

LENIDO LUMANOG AND AUGUSTO SANTOS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 182555. February 08, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This resolves the motions for reconsideration separately filed by Lenido Lumanog and Augusto Santos, Cesar Fortuna and Rameses de Jesus assailing our Decision dated September 7, 2010 convicting them of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the consolidated petitions and appeal are hereby DISMISSED. The Decision dated April 1, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00667 is hereby AFFIRMED with MODIFICATIONS in that the civil indemnity for the death of Col. Rolando N. Abadilla is hereby increased to P75,000.00, and the amounts of moral and exemplary damages awarded to his heirs are reduced to P75,000.00 and P30,000.00, respectively.

With costs against the accused-appellants. SO ORDERED.[1]

Lumanog and Augusto Santos seek the reversal of their conviction on the following grounds:

The Honorable Supreme Court erred in:

- Setting out in the facts of the case and the contents of inadmissible extrajudicial confessions;
- Not including the extrajudicial confession of Lorenzo delos Santos as excluded evidence;
- Applying the ruling in *People v. Rivera* "that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court";
- According finality to the evaluation made by the lower court of the testimony of Freddie Alejo;
- Ruling that there was positive identification;
- Finding "none of the danger signals enumerated by Patrick M. Wall" when 3, 7, 10, 11, 12 in said enumeration are present;
- Dismissing the mismatch between the prior description given by the witness and the actual appearances of the accused;
- Relying on the ocular inspection conducted at a time when a material condition is significantly altered;
- Ruling that the inconsistencies in Alejo's earlier statement and his in-court testimony have been explained;
- Not discrediting Alejo's testimony despite acceptance of benefits from the Abadilla family;
- Holding that the acquittal of Lorenzo delos Santos does not necessarily benefit the appellants;

- Ruling that the ballistic and fingerprint examination results are inconclusive and not indispensable;
- Not considering the totality of evidence presented by the defense as against the alleged "positive identification" of the accused.
- Allowing Justice Jose Catral Mendoza to take part in the deliberation and the voting;
- Dismissing the evidence presented by Augusto Santos;
- Ruling that the silence of accused Lumanog amounts to a quasi- confession;
- Holding that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive.[2]

Rameses de Jesus raised the following grounds in his motion:

I.

THE HONORABLE SUPREME COURT GRAVELY ERRED IN HEAVILY RELYING ON THE LONE ALLEGED EYEWITNESS SECURITY GUARD (SG) FREDDIE ALEJO'S TESTIMONY, WHICH WAS CHARACTERIZED BY MATERIAL OMISSIONS, PATENT INCREDIBILITY, CONTRADICTIONS AND DISCREPANCIES.

II.

THE HONORABLE SUPREME COURT GROSSLY MISAPPRECIATED THE FIRST SWORN STATEMENT GIVEN BY SG FREDDIE ALEJO, WHEREIN HE STATED THAT THERE WERE FOUR (4) SUSPECTS WHO PERPETRATED THE CRIME CONTRARY TO HIS SUBSEQUENT TESTIMONY IN OPEN COURT.

III.

THE HONORABLE SUPREME COURT FAILED TO APPRECIATE THE PERSONAL CIRCUMSTANCES OF THE ACCUSED-APPELLANTS, WHICH WOULD SHOW AS HIGHLY UNLIKELY THEIR ALLEGED COLLECTIVE GUILT AND CONSPIRACY.

IV.

THE HONORABLE SUPREME COURT FAILED TO GIVE WEIGHT TO PHYSICAL EVIDENCE, PARTICULARLY THE EXCULPATORY BALLISTICS AND DACTYLOSCOPY EVIDENCE, AND EXPERT TESTIMONY PRESENTED BY THE DEFENSE.[3]

On his part, Cesar Fortuna argues that:

THE LONE, CONTRADICTED AND INCREDIBLE TESTIMONY OF S/G ALEJO IS NOT SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT[4]

At the inception, let it be emphasized that the filing of a motion for reconsideration does not impose on us the obligation to discuss and rule again on the grounds relied upon by the movant which are mere reiteration of the issues previously raised and thoroughly determined and evaluated in our Decision being questioned.[5] In particular, the Court need not dwell again on the extrajudicial confessions of Joel de Jesus and Lorenzo delos Santos which we have held inadmissible, the delay in the resolution of the appeals before the CA and this Court which under the circumstances cannot be deemed unreasonable or arbitrary, the inconclusive ballistic and fingerprint examination results, and the effect of Lorenzo delos Santos' acquittal to the rest of appellants. These matters have been passed upon and adequately discussed in our Decision.

