

ARCADIO CORTEZ Y VENGZON, PAULINO SAMPANG Y BUNGUE, PETITIONERS, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-32246-48. June 30, 1988

Ponente: CORTES, J.

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CORTES, J.:

Assailed in this petition for review are the decision of the Court of Appeals dated May 26, 1970 affirming the conviction of petitioners for homicide in Criminal Cases Nos. 4376 and 4377 and less serious physical injuries in Criminal Case No. 4375, and the resolution of June 25, 1970 denying petitioners' motion for reconsideration. This case was considered submitted for decision on April 7, 1972.

Petitioners Arcadio Cortez, Paulino Sampang and one Benjamin Villanueva were charged with the crime of murder for the deaths of Escolastica Pingol and Luis Baltazar and frustrated murder for the injuries sustained by Santiago Baltazar. After joint trial, the Court of First Instance of Pampanga, Branch II, found Cortez and Sampang guilty of homicide in Criminal Cases Nos. 4375 and 4377. In both cases they were sentenced to suffer the indeterminate penalty of from 6 years and 1 day of prision mayor to 17 years, 4 months and 1 day of reclusion temporal, ordered to indemnify jointly and severally the heirs of Escolastica Pingol and Luis Baltazar in the sum of 6,000.00 pesos and to pay each, one third of the costs. In Criminal Case No. 4376, the trial court found Arcadio Cortez and Paulino Sampang guilty of less serious physical injuries and sentenced to four (4) months of arresto mayor and to pay each, one third of the costs. Benjamin Villanueva was acquitted by the court in those three cases [pp. 252-253, rec.].

From the judgment, Arcadio Cortez and Paulino Sampang appealed to the Court of Appeals. The latter court rendered the questioned decision, the dispositive portion of which reads as follows:

Wherefore, finding no cogent reasons to reverse the judgment appealed from, being in accordance with the law and evidence on record, the same is hereby affirmed except the indemnity in the two homicide cases, which is raised from P6,000.00 to P12,000.00 pesos in each case and each accused appellant to pay 1/3 of the costs in this instance, (p. 34, Rollo)

The conviction was based on the following facts as found by the Court of Appeals:

Between 10:00 and 11:00 o'clock on the night of October 21, 1961 while Santiago Baltazar, his wife Escolastica Pingol and his four sons Ruben, Pabio, Orlando and Luis, all of tender ages, were sleeping in their house at Barrio Mitla, Porac, Pampanga, the said Santiago Baltazar was awakened by the barking of the dogs (pp. 1-2, 9, t.s.n., Nov. 27, 1962; pp. 12-13, t.s.n., Jan. 14, 1963). Then he heard a voice which he recognized as that of Arcadio Cortez for he knew him long before the incident, asking "Are the owners of the house in?" (pp. 2-3, t.s.n., Nov. 27, 1962, pp. 12-13, Jan. 14, 1963). He peeped through a hole and there on the ground he saw and recognized, for the moon was very bright, another man, Paulino Sampang, whom he knew very well before the incident (pp. 2, 9, t.s.n., Nov. 27, 1962; p. 14, t.s.n., Jan. 14, 1963). Being the owner of the house,

Santiago Baltazar had no alternative but to go downstairs, however, before he did that, he told his wife who was also awoken [sic] by the barking of the dogs that there were three persons in all near their house (pp. 3-4, t.s.n., Jan. 24, 1963).

Upon reaching the ground, Santiago Baltazar approached Paulino Sampang who was armed with a .22 cal. gun and asked him: "What is it you want, Abe?," to this question, Sampang replied: "If you want to know, you come and see our Commander." When he said "Commander," he was referring to Arcadio Cortez who was under a bullcart (pp. 7-11, t.s.n., Jan. 24, 1963; p. 3, t.s.n., Nov. 27, 1962).

