

GERARDO BIONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 142262. August 29, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On September 7, 1995, Danilo Cayubit (Cayubit), who was serving a prison term for homicide at the National Bilibid Prisons, executed a 5-page, single spaced Sinumpaang Salaysay[1] before the Parañaque City Prosecutor charging herein petitioner Gerardo Biong (Biong) with attempted murder alleged to have been committed more than four years earlier or on June 30, 1991.

Cayubit had early on been tagged as the leader of the Akyat Bahay Gang which allegedly broke into the Vizconde residence in B.F. Homes, Parañaque in 1991 during which Estrellita Vizconde and her two daughters Carmela and Jennifer were massacred.

The pertinent portions of the Salaysay which Cayubit executed read:

x x x x

- Noong madaling araw ng ika-30 ng Hunyo 1991, sa nabanggit na lugar, sa pamamagitan ng dahas at panutok ng baril, ako ay kinidnap at pilit na isinakay ni Gerardo Biong sa isang sasakyan na minamaneho ni Captain Tible kasama si Jun Alcantara na pawang mga pulis;

x x x x

- Habang tumatakbo ang nasabing sasakyan ay pinahubad ni Biong ang aking damit, pati ang "brief" at ipinasas ang aking dalawang kamay sa likod at naka-gapos sa paa ng upuan ng sasakyan;

x x x x

- Tumigil kami sa tapat ng "D & L Disco Pub" sa kanto ng "Lopez" at "Santos" Road na malapit sa pasukan ng "BF Homes" Parañaque, bumaba si Biong at lumapit sa limang lalaki na tila naghihintay sa kanya; noong nag-uusap sila ay itinuro ang aming sasakyan at sumenyas na naka-taas ang hinlalaking daliri (thumb up) na tila ibig sabihin ay "ayos na, nandiyan sa sasakyan", at nag-"appear"an yung lima habang ang ibang mga kasama ay nakatingin; pagkatapos nilang nag-usap ay tinapek ni Biong yung isa sa puwit, sumakay sila sa kanilang mga sasakyan na patungo sa "BF Homes", naiwan si Biong at kumain ng bal[u]t;

- Sumakay ulit si Biong at pumasok kami sa "BF Homes" Parañaque at ini-abot ang radio sa "guardhouse"; tumigil kami pagkalaggas sa mga sasakyan noong mga lalaki na kausap ni Biong na naka-parada at may nag-mamatyang at nag-babantay; kinalagan ako ng posas ni Biong at pinababa na hubad-hubad pa rin;

- Pumasok kami sa bakuran ng isang bahay doon at nasalubong naming na papalabas ang tatlo doon sa mga nabanggit na kausap ni Biong; kasama yung tinapek sa puwit, at ang utos nila kay Biong ay i-"salvage" at tapusin na daw ako;

- Sinundan yung nasabing tatlo ng dalawang lalaki pa na tila "security guard" na dugu-duguan, at tinanong ni Biong kung saan yung "gamit" at ang sagot ay "nandoon sa loob, naiwan"; pumasok si Biong sa loob ng bahay at pagkatapos ay lumabas at binigyan ako ng "tear gas" at inutusan akong ispreyan ang bawat silid ng bahay;

- Pumasok kami, pati si Tible at Alcantara sa isang silid ng bahay na may bangkay ng tatlong bababe, isa doon ay bata, yung isa naman ay hubad-hubad na tila nakagapos sa likod;

- Inutusan ako ni Biong na kunin yung "gamit" (bayoneta) na dugu-duguan, at nung nadampot ko na ay binunot ni Biong and kanyang baril at babarilin ako; mabilis namang nang-awat si Tible at Alcantara, at mabilis din akong kumubli sa likuran nila, ako ay yakap ni Tible na patalikod; si Biong naman ay pilit akong barilin at patayin habang nakikiusap si Tible at Alcantara na huwag akong barilin, at sa aking pag-iwas ay naihawak ko ang aking kamay na dugu-duguan, maari sa pader at/o salamin na binasag ni Biong;

- Nag-usap sila Biong at Alcantara sa labas, yun naman ay sinamantala ko at mabilis na tumakbong papalabas at nagtatago kung may dumarating; ng nakita ko ang sasakyan nila Tible at Alcantara na parating na tila hinahanap ako, at noong nalaman ko na hindi kasama si Biong doon, ay lumantad at hinatid ako sa bahay namin, naligo lang ako at umalis kaagad;

