

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUFEMIO CAPARAS Y PAEZ AND PATRICIO DIAMSAY Y GREGORIO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-47411. January 18, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Before Us are two separate motions for reconsideration of Our decision dated February 20, 1980 convicting the two above-named appellants, one filed by their counsel of record in behalf of both of them; the other, filed by a new counsel of Caparas only in his behalf.

The motion for reconsideration, filed by appellants' counsel of record, seeks the re-examination of the decision insofar as it rejects the plea of self-defense of appellant Diamsay. As in the appellants' brief, appellant Diamsay in his present motion for reconsideration failed to prove the justifying circumstance with clear and convincing evidence. As he had himself admitted to be the actual killer, the burden of proof is shifted to him to establish all the facts necessary to prove his plea of self defense. The motion for reconsideration, insofar as Diamsay is concerned, has nothing new with which to discharge this burden, and must consequently be denied.

As regards appellant Caparas, the motions for reconsideration seek the review of the testimonies of the two principal witnesses, Laureano Salvador and Lydia Posadas, upon which said appellant was convicted, on ground of conspiracy between him and Diamsay. Caparas points out some facts and circumstances which are alleged to impair the credibility of the aforesaid witnesses and thereby leaves the fact of conspiracy unproven beyond reasonable doubt as it should be.

Thus, Caparas points out that Laureano's testimony was extracted through leading questions, and he quotes:

"Q Do you know the purpose of Carlos Gregorio in coming to your house?

"A Yes, sir.

"Q What was his purpose?

"A Regarding the landholding I was farming and his help I requested.

"Q Did you go to any place with Carlos Gregorio after that?

"A Yes, sir.

"Q Where?

"A To his house.

"Q You are referring to the house of Carlos Gregorio?

"A Yes, sir.

x x x

"Q Now, when you arrived at the house of Carlos Gregorio, who were with you?

"A Carlos Gregorio, sir.

"Q Who were the persons, if any, that you have seen at the house of Carlos Gregorio?

"A Eufemio Caparas and Diamsay, sir.

x x x

"Q Now, when you arrived in that house, what happened?

"A We talked regarding the landholding, sir.

"Q You said, 'we', to whom are you referring?

"A Eufemio Caparas, sir.

"Q What did you talk about that landholding?

"A Regarding the landholding which he said would be given to me. He said there is already one.

"Q And what did you answer when this was said to you by Eufemio Caparas?

"A I said, 'if there is, I give thanks', but he said that the land he was giving me had some trouble.

"Q And what did you say?

"A I said 'that seems hard', but he said, 'that is easy'.

"Q What else transpired?

"A I asked him what he meant by easy and he said 'it is easy under this condition', and I asked him what condition, and he said 'you kill him'.

"Q During all that time, who were present inside that house?

"A Tisio Diamsay.

"Q Who else?

"A Eufemio Caparas, sir.

"Q Anybody else?

"A Carling Gregorio, sir.

"Q And you?

"A I was present.

x x x

"Q Now, in the vernacular, in Tagalog Language that you have been testifying, you said, 'Patayin n'yo', means plural, do you know to whom this word 'n'yo' referred to?

"A He was ordering me, Carling, and Tisio Diamsay, sir.

"Q Ordering to what?

"A To kill.

"Q To kill Simeon Paez?

"A Yes, sir."

We are constrained to agree that the testimony of Laureano on the supposed conspiracy was elicited by means of leading questions, the probative value of which, according to accepted legal authorities, is thus diminished or lessened.

"The probative value of a witness' testimony is very much lessened where it is obtained by leading questions which are so put that the witness merely assents to or dissents from a statement or assertion of an examining consul put with such vocal inflection as to be a question." [1]

Appellant Caparas also points out several inconsistencies and improbabilities in the testimonies of the two witnesses. While this Court has constantly adhered to the rule that conclusions of the trial court on the matter of evaluations of the truth of declarations of witnesses and their credibility carry great weight and command favorable considerations,[2] the instant case cannot come under this rule for, as pointed out in the motion for reconsideration, the judge who rendered the decision was not the judge who heard the testimonies and observed the demeanor of witnesses Laureano Salvador and Lydia Posadas.[3] This being the case, and considering the gravity of the crime charged, their testimonies must be subjected to a strict scrutiny to leave no room for doubt as to the guilt of Caparas whose complicity was based only on conspiracy which, according to settled doctrine, must be shown to exist as clearly and convincingly as the commission of the offense itself.[4]

After a careful and conscientious review of the evidence, We are now convinced that the testimonies of the two aforementioned witnesses were accorded more than what they deserve by way of credence and veracity. Doubts as to the truth of their testimonies assail the mind of the Court, occasioned by many improbabilities in their testimonies, and in the case of Lydia, by direct contradiction by his own sister, Priscilla Posadas.