When Santiago Baltazar approached Arcadio Cortez, the latter moved away from him and holding a (G)arand with his two hands over his head, told Baltazar: "Go back to your wife." Baltazar started moving towards the house and upon reaching the foot of the stairs, he faced them (Arcadio Cortez and Paulino Sampang.) At this instance, Cortez and Sampang began shooting at the house and also at him. Baltazar was hit in the right thigh. He fell and lost consciousness (p. 4, t.s.n., Nov. 27, 1962).

When he regained consciousness, he saw nobody on the ground but he heard a voice inside the house saying, "Go on, Go on." At the same time he also heard a thud as if someone was hacking somebody with a bolo. He tried to rise but he was shot again in the right ear and consequently fell unconscious a second time (p. 6, t.s.n., Nov. 27, 1962.)

When he regained consciousness again, he felt that his son Pablo was embracing him, saying "Father you have been wounded." And while he heard the screaming of his other children, he managed to go under the house and with a piece of rag he bound his wound. Then he crawled upstairs. There he saw his wife and youngest son already dead. He examined her body and found her having a bolo wound on her left shoulder and a bullet wound on the breast (p. 6, t.s.n., Nov. 27, 1962).

People began coming to the premises. Among them was Vice-Mayor Genaro Dimalanta to whom Santiago Baltazar gave two unfired bullets which he found on the ground. They fell when the (G)arand held by Arcadio Cortez jammed twice (pp. 6-7, t.s.n., Nov. 27, 1962, pp. 12,17, t.s.n., Jan. 24, 1963).

The vice-mayor in turn brought Santiago Baltazar to the Pampanga Provincial Hospital where he was hospitalized for two weeks. While there, he was visited by two P.C. men. One of them was Major Lim. They asked him whom he suspected and he said he didn't know. ... After having been discharged from the provincial hospital, Baltazar was treated for more than two months in the clinic of Dr. Benita Ayson in Manibaug, Porac, Pampanga (pp. 6-8, t.s.n., Nov. 27, 1962).

Medico-legal certificate issued by Dr. Bienvenido Ignacio of the Pampanga Provincial Hospital (Exh. D, p. 9, roll of exhibits) disclosed the following injuries sustained by Santiago Baltazar:

- "1. Gunshot wound, tragus through and through with the entrance below and the exit, above the tragus.
- "2. Gunshot wound, slight of the superior portion of the right pinna of the ear.
- "3. Gunshot wound, 1 Vi cm. in diameter antero medial portion of the middle third of the right thigh with hematoma 2 inches above the wound.
- "4. Probing-direction of the wound upward, 3 Vi inches in length.
- "5. X-ray of the thigh, right. — Metallic foreign body in the muscle tissue, median portion of the buttocks.

Death certificate of Escolastica Pingol (Exhibit E) stated that the cause of death as certified by Dra. Benita Ayson, was hemorrhage due to total wounds (gunshot).

And the death certificate of Luis Baltazar (Exhibit F) disclosed that the cause of death as found by the same physician was internal hemorrhage caused by trauma on the chest, (pp. 26-29, Rollo; Italics supplied)

1. In the instant petition, petitioners' main contention is that there was insufficient identification in law to sustain a

judgment of conviction. They assert that although Santiago Baltazar identified them in court on November 27, 1962, he failed to reveal their names to P.C. investigators on October 22, 1961, the morning after the crime was committed thus showing that there was no proper identification in law to sustain their convictions.

In not a few decisions, this Court has ruled that delay in divulging the name of the perpetrators of the crime, if sufficiently explained, does not impair the credibility of the witness and his testimony [People v. Catao, G.R. No. L-9532, 107 Phil. 861 (1961); People v. Bulan, G.R. No. L-14934, 108 Phil. 932 (1960); People v. Lao Wan Sing, 125 Phil. 43 (1966), 18 SCRA 1076; People v. Salcedo, G.R. No. L-37080, 122 SCRA 94, 92 Phil. 933 (1953); People v. Cabanit, G.R. Nos. 62030-31, Oct. 4, 1985, 139 SCRA 94; People v. Cruz, G.R. No. 68805, July 9, 1986, 142 SCRA 583; People v. Andres, G.R. No. 75355, October 29, 1987; and People v. Renejane, et al., G.R. Nos. 76954-55, February 26, 1988].

