

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIVENCIO TUAZON Y DIZON, DEFENDANT-APPELLANT.

G.R. No. L-74799. March 28, 1988

Ponente: YAP, J.

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YAP, J.:

This case was elevated to us for automatic review on June 13, 1986, in view of the death penalty imposed by Judge Eduardo C. Tutaan, Regional Trial Court, National Capital Judicial Region, Branch 84, Quezon City, on the accused-appellant Vivencio Tuazon y Dizon for the crime of murder, in a decision dated March 5, 1986, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Vivencio Tuazon y Dizon GUILTY as principal and beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, the killing of Lolita Labii being attended with the qualifying circumstances of treachery and evident premeditation and the aggravating circumstance of use of a motor vehicle. He is sentenced to suffer the supreme penalty of death. Further, he is sentenced to pay to the child of Lolita Labii (Rowena L. Nicolas) and the parents of Lolita the amount of P20,000.00 as actual damages incurred for the funeral, P30,000.00 as civil indemnity, P20,000.00 as moral damages, and P10,000.00 as exemplary damages. He is also sentenced to pay the costs of the proceedings.

The Branch Clerk of Court is ordered to forward immediately the records of the case together with all evidence -- testimonial and documentary - adduced during the trial, to the Honorable Supreme Court for the automatic review of the case.

Let copy of the decision be furnished Brigadier General Alfredo Lim, Superintendent, Northern Police District, and the National Police Commission for the further investigation of the highly irregular and suspicious actuations of police investigator Orlando (sic) Fernandez of the Station Investigation Division of the Quezon City Police Station, in the investigation and re-investigation of this case with the strong recommendation that proper action be taken thereon.

SO ORDERED."

The brief for appellant was filed by his counsel on August 3, 1987. The Solicitor General filed a Manifestation in lieu of Appellee's Brief, on January 11, 1988, recommending that the judgment of conviction be set aside and the accused acquitted and that the Quezon City Fiscal be directed by the Court to investigate anew the felonious death of Lolita Labii and, if the results of the investigation be positive, to file the corresponding complaint or information for murder against the real person or persons responsible for said crime.

After a careful review of the record, we agree with the conclusion of the Solicitor General and find the evidence not sufficient to establish beyond reasonable doubt the guilt of the accused-appellant of the offense of murder as charged in the information.

The victim of the crime, Lolita Labii, was shot to death right in front of the gate of her residence, a rented

apartment located at 37-A Matapang Street, Barangay Pinahan, Quezon City, between 12:30 and 1:30 P.M. on December 19, 1984. As she alighted from her car, a man approached her and, after ascertaining her identity, pumped several bullets into her, and got away in a car bearing license plate No. NHZ-479 driven by another man. The victim was rushed by her brother, Froilan Labii, to the Hospital ng Bagong Lipunan where she succumbed about twenty minutes from her arrival.

Upon request of Police Sgt. Rodolfo Desierto of the Quezon City Police Station (Exh. "I"), the PC Crime Laboratory, through Major Dario L. Gajardo, a medico-legal examiner, performed an autopsy of the cadaver of the deceased Lolita Labii for the purpose of determining the cause of death. Major Gajardo submitted his Medico-Legal Report No. M-3584-84 (Exh. "J"), indicating therein, as the cause of death, the five gunshot wounds he found on the body of the deceased. The first wound, located on the right mammary region, was a frontal infliction, while the other four gunshot wounds, located on the left mammary region, on the left scapular region, on the right lumbar region, on the middle 3rd finger of the right arm, and on the proximal 3rd of the right forearm, were inflicted from behind by the assailant. Major Gallardo concluded that the cause of death was "cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wounds of the trunk and upper extremity." [1]

The police investigator assigned to investigate the case was Patrolman Rolando Fernandez of the Quezon City Police, who was not presented by the prosecution as its witness as is normally done, but by the defense. Pat. Fernandez recounted (as defense witness) what he did upon receiving an order to investigate the shooting incident. As summarized by the trial court in its decision [2], Pat Fernandez testified that, on December 19, 1984, he was on duty when the Labii shooting incident was referred to him by the desk officer. Proceeding to the Hospital ng Bagong Lipunan, he saw that the victim had 4 to 5 gunshot wounds. At the scene of the shooting, he was told by Venus Madriaga that a man shot Lolita. He got the plate number, NHZ-479, of the get-away vehicle from an informant. Checking the records of the Land Transportation, he found that the vehicle was registered in the name of Vivencio Tuazon. Proceeding to the residence of the accused at San Andres Bukid, Manila, he was told that Tuazon was in Sta. Ana, Pampanga. Police operatives were then sent to Sta. Ana, Pampanga. Tuazon was apprehended and brought to the police headquarters in Quezon City. Tuazon denied that he was the trigger man, although he admitted ownership of the car. Pat. Fernandez then formed a line-up of seven (7) male persons which included Tuazon. All four (4) witnesses, Venus Madriaga, Ligaya Sison, Belinda Tapia and Andres Bongat, picked out and pointed to Vivencio Tuazon as the trigger man. Tuazon insisted that his car was rented out to a certain Victor Yago, Jr. to fetch a balikbayan from the Manila International Airport. After taking the statements of witnesses, Pat. Fernandez forwarded the case to the inquest fiscal.

