

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO MAGBANUA Y PRECINILLO, BEN SANTAMINA Y SANGULLA
AND ERNESTO PINGGO Y GUIALA, ACCUSED-APPELLANTS.**

G.R. No. 53838. March 15, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

CARLITO MAGBANUA, BEN SANTAMINA and ERNESTO PINGGO were accused of murder in Criminal Case No. 1587 of the defunct Court of First Instance of Zamboanga City. The information against the accused reads:

"That on or about December 11, 1976, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, mutually aiding and assisting one another, taking advantage of the night and of their superior strength to better accomplish their purpose, grab from the possession of CIC BASIRI ASIMUDIN, a member of the 462nd PC Company stationed at PC Detachment in Recodo, this City, the latter's Service Pistol cal. 45 and once the above-named accused had in their possession the aforesaid pistol, with intent to kill, did then and there, wilfully, unlawfully and feloniously, assault, attack and shoot with the same pistol at the person of said Basiri Asimudin, thereby inflicting upon the latter's person mortal wounds which caused his death." (Expediente, p. 1.)

In a short and well-written decision, Judge Abdulwahid A. Bidin, now associate justice of the Intermediate Appellate Court, found the accused guilty as charged and sentenced "each and everyone of them to suffer the penalty of reclusion perpetua, to jointly and solidarily indemnify the heirs of the deceased Basini Asimuddin in the amount of P12,000.00 and to pay the cost." (Idem, p. 95.)

All of the three appealed to this Court. After the case had been submitted for decision, BEN SANTAMINA filed an Urgent Motion to Withdraw Appeal. The motion was granted on February 15, 1984, for which reason only the appeal of MAGBANUA and PINGGO remains to be considered.

The facts, as found by the trial court, are as follows:

"Accused Carlito Magbanua, Ben Santamina and Ernesto Pinggo are fishermen and crew members of the Mizpah IV, a fishing boat which was on dry dock at Recodo, this City, for about five months prior to the incident which gave rise to the filing of the information in the above-entitled case. In the evening of December 11, 1976 at about 7:00 o'clock, the three accused went to the store of Leny Rodriguez at Recodo, this City, and bought a bottle of special brandy which they drank on a bench outside of the store. The store was lighted with a petromax lamp. Later that evening Albert Sala who resides nearby, arrived at the same store. Albert Sala ordered for a bottle of coke which he drank inside the store. Sometime later Basiri Asimuddin, a soldier assigned to the PC Detachment at Recodo, arrived at the store. Basiri Asimuddin asked also for a bottle of coke. Basiri Asimuddin was in civilian clothes and had a .45 cal. pistol tucked to his left waist. While Basiri Asimuddin was standing outside of the store drinking his bottle of coke, accused Carlito Magbanua suddenly

embraced him from behind as accused Ernesto Pinggo held his (Asimuddin's) hands. Then Ernesto Pinggo took the pistol from the left waist of Basiri Asimuddin and gave the pistol to accused Ben Santamina. While Ernesto Pinggo and Carlito Magbanua were holding the hands of Basiri Asimuddin, Ben Santamina fired three shots at Basiri Asimuddin. On the second shot Basiri Asimuddin fell and as he lay on the ground, Ben Santamina fired another shot. Then the three, Ben Santamina, Carlito Magbanua and Ernesto Pinggo, fled towards the bushes with Ben Santamina taking the pistol along with him. Later soldiers from the PC Detachment at Recodo arrived and brought Basiri Asimuddin to the Brent Hospital but Basiri Asimuddin expired before he was operated on, as certified by Dr. Jose Generoso and evidenced by the death certificate issued by him (Exhibit "B"). When examined early the following morning by Dr. Rodolfo Balmoria, a medico legal officer of the Philippine Constabulary at the Funeraria Villa, the deceased Basiri Asimuddin was found to have sustained three gun shot wounds, two of which were entrance wounds while the other was an exit wound, as follows:

'Post mortem Findings:

- '1. Gunshot wound, point of entry, lateral left lumbar region, directed laterally to the right, measuring 0.8 cm x 0.8, 3.5 cm from the anterior midline, contusion collar measuring 0.3 cm posterior, 0.2 cm inferior and superior, 0.1 cm anterior with tattooing or smudging around the gunshot wound of entrance.
- '2. Gunshot wound, point of entry, lateral left iliac region, directed laterally to the right, measuring 0.9 cm x 0.8, 16 cm from the anterior midline, contusion collar measuring 0.3 cm posterior, 0.2 cm inferior and superior, 0.1 cm anterior with tattooing or smudging around the gunshot wound of entrance.
- '3. Gunshot wound of exit, right lumbar region, measuring 1 cm x 1.8, 14 cm from the anterior midline.' (See medico legal necropsy report, Exhibit "A").

