

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENERIO P. VERGARA, ERNESTO T. CUESTA, JR., PEDRO G. DAGAÑO
AND BERNARDO P. CUESTA, ACCUSED. RENERIO P. VERGARA,
ACCUSED-...**

G.R. No. 110286. April 02, 1997

Ponente: VITUG, J.

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VITUG, J.:

From the decision, dated 10 February 1993, of the Regional Trial Court, 8th Judicial Region, Branch 7, in Tacloban City, finding accused Renerio P. Vergara guilty beyond reasonable doubt in Criminal Case No. 92-09-508 of a violation of Section 33 of Presidential Decree ("P.D.") No. 704, as amended by P.D. No. 1508, an appeal to this Court has been interposed.

Vergara was charged, together with his three co-accused, namely Ernesto T. Cuesta, Jr., Pedro G. Dagaño and Bernardo P. Cuesta, on 25 September 1992, in an information that read:

"The undersigned Provincial Prosecutor of Leyte accuses Ernesto T. Cuesta, Jr., Pedro G. Dagaño, Renerio P. Vergara and Bernardo P. Cuesta of the crime of Violation of Section 33, Presidential Decree No. 704, as amended by Presidential Decree No. 1058, committed as follows:

"That on or about the 4th day of July, 1992, in the Municipal waters of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and criminally catch, take and gather fish belonging to the anchovies species known locally as 'bolinao', with the use of explosives contained in a bottle and called in the vernacular as 'badil', which bottled explosives after being ignited and hurled to the sea, produced explosion and caused the death of the said fish which were hit or affected by such explosion.

"CONTRARY TO LAW."[1]

Vergara alone was arraigned and brought to trial; his co-accused escaped and remained at large.

It would appear that at about 7:30 in the morning of 04 July 1992, a team composed of deputized Fish Warden and President of the Leyte Fish Warden Association Jesus P. Bindoy, Police Officers Casimiro Villas and Diosdado Moron of the Palo PNP Station, Leyte, Fish Wardens Mario Castillote and Estanislao Cabreros and Fish Examiner Nestor Aldas of the Department of Agriculture were on board, "Bantay-Dagat," a pumpboat, on "preventive patrol" along the municipal waters fronting barangays Baras and Candahug of Palo, Leyte, when they chanced upon a blue-colored fishing boat at a distance of approximately 200 meters away. The boat, 30 feet long, had on board appellant Renerio Vergara and his three co-accused Bernardo Cuesta, Pedro Dagaño and Ernesto Cuesta, Jr., and was on parallel course toward the general direction of Samar.[2]Momentarily, the team saw appellant throw into the sea a bottle known in the locality as "badil" containing ammonium nitrate and having a blasting cap on top which, when ignited and thrown into the water, could explode. The explosion would

indiscriminately kill schools and various species of fish within a certain radius. Approximately three seconds after appellant had thrown the "badil" into the sea, the explosion occurred. Vergara and Cuesta dove into the sea with their gear while Dagaño and Cuesta, Jr., stayed on board to tend to the air hose for the divers.[3]

The team approached the fishing boat. SPO2 Casimiro Villas boarded the fishing boat while Fish Warden Jesus Bindoy held on to one end of the boat. Moments later, Vergara and Cuesta surfaced, each carrying a fishnet or "sibot" filled with about a kilo of "bolinao" fish scooped from under the water. Having been caught red-handed, the four accused were apprehended and taken by the patrol team to the "Bantay-Dagat" station at Baras, and later to the police station in Palo, Leyte. The fishing boat and its paraphernalia, as well as the two fishnets of "bolinao," were impounded. The accused, however, refused to sign and acknowledge the corresponding receipts therefor.

On 10 February 1993, following the submission of the evidence, the trial court rendered judgment convicting Vergara, viz:

"WHEREFORE, said Renerio Vergara is hereby sentenced to a penalty of Twenty (20) years to life imprisonment as punished under Sec. 2, of PD 1058.

"This Court further orders the confiscation of the fishing boat of Mario Moraleta including the following equipments: 1 air compressor, 3 sets of air hoses, and the 3 pieces of 'sibot' having been found to be instruments of the crime.

"SO ORDERED "[4]

In his appeal, Vergara submitted the following assignment of errors:

"1. THE LOWER COURT COMMITTED GRAVE ABUSE OF AUTHORITY WHEN IT COMPLETELY IGNORED THE TESTIMONY OF EMILIO LINDE.

"2. THE LOWER COURT COMMITTED GRAVE ABUSE OF AUTHORITY WHEN IT GAVE MUCH WEIGHT TO BIASED WITNESSES WHOSE TESTIMONIES WERE GLARINGLY INCONSISTENT.

