

FLAVIO DE LEON, GREGORIO DE LEON AND APOLONIO SANTOS, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, AND INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 66020. June 22, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review seeking the reversal of the decision of the Intermediate Appellate Court of Appeals in A.C.-G.R. No. 23524 entitled *Flavio de Leon, et al. v. People* which affirmed the decision of the Court of First Instance of Rizal, Branch XIII convicting the petitioners of the crime of homicide and sentencing them to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum and to indemnify the heirs of the victim.

The facts as established by the trial court and adopted by the Court of Appeals are as follows:

"From the testimony of Dr. Mariano Cueva, Jr., Medico-legal Officer of the NBI, it was established that a post-mortem examination of the body of Benjamin Aguinaldo was conducted and pictures of the cadaver were taken (Exhibit A, A-1 to A-5). As a result of his examination, he found on the body of the deceased nine (9) separate and distinct gunshot wounds, seven (7) of which constituted entrance and exit wounds; and two (2) entrances wherein at the end were bullet tracks, two (2) slugs of which were recovered and these slugs were found to be of .45 caliber bullets (Exhibits C and C-1). (pp. 9--18, tsn, Jan. 9, 1973). Two of the gunshot wounds had entrances at the back of the deceased. There were two (2) fatal wounds, one (1) at the lower lip which fractured the lower jaw and one at the back of the body just below the left shoulder blade which broke a rib, perforated the left lung and heart. The approximate distance of the assailant to the deceased was beyond twenty-four (24) inches since the entrance (sic) of the bullets were clean cut. (pp. 20-30, tsn, Jan. 30, 1973)

"Mariano Mata, Jr., an NBI Agent, substantially testified that he received a sworn complaint from one Teresa Aguinaldo in connection with the death of her husband Benjamin Aguinaldo (Exhibit D). Their office conducted an investigation and in the course thereof, they were able to secure the sworn testimony of three (3) witnesses, namely, Ricardo Reyes y Ancheta; Marcelino Quinto, Jr. y Taylo; and Eduardo Flores y Garcia (pp. 2-48, tsn, Jan. 11, 1973). From these sworn statements, they extracted the following:

"Ricardo Reyes pointed to Flavio de Leon, Gregorio de Leon and Apolonio Santos as three (3) of the five (5) men who had forcibly taken Benjamin Aguinaldo in the evening of March 2, 1970 and that was the last time Aguinaldo was seen alive (Exhibit E). Reyes identified the three (3) accused and was corroborated by Marcelino Quinto, Jr., who saw the three (3) accused with Aguinaldo in a jeep which was then driven by Flavio de Leon (Exhibit G). On the other hand, Eduardo Flores testified that in the evening of March 2, 1970, while inside his house, he heard some commotion outside but was not able to go out to inquire about it as his wife prevented him. The following morning, however, he learned from Isidro Ramos that Benjamin Aguinaldo was manhandled by Flavio de Leon and Gregorio de Leon and others whom he could not identify (Exh. F). A rough sketch was prepared wherein Reyes and Quinto indicated the position of Aguinaldo who was being forcibly taken by five (5) men and the relative position of the jeep driven by Flavio de Leon while in the

vicinity of San Dionisio, Parañaque, Rizal. The corresponding report on the result of the investigation and a letter for the corresponding filing of criminal charges were sent by the NBI to the Provincial Fiscal of Rizal (Exhibits H and I).

"Teresita Aguinaldo, wife of the victim, Benjamin Aguinaldo, testified that on March 2, 1970, her husband, Benjamin, left their residence at Zapote, Bacoar, Cavite, driving a PUJ jeepney owned by Isidro Ramos plying the Bacoar-Cubao route. When Benjamin Aguinaldo failed to return that night, she made inquiries the following morning as to the whereabouts of her husband. She went to the house of Ricardo Reyes at Pulang Lupa, Las Piñas, Parañaque. She was advised to ask Isidro Ramos to accompany her to Flavio de Leon to find out where Benjamin was taken. Isidro Ramos, however, denied knowledge about the whereabouts of Benjamin Aguinaldo. Ramos thereafter accompanied her to see Flavio de Leon who, however, could not give any information because he (Flavio de Leon) was allegedly playing mahjong on March 2, 1970 (pp. 3-13, tsn, Feb. 26, 1973). On the way home, a school boy from Sto. Niño informed her that a cadaver was found on the garbage dumping area at Wawa, Sto. Niño. She immediately proceeded to the Municipal Hall of Parañaque to verify the information, but she was informed that the body had been transferred to Funeraria Popular. She went to said funeral parlor where she saw the body of the man burned beyond recognition. But she recognized the cadaver as that of her husband who has small toes on both the right and left feet which are similar to Benjamin's mother (pp. 16-18, tsn, Feb. 26, 1973).

"In connection with the investigation of both Reyes and Quinto before then Assistant Fiscal Luis Victor, she was able to secure the stenographic transcript of said preliminary investigation and that both Reyes and Quinto are now deceased.