- Sa payo ni Tible at Alcantara na tumahimik at parang walang nalalaman [sic] ay nagtago muna ako sa probinsiya sa pangalang "Dennis Anemos";

x x x x

- Dinalaw ako ni Tible at Alcantara sa kulungan at binigyan ng babala na mag-ingat, huwag kumanta, tumahimik na lang daw ako na parang walang kinalaman sa "Vizconde massacre", dahil wala daw mangyayari sa kasong iyon dahil naki-alam na ang kamag-anak ng mga nasasangkot doon na malalaking pulitiko, matataas na opisyaes ng pulisya at military, mayayaman at maimpluwensiyang pamilya;

- Nalaman ko rin kina Tible at Alcantara na iyong nabanggit na tinapek sa puwit ni Biong sa tapat ng "D & L Disco Pub", at isa doon sa tatlong nagsabi na i-"salvage" at tapusin na kaagad ako ay anak ni Senador Freddie Webb;

- Pinaliwanag din sa akin nila Tible at Alcantara, kung bakit ako pinag-hubad ni Biong, at bakit ninakawan nito ang bahay na nabanggit; ay dahil sa balak ni Biong na itambak ang aking bangkay, sa silid ding iyon, kasama ang mga biktima at pagkatapos ay palabasin na ako ay pinuno ng isang "akyat-bahay gang" na nahuli sa aktong pagnanakaw, pagpatay, at pang-gagahasa, at kaya nabaril at napatay dahil lumaban na ang sandata ay ang nabanggit na "gamit" o bayoneta

- Pinag-bilinan ako ng paulit-ulit nila Tible at Alcantara na tumahimik na lang, huwag "kumanta" o mag-salita tungkol sa "Vizconde massacre" dahil sinisisi daw sila ni Bong sa pag-ligtas sa akin, at pinag-bantaan na oras na ako ay nagsalita o kumanta", sila day ay mananagot kay Biong dahil nai-ipit daw ito sa "boss" niya;

x x x x

- Hanggang ngayon ay binabantaan ako ng iba't-ibang lalaki, na makilala ko lang kung makita ko ulit, na isusunod daw ako kina Tible at Alcantara kapag tumistigo o nakialam sa "Vizconde massacre";

- Makikilala at ma-ituturo ko si Gerardo Biong, yung anak ni Senador Freddie Webb, at ang kanilang mga kasabwat kung makita ko sila ulit;

x x x x[2] (Emphasis and underscoring supplied)

Biong was thereafter indicted on January 19, 1996 before the Parañaque Regional Trial Court (RTC) for attempted murder alleged to have been committed as follows:

That on or about the 30[th] day of June 1991 in the Municipality of Parañaque, Metro Manila, Philippines, and

within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without justifiable cause, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously abduct one Danilo Cayubit and brought him to a secluded place/house and thereat attack, assault and point a gun at said complainant thus commencing the commission of the crime of Murder, directly by overt acts but nevertheless did not perform all the acts of execution which should have produced the crime of Murder by reason of cause or causes other than his own spontaneous desistance that is due to the fact that said accused was pacified or prevented from shooting the complainant by concerned persons.

CONTRARY TO LAW.[3] (Underscoring supplied)

Via the testimony of its lone witness Cayubit, a tricycle driver, the prosecution sought to establish the following version:

At about 3:00 o'clock[4] in the morning of June 30, 1991, while Cayubit, who was out on bail for homicide, was "on line waiting for passengers" at the tricycle terminal at Valley 2 in Parañaque, Metro Manila, Biong approached him and forced him to board an "owner type" jeep with its sides open. He occupied the backseat (passenger's seat), between Biong and one Jun Alcantara[5] who "used to while away his time at the warrant section" of the Parañaque Police Station.[6] The driver's seat was occupied by one Capt. Tible of the Air Force. He was acquainted with the three as he "used to accompany them in all their "lakad" because [he, Cayubit] was an asset." [7]

With Tible, whose first name Cayubit does not know, on the wheels, the jeep headed west and as it approached the Coastal Road, Biong forced Cayubit to strip off his clothes including his underwear, and he did. And then Biong handcuffed his hands "at the back."

Somewhere along the Coastal Road "near the bridge," Biong freed Cayubit's hands, asked him to alight, "brought him at the side and when [he] was lying down, [Biong] just pulled out his gun and when he was about to shoot [him]," Tible and Alcantara restrained Biong, Tible saying that "Wala sa usapan natin iyan, pare." Biong thereupon kicked Cayubit and asked him to board the jeep.