At the time Pat. Rolando Fernandez endorsed the case to the City Fiscal's Office for filing of the proper criminal charges, Victor Yago was not yet apprehended and could not be made to deny or confirm the appellant's claim. Based on the statements of the alleged eyewitnesses, Andres Bongat, Venus Madriaga and Ligaya Sison to the effect that the appellant was the gun-wielder, the City Fiscal's Office filed the corresponding information for Murder against Vivencio Tuazon y Dizon, together with several John Does, on January 3, 1985, before the RTC of Quezon City docketed as Criminal Case No. Q-37369. The information alleges:

"That on or about the 19th day of December, 1984, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with, and mutually helping one another, with intent to kill, without any justifiable cause, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of LOLITA LABII Y NEFALAR by then and there shooting at the latter several times on the body with the use of a .45 caliber firearm, thereby inflicting upon her serious and mortal wounds which were the direct and immediate cause of her death, to the damage and prejudice of the heirs of the deceased victim in such

amount as may be awarded under the provisions of the new Civil Code of the Philippines.

"That in the commission of the crime, a motor vehicle was used by the accused."

Upon arraignment on January 9, 1985, the accused, assisted by his counsel de officio, entered a plea of "not guilty".

However, on April 1, 1985, Pat. Fernandez received information that Victor or Restituto Yago, Jr. had been apprehended by the Makati police. He then conducted a reinvestigation of the case, in the course of which he unearthed certain facts and developments contrary to the theory of the case which he had earlier developed. According to Pat. Fernandez, Restituto Yago, Jr. admitted that he rented the car of the appellant on that day, which was used as the get-away car in the killing of Lolita Labii. Yago further admitted that he was the driver of the get-away car but stated that it was Danilo Lim who was the triggerman. Danilo Lim, when apprehended, readily admitted that he was the triggerman, but implicated Tony Apilado as the mastermind. Froilan Labii, brother of Lolita, knew Antonio Apilado as the latter had a case with his sister, Lolita, involving fake dollars. After Antonio Apilado was apprehended, he was brought face to face with Danilo Lim, and the latter pointed to the former as the person who ordered him (Danilo) to kill Lolita. The statements of Restituto Yago, Jr.[3] and of Danilo Lim[4] were later presented at the trial.

The foregoing developments were brought to the attention of the trial court through the testimony of Pat. Fernandez, testifying as a defense witness, on May 13, 1985, or barely six (6) days after the prosecution had rested its case on May 7, 1985. They are of a serious nature, damaging to the prosecution's theory.

We agree with the observation of the Solicitor General that in the interest of justice, the trial court should have suspended the proceedings in the criminal case and should have ordered the re-investigation of the case by the City Fiscal's Office, directing special attention to the confessions of Restituto Yago, Jr., driver of the get-away car, and the triggerman, Danilo Lim.

Said the Solicitor General in his Manifestation:[5]

"This action was the least that the Presiding Judge of the trial court could have taken, considering that Fiscal Rolando Beltran, the trial fiscal, was blatantly uncooperative with the request of the relatives of the appellant for a reinvestigation of the case. Fiscal Beltran excused himself from taking action on the said request by simply claiming that there were no witnesses against Restituto Yago (pp. 14-15, tsn, May 13, 1985). This excuse of the trial fiscal is not legally acceptable or valid since there were the statements of the appellant and his corroborating witnesses, and the written admission of Restituto Yago himself, that he was the driver of the get-away car during the shooting of Lolita Labii."

The Solicitor General noted that the transcripts of the stenographic notes of the proceedings in this criminal case are spiced with statements by the Presiding Judge of the trial court intimidating the defense witnesses, brow-beating the defense counsel, and making threats of possible sanctions against the police investigator, Pat. Rolando Fernandez, who testified as a defense witness.[6] At one time, he warned the defense counsel against asking leading questions, and when the defense counsel manifested that he was sorry for doing so, the Presiding Judge emphatically stated: "You don't have to be sorry for that. You be sorry for your client".[7] He repeatedly berated Pat. Fernandez for continuing his investigation of the case without informing the Fiscal's Office, even after the information was already filed against Tuazon, despite the explanation of the defense counsel that the police investigator, Pat. Rolando Fernandez, had to proceed with the investigation of the case due to certain new developments that were brought to his attention. The Presiding Judge could not hide his anger with the police investigator, as the following outbursts and threats illustrate (emphasis supplied):

"What are you trying to do with the Office of the City Fiscal? Make them look like stupid. You better watch

out." (tsn, May 20, 1985, p. 14)

"To be fair with you, Patrolman, you are now testifying as defense witness. If ever the Court finds that there is something wrong with it, the Court will not hesitate to throw the book at you and recommend proper action on you." (id., pp. 10-11).