To begin with Laureano Salvador, it is not without significance that he was not listed in the information to be among the prosecution witnesses. Only during the trial on June 2, 1973, and after more than two years after the commission of the crime, that he surfaced and testified on what he allegedly knew about the crime. From his testimony, it would appear that he did not inform the authorities nor his relatives what he knew about the crime, and that it was only to Pablo Paez that he told his story about the crime, but only after almost two years after its commission. This fact in itself is contrary to human experience because the natural reaction of one who has knowledge of the crime is to reveal it to the authorities, except only if he is the author thereof. Indeed, as held in *People vs. Basuel*,^[5] the silence of the witnesses for about two years detracts from their trustworthiness.

This witness, of course, explained that his silence was due to his fear for his life, for which reason he went into hiding in Dupax, Nueva Viscaya, where he allegedly worked at Diplong Sawmill. We cannot, however, give credence to this explanation, since counsel for appellant was not given the opportunity to cross examine Salvador Laureano on this matter. It appears that this witness testified that while hiding in Dupax, he worked in "Diplong Sawmill." But upon investigation by counsel for appellant, it was found out that there is no Diplong Sawmill and because of this, counsel for appellant moved to cross examine further the witness. But said witness failed to appear in the hearing despite summons, until the court, after a third failure to appear, issued an order for his arrest. When the said witness finally appeared, counsel for appellant requested to postpone the cross examination on a very valid ground that he had another case which was earlier scheduled on the same date. The trial court, however, refused to postpone the cross examination. This, in Our opinion, is a prejudicial error on the part of the trial court, which should have granted the postponement. As it is, his testimony cannot but create some doubts in Our mind, specially as on his own admission, he never went to the Office of the Provincial Fiscal to inform the government prosecutors that he would be a witness in this case.

In the case of *People vs. Maisug*,^[6] this Court held that the conduct such as shown by the witness is unnatural and contrary to ordinary experience. Lawyers do not usually present witnesses without informing themselves regarding the facts that they would prove by the testimonies they would present in court.

The other witness, Lydia Posadas, a sister-in-law of the deceased had to wait for four (4) days after the shooting, and about two (2) weeks after she allegedly overheard the supposed conspiracy, to execute a joint statement with her sister, Priscilla, before the Provincial Fiscal. It defies one's credulity that both of them, especially Lydia, who is a sister-in-law of the deceased would not immediately expose Caparas as the man behind the perpetration of the crime. This stultified silence casts grave doubts as to their veracity.^[7] These doubts deepen when she testified that she did not reveal even to her husband the plot to kill his brother. The reason given by the lower court is that

her father-in-law to whom she told of Caparas' plan to liquidate the deceased advised her not to inform anybody, as Atty. Pedro Paez would arrive on February 6, 1971 to settle the conflict. The explanation is not persuasive. No wife who heard of a plot to kill her brother-in-law would not tell her husband of such a dreadful plan. Her explanation why she did not tell her husband is simply preposterous. Upon being told of the plot, anyone, especially a father, would not let even a day pass before taking measures to avert the plot against his son's life. Lydia Posadas testified that she heard the plot on January 27, 1971. To wait until February 6, 1971 to reveal it to the authorities would be taking so much risk, not dictated by the gravity of the events that cried for instant action to prevent its occurrence.

Aside from the inherent incredibility, as shown above, of Lydia's testimony, it was directly contradicted by her sister, Priscilla, who denied having gone to the haystack with her sister, Lydia, on January 27, 1971. Priscilla declared that she executed the sworn statement which tended to implicate Caparas because she and her sister were instructed to do so by Pedro Paez who from all indications exerted moral ascendancy over them as they were staying with the family of Pedro Paez. And being then only 17 years old, she did not realize the serious implications of what she had done.

In Our decision subject of the present motion for reconsideration, We brushed aside Priscilla Posada's testimony, stating:

"x x x Lydia Posadas declared in Court on July 14, 1973 while Priscilla Posadas took the stand on March 27, 1974. Between these dates, as the cliché goes, much water has gone under the bridge. There is every possibility for overtures to have taken place by way of saving appellant Caparas at least, who is after all, closely related to the victim and the Paezes, from complicity. For if the two sisters were made to jointly execute a false affidavit by Pedro Paez, Priscilla could at least have been prevailed upon not to take the stand just so her sister Lydia would not be unmasked as a liar. If she took the stand as a defense witness, it must have been because the Paezes, realizing what a terrible fate would befall a close relative, appellant Caparas, who could have soothed their aggrieved feelings with more than just an empty supplication for pity, were induced to save Caparas from the grave punishment that he would suffer for the serious offense with which he was charged."