With Tible still on the wheels, the group repaired to D&L Disco Pub located at Lopez corner Sucat, Parañaque. While there, Biong "wrapped [Cayubit's] head with a jacket" which Cayubit was, however, able to remove, thus enabling him to see Biong approach and talk to five persons "[a]t the door" of the pub. The five persons including one whom Biong tapped at the buttocks thereafter left on board two vehicles as Biong partook of balut. Biong not long after returned to the jeep, "cleaned his hands he used in eating bal[u]t on [Cayubit's] head," and again covered Cayubit's head with a jacket. The group thereupon repaired to and arrived at B.F. Homes Subdivision in Parañaque at about 3:30 a.m. of June 30, 1991.

While at the subdivision, Biong ordered Cayubit to alight. Followed by Tible and Alcantara, the four of them proceeded to an unlit house. Before reaching the house, they met three of the five persons Biong earlier met, including the one whose buttocks Biong tapped, who told Biong "Iyan ba, i-salvage na yan, tapusin na kaagad iyan."

As the group approached the door of the house, "may lumabas pong puro dugo na parang naka-security guard pong uniform pang-ibaba at civilian pang-itaas, uniform na puro dugo." [8] Biong entered the house and then came out and asked Cayubit to spray the rooms with tear gas. On entering one room, Cayubit saw dead bodies of three women, one of whom was naked with her hands tied at her back. Biong then asked Cayubit to pick up a blood-stained bayoneta and as Cayubit was in the act of picking it up, Biong attempted to shoot him but again he was restrained by Tible and Alcantara.

Biong and Alcantara thereafter conversed outside the house in the course of which Cayubit fled, he running until

he reached Lopez.[9]

In Lopez, Cayubit saw the same jeep he had earlier boarded, bearing only Tible and Alcantara. Seeing that Biong was not in the jeep, Cayubit motioned to stop it as it did and he boarded it. Tible and Alcantara brought him home but before reaching his house, he asked them why Biong wanted to shoot him, but the two proffessed no knowledge about it. They nevertheless warned him to just keep silent.[10]

While at the penitentiary, Cayubit, through a reporter, contacted his lawyer friend Atty. Macario Angarao who went to see him. He requested Atty. Angarao to help him for "[he] is agrabiado considering that [his] kakampi Capt. Tible and Alcantara are already dead." Hence, his execution of the September 7, 1995 affidavit which led to the filing of the present information against Biong.

Cayubit's Sinumpaang Salaysay was marked in evidence.

Denying the accusation, Biong gave the following version: He was, from the evening of June 29, 1991 up to the morning of June 30, 1991, on duty at the Investigation Division of the Parañaque Police Headquarters, his tour of duty being from 7:00 P.M. up to 7:00 A.M. the following day.

At around 4:00 o'clock in the morning of June 30, 1991, on returning to the headquarters after responding to a taxi driver's complaint against persons who boarded his vehicle but who did not pay their fare, he was directed by the desk officer to proceed to 80 Vinzon St., B.F. Homes, Parañaque and conduct, as he did, an investigation in connection with the Visconde massacre that occurred in said place.[11]

Biong was himself later investigated by the Inspector General of the Philippine National Police (IG PNP), both in Bicutan and in Crame, the National Bureau of Investigation (NBI) and the National Police Commission, and was suspended for 60 days for failure to preserve the evidence in the Vizconde massacre. And he was eventually summarily dismissed from the service.

On June 23, 1995, Biong was arrested and detained, he having been referred to by a prosecution witness, Jessica Alfaro, in the Vizconde massacre case as a driver-bodyguard of the Webbs.[12] He was being lured to become a state witness by offering him material things and promotion in his career. He denied having been a driver-bodyguard of the Webbs, however. And he refused to be a state witness which earned the ire of the NBI, hence, he was falsely indicted for the present charge.

Biong does not know Tible and Alcantara.[13] As for Cayubit, the first time he met him was when he was brought to jail in relation to another case, and a relative of Cayubit who happened to come from his (Biong's) hometown asked him to protect Cayubit.[14]

SPO1 Fidel Alhambra, a desk officer of the Parañaque police, corroborated Biong's testimony of being directed to go to the scene of, and investigate the Vizconde massacre after he (Alhambra) received a message from a radio operator of the Parañaque Police Station regarding said incident.