"But you referred the case to the City Fiscal for filing . . . of the Information in the case and yet, without consulting the Office of the City Fiscal, you try to continue investigating to formulate another theory after they filed the Information. You better watch out, Patrolman . . . Not only the Fiscal, but the Office of the City Fiscal, you are making the Office of the City Fiscal a fool." (id., p. 14)

"You watch out. In this proceedings, you are on trial here. The way you conduct the investigation here is terrible. . ." (tsn, May 27, 1985, p. 28)

The intemperate remarks of the Presiding Judge betray a mind already closed to the idea of deviating from the theory of the prosecution regarding the perpetrator of the crime. Granting that the Police Investigator should not have conducted a further investigation of the case without informing the City Fiscal's Office, the trial court - if it is to remain true to its first and foremost duty to ferret out the truth at the trial - should have taken a serious look at the new facts which the subsequent investigation of the police had unfolded, instead of closing its mind and berating and browbeating the police investigator for making the Fiscal's Office "look stupid." For truth never makes any one look like a fool, but a fool can make truth look stupid.

The new facts brought out by the subsequent investigation conducted by Pat. Fernandez should have been taken seriously and at least checked out for their veracity, instead of being met with disbelief and outright hostility by the trial court. After all, it should be clear to anyone whose mind is unwarped by bias or partiality that Pat. Fernandez was not just talking through his hat. His findings were buttressed by the written statements of the self-confessed driver of the get-away car, Restituto Yago, Jr. and the triggerman, Danilo Lim, and by the testimony in court of Yago himself. These declarations, both extrajudicial and judicial, can not be taken lightly, for these are not self-serving declarations, but admissions against interest.

The conduct of the trial judge in this case betrays a closed mind lacking in objectivity and impartiality, hardly befitting that of a judicial officer whose main concern is to search for the truth and see to it that justice be done to the accused without fear or favor. He appeared more concerned in sparing the Fiscal's Office from being made to look "like fools", rather than in ferreting out the truth in the interest of justice and fair play.

As pointed out by the Solicitor General, even as the defense proceeded to present its evidence, establishing firmly Tuazon's defense of alibi, and his explanation that he had rented out the car to someone, the Presiding Judge, obviously nurturing a preconceived judgment of the case, openly and disdainfully disregarded all such evidence presented by the defense. This is apparent from the reason the Presiding Judge cited in disregarding the testimonies of the appellant and his corroborating witnesses[8]. On the other hand, the trial court closed its mind to the possibility that the eyewitnesses who pointed to the appellant as the triggerman could have been mistaken in view of the resemblance between the appellant and Danilo Lim[9]. Since one of the "eyewitness" knew the accused beforehand, the possibility of mistaking someone else for him cannot be discounted, especially as the incident took but a fleeting moment and was so startling.

All things considered, we hold that the appellant is a victim of a grave miscarriage of justice. The Court is not convinced with moral certainty that he is guilty beyond reasonable doubt of the offense charged, for which reason he is entitled to be acquitted. We agree with the recommendation of the Solicitor General that the City Fiscal of Quezon City should investigate anew the felonious death of the victim Lolita Labii and find the real perpetrators of the crime so that the proper information of complaint can be filed against them.

ACCORDINGLY, the judgment of conviction against appellant Vivencio Tuazon y Dizon is REVERSED and SET ASIDE, and appellant is hereby ACQUITTED. The City Fiscal of Quezon City is directed to investigate anew the felonious death of Lolita Labii and to prosecute and bring to justice the real perpetrators of the crime.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] Exh. "J"; tsn, April 22, 1985, p. 5.

[2] Rollo, p. 40.

[3] Exhs. "5", "5-A to "5-G", "8", "8-A" to "8-G".

[4] Exhs. "6", "6-A" to "6-G", "7", "7-A" to "7-G".

[5] Rollo, p. 224.

[6] Tsn, June 6, 1985, p. 21; tsn, May 20, 1985, pp. 10-16; tsn, May 27, 1985, pp. 15-16.

[7] Tsn, June 6, 1985, p. 21.

[8] Manifestation, Rollo, p. 226.

[9] Tsn, June 6, 1985, pp. 6-10; see Exhibit "13").

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