To explain the delay, Baltazar testified as follows:

Q

A while ago in your answer to the cross-examination of counsel, you mentioned that it was Paulino Sampang who fired the shot at you. Will you tell the Court the reason why you did not mention Paulino Sampang to the P.C. officers when they interrogated you in the hospital?

A

Because I was not sure of the identity of the interrogators, that is the reason I did not name names. Now that I am sure before this Honorable Court, I gave the names here.

COURT

Q

Did you not say that somebody introduced himself as Major Lim?

A

Yes, Sir, he introduced himself as such, but I doubted his true identity. Besides I was confident I would recover from my wound and I would be allowed to tell the whole story later on.

Q

What came to your mind when you said you doubted the identity of the investigator?

A

Because I was afraid that my family was still in the house and that these persons might come back and harm them. That is the reason I did not mention these people.

Q

Who are these persons you referred to?

A

Arcadio Cortez, Paulino Sampang and Benjamin Villanueva (pp. 22-23, t.s.n., Nov. 1962).

The above explanation of Santiago Baltazar sufficiently accounts for his failure to reveal immediately the identity of the culprits. It is both credible and convincing. His fear and apprehension for the safety of his family and his guarded suspicion of the identity of the investigators were reasonable reactions of an ordinary man agitated by a

frightful and shocking occurrence. He had just witnessed the violent deaths of his wife and youngest son. With the memory of the traumatic experience still fresh in his mind, he reasonably entertained the belief that to reveal the identities of the culprits would be tantamount to inviting their retribution.

Thus, in one case where the witnesses for the prosecution failed to divulge immediately the identity of the criminals, This Court said:

The failure of the prosecution witnesses to report the malefactors to police officers who investigated the crime immediately after the occurrence is understandable, considering that the witnesses feared for their lives as the killers were still at large and armed, and with the shock of the ambush still fresh in their minds, perhaps they considered the protection of the police inadequate. [People v. Sampang, March 31, 1966, G.R. No. L-15843, 16 SCRA 516.]

Moreover, the delay complained of is partly attributable to the acts of petitioners and their counsel. The records show that the criminal complaint was filed on October 27, 1961. Petitioners' counsel moved for the postponement of the second stage of the preliminary investigation three times, filed a motion to quash, postponed its hearing, changed his mind and withdrew the motion to quash and with the conformity of petitioners, asked that trial on the merits ensue. A period of four months had elapsed by then. Petitioners cannot now complain of the belated identification considering that they are partly to blame for it.

Notwithstanding Baltazar's credible explanation for the delay, still, this Court examined the record to ascertain the positiveness of Baltazar's testimony. After careful scrutiny, the Court finds that Baltazar's narration of the facts is straightforward, direct and full of details which could not have been the result of deliberate afterthought. As such it deserves full faith and credence. He stated that he saw Sampang twice; first, when he peeped through a hole, and second, when he went down the house. He even saw Sampang point the gun at him before the latter fired. He also identified Cortez whom he saw sitting under the bullcart and with who he conversed.

By quoting portions of the transcript of stenographic notes of Baltazar's testimony, petitioners would like this Court to believe that when asked if he knew of any suspects, Baltazar mentioned the names Eligio Ayson, Pablo Bengco and Celestino Bengco as his suspects.

A careful examination of the records shows that the three were mentioned by Baltazar not as his suspects but as the people who went to his home requesting that his wife treat a sick person they brought with them [pp. 19-22, t.s.n., Jan. 24, 1963].

2. Petitioners next question the credibility of Baltazar's testimony. They contend that even if the testimony is positive, it should not be believed as it is uncorroborated and as it contains contradictions.

