

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOVITO AGUEL, SILVERIO AGUEL AND RAMON JALIKO,  
DEFENDANTS, SHEM JAKOALEM, DEFENDANT-APPELLANT.**

*G.R. No. L-36554. December 14, 1981*

Ponente: ABAD SANTOS, J.

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**ABAD SANTOS, J.:**

In Our decision which was promulgated on May 19, 1980, We affirmed in toto the judgment of the Circuit Criminal Court of Cebu City in Criminal Case No. CCC-XIV-613-Cebu which reads as follows:

"WHEREFORE, the Court finds the accused Shem Jakosalem GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and applying the provisions of Article 294, paragraph 1 of the Revised Penal Code, and there being no mitigating nor aggravating circumstance present in connection with the crime charged, the accused is hereby sen-tenced to suffer the penalty of RECLUSION PERPETUA, to indemnify Aurora Ira the sum of P160, 000. 00 for the lost of money and other valuables and for the death of Cristituto [Restituto] Ira to pay the heirs the sum of P12,000.00 with one-fourth of the costs."

In the decision, We said, among other things, the following;

"The appellant claims that evidence not available at the trial was later discovered to the effect that it was not Virgilio Ababon who drove the get-away taxi but one Sergio Carampotan. Copies of clippings from the "Morning Times" of Cebu City dated November 8 and 4, 1972, marked as Annexes "A" and "B" were sub-mitted as the 'newly discovered evidence.' Suffice it to say, the clippings are hearsay and have no evidentiary value. Moreover, the 'newly discovered evidence' of November 8 and 4, 1972, should have been immediately utilized as a possible basis for a new trial since the judgment under appeal had not yet become final instead of submitting it as a ground for acquittal in a brief dated May 20, 1974."

Taking a cue from Our statement the defendant-appellant filed a motion for new trial based on newly discovered evidence on July 11, 1980. We required the Solicitor General to comment and he has submitted the following:

"Appellant anchors his motion for reconsideration and/or new trial on newly discovered evidence on the broad ground of substantial justice.

"Appellant cites peculiar circumstances obtaining in his case as exceptional so as to allegedly warrant a new trial if only to afford him the opportunity to establish his innocence of the crime charged.

"Thus - sometime in November 1972, or two (2) months after appellant's conviction by the Circuit Criminal Court on August 31, 1972, the PC-CIS apprehended a gang of robbers (Annexes "A" and "B", Appellant's Brief).

"On November 5, 1972, Edilberto Campo executed his handwritten extra-judicial confession (Annex "A" of Annex "A", motion) admitting participation in the La Moderna robbery naming the other participants.

"On January 21, 1974, Ramon Guevarra executed a handwritten extrajudicial confession (Annex "D" of Annex

"A"; motion) admitting participation in the La Moderna, naming his confederates therein.

"On February 28, 1976, Emiliano Paez executed an extra-judicial confession (Annex "E" of Annex "A", motion) admitting participation in the robbery and named his other cohorts in the heist.

"On December 2, 1975, the District State Prosecutor filed an information (Annex "B", motion) docketed as Criminal Case No. CCC-XIV-1151-Cebu for the same offense and involving the same offended parties in Criminal Case No. XXX-XIV-613, Cebu, for which appellant was convicted, but with a different set of accused. The Information reads:

'PEOPLE OF THE PHILIPPINES, Plaintiff,

- versus - CCC-XIV-1151-CEBU

EXEQUIEL CIBRIAN alias Robbery with

WILLIAM CIBRIAN, Homicide

**RODRIGO DELUVIO,**

**ANECITO DELUVIO,**

**HECTOR HURTELANO,**

RAMON (Baby) GUEVARRA,

RENATO (Tata) ASEGURADO,

**EDILBERTO CAMPO,**

**SERGIO CARAMPATAN,**

**MAGDALENO TIBGAO,**

EMILIANO (Boy) PAEZ,

Accused.

X ----- X

#### **AMENDED INFORMATION**

The undersigned, District State Prosecutor, accuses Exequiel Cibrian alias William Cibrian, Rodrigo Deluvio, Anecito Deluvio, Hector Hurte-lano, Ramon (Baby) Guevarra, Renato (Tata) Asegurado, Edilberto Campo, Sergio Carampatan, Magdaleno Tigbao and Emiliano (Boy) Paez, of the crime of Robbery with Homicide committed as follows:

