

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY ORTIZ, ACCUSED-APPELLANT.

G.R. No. 111713. January 27, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This case is demonstrative of what Sir William Blackstone once said: "It is better that ten guilty persons escape than one innocent suffer." [1]

Appellant Henry and co-accused Danilo and Ernesto, all surnamed Ortiz were charged with murder before the Regional Trial Court (RTC) of Pasig. The accusatory pleading reads as follows:

"That on or about the 2nd day of June 1992, in the municipality of Pasig, Metro Manila, Philippines and within the Jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with deadly weapons and pied (sic) of wood, with intent to kill, treachery and evident premeditation, taking advantage of superior strength did then and there willfully, unlawfully and feloniously attack, assault and stab one Renato Medenilla on the different parts of his body as a result of which said Renato Medenilla sustained fatal wounds which directly caused his death." [2]

During arraignment, appellant pleaded not guilty while Danilo and Ernesto remained at large. After trial, the lower court sustained the existence of conspiracy among the three and on the basis thereof, convicted appellant for murder qualified by superior strength, sentenced him to suffer reclusion perpetua and to indemnify the heirs of the victim. It also ordered the issuance of an alias warrant for the immediate arrest of accused Ernesto and Danilo Ortiz. [3]

In a direct appeal to this Court, appellant imputes error to the lower court in "striking out" the June 2, 1993 testimony of the victim's mother, Cresencia Medenilla, a witness for the prosecution, about the incident. Pursuant to the order of the court, her testimony was retaken on June 30, 1993, whereby she gave a version different from her previous testimony.

A flashback of the case.

On June 2, 1992, Helen Catadman's daughter was celebrating her birthday at their house. The three accused were present therein drinking and eating. According to her mother's testimony, the victim arrived at the party at about 9:00 o'clock in the evening. [4] He sat down near one table. Thereupon, he was berated by appellant who asked the former why he is mad at them (the three accused). The victim, however, did not respond until after he was asked by appellant for the third time where the former replied "Bakit pinagtutulungan ninyo ako." [5]

When the victim tried to stand, he was slapped by appellant. The latter then pulled the former out of the house. There, appellant again slapped the victim causing the latter to fall and hit his forehead on the pavement. The victim stood up but was slapped for the third time by appellant. Again he fell down, [6] but he was still able to stand up and ran towards the gate, where accused Ernesto was standing by holding a piece of wood about 18

inches long.[7] At this time, appellant left the scene. Outside the gate Ernesto hit the victim at the back of the latter's neck with the piece of wood he was holding.[8] Danilo also stabbed the victim with a 6-inch icepick.[9] The victim fell face down. When he attempted to stand, Ernesto stabbed the former with a "29 knife" (balisong). Thereafter, Ernesto and Danilo ran away. The 19-year-old victim was placed in a tricycle, but died on the way to the hospital due to the fatal stab wounds he sustained. The Medico Legal report established the cause of death as "cardio-respiratory arrest due to shock and hemorrhage secondary to stab wound of the chest." [10]

Appellant was apprehended and together with the two other accused, were charged before the lower court with murder. During the trial of the case on June 2, 1993 Cresencia Medenilla testified as one of the witnesses for the prosecution. But her testimony was stricken off the record and retaken on June 30, 1993 allegedly because she could not understand some of the counsels' questions during the earlier testimony. The real reason, however, become evident on cross examination when the witness admitted that she sought the assistance of a man whom she met for the first time.[11] She told the mysterious person regarding her problem.[12] The latter in consideration of P75 prepared for her a "manifestation and motion" and told her how to implicate appellant. She signed this Manifestation and Motion and filed it with the lower court on June 14, 1993, alleging that she did not fully understand the questions propounded to her by the prosecution and defense counsels, that she cannot understand some Tagalog and English words, as she uses only the "Waray" dialect, and accordingly prayed that her earlier testimony be stricken off the record for the purpose of retaking the same with the assistance of a Waray interpreter.