By Decision[15] of February 24, 1997, Branch 258 of the Parañaque RTC convicted Biong of attempted murder with the "aggravating" [sic] circumstances of treachery and evident premeditation. The dispositive portion of the decision reads:

WHEREFORE, the prosecution having been able to prove the guilt of the accused beyond reasonable doubt, accused GERARDO BIONG is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of PRISION CORRECCIONAL as minimum to nine (9) years, six (6) months and twenty (20) days of PRISION MAYOR as maximum and to pay the costs of suit.

SO ORDERED.[16]

In so deciding, the trial court found that Cayubit's testimony was "clear, convincing, categorical, consistent and frank," and that his "affirmative testimony is much stronger" than Biong's denial-negative testimony. Thus it observed:

Culled from the private complainant vis-à-vis that of the accused and his witness, the Court after a careful evaluation and analysis of the parties assertions and averments is of the honest opinion and belief and so holds that the prosecution was able to prove beyond reasonable doubt that the accused is guilty of attempted murder as charged in the Information.

x x x x

In this case, the testimony of the private complainant was made in a clear, convincing, categorical, consistent and frank manner. He positively identified the accused as the one who twice made an attempt on his life by trying to shoot him, first near the bridge at the coastal road and the second inside the house at BF Homes but twice it was foiled by the timely intervention of Capt. Tible. While the private complainant does not know why the accused wanted to kill him, motive need no longer be proven as the accused was positively identified (People v. Paragua, 326 Phil. 923 (1996))

x x x x

Taken all together, the defense of the accused regarding the charge against him is that of denial. That he does not know the accused except when he was jailed sometime in 1988 and even extended him a favor while detained. Well-settled is the rule that denial, like alibi is very easy to concoct but hard to prove. Moreover, denial is a self-serving negative defense that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters (People v. Salison, Jr., 253 SCRA 768). Furthermore, an affirmative testimony is much stronger than a negative testimony, hence, a mere denial is insufficient. There should be corroboration. In this, the defense failed as the testimony of SPO1 Alhambra did not in any way help the accused but instead destroyed his credibility.[17] (Emphasis and underscoring supplied)

In fine, the trial court found Cayubit to be a credible witness and his testimony credible.

On appeal to the Court of Appeals, Biong ascribed to the trial court the following errors:

A

. . . IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF LONE PROSECUTION WITNESS EVEN IF THE TESTIMONY IS RIDDLED WITH MATERIAL INCONSISTENCIES AND SUBSTANTIAL CONTRADICTIONS.

B

. . . IN HOLDING [THAT] THE TESTIMONY OF THE PROSECUTION'S LONE WITNESS, BEING AN AFFIRMATIVE TESTIMONY, IS MUCH STRONGER THAN THE APPELLANT'S NEGATIVE TESTIMONY.

C

. . . IN CONVICTING THE APPELLANT OF ATTEMPTED MURDER NOTWITHSTANDING THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT. [18] (Underscoring supplied)

The Court of Appeals found all assigned errors bereft of merit.

The appellate court found that no inconsistencies are extant from the evidence on record.

On Cayubit's credibility, the appellate court recalled the repeated ruling of this Court that the "trial court's findings with respect thereto are generally not disturbed on appeal."

On Biong's claim that his refusal to turn state witness in the Vizconde case earned the ire of the NBI, the appellate court branded it as a bare accusation, and finding no showing of improper motive on the part of Cayubit, it held that his testimony "is worthy of full faith and credence." Thus it held:

Said bare accusation, however, was not substantiated. It is worth noting that private complainant himself refused to testify in the said Vizconde case. Moreover, it escapes Us why private complainant will file the present case against the accused-appellant just because the latter refused to turn state witness in the Vizconde case. Hence, since there is no evidence to show any improper motive on the part of complaining witness Cayubit to testify against the accused or to falsely implicate him in the commission of the case, the logical conclusion is that the testimony is worthy of full faith and credence. (People vs. Malabago, 271 SCRA 464) [19] (Underscoring supplied)

By Decision[20] of March 11, 1999, the appellate court thus affirmed that of the trial court.

His Motion for Reconsideration having been denied, Biong filed the present Petition for Review,[21] faulting the appellate court as follows:

- . . . IN NOT HOLDING THAT UNDER THE FACTS OF THE CASE PETITIONER COULD ONLY BE HELD LIABLE FOR THE CRIME OF LIGHT THREATS.