Early the following morning, the three accused were picked up and brought first to the PC Detachment and later, to the PC Headquarters at Cawa-Cawa Boulevard where they were interrogated. The three accused denied participation in the killing of Basiri Asimuddin. They were then taken to the PC Crime Laboratory where a parafin examination was performed on them by Mrs. Athena Anderson, a forensic chemist of the PC Crime Laboratory, Zamboanga City. The examination showed that the hands of accused Ben Santamina and Carlito Magbanua were found positive for presence of nitrates or gun powder residue while the hands of Ernesto Pinggo yielded negative results, per Exhibit "C". (Idem, pp. 91-92.)

The only issue raised in the trial court and in this appeal is the credibility of witnesses. The prosecution presented three witnesses to the shooting, namely: Rahma Appang, Macrim Lukman and Albert Sala. Leny Rodriguez who owned the store which was patronized by the accused and the deceased had transferred her residence at the time of the trial. Contradicting the said witnesses were the accused themselves. Their version is "that at about 7:00 P.M. of December 11, 1976 they went down from their fishing boat which was then dry docked at Recodo for the past five months to buy lemon for their 'kilawin', leaving their vessel unguarded. Upon arrival, Ben Santamina went to the store to buy the lemon while Carlito Magbanua and Ernesto Pinggo waited near the road side in front of the store. After Ben Santamina bought the lemon and was returning towards his companions, another man arrived and fired three times at the man who was standing near the store. The man fired at fell. Then the one who fired approached the victim and picked up something from the fallen man and ran away, while they (the three accused) just stood in the place where they were and did not run away nor did they help the fallen man. They do not know who the assailant and victim were." (Idem, pp. 92-93.)

The appellants impugn the credibility of Rahma Appang and Macrim Lukman. They claim that these were unreliable witnesses because they gave contradictory statements about the shooting.

Appang and Lukman did make contradictory statements.

Appang executed an affidavit on December 12, 1976 (Exhibit 1) where she stated that she saw ERNING grab the pistol of ASIMUDDIN and that the former shot the latter four times. However, Appang testified during the trial that it was Ben Santamina who shot Asimuddin.

Lukman also executed an affidavit on December 12, 1976 (Exhibit 4) where he stated that he saw ERNING reach for the gun of ASIMUDDIN and that the former shot the latter three times. However, during the trial Lukman, like Appang, declared that it was Santamina who shot Asimuddin.

We have examined Exhibits 1 and 4 carefully and we note the following:

1. Both affidavits were executed on December 12, 1976.
2. Both affidavits were in the form of question and answer and in both the interrogator was Policeman Rogelio P. Carpio.
3. Both affidavits were taken in the investigating room of the 462nd PC Company.

Except for minor variants the affidavits are strikingly similar in respect of the shooting which leads Us to believe that they were more the handiwork of the interrogator. But this does not mean that the credibility of Appang and Lukman has been impaired. For as the People correctly states:

"The fact that Appang and Lukman contradicted their previous statements does not necessarily imply that their testimony in court cannot be relied upon. The previous statements mentioned were taken ex parte without the benefit of a formal inquiry. This Honorable Court has always been guarded in binding the witness to such statements. These are 'almost always incomplete and often inaccurate, sometimes from partial suggestions and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject.' (People v. Pacala, 58 SCRA 370, 379 citing Moore on Facts, 1094-1095 and People v. Tan, et al. 89 Phil. 337, 341)"

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"It has been held that the mere fact that a witness declares to a certain set of facts and circumstances during a preliminary examination especially where it was not conducted with that degree of impartiality which should characterize such proceedings, and to another set of facts and circumstances upon trial of the case, does not necessarily discredit his testimony nor destroy it, if such contradictions are satisfactorily explained to the court as in the case at bar. (People v. Rocca, 3 SCRA 828; U.S. v. Lazaro, 34 Phil. 871; U.S. v. Briones, 28 Phil. 367; U.S. v. Magtibay, 17 Phil. 417)." (Brief, pp. 4, 6.)

And the contradictions can easily be explained. As stated above, the answers in both exhibits appear to have been suggested by the interrogator but in another situation where a judge was solemnly presiding the true facts emerged.

The decision of the trial court is also assailed on the ground "that it was accused-appellant Ben Santamina who fired the gun simply on the presence of gunpowder (nitrates) found in his person based on the parafin test." (Brief, p. 34.) This contention is erroneous. The trial court based its finding not only on the fact that Santamina was positive for gunpowder burns but also on the positive testimony of witnesses.

The appellants' version of the incident is too crude to be convincing. No person corroborated their story which coincided in many details so that it has all the earmarks of being contrived.

WHEREFORE, the judgment sentencing Carlito Magbanua and Ernesto Pinggo to suffer reclusion perpetua is affirmed but modified in respect of the indemnity which is increased to Thirty Thousand (P30,000.00) Pesos.

Costs against the appellants.

SO ORDERED.

Aquino, Acting C.J., (Acting Chairman), Concepcion, Jr., Guerrero, De Castro and Escolin, JJ., concur.

Makasiar, J., (Chairman), on leave.

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