

GREGORIO AGUILAR Y DE GUZMAN, PETITIONER, VS. HON. FELIPE NATIVIDAD, HON. QUERUBE C. MAKALINTAL AND HON. SOTERO CABAUG, AS APPELLATE JUSTICES OF THE COURT OF APPEALS (SP. SECON...

G.R. No. L-17849. August 31, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal by certiorari interposed by Gregorio Aguilar y de Guzman against the resolution of the Court of Appeals in C.A.-G.R. No. 26434-R, denying his motion for reconsideration and/or new trial on the ground of newly discovered evidence.

In Criminal Case No. 39888 of the Court of First Instance of Manila, petitioner, among others, was charged, with and convicted of the crime of frustrated homicide and sentenced to suffer an indeterminate penalty of from four (4) years and two (2) months of prision correccional as minimum, to ten (10) years of prision mayor as maximum; to indemnify Simeon Dacumos in the sum of P2,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

Petitioner appealed to the Court of Appeals (CA-G.R. No. 26434-R) which, on October 7, 1960, affirmed the decision of the lower court.

On October 28, 1960, petitioner filed a motion for reconsideration and/or new trial based on alleged newly discovered evidence consisting of an attached sworn statement of the offended party, Simeon Dacumos, stating, in retraction of his original testimony in the lower court identifying petitioner as his assailant, that "during the stabbing on the night of May 3, 1957, I was not able to recognize and identify my assailant because it was dark and the attack against me was so sudden, so that I believed in good faith the assurances of the investigating police officers that it was Gregorio Aguilar who stabbed me". On December 5, 1960, respondent court issued the appealed resolution.

The following facts found by the respondent Court are now final and beyond review:

"It appears that late in the evening of May 3, 1957, Francisco Estacio and Marcos Garcia went to the house of Fernando Almonaña on Antipolo Street, Manila, where the latter and Simeon Dacumos were resting. Estacio and Garcia asked Almonaña to accompany them to Lepanto Street where somebody had earlier hurled stones at them. Almonaña in turn invited Dacumos to accompany them. As they came out of the house, other unnamed persons joined them and they all proceeded towards Lepanto Street. When they neared San Diego Street, Federico Escarmosa, without warning, stabbed Almonaña, who however escaped immediately from his assailant. Upon seeing his friend and companion thus attacked and dash away, Simeon Dacumos also tried to run but he was blocked by Gregorio Aguilar and Francisco Estacio. Aguilar nicked Dacumos' throat with a balisong, and when in trying to escape the latter stumbled, Aguilar stabbed him at the base of the neck and on the shoulder. Brought to the North General Hospital, Fernando Almonaña later died as a result of the

abdominal stab wound he received, and Simeon Dacumos would have also died were it not for the opportune and efficient medical intervention."

"Knowing the crushing impact of complainant Dacumos' testimony identifying appellant, the defense concentrated its attack on it, assailing it as inspired by Mario Mallari to avenge the death of Fructuoso Amuyo, and as honeycombed with inconsistencies which makes Dacumos' identification of appellant completely unreliable. Nonetheless, the contradictions pointed out by appellant refer to details which directly concern his co-accused, such as the person who embraced the deceased Almonaña, and those who were behind him or abreast of him while they were walking along Lepanto street. But complainant was certain and positive that appellant was the one who stabbed him because he, the complaining witness, saw and recognized his assailant under the street light and from the light coming from the neighboring houses. It is true that complaining witness was not acquainted with appellant before the night of the incident and did not even know his name after that; but when he was asked by the police investigators in the hospital if he knew his attacker, complainant immediately answered, "If you can bring the person here, I can recognize him." And when asked during the trial if his assailant was in the court room, he unhesitatingly pointed to appellant as the person who stabbed him.

That complainant could not utter the name of the appellant until the investigators mentioned it, does not make his identification spurious, because a person can be identified not only by his name but also by his built and facial characteristics.