There is no law requiring that a testimony be corroborated in order to be believed. It has been held that the testimony of a single witness if credible and positive, is sufficient to produce conviction [People v. Lao Wan Sing, supra, People v. Canada, G.R. No. 63728, September 15, 1986, 144 SCRA 121; People v. Tan, Jr., G.R. No. L-53834, November 24, 1986, 145 SCRA 614.] Secondly, the contradictions and inconsistencies in Baltazar's testimony refer merely to minor details which do not impair nor destroy its probative value and which in fact even strengthen its reliability.

Above all, it is well settled in jurisprudence that the conclusions of the lower court on the credibility of witnesses are entitled to great weight and respect. Unless there are substantial facts and circumstances that have been overlooked, which if considered might affect the result of the case, such findings are generally not disturbed on appeal (People v. Lao Wan Sing, supra; People v. Baluarte, G.R. No. L-31180-81, October 30, 1974, 60 SCRA 356, People v. Brioso, G.R. Nos. 72028-31, November 9, 1987; People v. Patog, G.R. No. 69620, September 24,

1986, 144 SCRA 429; *People v. Bautista*, G.R. No. L-48606, July 11, 1986, 142 SCRA 649; and *People v. Patola*, G.R. No. L-41265, February 27, 1986, 141 SCRA 397.] The reason for the above stated rule is that the trial court is in a better position to observe the deportment and demeanor of witnesses to determine the veracity of their answers. No compelling reasons exist here to justify a deviation from that rule.

3. Petitioners next contend that the failure of the court a quo to appreciate the ballistics and chemistry reports as proof clearly tending to show their innocence, is in grave abuse of its discretion.

This contention is untenable.

The evidence for the defense shows that six .30 caliber cartridges (Exhibit 1) recovered from the scene of the crime and a .22 caliber slug (Exhibit 2) extracted from Santiago Baltazar's thigh were examined to determine whether they came from eleven (11) Garand rifles and from one .22 caliber rifle rounded up the day after the crime was committed.

The ballistics report states that the six .30 caliber cartridges were fired from one gun but not from any of those confiscated and that due to foreign marks, it cannot be determined from which gun the .22 caliber slug came from.

The Court agrees with the Solicitor General that there is no certainty that the fatal weapons were included in those confiscated [Brief for Respondents, at p. 8]. The Courts of Appeals and the Trial Court therefore did not err when they found that the ballistics report was "of no moment in determining the guilt or innocence of the accused" [Court of Appeals, Rollo, at p. 13].

The defense likewise presented a report (Exhibit "7") on the negative findings of a paraffin test taken on Arcadio Cortez five days after the commission of the crime [Note that Paulino Sampang was not subjected to a similar test, hence this defense is pertinent only with respect to Cortez.]

The Solicitor General contends that the paraffin test should not be considered in determining the innocence of the accused as during the period of five days the gunpowder residue may already have disappeared. The contention is well taken.

The chemical expert who conducted the test was Major Jose Fernandez, of the P.C. Central laboratory who testified as follows:

Q

According to the findings appearing in paragraph 7 (fiscal quoting exhibit 7) microscopic examination on Arcadio Cortez, etc. reveal the absence of gunpowder residue. That was your finding?

A

Yes, Sir.

*** **

Q

To refresh your memory, I want to inform you that the crime subject of this case was committed on October 21, 1961. It is a fact, is it not, that paraffin residue can be removed from the hands by washing with soft [sic] or by other chemicals?

A

Gunpowder may remain in the hands of the suspect within a period of 72 hours or more, if there are so many rounds fired or four days more.

Q

Even without doing anything on the hand, paraffin residue will disappear from the hand after that period of time you have mentioned?

A

Yes, Sir, so that washing with soft [sic] and water will not remove it. Within 72 hours is the approximate time of the stay of the gunpowder, because we have to consider if the person is perspiring.