- . . . IN AFFIRMING THE DECISION OF THE LOWER COURT DECLARING THE PETITIONER GUILTY OF MURDER AT THE ATTEMPTED STAGE OF EXECUTION.

- . . . IN APPRECIATING THE QUALIFYING CIRCUMSTANCES OF EVIDENT PREMEDITATION AND TREACHERY.

- . . . IN GIVING FULL FAITH AND CREDENCE TO THE UNCORROBORATED TESTIMONY OF THE LONE PROSECUTION WITNESS AS BASIS FOR THE CONVICTION OF PETITIONER WHEN SUCH EVIDENCE IS INSUFFICIENT TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

- . . . IN NOT GIVING CREDENCE TO THE TESTIMONY OF THE PETITIONER AND HIS CORROBORATING WITNESS.[22] (Underscoring supplied)

Without passing on whether the acts for which petitioner was charged constitute attempted murder, or light threats (in which case it had prescribed when Cayubit filed the complaint), this Court finds that on the basis of credibility of witness and of testimony, the case for the prosecution fails.

For, for evidence to be worthy of credit, it must not only proceed from a credible source; it must, in addition, be credible in itself — in conformity to knowledge, observation, and experience of ordinary men.

The findings of a trial court are no doubt generally not disturbed on appeal with respect to credibility of witnesses. The same does not hold true, however, with respect to credibility of testimony.

In assailing Cayubit's testimony, Biong proffers:

[T]he private complainant testified that after the petitioner attempted to kill him at a bridge along Coastal road, the petitioner met with five persons at D&L Disco Pub. Then the petitioner wrapped the private complainant's head with a jacket. Thereafter, the petitioner, ever intent on eating his balut, did not pay any more attention on the private complainant — not even when the private complainant removed the jacket that the petitioner wrapped around his head. If these were true, and if it were true that Tible and Alcantara were on the private complainant's side, the private complainant could have easily escaped at that time. But he did not. [23]

x x x x

The private complainant's testimony to the effect that he considered Tible and Alcantara to be his "kakampi" presumably because they rescued him from the clutches of death at the hands of the petitioner is equally incredible and contrary to reason and human nature. By his own admission, Tible and Alcantara were with the petitioner when they picked up the private complainant at the tricycle terminal in Valley 2, Sucat, Parañaque on June 30, 1991. (TSN, April 18, 1996, pp. 5-9).[24] Tible and Alcantara were also with the petitioner in the course of the drive to the coastal road where the first attempt on the witness' life allegedly took place. (TSN, April 18, 1996, pp. 9-11)[25] And they were also with the petitioner when the witness was taken to the Vizconde residence and allegedly instructed to clutch a knife beside three (3) dead persons (TSN, June 18, 1996, p. 34),[26] whereupon another attempt was allegedly made by the petitioner to kill him. From all indications, and assuming but without conceding these aspects of the private complainant's testimony to be true, Tible and Alcantara were principals by direct participation in the design to frame up the private complainant as the fall guy in the Vizconde massacre. The private complainant's testimony falls into pieces and fails to inspire belief and credence.[27] (Underscoring supplied)

x x x x

Biong thus poses as follows:

Should you believe Cayubit who on April 18, 1996 testified that he could not inquire from Biong why he was forced to board the jeep because Biong always hurt him whenever he would speak, but who, on June 18, 1996, upon questioning by the lower court, testified that Biong assured him that he had nothing to be afraid of? Cayubit further testified that he was not even cursed on that occasion contrary to his earlier testimony that Biong would always hurt him whenever he spoke x x x[28] (Emphasis and underscoring supplied)

This Court notes that Cayubit's account at the witness stand — that they stopped at the Coastal Road whereupon Biong removed Cayubit's handcuffs, let him alight from the jeep, and attempted to shoot him but was restrained by Tible and Alcantara — was glaringly not part of Cayubit's original detailed tale in his Sinumpaang Salaysay. With such novel claim made at the witness stand, it can be assumed that after Biong was restrained in his attempt along the Coastal Road to shoot Cayubit, the latter was not handcuffed. It is surprising that with his hands already free on their way to the BF Homes Subdivision, Cayubit did not, while they stopped at the pub, escape. Did he not claim that Tible and Alcantara were his "kakampi"?