"3. THE LOWER COURT COMMITTED GRAVE ABUSE OF AUTHORITY WHEN IT OPENLY SHOWED BIAS AGAINST THE ACCUSED DURING THE TRIAL OF THIS CASE."[5]

Emilio Linde sought to corroborate the claim of appellant that it was another unidentified group of fishermen who threw the bottle of explosives at a school of "bolinao" fish. It was obvious, however, said the trial court, that the statement of this defense witness was incredulous since he apparently had not at all been on board the fishing boat in the company of the accused at the time of the incident. Even the rather lengthy counter-affidavit of the four accused completely missed to mention Linde. The court a quo went on to observe that the demeanor of the accused at the witness stand and the substance of his testimony failed to elicit belief.

Trial courts are tasked to initially rule on the credibility of witnesses for both the prosecution and the defense. Appellate courts seldom would subordinate, with their own, the findings of trial courts which concededly have good vantage points in assessing the credibility of those who take the witness stand. Nevertheless, it is not all too uncommon for this Court, in particular, to peruse through the transcript of proceedings in order to satisfy itself that the records of a case do support the conclusions of trial courts.

Fish Warden Jesus Bindoy gave a detailed account of the 4th July 1992 incident. Thus —

FISCAL DAGANDAN:

"Q In the morning of the 4th day of July, 1992 do you recall where you were?

"A We were on the sea fronting barangays Baras and Candahug.

"Q What municipality?

"A Palo, Leyte.

"Q Did you have anyone with you in this particular incident?

"A Yes, sir.

"Q Who were they?

"A Two policemen Casimiro Villas, Jr. and Diosdado Moron and my fellow fish warden and one from the Department of Agriculture.

"Q Will you identify your co-fish warden who were present at that time?

"A Mario Castillote, Estanislao Cabrereros, Jr.

"Q How about that employee from the Department of Agriculture, who was he?

"A Nestor Aldas.

"Q What were you doing at that particular time on this place fronting barangay Baras and Barangay Candahug, Palo, Leyte?

"A We were watching for illegal fishers.

"Q What is your authority in this particular task?

"A We are the bantay dagat members of Palo.

"Q Do you have any written authorizing evidencing that position?

"A Yes, maam, our deputized ID (witness is showing ID No. 1432-91)

"FISCAL DAGANDAN:

For the records your honor I will quote this ID: This is to certify that Jesus P. Bindoy is a deputy fish warden vested with full power and authority to enforce all existing fishery laws, rules and regulations (SGD) Leopoldo Romano, [D]irector, Department of Agriculture, Region 8.

"FISCAL DAGANDAN:

"Q Since you claimed that you were on the sea fronting barangays Baras and Candahug in what vehicle were you in at that moment?

"A We were in a motorized pumpboat.

"Q So, what unusual incident if any that transpired?

"A In that morning we saw a blue pump boat which is about 200 meters away from us.

"COURT

What time in the morning?

"A About 7:30 in the morning more or less.

"FISCAL DAGANDAN:

"Q About how long is this colored blue pumpboat?

"A More or less 30 feet.

"Q At about this distance of 200 meters were you able to visualize or see if there were any passengers in that blue colored pumpboat?

"A Yes, maam.

"Q Were you able to identify them?

"A Yes, sir.

"Q Who were they?

"A The one in front of the pumpboat was Renerio Vergara, Bernardo Cuesta, Pedro Dagaño and Ernesto Cuesta, Jr.

"Q You mentioned of Renerio Vergara, whom you saw in that blue colored pumpboat and you identified earlier Renerio Vergara. Is he the same person?

"A Yes, they are one and the same person.

"Q At the time you saw these persons loaded in that color blue pumpboat what were they doing?

"A I saw them paddling.

"Q Towards what direction?

"A Towards the direction of Samar.

"Q And where were you in relation with that pumpboat that was paddled towards Samar area?

"A We were situated parallel to them.

"Q So what happened at this particular time?

"A That was when we saw Renerio Vergara threw a bottle to the sea and after that we heard an explosion.

"Q Did you come to know what particular bottle was it thrown to the sea?

"A It was a dynamite (badil).

"Q As a member of this bantay dagat are you familiar with this 'badil' which you earlier mentioned?

"A Yes, sir.

"Q Will you describe this particular device?

"A This bottle is filled with ammonium nitrate and on top is a blasting cap.

"Q So in case this is used by fishermen, how do they operate this 'badil'?

"A It is ignited and then thrown to the sea and this result in the killing of fishes at the sea.

"Q In this particular instance when you heard the explosion how far were you to this blue pumpboat?

"A About 200 meters.

"Q So what did you do after you heard this explosion?

"A After the explosion we slowly approached them.

"Q From the time you saw this bottle being thrown to the sea by Vergara up to the time you heard this explosion about how many minutes elapsed?

"A About 3 seconds.

"Q At about how near were you to this blue pumpboat?

"A We went near to a distance of one hundred meters.

"Q So, what did you do at this distance?