That on or about the 9th day of June 1972, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms, conspiring and confederating together and helping one another, with the use of a motor vehicle, did there and then wilfully, unlawfully and feloniously, with deliberate intent of gain, and by means of violence and intimidation by holding up Mrs. Aurora Ira, the proprietor of the store and Lydia Pilaes, a customer who were then inside the store, by pointing their guns at them, and after ordering them to squat on the floor and to bow low and tying their hands and plastering her mouth to prevent her

from making an outcry, take, steal and carry away from La Moderna Jewelry Store located at Labucay Building, Cebu City, assorted pieces of jewelries and cash all amounting to P160, 000. 00 more or less, belonging to the spouses Restituto Ira and Aurora Ira, to the damage and prejudice of the said owners in the said total sum; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the articles above-mentioned, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously and with evident premeditation and taking advantage of their superior number, strength and arms, with intent to kill, treacherously attack, assault and shot to death Restituto Ira, husband of Aurora, with the use of a gun causing his death, and after which they fled with the use of a motor vehicle in a get away.

That in the commission of the offense, it was attended by the following aggravating circumstances, to wit:

1. That the crime was committed in disregard of the respect due the offended party, on account of her sex;
2. That the crime was committed by a band;
3. That the accused took advantage of their strength and number;
4. That the crime was committed by means of a motor vehicle.

### **CONTRARY TO LAW. '**

"In a letter dated October 17, 1981, to the Clerk of Court of this Honorable Court, the Acting Clerk of Court of the Circuit Criminal Court of Cebu gave the following information regarding Criminal Case No. CCC-XIV-.1151-Cebu:

Accused

Date Arraigned

Remarks

Status

1. Exequiel Cibrian

July 31, 1975

Not Guilty

Prisoner

2. Rodrigo Deluvio

Jan. 29, 1976

-do-

Bonded

3. Anecito Deluvio

-do-

-do-

-do-

4. Hector Hortellano

-do-

-do-

-do-

5. Renato Asegurado

-do-

-do-

-do-

6. Ramon Guevarra

-do-

-do-

CIS Custody

7. Edilberto Campo

-do-

-do-

-do-

8. Magdaleno Tigbao, Jr.

Jul. 30, 1981

-do-

Prisoner

9. Emiliano Paez

March 12, 1976

Guilty

Prisoner

10. Sergio Carampatan

-

-

At large

"It appears further that in a 3rd Indorsement dated July 10, 1978 of District State Prosecutor Arzadon to the Chief State Prosecutor, 'from the evidence consisting of sworn statements of the witnesses and extra-judicial confessions of some of the accused in CCC-XIV-1151, the crime was committed by said accused and no men-tion was made of the participation of Shem Jakosalem.'

"Said 3rd Indorsement reads:

'From the evidence consisting of sworn statements of the witnesses and extra-judicial confessions of some of the accused, in the latter case (CCC-XIV-1151), the crime was committed by said accused and NO MENTION WAS MADE OF THE PARTICIPATION OF SHEM JAKOSALEM and his three co-accused in the commission of the robbery for which Jakosalem was charged and found guilty by Judge Cupin in Criminal Case No. CCC-X1V? 613.

'If, as claimed by Shem Jakosalem, he was wrongly charged by the City Fiscal of Cebu and he was unjustly convicted by Judge Cupin because he did not commit the offense imputed to him, this matter should be looked into by the Office of the Solicitor General who handles the side of the government in the ap-pealed case of Jakosalem considering that during the pendency of the appeal the case is subjudice. ' (Underscoring, words capi-talized, in parenthesis, ours for emphasis; Annex "F" of Annex "A", motion) '

"The foregoing circumstances, we submit, happened after appellant's trial and conviction and while his case was pending before this Honorable Court. There was, therefore, no way by which these developments could have been known by appellant during his trial.

"It is our submission that the above circumstances constitute newly discovered evidence which justify a reopening of this case to erase all doubts, if any, relative to appellant's guilt or innocence.

"It may, not be amiss to point out that while 'according to Sgt. Josefino Pilapil, Head of the Control Area Zone, Theft and Robbery Section, the basis of the police for pinpointing the accused was the information given by an informer, a police character named Jolly Amameo alias Boy Alias, who was killed a week after the appellant was arrested on June 18, 1972, that the persons responsible for the robbery were Shem Jakosalem, a certain Umpad, Romeo Estrada alias Carlito, and Roberto Sastrillo alias Boy' (underscoring ours, pp. 4-6, Decision dated May 19, 1980, SC), other persons different from the above were charged aside from appellant, namely: Jovito Aguel, Silverio Aguel and Ramon Jalico who were thereafter identified as the 'John Doe' , 'Peter Doe' and 'Richard Doe' in the original information. The above named individuals were subsequently arraigned and found innocent of the crime charged.

