

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VENTURA LANAS, QUINTIN NGINA, ALIAS BILOG NGINA, EUSEBIO
LISWIG, AND SMITH MAEGO, DEFENDANTS, VENTURA LANAS AND
EUSEBI...**

G. R. No. L-5086. May 25, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Mountain Province finding Ventura Lanas, Quintin Ngina, alias Bilog Ngina, and Eusebio Liswig guilty of the crime of murder, and sentencing each of them to suffer the penalty of reclusion perpetua, to indemnify, jointly and severally, the heirs of the deceased Bayen in the sum of P4,000, and to pay the costs proportionately. The appeal is interposed only by the defendants Ventura Lanas and Eusebio Liswig, as defendant Quintin Ngina has not appealed from the judgment and is now serving his sentence.

It appears that in the early evening of November 10, 1950, an old man by the name of Bayen left his house in the sitio of Legleg, municipal district of Besao, Bontoc, Mountain Province, bound for a granary of his some distance away from the house. He was carrying a torch of lighted pine wood and walked on pilapils of rice paddies. The following morning his body was found near the pilapils on which he had passed, with three lacerated wounds on the back part of the head and a bruise on the left check. His dead body was lying with his stomach flat on the ground and his head submerged in the mud of the rice paddies. The sanitary inspector who examined the corpse certified that death must have been either due to brain hemorrhage produced by blows on the head or suffocation.

On November 14, 1950, a complaint was filed against Ventura Lanas, Quintin Ngina, Eusebia Liswig, and Smith Maego, charging them with the murder of the deceased Bayen. In support of the information, the affidavits of Bagyan Bayen, Quintin Ngina, and Eusebia B. Sianen were taken. When the preliminary investigation was made by the Justice of the peace, Quintin Ngina pleaded guilty. He was questioned by the justice of the peace and his statement was taken down in writing as Exhibit 1, Lanas, et al. In this statement he confesses to having killed Bayen with a Japanese rifle, alone, without any inducement or offer of a reward by Lanas or Liswig. Notwithstanding the statement, the fiscal filed an information in the Court of First Instance against all the four, namely, Ventura Lanas, Quintin Ngina, Eusebio Liswig, and Smith Maego. Quintin Ngina was tried separately from his co-accused Eusebio Liswig and Ventura Lanas. As to Smith Maego, the record shows that he has not yet been apprehended. In the trial of the accused Lanas and Liswig, Quintin Ngina testified as follows: In the evening of November 10, 1950, he and Eusebio Liswig were called by a boy to the house of Ventura Lanas. Both of them went to Lanas' house, and once there Lanas gave them tapei, a native drink. Then Lanas proposed to Liswig and Ngina that they kill Bayen, offering to pay them P200 for the job. Liswig and Ngina did not expressly accept the proposition, but soon thereafter they went out accompanied by Lanas himself. As they went out Lanas gave Liswig a Japanese rifle. They went in the direction of Padangaan in a single file, Liswig first followed by Ngina and lastly by Lanas. After they had passed the house of Bayen, they saw Bayen ahead of them holding a torch.

Thereupon Lanas took the gun from Liswig and aimed it at Bayen, pulling the trigger, but the gun did not fire, so Liswig took the gun from Lanas, held it by the barrel, and with the stock hit Bayen on the back of the head several times. Bayen fell down dead on the rice paddy below the pilapil. Then Liswig gave the broken parts of the gun to Ngina, who thereupon hid them.

The evidence shows that when the crime was investigated, Ngina made his affidavit, Exhibit A, and he accompanied the policeman and indicated to him the place in which he had hidden the muzzle of the rifle, Exhibit B. The butt of the rifle was found at the place where the deceased was killed. The place indicated by Ngina was about twenty meters from the place where the corpse was found.

Another witness for the prosecution is Eusebia B. Sianen, daughter of the deceased Bayen, a resident of Bontoc. She declared that she heard a conversation in her house in Bontoc between his father and Lanas. In that conversation Lanas had said to her father that if Bayen would not be a witness in his favor, he would send Quintin Ngina and Eusebio Liswig to kill him. She testified that the supposed conversation took place on November 8, 1950.