In fine, the accused-movants strongly assail the weight and credence accorded to the identification of the accused by the lone eyewitness presented by the prosecution, security guard Freddie Alejo. It was pointed out, among others, that: (1) in his statement given to the police investigators immediately after the incident, Alejo mentioned only four suspects, contrary to his subsequent testimony in court; it was impossible for him not to mention the two men he had seen walking back and forth before the shooting; (2) Alejo accepted financial support and benefits from the Abadilla family which could have colored his testimony against the accused; (3) his in-court identification of the six accused is questionable and unreliable considering that it referred to them only by numbers and he had given prior description of only two suspects; and (4) the ocular inspection conducted by the trial court to confirm Alejo's observations was likewise unreliable because it was made at a time when a material condition is significantly altered, i.e., it was held from 10:00 a.m. onwards whereas the incident occurred between 8:30 and 9:00 a.m. when the glare of the morning sun directly hits the guard post where Alejo was stationed.

Fortuna submitted an Affidavit dated November 12, 2009 executed by a certain Orencio G. Jurado, Jr. who claims to be one of the police officers initially assigned to investigate the case. Fortuna contends that said belated statement would certainly cast doubt on the procedures undertaken by the police authorities in the apprehension of the likely perpetrators.

We find the motions bereft of merit.

While it is true that Alejo mentioned only four and not six suspects in his June 13, 1996 sworn statement, this did not impair his testimony as an eyewitness. Alejo was simply responding to specific questions as to what he had witnessed during the shooting incident. Herein quoted is an excerpt from the questioning by SPO1 Edilberto S. Nicanor of the Criminal Investigation Division (CID) at Camp Karingal (PNP-NCR) and Alejo's answers thereto:

08.

T -

Habang ikaw ay naka-duty bilang guwardiya sa 211 Katipunan Road, Quezon City, itong araw na ito, may napansin ka bang hindi pangkaraniwang pangyayari?

S -

Mayroon, Sir.

09.

T-

Anoiyon?

S -

May binaril na sakay ng kotse sa harap ng puwesto ko sir.

10.

T -

Anong oras ito nangyari?

S -

8:40 ng umaga kanina sir, more or less (13 June 1996)

11.

Tanong :

Sino ba itong binaril na tinutukoy mo, kung kilala mo?

Sagot :

Isang hindi ko kilala na lalaki sir.

12.

T -

Sino naman ang bumaril sa biktima na ito, kung kilala mo?

x x x x [6] (Emphasis supplied.)

The foregoing shows that Alejo merely gave the responsive answer to the question as to those persons whom he saw actually shoot the victim who was in his car. As the question was phrased, Alejo was not being asked about the persons who had participation or involvement in the crime, but only those who actually fired at the victim. Hence, he replied that there were four (4) armed men who suddenly fired shots at the victim. What followed was Alejo's narration of what the gunmen further did to the already wounded victim, to those people within the vicinity — including himself who was ordered at gunpoint to lie down and not interfere — and until the firing stopped as the suspects ran away. Clearly, it was not a fatal omission on the part of Alejo not to include in his first affidavit the two other suspects who were acting as lookouts. During his testimony in court, Alejo was able to fully recount the details and state that there were two men walking back and forth before the shooting. It is settled that contradictions between the contents of an affiant's affidavit and his testimony in the witness stand do not always militate against the witness' credibility. This is so because affidavits, which are usually taken ex parte, are often incomplete and inaccurate.[7]

There is likewise nothing irregular in Alejo's manner of testifying in court, initially referring to the accused by numbers, to indicate their relative positions as he remembered them, and the individual participation of each in the violent ambush of Abadilla. As already explained in our decision, Alejo's elevated position from the guardhouse gave him such a clear and unobstructed view of the incident that he was able to recognize the faces and physical features of the accused at the time. When two of the accused actually poked a gun at him, it gave him more opportunity to see the faces of the accused who had briefly turned their eyes on him. Furthermore, experience dictates, precisely because of the unusual acts of violence committed right before witnesses' eyes, that they remember with a high degree of reliability the identity of criminals.[8] Indeed, Alejos' recollection is not of "superhuman" level as accused now make it appear, considering that he was a trained security guard, whose job demands extra perceptiveness and vigilance at all times especially during emergency or critical situations. Keen scrutiny of the physical appearance and behavior of persons is a routine part of a security guard's work duties.