"It is also to be stressed that the issue of identification assumes importance after taking into consideration the foregoing circumstances coupled with the extra-judicial confession as well as the judicial admission of Emiliano Paez that he was the one who shot Restituto Ira. It is axiomatic that, as basic and elemental as proof of the essen-tial elements of the crime charged itself, positive proof of the identity of the alleged offender is an indispensable prop to any judgment of conviction for said crime.

"Delineating the criterion on this point, the Supreme Court has very cogently declared -

'x x x The identity of the offender, like the crime itself, must be proven beyond reasonable doubt. The question of identifica-tion of an accused as the perpetrator of an offense might seem to be the simplest that could possibly come before a court. But the fact is precisely the reverse. The question of identification has proved itself over and over again, by far, instead the most perplexing. As one court has observed: There are few more difficult subjects with which the administration of justice has to deal. The carelessness or superficiality of observers, the rarity of powers of graphic description, and the different force with which peculiarities of form or color or expression strike diffe-rent persons, make recognition or identifi-cation one of the least reliable of facts testified to even by actual witnesses who have seen the parties in question x x x' (People vs. Beltran, 61 SCRA 246, 250 citing Estate of Bryant, 176 Pa. 309, 318, 35 Atl. 571, 577 cited in Wall, Eye-witness Identification in Criminal Cases 1965 ed. ).'

For this reason, this Honorable Court has warned that -

'The courts should exercise caution in weighing evidence of iden-tity. As Wharton observed, under conditions

that generally surround the commission of a crime, there is sometimes a predisposition to connect an accused with a crime on the basis at times of fancied resemblances, depend-ing upon the prejudgment or bias of the declarant' (People vs. Jimenez, et al. 71 SCRA 186, 192).'

"It is noteworthy that when appellant was brought by the police authorities to the residence of Mrs. Ira on July 15, 1972, the latter, after taking a look at him, told the police that the former was not one of the robbers (p. 9, SC decision) although later on she identified ap-pellants as one of the robbers with the explanation that when appellant was brought to her, she was afraid to identify him because she had no confidence in the per-son of Lt. Ponciano Gacho (p. 12, SC decision).

"If only to satisfy the requirement that the guilt of the accused must be proved beyond reasonable doubt, appellant should be given the leeway to prove his in-nocence.

"It has been held that the authority of the appellate court over an appealed case is broad and ample enough to embrace situations as the instant case where the court may grant a new trial or retrial based on grounds other than those provided in Section 13 of Rule 124 or Section 2 of Rule 121. While Section 13, Rule 124 and Section 2, Rule 121 provides for specific grounds for a new trial, i. e. newly discovered evidence, and errors of law or irregularities committed during the trial, Section 11 of Rule 124 which provides:

'Power of appellate court on appeal. - Upon appeal from a judgment of the Court of First Instance, the appellate court may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Court of First Instance for new trial or retrial, or dis-miss the case.'

does not so specify, thereby leaving to the sound dis-cretion of the court the determination, on a case to case basis, of what would constitute meritorious cir-cumstances warranting a new trial or retrial (Jose vs. CA, 70 SCRA 264).

"This Honorable Court, in the afore-cited case of Jose vs. CA, Ibid, ruled that:

'Surely, the Rules of Court were conceived and promulgated to aid and not to obstruct the proper administration of justice, to set forth guidelines in the dis-pensation of justice but not to bind and chain the hand that dispense justice, for otherwise, courts will be mere slaves to or robots of technical rules, shorn or judicial discretion.

'Thus, admittedly, courts may suspend its own rules or exempt a case from them for the purposes of justice or, in a proper case, disregard them. In this jurisdiction, in not a few instances, this court ordered a new trial in criminal cases on grounds not mentioned in the statute, viz: retraction of witness, negligence or incompetency of counsel, improvident plea of guilty, disqualification of an attorney de officio to represent the accused in the trial court, and where a judgment was rendered on a stipulation of facts entered into by both the prosecution and the defense.

'Characteristically, a new trial has been described as a new invention to temper the severity of a judgment or prevent the failure of justice.'

"It is therefore, our position that 'the rigid application of the rules of procedure must bow to the overriding goal of courts of justice - to render justice where justice is due - to secure to every individual all possible legal means to prove his innocence of a crime of which he is charged' (Jose vs. CA, supra).

## CONCLUSION AND RECOMMENDATION

"WHEREFORE it is respectfully recommended that the decision of this Honorable Court dated May 19, 1980 be set aside and the case be remanded to the court a quo for new trial and for the purpose of allowing appellant to present his alleged newly discovered evidence. "

WHEREFORE, as prayed for, Our decision of May 19, 1980, is hereby set aside and this case is hereby remanded

to the court a quo for new trial so that the accused can present his alleged newly discovered evidence. No costs.

**SO ORDERED.**

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

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