As already mentioned, the retaken testimony materially varies with the earlier testimony. In the latter, which was taken a year after the incident, the witness said that appellant was no longer at the scene of the crime when accused Ernesto hit the victim with a piece of wood. Thus, in her direct-examination:

Q: How many times did he (Ernesto) hit Renato?

A: Only once, sir.

Q: At that time what was Henry doing?

A: He was not there anymore. He escaped.[13] (*italics ours*).

She even confirmed this statement during cross-examination:

Q: How many times did Henry Ortiz slap your son?

A: Three times sir.

Q: Thereafter what did Henry Ortiz do if any?

A: He escaped and hide, Sir.

Q: So Henry Ortiz was no longer there when Ernesto Ortiz hit your son.

A: None, sir because he ran and escaped.

Q: And Henry Ortiz was no longer there when Danilo Ortiz allegedly stabbed your son?

A: Yes, sir.[14] (*italics ours*).

These were the same facts stated in her affidavit executed (in Tagalog) before the police about two months after the killing where she said:

06 T: Kung iyong makikilala sino ba iyong tao o mga tao na pumatay sa iyong anak?

S: Sila po ay sina ERNESTO ORTIZ at DANILO ORTIZ tubong Las Nabas, Northern Samar at nakatira sa Mercedez, San Miguel, Pasig, MM.[15] (*italics ours*).

She never mentioned appellant as one of those who killed her son. When her testimony was retaken, she affirmed

the contents of the said affidavit during cross examination. to wit:

Q: I will quote again another question which I will ask for confirmation, Question no. 6, do you remember having asked this question by the police officer and I quote, "Kung iyong makikilala, sino ba iyong taong pumatay sa iyong anak"?

A: Yes, sir.

Q: And the answer you gave to the police to that question is "Sila po, Ernesto Ortiz, Danilo Ortiz, tubong Las Nabas, Northern Samar, nakatira sa Mercedes, San Miguel, Pasig, MM.

A: Yes, sir.

Q: You affirmed that under your present oath?

A: Yes, sir. [16] (*Italics ours*).

However, these statements vary with what she said during direct examination when her testimony was retaken. She testified that appellant was at the scene of the crime when the victim ran towards the gate:

Q: And when Renato fell down what happened to Renato if you know?

A: His mouth again hit the pavement, mam.

Atty. Sardillo: Same manifestation, Your Honor.[17]

Q: Thereafter what happened?

A: Renato stood up and ran towards the gate.

Atty. Sardillo: Same manifestation.

Q: How about Henry? Was he still there?

A: He is still there.

Q: What transpired thereafter?

A: When Renato was already outside I saw Ernesto holding a piece of wood at about one foot in length.

Atty. Sardillo: Same manifestation.

Q: Was Henry still there at that time?

A: He was still at the gate at that time, mam.[18] (*italics ours*).

But in the same direct examination, she declared that after accused Ernesto hit the victim, appellant left:

Q: Thereafter what happened?

A: When Renato came out of the gate Ernesto strucked (sic) Renato with a piece of wood on his neck he was holding at that time.

Q: Was Henry still there at that time?

A: When Renato was hit on the neck by Ernesto, Henry suddenly left the scene.[19]

Both the affidavit and the later testimony materially and substantially differ with respect to the fact of appellant's participation in the actual killing of the victim. Moreover, that Henry allegedly gave the following order to the other accused "Sige na saksakin ninyo na,"[20] which became the basis of the lower court's conclusion that there was conspiracy, was never mentioned by witness Cresencia during her earlier testimony. Neither did the witness mention such declarations of appellant in her affidavit before the police.