The defense sought to impeach the credibility of the principal witness Quintin Ngina by his affidavit, Exhibit A, and by his confession, Exhibit 1. In Exhibit A, it is to be noted that Ngina declares that there were three persons, aside from Lanas, who were present when the latter proposed that Bayen be killed, the third being one Robert Bastawang. This is different from his testimony at the trial that only he and Liswig were present when the offer was made. In this affidavit Ngina also states that it was only he and Liswig who followed Bayen, whereas in his testimony in court he declared that Lanas went along with them. Again, in the affidavit he says that it was Liswig who tried to fire the gun at Bayen, whereas in his testimony he declared that it was Lanas who made the attempt. In it there is no mention of Liswig having received any amount in pursuance of the agreement, whereas in his testimony he declared that Liswig received P100, out of which he gave Ngina P20. Witness Ngina was also made to explain why in his declaration before the justice of the peace, on the occasion of the preliminary investigation, he made the confession that it was he alone who had killed Bayen (Exhibit 1, Lanas, et al.), and he stated that he had been intimidated by Lanas into confessing that he had committed the offense himself and alone.

The appellant Liswig denied the imputation made by Ngina, and declared that on November 10th he was a driver-mechanic of his brother who paid him a monthly salary of P100; that in the afternoon of November 10th he had been working, and in the evening, around six o'clock he went to a fire nearby to warm himself, and that afterwards he went to the presidencia or municipal building to sleep; and that he slept that whole night there and never left the building until the following morning. He also testified that during the night Ngina came and wanted to lie down between him and his companion, but that the latter objected because Ngina smelled liquor. Liswig's claim that he stayed near and in the municipal building is corroborated by one policeman who acted as guard in the presidencia that whole evening. This guard stated that between six and nine in the evening he had seen Liswig near the fire where he and others were warming themselves, and that thereafter he (Liswig) went to the presidencia and slept there, without having left at all until early the next morning. He stated also that Ngina arrived at the presidencia to sleep at ten in the evening.

For his part, Lanas also made an entire denial of the imputations of Ngina. He attributes Ngina's charges to the fact that he had made many political enemies because during his incumbency as mayor of Besao he had tried to go after gamblers, drunkards, and violators of the law, as well as against those people who had collected contributions for the public without accounting for them. These, he stated, were now plotting against him.

The defense also introduced evidence to the effect that Ngina could not have been forced to make his confession, Exhibit 1, in which he declared that he alone committed the crime, because when he was being taken to the justice

of the peace for the investigation, Lanas and Liswig had no opportunity to talk to him, as Ngina sat with a policeman on the front seat of the car in which they were riding, while Liswig, Lanas, and their counsel, Attorney Pio Marcos, were in the rear seat.

Despite the contradicting affidavits of the principal witness Quintin Ngina and the denials and alibis presented by the defendants, the court found that the guilt of the two appellants had been proved beyond reasonable doubt, and, therefore, sentenced them as above indicated.

On this appeal counsel for appellants insist that the testimony of Quintin Ngina should not be given credit in view of the very many conflicting theories made in his affidavits, Exhibits A and 1, and his testimony at the trial. It is also argued that the testimony of the witness Eusebia B. Sianen, who supposedly heard the threat of Lanas against her father Bayen, should not also be given credit for the reason that at the supposed time of the threat there were already attempts to settle the civil case in which Bayen was to testify for the opponent of Lanas. Emphasis is also placed on the statement of Bayen's daughter, to the effect that on the night of the killing of her father she had seen Ngina and Smith Maego pass in front of their house, contrary to the testimony of Ngina that his companions were Eusebio Liswig and Ventura Lanas.

A careful study of the evidence submitted by the prosecution reveals that the testimony of the principal witness, upon which the finding of guilt of the appellants is predicated, is absolutely without corroboration of any kind in any of its important parts. A very convincing proof of Ngina's statement that he and Liswig were hired by Lanas to put Bayen to death would have been the testimony of the boy who supposedly called Ngina and Liswig to Lanas' house. Any other witness who saw these two going to the house of Lanas would have also lent the stamp of truth on Ngina's testimony. Unfortunately, none was given, and the supposed calling of Liswig and Ngina by Lanas is supported solely by the testimony of Ngina, which testimony is refuted by those of Liswig and Lanas. And if we take into account that Ngina changed his statements as many times as he made them, and the further fact that he was a drunkard, certainly the denial of Liswig, who apparently was a law-abiding resident with work, and his alibi, as testified to by the policeman on guard, are entitled to more credit.