*** **

Q

As I have said before, the crime subject matter of this case was committed at about 10:00 o'clock on October 21, 1961. In Exhibit 3, which is the letter of Col. Sangalang requesting your office to examine the paraffin cast on both hands of Arcadio Cortez and others, states that the same paraffin casts were taken at about 2300 hrs. on October 25, 1961 so that from 10:00 o'clock October 21, 1961, four days and one hour had already elapsed?

A

Yes, Sir.

Q

That four days and one hour is equivalent to 97 hours?

A

Yes, Sir.

Q

According to you, paraffin residue may disappear at approximately in 72 hours?

A

Maybe in 72 hours.

Q

So that if Arcadio Cortez and others fired guns at about 10:00 on October 21, 1961 and their hands paraffin cast 97 hours thereafter, the paraffin residue could not be found anymore?

A

No gunpowder may be found anymore.

Q

You said that if a person fires a gun in door [sic] without doing anything, in 72 hours the powder residue will disappear?

Supposing said person at the same time fires in door [sic] several times, will the powder residue stay more than 72 hours?

A

Yes, sir.

Q

In your experience, as a chemical expert, have you come across cases where paraffin cast disappear in less than 72 hours?

A

Yes, sir, in open outdoor, naturally, little residue will be deposited and when there is little gunpowder it may not be impressed on the hands of the firer.

Q

In those cases where the firing was done in open air, the paraffin residue disappeared in one day or two days?

A

This is a factor of not having gunpowder in the hands of the firer when the wind is strong.

Q

You came across cases where the person fired a gun and examined him within one day and you did not find any paraffin residue?

A

Yes, Sir in cases where there was strong wind, (tsn, pp. 38-40, January 13, 1964)

*** **

A careful scrutiny of the report and testimony shows that the paraffin test is of weak probative value, as it was taken five days after the incident happened, within which time the traces of gunpowder may already have been erased.

4. Petitioners next assail the trial and appellate court's reliance on their extrajudicial confessions which are alleged to have been executed involuntarily, hence inadmissible.

The confessions were taken on October 21, 1961, long before the 1973 Constitution took effect. The prevailing rule then was that extrajudicial confessions were presumed in law to be voluntary and thus admissible. The burden of overcoming that presumption rested on the accused. This rule was subsequently reversed such that, on the prosecution was imposed the burden of first proving that constitutional guarantees were observed before an extrajudicial confession may be admitted in evidence [People v. Jara, G.R. No. 61356-57, September 30, 1986, 144 SCRA 516.] The shift in the burden is the result of the adoption of the Miranda v. Arizona rule [384 U.S. 436 (1966)] in Section 20 of the 1973 Constitution. This rule however has no retroactive effect [Magtoto v. Manguera, G.R. No. L-37201-02, March 3, 1975, 63 SCRA 4, citing U.S. v. de los Santos, 54 Phil. 329; People v. Page, G.R. No. L-37507, June 7, 1977, 77 SCRA 348; People v. Castaneda, G.R. No. L-32625, August 31, 1979, 93 SCRA 56; People v. Garcia, G.R. No. L-40106, March 13, 1980, 96 SCRA 497; People v. Zea, G.R. No. L-23109, June 29, 1984, 130 SCRA 77; People v. Banaan, G.R. No. L-49385-87, July 2, 1986, 142 SCRA 410; People v. Ribadajo, G.R. No. L-40294, July 11, 1986, 142 SCRA 637; People v. Petenia, G.R. No. L-51256, August 12, 1986, 143 SCRA 361; People v. Pia, G.R. No. L-59604, November 14, 1986, 145 SCRA 581 and People v. de los Santos, G.R. No. L-35598, May 29, 1987, 150 SCRA 311].

As the confessions here were made before the effectivity of the 1973 Constitution which incorporated the Miranda rule, they are presumed voluntary until the contrary is proved by the petitioners.

