

RAMON T. LOPEZ, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 101507. December 29, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals in CA-G.R. CR No. 07388, which affirmed the decision of the Regional Trial Court, Branch 43, Manila in Criminal Case No. 84-25155.

I

The Information filed against petitioner before the Regional Trial Court, Branch 43, Manila reads as follows:

"The undersigned accuses RAMON LOPEZ y TUGNAO of violation of Anti-Carnapping Act of 1972, committed as follows:

"That on or about March 13, 1984, in the City of Manila, Philippines, the said accused, conspiring and confederating with three others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, to wit: by approaching one EMMANUEL DIZON y NARIO, driver of a Mitsubishi Colt Lancer four-door sedan bearing Plate No. PDY-765, while inside the UST Compound, this City, pointing bladed weapons at him and stabbing him with the same, driving said vehicle to Dasmarinas, Cavite where they left said EMMANUEL DIZON Y NARIO, forcibly take, steal and carry away the following motor vehicle, against the latter's will, to wit: one (1) brown Mitsubishi Colt Lancer, 4-door sedan, 1983 Model bearing Plate No. PDY-765, valued at P87,000.00, belonging to said Emmanuel Dizon y Nario, to the damage and prejudice of said owner in the aforesaid sum of P87,000.00, Philippine currency" (Records p. 1).

Upon arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued. On June 20, 1989, the Regional Trial Court rendered a decision, rejecting the retraction made by the complaining witness, finding petitioner guilty beyond reasonable doubt of the crime charged and sentencing him to suffer an indeterminate sentence of seventeen (17) years and four (4) months as minimum to twenty (20) years as maximum, and to pay the costs.

On appeal, the Court of Appeals affirmed the judgment of the trial court.

Hence this petition.

II

The facts as found by the trial court and accepted by the Court of Appeals are as follows:

On March 13, 1984, at around 2:00 P.M., complainant, Emmanuel N. Dizon, parked his car at the campus of the University of Santo Tomas, Espana, Manila, to wait for his cousin. While he was seated at the driver's seat, four

men approached the car. One of them was petitioner, who poked a knife at Dizon. Another companion of petitioner got into the right front seat while the two others occupied the back seat of the car. Dizon was pulled out of the driver's seat and forced to sit at the back. Petitioner then took over the wheel. After announcing that they were staging a carnap, they asked for the car key. As Dizon was slow in giving the key, he was stabbed at the right portion of his abdomen. After getting the key, petitioner drove the car away. The other malefactors stabbed Dizon several times, hitting him on the right brow, elbow, shoulder, right hip and knees. Thereafter they punched him with their fists. At a certain point, petitioner stopped the car to allow his companions to buy a piece of rope, which they used to hog-tie Dizon. They also covered Dizon's face with a shirt. Dizon was then brought to Cavite where he was thrown out of the car. He lost consciousness. When he regained consciousness, he found all his tormentors gone. He was able to free himself and seek help. Some barangay tanods brought him to the University Medical Center in Dasmariñas, Cavite.

Meanwhile, the family of Dizon received a call from the hospital, informing them that he was confined therein and that his vehicle was carnaped.

Dizon's father and three brothers proceeded in their jeep to the hospital. While driving along Roxas Boulevard, Manila, they saw the "carnapped" car going in the same direction. They deliberately bumped the car to force it to stop. They then jumped out of the jeep and opened the door of the stalled car. They found petitioner in the driver's seat, with a companion seated beside him. A brother of Dizon called a policeman, who arrested petitioner and his companion. The father and brothers of Dizon then proceeded to the hospital where Dizon was being treated. Dizon was then asked if petitioner and his companion were the ones who took the car and mauled him. He identified only petitioner as one of the malefactors.

On his part, petitioner denied having carnaped the vehicle. According to him, he was merely asked by Darel Jacinto to drive the vehicle to the corner of Augusto Francisco and Nakar Streets and to deliver it to a certain George. He consented to drive the vehicle but he proceeded first to a restaurant at Roxas Boulevard to take his merienda. Unfortunately, he was not able to do so because the vehicle he was driving was bumped by a jeepney.

III

Petitioner contends that the Court of Appeals erred in not giving credence to the recantation of Dizon, who executed an affidavit of desistance stating that he was not sure whether petitioner was one of the malefactors.

We have previously held that mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible (*People v. Dulay*, 217 SCRA 103 [1993]). The Court looks with disfavor upon retractions of testimonies previously given in court. The rationale for the rule is obvious: Affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated (*People v. Clamor*, 198 SCRA 642 [1991]).

Where a witness testifies for the prosecution and retracts his testimony and subsequently testifies for the defense, the test of determining which testimony to believe is one of comparison coupled with the application of the general rules of evidence (*Reano v. Court of Appeals*, 165 SCRA 525 [1988]).