In the same vein, in light of Cayubit's claim that after they left the premises of the pub, Biong wrapped his head again with a jacket, it is improbable for him to remove the same considering that Biong was seated beside him. Cayubit could not, therefore, have known to what direction they were going.

By his account, Cayubit fled the Vizconde residence by running. How could the naked Cayubit have been able to escape? And given his unclothed state, how could he have fled without arousing the suspicion of passersby?

Why would Biong, while inside the jeep, ask Cayubit to strip off his clothes and underwear (to lend credence to the theory that he committed rape?) when a person in such unclothed state inside an open jeep would certainly catch attention? Could not Biong have waited until they reached the Vizconde residence as after all what seemed to be the plan was to make it appear that he was the killer-rapist or one of the malefactors in the Vizconde massacre who was caught in flagrante, hence, killed on the spot? And that renders incredible too the alleged attempt of Biong to kill Cayubit at the Coastal Road.

It is, in light of these nagging questions, that this Court finds misplaced the application by the lower courts of the doctrine that affirmative testimony is stronger than negative testimony.

On top of his testimony failing the test of credibility, it not being in conformity to knowledge, observation and experience of ordinary men, Cayubit's credibility as a witness leaves much to be desired. For he had a tendency to

evade and contradict statements he had earlier made, as a sampling thereof from the following transcript of his testimony on June 4, 1996 reflects:

[COURT]

Q:

While you were on board . . . the vehicle together with Alcantara and Tible, d[id] you have any occasion to ask them why Biong got you and wanted to shoot you?

[CAYUBIT]

A:

I asked, your honor.

Q:

And what was their reply?

A:

They told me that this is the job of Biong and they were not informed about it and they do not know what he would do it to me, your honor. [sic].

Q:

So, you never knew the motive of Biong why he wanted to kill you?

A:

Yes, your honor.

Q:

Until now?

A.

Yes, your honor, I do not know.

COURT: Proceed.

[ATTY. AGCAOILI,

counsel for petitioner]: Q: In paragraph 15 of your sworn statement you mentioned in December of 1991 that you were investigated by the National Bureau of Investigation in connection with the Vizconde Massacre. Now, I am showing to you a sworn statement, please go over paragraph 15 and tell me if that statement is accurate to your recollection?

A:

"Noong Disyembre 1991 ako ay inimbistigahan at pinagpasapasahan ng pulis at NBI at inimbistigahan tungkol sa "Vizconde massacre", ako ay pinatungan ng kasong pagnanakaw. (robbery)"

Q:

Alright, in answer to the question of the Good Presiding Judge, you said that you still don't know up to this day the motive of Biong in allegedly attempting to kill you? Now, my question is, do you think this alleged attempt on your life has to do with the Vizconde Massacre ?

A:

It has something to do with the Vizconde Massacre, sir.

Q:

In your knowledge and belief and perception, has this attempt on your life or alleged attempt on your life have to do with the Vizconde Massacre?

A:

I learned about the connection when Tible and Alcantara visited me at the National Bureau of Investigation, sir.

[COURT]

Q:

When was this when they visited you?

A:

December 29, 1991, your honor.

Q:

Proceed.

[ATTY. AGCAOILI]:

Q:

So, in other words, as earlier [sic] of December 29, 1991, you knew Biong's motive for allegedly attempting to kill you was related to the Vizconde Massacre is that not correct?

A:

When I was already arrested, sir.

x x x x

Q:

So, Mr. Witness, the statement you made earlier to the Good Presiding Judge is that, you do not know up to this day the motive of Biong for allegedly attempting to murder you is not entirely accurate?

A:

I do not just easily believe. What I know is that the day before I knew his motive, sir.

Q:

Is that the best answer you ca[n] give to explain the apparent inconsistency of your testimony, Mr. Witness?

A:

Yes, sir. [29](Emphasis and underscoring supplied)

In fine, Cayubit's demonstrated disposition and tendency to give evasive and contradictory statements dents his integrity as a witness.

In another vein, the delay of more than four years in reporting the alleged murder attempt against Cayubit casts serious doubts on the truth of the accusation.