To rebut the presumption, the defense introduced as evidence the medical certificates executed by Dr. Marcelino

Benosa and his testimony that he examined the accused a day after they were apprehended. When he took the stand, he averred that he found contusions and swellings on the bodies of the accused for which he prescribed certain medicines. He also stated that it was Atty. Clemente Soriano, counsel for the accused, who recommended him to relatives of the accused to examine the latter and that he had personally known Atty. Soriano since 1945 as they were townmates, being both from Macabebe, Pampanga. In addition, he also said that his practice was in Angeles, Pampanga, and that he went to Porac and left his clinic just to examine the condition of the petitioners. The defense did not attempt to explain why they did not avail of the services of a physician from Porac nor did they show that there was none available.

On the other hand, the prosecution presented as witness the Clerk of Court, Mr. Marcelo Mendoza, who testified that when the accused were brought before him, they never complained to him of any maltreatment; that he translated and explained to them each of the questions propounded and the answers they had given in their statements and that afterwards, the accused swore to the truth of the contents of their confessions, and signed them in his presence. This testimony was corroborated by those of the investigators who took the statements of the accused and who vehemently denied maltreating them.

In view of the Clerk of Court's credible testimony and the admission of Dr. Benosa during the trial that the contusions he found may not have been caused by the alleged maltreatment of the accused, this Court finds that the presumption of voluntariness has not been satisfactorily overcome.

More importantly, the statements are replete with details which only the accused could have known and which the investigators could not have supplied, as follows: that Escolastica Pingol or "Tecang," was a witch; that although they knew that such could not be believed by courts of law, they knew for a fact, that she was victimizing certain members of the community; that Cortez was in fact a victim of her witchery, as was Sampang's mother; and that they went to Tecang's house only to scare her but when they heard her and her family shouting for help, they started firing. The confessions also reveal that they utilized Benjamin Villanueva to guide them to Tecang's house as well as the direction they took in getting there. All these details are earmarks of voluntariness.

5. Contrary to petitioner's contention, corpus delicti here has also been proven. As early as *People v. Mones*, [58 Phil. 5 (1933)], this Court has held that corpus delicti is the fact of specific loss or injury and that in homicide, the fact of death, whether or not feloniously caused, is the corpus delicti. This has been sufficiently shown by the death certificates of the victims and the testimony of Santiago Baltazar. With sufficient proof of the corpus delicti, the extrajudicial confessions are thus sufficient to convict Cortez and Sampang of homicide and less serious physical injuries.

Nonetheless, even if we were to disregard the extrajudicial confessions, the positive identification made by Santiago Baltazar is still ample evidence to establish the guilt of the accused to a moral certainty.

6. Lastly, we consider the defense raised by petitioners. Cortez claimed that he was in a neighboring sitio guarding his growing crops against wild pigs while Sampang alleged that he was at home attending to his sick child.

Alibi is easily fabricated such that courts must accept it only with great caution. For such defense to prosper, it is not enough that the accused were somewhere else but that it must be clearly shown that it was physically impossible for them to have been at the place of the crime or its immediate vicinity at the time of its commission [*People v. Perante, Jr.*, G.R. Nos. 63709-10, July 16, 1986, 143 SCRA 56; *People v. Gapasin*, G.R. No. 52017, October 27, 1986, 145 SCRA 178; and *People v. Santillan*, G.R. No. 68331, January 29, 1988.] In this case, the places where petitioners were at the time of the incident and the place where the crime was committed are within walking distance.

Furthermore, the defense of alibi must fail in view of the clear and positive identification made by Baltazar. He had known Cortez and Sampang for a considerable period of time. There was no showing that he had any grudge or improper motive to foist such a serious accusation upon them and fabricate his testimony.

On the totality of the evidence therefore, the Court finds the guilt of the petitioners to have been proved beyond reasonable doubt.

WHEREFORE, the petition is denied, and the decision of the Court of Appeals affirmed, except the indemnity in the two homicide cases which is hereby raised in each case to P30,000.00.

SO ORDERED.

Fernan, Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

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