A testimony solemnly given in court should not be set aside lightly and before this can be done, both the previous testimony and the subsequent one should be carefully juxtaposed and the circumstances under which each was scrutinized. In other words, all the expedients devised by man to determine the credibility of a witness should be utilized to ascertain which of the contradictory testimonies represents the truth (*People v. Clamor*, supra).

It would be risky to reject the testimony taken before the court of justice simply because the witness who has

given it later may change his mind for one reason or another. Such rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses (De Guzman v. Intermediate Appellate Court, 184 SCRA 128 [1990]).

To ensure that justice is not denied, the Court has carefully gone over the transcript of stenographic notes of the testimony of the complainant. We have reached the same conclusion as that of the trial court and the Court of Appeals.

On direct testimony, Dizon testified as follows:

"Q By the way, did you recognize who were these persons?

A No, sir. I did not recognize them.

Q If you will see them, you will recognize them?

A Yes, sir.

Q And how many of these four (4) would you recognize?

A I can only recognize one at this moment, sir.

Q Is he here in court?

A Yes, sir.

Q If you know him will you point to him.

A That one, sir. (Witness pointing to a man in a striped polo shirt who, when asked of his name, gave the same as Ramon Lopez). (TSN, p. 9-10, February 25, 1985, Direct Examination of E. Dizon).

Q The question is did you see the accused again?

Fiscal Where?

A Yes Sir, he was also in the hospital.

Atty. Dionido

Q Why was the accused there?

Witness

A I was asked to identify him, sir.

Q Who made you identify the accused in this case?

A I think a police investigator, sir.

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Q And then during that time that alleged investigator asked you what did they asked you about this case.

A They asked if they were the ones who carnapped the car, sir.

Q You mentioned "sila" who were they?

A Ramon Lopez and I do not know the others, sir.

Q And then, after asking you if who among them perpetrated the crime, what did you answer to the

investigator?

A I only pointed to Ramon because I recognized him, sir" (TSN, Feb. 25, 1985, pp. 23-25).

On cross examination, Dizon testified as follows:

Q Now after you were pulled into the rear seat, you said that one of the accused entered the car on the front door, left. Who opened the door?

A The accused, sir (Witness pointing to accused Ramon Lopez).

Q You could recall very distinctly the features of these four (4) people that entered the car notwithstanding the elements of surprise and fear which came unto you at the very time?

A Yes, sir" (TSN, February 25, 1985, p. 45).

The recanted testimony of Dizon reads as follows:

"Q Mr. Witness, in the information filed in court, you charged Ramon Lopez y Tugnao who as alleged in the information, was the person who used force and violence upon you on March 13, 1984, with the end of (sic) view of getting this Mitsubishi Colt Lancer?

A He looks like the one who took my car, sir.

Q You just stated Mr. Witness that quoting you, he looks like the person who took my car on March 13, 1984, are you positive or certain that this person here, the accused, was the very same person who took your car on March 13, 1984?

A I am not sure when I pointed to him if he was the one who took my car, sir (TSN, p. 7, March 15, 1989).

Q How come that you are changing and clarifying your stand only now?

A Because of the lapse of time that the case is dragging, it is only now that I realized that he was not the culprit, sir (TSN, p. 11, March 15, 1989).

Q Now, this case happened or took place on March 13, 1984, yet (sic) and now is 1989 or more or less a period of four (4) years, you executed this affidavit of desistance after four years. Why is it that it took you four years to change your mind and testify in favor of the accused?

A Because of the time that lapsed, he is no longer in my mind and my conscience bothers me, sir.

Q Did you not have the time to see the fiscal's office to tell that you are now bothered in testifying against the accused?

A Because I was angry at that time, sir.

Q The question is do you have no time going to the fiscal's office and tell us that you are bothered by your conscience?

A None, sir.

Q But you have the time to see the accused and the counsel for the accused?

Atty. Fernandez:

Objection, your honor. I only met the witness here in court.

Fiscal: Regardless of where you met the counsel? witness

A None, sir.

Q But you have the time to see them?

A Yes, sir" (TSN, March 15, 1989, p. 11).

Between the testimony of Dizon as prosecution witness on one hand and that of his affidavit of recantation and testimony for the defense on the other hand, the former must be given credence and the latter rejected. His testimony as a prosecution witness was coherent, clear, precise and unwavering even in the face of the cross-examination conducted by the defense counsel. In so doing, he positively identified petitioner as the culprit and lucidly described how petitioner took his car.

IV

The "carnapping" in this case was committed by means of violence against or intimidation of persons. The penalty prescribed under Section 14 of R.A. No. 6539 is "imprisonment for not less than seventeen years and four months and not more than thirty years." Under Section 1 of the Indeterminate Sentence Law, if an offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by the said law and the minimum shall not be less than the minimum term prescribed by the same. In fixing the maximum penalty, the trial court must have taken into consideration the fact that the stolen car was recovered the same day.

WHEREFORE, the decision appealed from is AFFIRMED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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