Movants likewise fault this Court for giving considerable weight to the observations made by the trial judge during the ocular inspection, arguing that the timing of said ocular inspection did not coincide with the precise hour in the morning when the shooting incident happened. Because the shooting took place between 8:30 to 9:00 when the glare of the morning sun directly hits the guard post of Alejo, the latter supposedly cannot be said to have had such clear vantage point as found by the trial judge when he positioned himself at the said guard post at a later time, which is already past 10:00 in the morning.

We are not persuaded.

Movants are raising the issue for the first time before this Court and long after trial and rendition of judgment. We have perused the transcript of stenographic notes taken during the ocular inspection conducted by the trial court on September 26, 1996, and found no objection or comment made by the defense counsel regarding the timing of the inspection and its relevance to the evaluation of Alejo's testimony. Neither did the accused complain of any irregularity in the conduct of the said ocular inspection before the appellate court. If indeed, the accused found the timing of the ocular inspection crucial to their defense that Alejo was not really an eyewitness as he could not have clearly seen the faces of all the accused from his guard post, they could have made a proper manifestation or objection before the trial judge. They could have even staged a reenactment to demonstrate to the trial court the alleged glare of the morning sun at the time of the commission of the crime, which could have affected Alejo's perception of the incident. But they did not. It is now too late in the day for the accused to assail as irregular the ocular inspection which was done with the conformity and in the presence of their counsel.

It is an admitted fact that Alejo and his family were sheltered and given financial support by the victim's family, presumably out of gratitude and sympathy considering that Alejo lost his job after the incident. Such benevolence of the Abadilla family, however, is not sufficient basis for the conclusion that Alejo would falsely accuse movants as the perpetrators of the crime. As we have stressed, Alejo did not waver in his identification of the accused despite a grueling cross-examination by the defense lawyers. Both the trial and appellate courts found Alejo's testimony as credible, categorical and straightforward. After a painstaking review of the records, we find no cogent reason to deviate from their findings on the issue of credibility of the prosecution's lone eyewitness.

As to the affidavit of Orencio G. Jurado, Jr. submitted by Fortuna, the said affiant claimed that he had a heated argument with Inspector Roger Castillo during one of the hearings before the trial court because Inspector Castillo was urging him (Jurado) "to confirm that those arrested by the joint team of CID and PARAK-DILG were exactly the same people/suspects described by the guards to which [he] firmly declined". Jurado alleged that he was surprised to see the faces of the suspects flashed on TV several days after Herbas and Alejo gave their statements at Camp Karingal because they did not fit the description given by witnesses Herbas and Alejo. Jurado was also allegedly prevented earlier by an unidentified policeman — as per instruction of then DILG Secretary Robert Barbers — from interviewing the suspects arrested by the operatives of the CID and PARAK-DILG.[9]

Evidently, Fortuna seeks the introduction of additional evidence to support the defense argument that there was no positive identification of Abadilla's killers. To justify a new trial or setting aside of the judgment of conviction on the basis of such evidence, it must be shown that the evidence was "newly discovered" pursuant to Section 2,[10] Rule 121 of the Revised Rules of Criminal Procedure, as amended.

Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below.[11] Movant failed to show that the defense exerted efforts during the trial to secure testimonies from police officers like Jurado, or other persons involved in the investigation, who questioned or objected to the apprehension of the accused in this case. Hence, the belatedly executed affidavit of Jurado does not qualify as newly discovered evidence that will justify re-opening of the trial and/or vacating the judgment. In any case, we have ruled that whatever flaw that may have initially attended the out-of-court identification of the accused, the same was cured when all the accused-appellants were positively identified by the prosecution eyewitness during the trial.

Finally, we must make it clear that Justice Jose Catral Mendoza, who, as then presiding judge at the trial court, heard the prosecution and defense witnesses, never took part in the deliberations and voting by the Court in this case. The absence of notation in the ponencia that Justice Mendoza had "no part" in the deliberations and voting in this case was purely an oversight and inadvertent omission. The Clerk of Court, Atty. Enriqueta Esguerra-Vidal, had already rectified such error in the Revised Page 75 of our Decision dated September 7, 2010.