Generally, an affidavit, being taken ex-parte is almost always incomplete and often inaccurate[21] or lacking in details and is deemed inferior to the testimony given in open court.[22] It is not a complete reproduction of what the declarant has in mind because they are often executed when an affiant's mental faculties are not in such a state

as to afford him a fair opportunity to narrate in full what actually transpired and are sometimes prepared with partial suggestions from the administering officer.[23] But this is not an absolute rule. Jurisprudence forewarns that, when serious and inexplicable discrepancies are present between a previously executed sworn statement of a witness and her testimonial declarations with respect to one's participation in a serious imputation such as murder, there is raised a grave doubt on the veracity of the witness' account[24] This is particularly true when, as exemplified by this case, the witness' narration in the sworn statement substantially contradicts her testimony in court.[25] To disregard the earlier testimony would all the more create an inexplicable discrepancy between the affidavit and the retaken testimony. Likewise, the omission in the affidavit of the alleged presence of appellant at the scene of the crime as well as his alleged order to the other two accused to stab the victim, pertains to very important details of the incident that one relating the same as an eyewitness would not be expected to fail to mention.[26] In the instant case, the contradictory statements and the omission of important details by the said prosecution witness erode the credence of her testimony.

Furthermore, the earlier testimony of the same witness completely jibes with the affidavit[27] she executed less than 2 months from the time of the killing, affirming that Henry was not at the scene of the crime when the victim was hit and stabbed by the two other accused. Even assuming the affidavit to be incomplete, if the affiant's testimony on the witness stand relates the same events mentioned in the affidavit, and did not materially detract nor add new material details, the status of the affidavit in the case at bench, may still be deemed accurate and consistent with the affiant's testimony given in open court. Noteworthy is the fact, that exactly a year after the crime, the witness' account of the incident was the same as that of her affidavit. What is surprising is that less than a month after the earlier testimony was taken, there was a sudden change in her version. The reason for the change came out during cross-examination where the witness revealed that a certain person whom she met for the first time prepared for her a document on how to implicate appellant.[28] This document which she signed was entitled "manifestation and motion" where she asked the lower court to retake her testimony.

Under the earlier testimony, appellant could not be held liable for the death of the victim having left the scene and inflicted no fatal wounds on the latter. The fact that appellant allegedly acted in conspiracy with the other accused is not supported by the earlier testimony and thus, was not established by the requisite quantum of proof. It was only in the retaken testimony that the theory of conspiracy came out. After reviewing the evidence on record, the Court doubts whether appellant conspired with the other accused. There is no evidence that the former's remarks to the other accused were of such nature and uttered in such manner as to become the determining cause of the crime [29] or would have induced the latter to commit it. The facts leading to that theory was a mere afterthought considering that the other two accused are at large and only appellant is in custody. So that upon the advice of a mysterious man, and with the mother of the victim grieving for the loss of a son, somebody has to be blamed for the crime — appellant being the most convenient scapegoat. Thus, it is not surprising when she readily answered in the affirmative to the prosecution's query, to wit:

"Q: You said that the one who prepared this document told you to implicate Henry Ortiz, do you understand that answer of yours.

A: Yes man (sic)."[30]

The rule that the factual findings and assessment of credibility of witness generally binds the Court, cannot be strictly applied in this case. Significant facts and circumstances were overlooked and disregarded by the lower court, which if properly considered affect the result of the case.[31] Records show that there are strong and cogent reasons that justify departure from the lower court's findings.[32]

Cresencia's reason why her testimony should be retaken is because she cannot understand some Tagalog words. This rationalization should be disbelieved due to the following: First, her affidavit before the police is in Tagalog;

second, in the earlier testimony, she never asked for any Waray interpreter to aid her. In fact, her answers were responsive to the counsels' questions which only underscores that she understood them; third, in the retaken testimony, she was answering in Tagalog, and Finally, during cross-examination, she testified without the assistance of a Waray interpreter and that she can understand Tagalog. Thus:

Q: You are testifying before this Honorable Court without the aid of a Waray interpreter. Do you understand that?

xxx

A: Yes, sir.

Q: And you understand all the questions propounded to you by the Prosecutor?

A: Yes, sir.

Q: And the answer you gave to the prosecutor as well as to this representation were all voluntarily made by you?

A: Yes, sir.