We realize the foregoing ratiocination goes more into the realm of conjecture than reality, upon consideration of the fact that as the records show, the prosecution through a private prosecutor, presented rebuttal evidence to disprove the evidence given by Priscilla Posadas, thus negating what this Court surmised was the reason for Priscilla's testimony so favorable to appellant Caparas. It may be because the Solicitor General made no attempt to explain the damaging testimony of Priscilla, from the prosecution standpoint, that the Court was pushed to doing it, and regrettably so, for as just stated it did so with no better than mere speculation and surmise.

Why Pedro Paez involved the two sisters at the time the joint affidavit was executed was probably because Laureano was still in hiding and Pedro Paez thought that conviction of Caparas would be more sure if two witnesses could corroborate each other.

Moreover, Pedro Paez's letter dated June 23, 1980 addressed to the President of the Philippines and forwarded to this Court by his office requesting for early resolution of this case and another letter dated June 17, 1981 praying for execution of the decision of this Court in this case show no pity on Pedro Paez's part to want appellant Caparas saved from punishment, contrary to this Court's mere surmise.

The trial court also inferred conspiracy from its finding that appellant Caparas, in ordering the killing of the deceased, was motivated by resentment against the deceased as a result of a conflict between them over proprietary rights involving a portion of agricultural land; and that the gun used in killing the deceased was owned by Caparas.

While conspiracy may be established by circumstantial evidence provided that it is competent and convincing, in the instant case, the evidence with which to link Caparas in a conspiracy with Damsay to kill the deceased does not rest on solid ground. The records do not show that Caparas harbors intense resentment against the Paezes as to go to the extent of liquidating them. On the contrary, it was the Paezes who had all the reason to be angry with Caparas who, according to them, was defrauding them of their rightful rights. In the case of Damsay, he apparently acted on his own. Damsay hated the Paezes because of the latter's "insulting attitude" toward him, as may be gleaned from the decision of the trial court when it states:

"When Simeon Paez was about to have the same land planted, Damsay stopped the planters. This angered the former causing him to utter slanderous remarks against Damsay. Pedro Paez also resented the actuations of Damsay in (sic) stopping of the land."

As regards the finding that the gun used by Damsay in killing Simeon Paez was owned by Caparas, this is easily explained by the fact that as overseer of Caparas, Damsay was authorized to carry the gun. Pedro Paez himself admitted that when he was still the overseer of Caparas, he also used to carry a gun given him by Caparas.

In the light of the foregoing discussion, We cannot but entertain doubts as to the veracity of the testimonies of the two witnesses which alone provided the basis for the finding of conspiracy against Caparas. These doubts now disturb the mind of the Court as to his culpability, and must accordingly be resolved in favor of appellant Caparas it being preferable to acquit a guilty person rather than convict an innocent one.[8]

WHEREFORE, the decision of February 20, 1980 is hereby affirmed with respect to appellant Damsay, but reversed with respect to appellant Caparas who is hereby acquitted, on ground of reasonable doubt, of the crime charged. With costs de oficio as to appellant Caparas.

SO ORDERED.

Concepcion, Jr., Abad Santos, Ericta, and Escolin, JJ., concur. Barredo, J., (Chairman), vote to give the movant the benefit of doubt. Aquino, J., see dissent below.

[1] 23 C.J.S. 40.

[2] People vs. Salas, 66 SCRA 126; People vs. Omega, 76 SCRA 262.

[3] People vs. Omega, 76 SCRA 262.

[4] People vs. Llanera, 51 SCRA 49.

[5] 47 SCRA 307.

[6] 27 SCRA 750.

[7] Ibid; People vs. Moreno, 85 SCRA 673.

[8] See Tan vs. Peralta, 19 SCRA 769.

DISSENTING OPINION

AQUINO, J.:

I dissent. Eufemio Caparas is a co-principal by inducement. As shown in the opinion penned by Justice De Castro, he was the mastermind behind the killing of Simeon Paez. He had the motivation for killing Simeon. Patricio Damsay was merely a tool of Caparas. His only motive for killing Simeon was to comply with the order of his employer, Caparas. There is no justification for acquitting Caparas and changing the judgment of conviction against him. (People vs. Caparas, 102 SCRA 781, February 20, 1981).

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