IN VIEW OF THE FOREGOING, the motions for reconsideration filed by Lenido Lumanog and Augusto Santos, Rameses de Jesus and Cesar Fortuna are hereby DENIED WITH FINALITY.

Let entry of judgment be made in due course.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., and Perez, JJ., concur.

Carpio, J., see dissenting opinion.

Carpio Morales, J., I maintain my vote in the original decision, hence, I dissent.

Mendoza, and Nachura, JJ., no part.

Abad, J., see my dissenting opinion.

Sereno, J., I maintain my dissent.

[1] Rollo (G.R. No. 182555), pp. 870-871.

[2] Id. at 979-980.

[3] Id. at 937.

[4] Id. at 1023.

[5] *People v. Larranaga*, G.R. Nos. 138874-75, July 21, 2005, 463 SCRA 652, 659, citing *Ortigas and Company Limited Partnership v. Velasco*, G.R. Nos. 109645 and U2564, March 4, 1996, 254 SCRA 234.

[6] Folder of Exhibits, pp. 26-27.

[7] *Resayo v. People*, G.R. No. 154502, April 27, 2007, 522 SCRA 391, 402-403, citing *People v. Quillosa*, 382 Phil. 638, 647 (2000), *People v. Bermudez*, G.R. No. 129033, June 25, 1999, 309 SCRA 124, 136, *People v. Tanihon*, 354 Phil. 1015, 1026 (1998).

[8] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 228, citing *People v. Foncardas*, 466 Phil. 992, 1006 (2004).

[9] Rollo (G.R. No. 182555), p. 1035.

[10] SEC. 2. Grounds for a new trial. -- The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

[11] *United States v. Palanca*, 5 Phil. 269, 271 (1905).

DISSENTING OPINION

CARPIO, J.:

I reiterate my dissent.

The prosecution in this case gravely failed to discharge its burden of proof of guilt beyond reasonable doubt. Specifically, the prosecution unsuccessfully established the identity of the perpetrators of the crime beyond reasonable doubt. Lamentably, the majority believes otherwise. The majority relies on the highly questionable identification made by the lone eyewitness, Freddie Alejo (Alejo), in convicting the five accused for the murder of Philippine Constabulary Colonel Rolando N. Abadilla (Abadilla). The majority dismally failed to exercise caution in relying on Alejo's identification, contrary to what the Court emphasized in *People v. Rodrigo*,^[1] thus:

The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused. (Emphasis supplied)

As I earlier pointed out, danger signals abound in Alejo's in-court identification, rendering such identification seriously doubtful. These warnings include (1) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (2) there was a limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime.

According to Alejo, not one, not two, but six men perpetrated the crime. He saw these six male adults, all complete strangers, for the very first time in a matter of seconds. It is quite unbelievable that Alejo, whose life was threatened by at least one of the suspects, focused his attention on all six suspects, looked at them at the same time, and memorized their faces and features in a very fleeting and extremely stressful moment. In fact, in his sworn statement given before the police investigators, Alejo was able to describe only two suspects. He failed to give any description of the other killers. This highlights Alejo's weak recollection of the crime and its perpetrators even if he is a security guard who is expected to be extra perceptive and vigilant.

If Alejo indeed perfectly memorized the physical appearance of the killers, which the majority believes, nothing stopped him from describing the rest of the suspects when asked by the police investigators "Ano ba ang itsura ng mga suspect?" Alejo could have readily described the other suspects, which description would have strengthened his subsequent in-court identification of the accused, if indeed they were the suspects Alejo saw murdering Abadilla. However, to repeat, Alejo was able to describe only two suspects, whose remarkable features bore no resemblance with the accused's.

Notwithstanding, during the trial, Alejo easily identified the six accused as Abadilla's murderers. It must be emphasized that prior to his in-court identification, Alejo had surely seen the faces of the accused in newspapers and television, facilitating his identification of the accused during the trial. As I have previously stressed, Alejo would not have been able to identify the accused in court without the pictures of the accused that were taken by the media. The media exposure of the accused casts serious doubts on the integrity of Alejo's testimony on the identification of the murderers.