Q: And the same is true with your first testimony before the Honorable Court?

Objection your Honor.

Court: Sustained.

Q: Now, you do not need any Waray interpreter with my next questions?

A: Not anymore, sir.

Q: Because you can understand Tagalog as relayed to you by the Court interpreter?

A: Yes, sir.[33]

With the absence of any other evidence that would support a finding that appellant conspired with the other accused and considering that appellant himself had no participation in killing the victim, the Court cannot sustain the conclusions reached by the lower court. The presumption of innocence enjoyed by appellant was not rebutted by the prosecution, who obviously had no evidence that would sustain beyond reasonable doubt appellant's guilt of the crime charged.[34] It was incumbent on the prosecution to discharge the onus probandi of the crime. But it failed to discharge that burden. Even the allegation of conspiracy is scantily supported by evidence on record and we are not convinced that the prosecution was able to establish it by the requisite quantum of proof in criminal cases.[35] Jurisprudence is replete that conspiracy must be proven by proof beyond reasonable doubt.[36] Since conviction rests upon the strength of evidence of the prosecution and not on the weakness of the evidence for the defense,[37] the evidence of appellant, assuming it to be weak is no reason to convict, as the case of the prosecution is not strong enough to sustain a conviction.

Neither is there any basis to justify the striking out of the prosecution witness' earlier testimony. Even assuming arguendo that only the retaken testimony can be considered, the same revealed material inconsistencies not only with her earlier testimony but with her affidavit as well. Besides, the mere presence of a person at the scene of the crime does not make him a co-conspirator.[38] Appellant's escape under the circumstances is indicative of his non-cooperation with the others. Proofs, not mere conjectures or assumptions, should be proffered by the prosecution which would show that appellant had taken part in the planning, preparation and perpetration of the alleged conspiracy to kill the victim.[39] Otherwise, "a careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds" really responsible for the crime.[40]

Appellant, however, is not totally free from civil liability. It was established on record that he slapped and caused injuries to the victim. Civil liability is not extinguished by acquittal based on reasonable doubt.[41]

WHEREFORE, premises considered, appellant is ACQUITTED of the crime charged but must pay P3,000.00 as damages. The order of the lower court that an alias warrant be issued for the immediate arrest of the other two accused is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Commentaries on the Law of England, Book 4, 27.

[2] Information dated November 11, 1992. (Rollo, p. 3).

[3] Regional Trial Court Decision penned by Judge Martin S. Villarama, Jr. (Rollo, p. 18).

[4] TSN, June 2, 1993, Cresencia Medenilla, p. 3. In the retaken testimony, however, the witness said that appellant arrived at about 9:30 p.m. (TSN, June 30, 1993, Cresencia Medenilla, p. 4.)

[5] TSN, June 2, 1992, p. 4. In the retaken testimony the witness testified that the victim's words were "Bakit ako ninyo pinagtutulungan." (TSN, June 30, 1993, p. 5).

[6] Ibid., p. 5.

[7] TSN, June 2, 1993, p. 5. In the retaken testimony on June 30, 1993, the witness testified that the size of the wood was about a foot long. (TSN, June 30, 1993, p. 7).

[8] Ibid., p. 5.

[9] Ibid., p. 6.

[10] Original Record, p. 7.

[11] TSN, January 30, 1993, p. 19.

[12] The witness apparently realized that under her earlier testimony, appellant could not be convicted of the crime charged.

[13] TSN, June 2, 1993, p. 5.

[14] Ibid., p. 14.

[15] Exh. "D"; Exh. "1-B."

[16] TSN, June 30, 1993, p. 18.

[17] The "Manifestation" of defense counsel, Atty. Sardillo, pertains to the answers of prosecution witness Cresencia Medenilla, which were given in Tagalog.

[18] TSN, June 30, 1993, p. 7.

[19] Ibid., p. 8.

[20] Ibid.

