence as admissions of guilt.

Moreover, Sarmiento in his affidavit of retraction dated June 8, 1973 said that the declarations in his confessions were not true, particularly the imputation that Rodolfo Robles induced the killing of Mendoza (Exh. HH).

In convicting Luna and Sarmiento of murder, qualified by treachery and aggravated by craft, which was offset by voluntary surrender to the authorities, the lower court relied on the testimonies of De Guzman and Manlapit. The latter used to be a fellow prisoner of Luna in the New Bilibid Prison.

Luna in this appeal contends that the lower court erred in giving credence to the testimonies of De Guzman and Manlapit, in disregarding the circumstance that the owner of the Old Gold Restaurant failed to identify Luna at the police lineup, in not sustaining Luna's alibi and in rendering the judgment of conviction.

As Luna's counsel aptly states, these contentions revolve around the issue as to the credibility of the prosecution witnesses and the probative value of Luna's evidence.

From September 16, 1961 to February 25, 1969, Luna was serving sentences for robbery and theft in the New Bilibid Prison. He was classified as a minimum security prisoner. As such, he was detailed from June 20, 1966 to July 27, 1967 to work as an oiler in the vessel Bupri which was owned by the Bureau of Prisons (Exh. 3-Luna) and was anchored at the Manila North Harbor.

Luna's alibi was that in the evening of November 22, 1966, when Mendoza was killed, he (Luna) was in the vessel Bupri from which he could not have left because it was guarded.

That pretension was refuted by Ricardo Raymundo, a rebuttal prosecution witness and a fellow prisoner of Luna also detailed at the vessel Bupri. Raymundo declared that at around six o'clock in the evening of November 22, 1966, he, Luna and another prisoner named Rudy were permitted by the prison guard, Romy Veloria, to leave the vessel at the Manila North Harbor and go home on condition that they would be back before midnight.

Raymundo testified that he took a jeepney at Pier 8 while Luna went to Pier 10. We hold that the trial court did not err in giving more credence to Raymundo's testimony than to Luna's alibi. Raymundo was a disinterested and unbiased witness.

With respect to the failure of Que Hok, the female Chinese owner of the Old Gold Restaurant, to identify Luna during the police lineup on November 24, 1966, the explanation is that the shooting took place shortly after Luna and his companions entered the restaurant and Que Hok did not have sufficient time to know them very well. When she heard the first shot, she was going to the kitchen. She witnessed the shooting by looking through the glass partition (Exh. 6-Luna). She was afraid and nervous when she failed to identify Luna at the Old Bilibid Prison.

Another reason is that she had a weak eyesight. She later suffered from cataract and had an eye operation and her right eye became blind in 1970.

Que Hok in her statement given on the day following the shooting described one of the two killers as "bilugan ho ang mukha, maputi, may hati ang buhok at hindi masyadong mahaba (mataas) at mga 5'2" ho seguro ang taas" (No. 11, Exh. 6-Luna).

Judge Pamaran during the trial, when Que Hok was testifying as a witness for Luna, observed that Luna "is more than the ordinary built or physique, his hair is parted on the left side and that he has a round face" (31 tsn April

25, 1974).

Finally, it is relevant to note that it was not unusual that Luna and Sarmiento were co-conspirators because they were contemporaries in the Abad Santos High School where they used to play basketball together; they were fellow prisoners in the national penitentiary and they were both henchmen of the Robles brothers (No. 8, Exh. M, p. 171, Record). Luna resided for a long time in Sande Street, his residence being about one hundred meters away from the scene of the crime. He was familiar with that locality.

After a thorough review of the evidence and a conscientious evaluation of Luna's arguments, we find that his guilt was proven beyond reasonable doubt.

WHEREFORE, the trial court's judgment as to Luna is affirmed. Costs de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs in the dissent of Justice Abad Santos.

Concepcion, Jr., J., on official leave.

Abad Santos, J., see dissent.

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Dissenting Opinion

ABAD SANTOS, J.:

My mind cannot rest easy that Conrado Luna is guilty of murder. My uneasiness is due not only to the lapse of time between the killing of Rodolfo Mendoza on November 22, 1966, and the prosecution therefor which was initiated by the filing of informations on March 29 and June 18, 1973, because the government's key witnesses did not come forward soon after the killing. Mainly on the testimony of Ernesto de Guzman and Renato Manlapit the trial court tagged Conrado Luna and Antonio Sarmiento as the killers of Rodolfo Mendoza but at the same time it acquitted Rogelio Robles of any complicity in the commission of the crime notwithstanding the fact that the two witnesses were equally positive regarding the participation of Rogelio Robles.

Then too Que Hock and Dioning Dadolla, owner and waitress respectively, of the Old Gold restaurant where the killing took place, failed to identify Conrado Luna as one of the killers in a line-up at the Manila Office of the Bureau of Prisons soon after the incident.

Conrado Luna assails the trial court for disregarding his defense of alibi. He claims that on November 22, 1966, when the killing took place he was a national prisoner assigned to the prison ship "Bupri" and this was corroborated by Victorino Navarro of the document section of the Bureau of Prisons. True, Ricardo Raymundo who at that time was also a prisoner assigned to "Bupri" said that prisoners thereat could leave with the guard's permission and that on the date in question, he, Luna and a third prisoner left the "Bupri". The testimony of this witness is incredible in that after the lapse of eight years he was able to recall what he did on a particular day. There is also the presumption that the prison guards on the "Bupri" performed their duties regularly by not

allowing prisoners assigned thereto to leave the premises. With these two factors the defense of alibi acquires strength and significance.

I vote for the acquittal of Conrado Luna.

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