Further, Alejo's in-court identification of the accused Joel de Jesus proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. As a consequence, Alejo's testimony based on such fatally defective identification cannot be considered as proof beyond reasonable doubt of the identity of

the perpetrators, warranting Joel's acquittal.

As regards Lumanog, Fortuna, Santos and Rameses, it was Joel, through a coerced confession, who supplied the police investigators with the identities of his supposed cohorts and their whereabouts. The police did not possess any description or prior identification of these accused. To repeat, Joel provided the police, through a coerced confession, with the identities of his supposed co-conspirators and where they could be found.

The inadmissibility of Joel's extrajudicial confession renders its contents, specifically the identity of the supposed killers, unreliable and inadmissible as well. Hence, Alejo's in-court identification of the accused must not be given any weight for to do so is to admit and give probative value to the coerced confession of Joel.

At this juncture, I reemphasize the serious violations committed by the police authorities of accused's constitutional rights. The highly suggestive photographic identification of Joel made by Alejo violated Joel's due process rights under Sections I and 14(1), Article III of the Constitution. Meanwhile, the failure of the police to provide Joel with the assistance of counsel during the police line-up, regarded as a part of custodial investigation, violated Section 12(1), Article III of the Constitution. Moreover, torturing Joel to admit his participation in the crime and to provide the identities of his supposed co-conspirators violated his right under Section 12(2), Article III of the Constitution. Also, the police arrested the accused without warrant contrary to Section 2, Article III of the Constitution.

The police's blatant infringement of the accused's constitutional rights and the seriously flawed identification of the accused as the perpetrators of the crime generate sufficient reason to doubt the accused's guilt for the crime charged. Contrary to the majority's view, the prosecution miserably failed to establish the accused's guilt beyond reasonable doubt. The accused are therefore entitled to an acquittal.

ACCORDINGLY, I vote to GRANT the motions for reconsideration.

[1] G.R. No. 176159, 11 September 2008, 564 SCRA 584, 597.

DISSENTING OPINION

ABAD, J.:

Upon reading the ponencia of Mr. Justice Martin S. Villarama Jr, serious doubts continue to linger on the credibility of the prosecution's sole witness, Freddie Alejo. Still, I find myself unable to sustain the conviction of all the accused.

The Court should not have swallowed Alejo's testimony hook, line and sinker considering that the ponencia acknowledged that Alejo received some economic benefit from the Abadilla Family. While it can not be disputed that Alejo was present in the scene of the incident on June 13, 1996, however, the receipt of any form of economic benefit transformed him to a partial and bias witness since he has something to gain or lose depending upon his testimony. A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[1] The unbiased mind is also susceptible and can succumb to the pressures brought about by life's realities. There is reason, therefore, to doubt the testimony of Alejo from the very beginning.

Contrary to the ponencia's findings, Alejo's acceptance of these benefits severely tainted his credibility and neither the finding that he did not waiver in his identification of the accused despite rigorous cross-examinations nor the

reliance given by the trial court and CA on his testimony will overshadow the fact that he is a biased witness for the prosecution.

It is also unfair how the ponencia credited the inexplicable clarity of the identification of the accused by Alejo to his training as a security guard, but did not consider the very same training when he failed to notice and take action on the two men walking to and fro the establishment from more than an hour, among others. Selective consideration of Alejo's training as a security guard to the sequence of events that transpired that day can only invite suspicions as to his credibility.

Evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind. Here, not only is Alejo a biased witness, but also his testimony, in itself, shows earmarks of falsehood as shown in the earlier dissenting opinions.³

Since the prosecution failed to show any credible evidence to implicate all the accused to the murder of Colonel Abadilla, the constitutional presumption of innocence will entitle them to an acquittal regardless of the weakness or strength of their defense.

WHEREFORE, I vote to GRANT the motion for reconsideration and acquit all the accused.

[1] *People v. Vergara*, G.R. No. 186119, October 29, 2009.

[2] *Zapatus v. People of the Philippines*, G.R. Nos. 147814-15, September 16, 2003.

[3] See Dissenting Opinions of Mr. Justice Antonio T. Carpio and Mr. Justice Roberto A. Abad in G.R. Nos. 182555, 185123 and 187745, *Lumanog v. People*, September 7, 2010.

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