[21] People v. Ferrer, G.R. 102062, March 14, 1996; People v. Leangsiri, 252 SCRA 213 (1996); People v. Abrenica, 252 SCRA 54 (1996); People v. Peralta, 251 SCRA 6 (1995); People v. Calegan, 233 SCRA 537

(1994).

[22] *People v. Conde*, 252 SCRA 681 (1996).

[23] *People v. Sapurco*, 315 Phil. 561, 571 (1995) citing *People v. Cruza*, 237 SCRA 410 (1994); *People v. Manuel*, 236 SCRA 545 (1994).

[24] See *Castañón v. Escaño, Jr.*, 251 SCRA 174, 190 (1995) citing *People v. Cruz*, 231 SCRA 759, 770 (1994) and *People v. Casim*, 213 SCRA 390 (1992).

[25] See *People v. Español*, G.R. 105676, April 10, 1996 citing *People v. Alvarado*, 242 SCRA 464 (1995); *People v. Calegan*, *supra*.

[26] *Ibid*.

[27] Exh. D. July 27, 1992.

[28]

Q: Do you still remember that before this case was tried you signed a document entitled, Manifestation and Motion, can you still remember that?

A: Yes, sir.

Q: If shown to you that document bearing your signature, will you be able to recall or identify your signature?

A: Yes, sir.

Q: Who prepared this Manifestation and Motion?

A: I could not remember who prepared this. I asked only for help.

Q: From whom did you ask for help?

A: I asked from a certain person who was then staying outside.

Q: When was that?

A: June 14, 1993, sir.

Q: What is his name?

A: I did not ask his name.

Q: That was the first time you met that person?

A: Yes, sir.

Q: Did you ask his name?

A: No, sir.

Q: Did he ask you why you are asking for help?

A: The man asked me what is my problem.

Q: And before your pleading was filed and before you affixed your signature you explained to him the nature of the testimony given before this Honorable Court?

A: Yes, sir.

Q: And after that he told you he will prepare the document for you to sign and filed (sic) before this Court, is that correct?

A: Yes, sir.

COURT: Did you pay him?

A: He asked me to pay P75.00, Your Honor.

Atty. Sardillo:

Q: And then he told what to say in the event this motion will be granted that you be allowed to speak again to the witness stand?

A: I just told him I want to repeat the testimony I gave in Court that time.

Q: And you were told by that particular person who prepared this document entitled, Manifestation and Motion how to implicate Henry Ortiz?

A: Yes, sir. (TSN, June 30, 1993, Cresencia Medenilla, pp. 18-20).

[29] *People v. Abarri*, 242 SCRA 39 (1995).

[30] *Ibid.*, p. 20.

[31] *People v. Abado*, 224 SCRA 725; *People v. Roldan*, 224 SCRA 536; *People v. Aldorte*, 219 SCRA 458.

[32] See *Donato v. CA*, 217 SCRA 196 (1993).

[33] TSN, August 11, 1993, Cresencia Medenilla, p. 9.

[34] See Rule 133, Section 2 of the Rules of Court.

[35] Conspiracy must be established by no less than proof beyond reasonable doubt. *Magsuci v. Sandiganbayan*, 240 SCRA 13 (1995); *Fonacier v. Sandiganbayan*, 238 SCRA 655; *People v. Orehuella*, 232 SCRA 82 (1994); *People v. Bayrante*, 235 SCRA 19.

[36] *Ibid.*

[37] *People v. Sotto*, 312 Phil. 869 (1995) citing *People v. Labarias*, 217 SCRA 483 (1993) and *People v. Fider*, 223 SCRA 117 (1993).

[38] *People v. Dulatre, Jr.*, 248 SCRA 107 (1995).

[39] See *Sabiniano v. CA*, 249 SCRA 24 (1995).

[40] *Ibid.*, p. 29 citing *Arias v. Sandiganbayan*, 180 SCRA 309 (1989).

[41] *PNB v. Catipon*, 98 Phil. 286; See also Sec. 2 Rule 120, Rules of Court.

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