"A We kept on watching them first and after we knew that the two persons dived to the sea that was the time that we approached the pumpboat.

"Q Were you able to recognize these two persons who dived?

"A Yes, maam.

"Q Who were they?

"A Renerio Vergara and Bernardo Cuesta.

"Q You said there were four persons loaded in that pumpboat. How about the other two what were they doing?

"A The two persons were there, one watching the hose that was used by the two persons who dived for breathing.

"Q So, what else did you do?

"A When we approached the pumpboat it was Casimiro Villas, a policeman who boarded the pumpboat.

"Q How about you what did you do when Casimiro Villas boarded the pumpboat?

"A I was the one holding on to the blue pumpboat.

"Q So, what else was done if any by the members of your team?

"A While we were there we let the two persons who dived surface and they were carrying with them fishnet filled with 'bolinao' fish and then we told them that we will bring them to our temporary station at Baras, Palo.

"Q Do you know the specie of this bolinao?

"A Anchovies.

"Q About how heavy were these fishes of bolinao in the fishnet?

"A About one kilo per fishnet.

"Q How many contraption were carried by them?

"A Each one of them was carrying one 'sibot' (fishnet).

"COURT

So, two divers two nets?

"A Yes, sir.

"Q And each has a catch of one kilo?

"A Almost one kilo.

"Q So, two nets two kilos more or less?

"A Yes, sir.

"FISCAL DAGANDAN:

"Q So, after that what did you do?

"Q When we arrived at our temporary station at Baras, Palo we gave the fishes to the fish examiner and we had the pumpboat inventoried and told them to sign the receipt we made.

"Q Do you recall if you made an apprehension report of the incident you witnessed?

"A Yes, maam.

"Q I show you a original copy of apprehension report dated July 4, 1992 addressed to the Regional Director, Department of Agriculture, Tacloban City stating that the following offenders namely Renerio Vergara y Prisno, Pedro Dagaño y Gadin, Ernesto Cueta y Tobilla and Bernardo Cuesta y Pedrero were apprehended and the violation is fishing with the use of dynamite, the original of which is found on page 4 of the records. Will you examine the same and tell this court what relation has that to the report you said you made?

"A This is the apprehension report that we prepared on July 4, 1992."[6]

Nestor Aldas, an Agricultural Technologist and Fish Examiner working with the Department of Agriculture, Palo, Leyte, who examined the fish samples taken from the accused, testified that he was with the team patrolling, on 04 July 1992, the waters of San Pedro Bay, Baras, Palo, Leyte, when he, like the other members of his team,

witnessed the use of explosives by the accused. Fish samples from the catch showed ruptured capillaries, ruptured and blooded abdominal portion, and crushed internal organs indicating that explosives were indeed used.

The Court is convinced that the trial court has acted correctly in finding accused-appellant guilty of the offense charged.

Sections 33 and 38 of P.D. No. 704, as amended by P.D. No. 1058, read:

"Sec. 33. Illegal fishing; illegal possession of explosives intended for illegal fishing; dealing in illegally caught fish or fishery/aquatic products. — It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substance, or by the use of electricity as defined in paragraphs (1), (m) and (d), respectively, of section 3 hereof: Provided, That mere possession of such explosives with intent to use the same for illegal fishing as herein defined shall be punishable as hereinafter provided: Provided, That the Secretary may, upon recommendation of the Director and subject to such safeguards and conditions he deems necessary, allow for research, educational or scientific purposes only, the use of explosives, obnoxious or poisonous substance or electricity to catch, take or gather fish or fishery/aquatic products in specified area: Provided, further, That the use of chemicals to eradicate predators in fishponds in accordance with accepted scientific fishery practices without causing deleterious effects in neighboring waters shall not be construed as the use of obnoxious or poisonous substance within the meaning of this section: Provided, finally, That the use of mechanical bombs for killing whales, crocodiles, sharks or other large dangerous fishes, may be allowed, subject to the approval of the Secretary.

"Section 38. (1) By the penalty of imprisonment ranging from twelve (12) years to twenty-five (25) years in the case of mere possession of explosives intended for illegal fishing; by imprisonment ranging from twenty (20) years to life imprisonment, if the explosive is actually used: Provided, That if the use of the explosive results in 1) physical injury to any person, the penalty shall be imprisonment ranging from twenty-five (25) years to life imprisonment, or 2) in the loss of human life, then the penalty shall be life imprisonment to death."

WHEREFORE, the decision of the court a quo appealed from is affirmed in toto. Costs against accused-appellant.

SO ORDERED.

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

[1] Records, p. 1.

[2] TSN., 22 January 1993, pp. 2-8.

[3] TSN., 22 January 1993, pp. 8-11.

[4] Rollo, p. 24.

[5] Rollo, p. 80.

[6] TSN., 22 January 1993, pp. 4-14.

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