Again, the testimony of Ngina, to the effect that Liswig, Lanas, and he followed Bayen before they killed him, besides being unsupported by any corroborative evidence, is belied by the statement of Bagyan Bayen, daughter of the deceased, who stated in an affidavit, Exhibit 1, attached to the complaint, that she saw Ngina and Smith Maego pass in front of their house on the night that her father was killed. The testimony of Eusebia B. Sianen, who declared that on November 8, 1950, Lanas had threatened her father, is also belied by her own declaration before the district mayor on November 14, 1950, also attached to the complaint. In this declaration she does not mention at all that Lanas was present in her father's house and had threatened the latter.

We, therefore, find that the judgment of conviction has no leg to stand on. By the contradicting stories that Ngina made about the persons who participated in the killing, it is not unreasonable to entertain the belief that his confession made before the justice of the peace on the occasion of the preliminary investigation, to the effect that he alone personally caused the death of Bayen, may have been the truth. This confession was made before the justice of the peace, with all the formalities of an investigation, because it was in the course of a proceeding provided for by law. No evidence has been submitted that any influence of any kind was ever brought to bear on Ngina in order that he may make this confession. His excuse that he was threatened, made in a general manner, can not be believed in the absence of concrete facts and incidents. In any event, the unreliable declaration of this witness, who has made his solemn plea of guilty and an affidavit which conflicts with his testimony, can not serve as a basis of conviction, as there is absence of credible evidence to corroborate the statement in any of its points. The doubtful testimony of the self-confessed killer, imputing the blame for the killing to the appellants, certainly can not, by itself, and without corroboration, be considered as proof to a moral certainty that the latter had

committed or participated in the commission of the crime.

"The true doctrine which should govern the testimony of accomplices, or what may be variously termed principals, confederates, or conspirators, is not in doubt. The evidence of accomplices is admissible and competent. Yet such testimony comes from a "polluted source." Consequently, it is scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected. Even then, however, the defendant may be convicted upon the unsupported evidence of an accomplice. If corroborated absolutely or even to such an extent as is indicative of trustworthiness, the testimony of the accomplice is sufficient to warrant a conviction. This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and such inconsistencies are satisfactorily explained.

"To quote from one of many decisions of this court, which concerns both the credibility of witnesses as determined by the trial court and the competency of testimony by an accomplice, we turn to the case of the United States vs. Ambrosio and Falsario (1910), 17 Phil. 295, wherein it is said:

"It is unquestionably true that the testimony of an accomplice must be taken with great care and caution. It must be assayed and weighed with scrupulous care. The corroborating testimony must be strong and convincing. It is also true, however, that when the testimony of an accomplice is corroborated by unimpeachable testimony and by strong circumstances, it may be given its due weight and force against the person in regard to whom it is presented." (U. S. vs. Remigio, 37 Phil. 599, 610-611)

"It is elementary law that a defendant in a criminal action can not be convicted on the evidence of an accomplice only, and that to sustain such a conviction, there must be other evidence corroborating that the accomplice, which tends to show the guilt of the defendant. (People vs. Asinas, 53 Phil., 59, 67.)

"The offense committed was murder, very clearly qualified by the element of alevosia. * * *. The aggravating circumstance of evident premeditation is indicated in the testimony of the single witness who gave an account of the meeting in the house of Elpidio Bumangag at which the death of Emilio Almazan was decided upon. But this witness was evidently a party in the conspiracy, and his testimony should not be accepted without corroboration, of which there is none; for it is a well recognized rule that the testimony of one of several conspirators should not be accepted, as against his fellows, without some corroboration. This is especially applicable in a situation where the facts testified to would, if fully accepted, necessarily result in the imposition of the death penalty." (People vs. Bumanglag, 56 Phil., 10, 13-14)

Wherefore, we hereby declare that the evidence does not prove beyond reasonable doubt that the appellants Eusebio Liswig and Ventura Lanas are guilty of the crime charged, and we, therefore, reverse the judgment of conviction appealed from and absolve the appellants from the charge, with costs de oficio.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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