By Cayubit's explanation, he did not complain earlier as, from June 30, 1991 up to December 6, 1991 (when he was arrested by the NBI in connection with the Vizconde massacre), he was a fugitive from justice on account of the homicide case^[30] for which he was eventually convicted. And by his account, he was also afraid that he would get caught, he having learned from the television in August 1991 that he was being implicated in the Vizconde massacre, drawing him to even use the alias name of "Dennis Anemo[s]."^[31]

When asked, however, why he did not file a case against Biong, Tible and Alcantara despite his access to a lawyer after his arrest on December 6, 1991, Cayubit replied that, with respect to Tible and Alcantara, he had no intention to file a case against them for as long as they were alive, he having used to run errands for Tible and thereby earned his living. Parenthetically, given his information that he benefited from Tible's help, it is odd that Cayubit does not even know Tible's first name. With respect to Biong, however, Cayubit could not proffer a satisfactory explanation.

This Court notes that the trial court and the Court of Appeals relied on *People v. Salison, Jr.*^[32] and *People v. Dela Torre*,^[33] respectively,^[34] in holding that the defense of denial is very easy to concoct and hard to prove and cannot prevail over positive identification. The guilt beyond reasonable doubt of the accused must be proven, however, on the strength of the evidence of the prosecution, and not on the weakness of the evidence of the defense.

Under our laws, the onus probandi in establishing the guilt of an accused for a criminal offense lies with the prosecution. The burden must be discharged by it on the strength of its own evidence and not on the weakness of the evidence of the defense or lack of it. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence.^[35] (Underscoring supplied)

The prosecution failed, however, to discharge the onus of proving beyond reasonable doubt the guilt of Biong. The weakness of Biong's device, vis-a-vis the incredible, unreliable evidence for the prosecution, thus assumes importance and acquires commensurate strength. To view it otherwise would spawn an absurd situation where the accused is in a more difficult situation where the prosecution evidence is weak than where it is strong.^[36] Biong's acquittal is thus in order.

WHEREFORE, the petition is GRANTED. Accused-petitioner Gerardo Biong is, for failure of the prosecution to prove his guilt beyond reasonable doubt, accordingly ACQUITTED of the crime charged. Let the bail bond posted for his provisional liberty be CANCELLED.

SO ORDERED.

Quisimbing (Chairperson) and Tinga, JJ., concur
Carpio, J., no part. He was a witness in the Vizconde case.
Velasco, Jr., J., no part.

[1]Records, pp. 5-9.[2] Id. at 5-6 & 9.

[3] Id. at 1.

[4] TSN, April 18, 1996, p. 56; Records, p. 102.

[5] Id. at 10-11; Id. at 57-58.

- [6] Id. at 58; Id. at 104.
- [7] Id. at 59; Id. at 105.
- [8] Id. at 35; Id. at 82.
- [9] Id. at 38-39; Id. at 6, 85-86.
- [10] TSN, June, 1996, pp. 16-19; Records, pp. 274-278.
- [11] TSN, July 16, 1996, pp. 10-19; Id at 712-721.
- [12] A son of former Senator Freddie Webb, Hubert Jeffry P. Webb, had been indicted and found guilty in the Vizconde Massacre case. The case is presently on appeal.
- [13] TSN, July 16, 1996, p. 42; Records, p. 744.[14] Id. at 49-52; Id at 751-754.
- [15] Records, pp. 1359-1365.
- [16] Id. at 1365.
- [17] Id. at 1363-1364.
- [18] CA rollo, pp. 74-75.
- [19] Id. at 147-148.
- [20] Penned by Court of Appeals Associate Justice Presbitero J. Velasco, with the concurrence of Court of Appeals Associate Justices Consuelo Ynares-Santiago and B.A. Adefuin De La Cruz, id. at 141-156.
- [21] Rollo, pp. 7-46.
- [22] Id. at 16-17.
- [23] Id. at 33.
- [24] Records, pp. 52-56.
- [25] Id, at 56-58.
- [26] Id. at 650.
- [27] Rollo, pp. 36-37.
- [28] Id. at 151 (emphasis in the original); Vide records, pp. 57, 595-596; TSN, April 18, 1991, p. 10; June 18, 1991, pp. 17-18.
- [29] TSN, June 4, 1976, pp. 18-26; Records, pp. 276-284.
- [30] TSN, April 18, 1996, pp. 71-76; Records, pp. 117-122.
- [31] Id. at 63; Id at 109.
- [32] 324 Phil. 131, 144 (1996).
- [34] Records, p. 1364; CA rollo, p. 152.
- [35] People v. Villanueva, 427 Phil. 102, 128 (2002).
- [36] People v. Dilao, L-43259, Oct. 23, 1980, 100 SCRA 358, 394; People v. Fraga, 109 Phil. 241, 250 (1960).

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