"The court below did not believe appellant's declaration that when complainant was made to point out his assailant in the municipal jail, complainant was not able to immediately pinpoint appellant from among those who were made to line up, and only succeeded in doing so after Detective Navasca told complainant, pointing to appellant, "He was the one who stabbed you." We cannot disturb the lower court's findings on this matter. The trial court observed the demeanor of appellant and other witnesses, while on the stand, and therefore had an opportunity not afforded us to properly judge appellant's credibility. Besides, appellant's testimony on this point has not been corroborated by anybody, and there is no sense in making the court believe that after Navasca had supposedly pointed out appellant to complainant as his attacker the latter would still point out appellant to Navasca as his (complainant's) assailant."

The issue to be determined in this appeal is whether the respondent court erred in denying petitioner's motion for reconsideration and/or new trial on the ground of alleged newly discovered evidence consisting of the sworn statement of the offended party, Simeon Dacumos, in which, among other things, he states:

"2. That during the trial of this case in the Court of First Instance of Manila, I was the lone witness for the prosecution and I testified against Gregorio Aguilar and pointed to him as the person who stabbed me;

"3. That I pointed to Gregorio Aguilar as the person who stabbed me because of the similarity of his build with my attacker and because of the information relayed to me by the investigating police officers who assured me that it was Gregorio Aguilar who was my assailant;

"4. That during the stabbing on the night of May 3, 1957, I was not able to recognize and identify my assailant because it was dark and the attack against me was so sudden, so that I believed in good faith the assurances of the investigating police officers that it was Gregorio Aguilar who stabbed me;

"5. That after I learned that Gregorio Aguilar was convicted for my stabbing and was sentenced to imprisonment, I began to think about this matter and I was finally convinced that I made a mistake in identifying Gregorio Aguilar as my assailant because:

'a)

We have never met and known each other before the incident;

'b)

Aguilar has no reason, whatsoever, to stab me;

'c)

That even the deceased, Almonaña, who was my constant companion, did not know Aguilar and I have never heard him speak about Aguilar;"

It is well settled in this jurisdiction that recantation by prosecution witnesses does not necessarily entitle defendant to a new trial, such question being dependent upon all the circumstances of the case (*People vs. Follantes et al.*, 64 Phil. 577).

Moreover, in resolving such question, one can not but bear in mind that testimony given at the trial with the solemnities prescribed by law and in the presence of the judge called upon to study the incidents and details thereof and who observed the conduct and demeanor of the witnesses while testifying, carries with it the presumption that it was truthful, spontaneous and freely given (*People vs. Cu Unjieng, et al.*, 61 Phil. 906). Upon the other hand, for obvious reasons, scant weight can be placed upon sworn statements of witnesses withdrawing testimony previously given by them at the trial of a case and accepted as true by the trial judge (*People vs. Olfindo*, 47 Phil. 1).

Reason for all the above is that if new trial were to be granted every time an interested party succeeds in inducing some of the witnesses against him to vary their testimony after trial, there would be no end to every litigation.

Even when the testimony of the recanting witness is the only evidence sustaining the judgment of conviction, a new trial may be granted only upon a clear showing of the existence of special circumstances sufficient to raise a substantial doubt as to the truth of his testimony given at the trial and accepted as true by the trial judge (*People vs. Dacir*, 26 Phil. 503).

Considering all the circumstances disclosed by the record, the affidavit of Dacumos relied upon by petitioner in support of his motion for reconsideration and/or new trial filed with the respondent court is insufficient to raise such substantial doubt as to the truth of his original testimony.

As found both by the trial court and the respondent court, after Dacumos' companion, Almonaña, had been attacked by Federico Escarmosa, Dacumos tried to run away but his escape was blocked by herein petitioner Gregorio Aguilar and Francisco Estacio, and while he was trying to free himself from their hold, petitioner stabbed him at the throat; that when he succeeded in freeing himself from petitioner and Estacio, he ran away but was pursued by them who caught up with him, and thereupon petitioner stabbed him again twice; that all these happened near a street light and near houses which had their lights on. From all these circumstances the conclusion is inescapable that, as found by the respondent court, "complainant was certain and positive that appellant was the one who stabbed him".

In view of the foregoing, we are of the opinion, and so hold, that the respondent court did not err in denying petitioner's motion for new trial, with the result that the aforesaid order of denial is affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Regala, JJ., concur.

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