"Aquilina Quinto testified that the last time she saw her son Marcelino Quinto, Jr., was on April 14, 1971, when he left for work. Two (2) days thereafter, several men, some of whom were in PC uniforms, told her that her son just died. They could not tell the cause of her son's death (pp. 209, tsn, July 3, 1973).

"Anita Reyes testified that Benjamin Aguinaldo is the compadre of her late husband Ricardo Reyes. After the burial of Benjamin Aguinaldo, the mother of Benjamin went to their house at San Dionisio, Parañaque, to request her husband to testify about the death of Benjamin. Her husband agreed to do so. Later, a group of men, some of whom were in PC uniforms, attempted to take her husband Ricardo from their house, but she vehemently refused to let go of Ricardo. The following morning, she reported the incident to Mrs. Rosalinda Aguinaldo, who thereafter, provided them a place at 57 Araneta Avenue, Quezon City to live in. Marcelino Quinto, Jr. never stayed at their place, but he only went there whenever an investigation was to be conducted by Fiscal Victor. There was also another occasion when a group of men claiming to be CIS agents had a talk with her husband Ricardo who later recounted to her that the group of men had told him to desist from testifying in favor of Mrs. Aguinaldo. It was sometime thereafter when she was informed by the Bacoar Police that her husband was shot and killed at Bacoar. Her husband was identified thru his driver's license (pp. 4-17, tsn, May 9, 1973). Her husband, Ricardo, was once confined at the Bulacan Provincial Jail at Malolos for involvement in a hold-up. Her husband's real name was Reynaldo but he was later baptized as Ricardo. (pp. 29-30, tsn, May 9, 1973)

"Angeles Vicencio testified that he is the stenographer who took down the stenographic notes of the preliminary investigation conducted before Fiscal Luis Victor under IS No. 70-1193, entitled 'Rosalinda Panganiban vs. Flavio de Leon, et. al.' In this preliminary investigation, Ricardo Reyes and Marcelino Quinto, Jr., testified under oath regarding the circumstances under which they saw Benjamin Aguinaldo in the company of the three (3) accused and with two (2) other unidentified persons. These two (2) prosecution witnesses were cross-examined by counsel for all the accused. There were six (6) sessions in this preliminary investigation, namely, on May 7, 14, 20, and June 9, 24 and July 27, 1970, the transcripts of which were secured by both complainant and respondents (Exhibit L, L-1 to L-6; pp. 18-28, tsn, Aug. 15, 1973).

"Isidro Ramos testified that he is a jeepney operator and employer of the late Benjamin Aguinaldo. He had no

knowledge about the abduction and killing of Benjamin Aguinaldo. He saw Benjamin Aguinaldo in the evening of March 2, 1970 when the latter came to remit the day's boundary and to return the radio and jeepney. After Benjamin left, he (Isidro Ramos) went to sleep. He described his house and garage. The walls of his house fronting Daanan Street consist of eight (8) layers of hollow blocks, and the front has a steel gate. On the eastern side, is a wall consisting of eight (8) layers of hollow blocks. The fence of the garage is lower than the jeepney, but the roof of the jeepney could be seen outside. If one is outside, however, he will not see the people inside the jeepney as only the roof could be seen.

"Rosalinda Aguinaldo testified that she is the mother of the late Benjamin Aguinaldo who was found dead in the garbage dumping area in Wawa, Sto. Niño, Parañaque. Ricardo Reyes and his family stayed at their residence at Araneta Avenue, Quezon City, for several months because of the threats on Reyes' life as a result of his testifying against the accused in this case. During this period when Reyes was staying with her, there were two (2) occasions when a group of men came to her house to inquire about the whereabouts of Reyes (pp. 1-11, tsn, June 25, 1973).

"From the transcripts of stenographic notes of the proceedings at the preliminary investigation (Exhibits L, L-1 to L-6), the following facts were testified to by Ricardo Reyes, now deceased:

"At about 6:30 in the afternoon of March 2, 1970, he was with Benjamin Aguinaldo, a PUJ jeep driver plying the route at Baclaran. He had known Aguinaldo at that time for approximately seven (7) months. On that date, they made several trips, the first was at Baclaran-Cubao route and back; the second was in Quiapo (sic) and then back to Baclaran; the third was to Sta. Cruz; and the fourth was to Divisoria. By the time they were back at Baclaran, it was about quarter to 10:00 P.M. At that time, Aguinaldo decided to return the jeepney to its owner, Isidro Ramos at Sto. Niño. When they were about thirty (30) meters from the house of Ramos, Aguinaldo gave him P0.60 to buy one-half (1/2) pack of cigarettes. He got out of the jeep and went to two (2) stores, but they were already closed, so he walked towards the garage. When he was about twenty (20) meters away, he saw five (5) men in a jeep approach Aguinaldo who had parked his jeep. He moved closer and sought cover on the fence of a house just across the house of Ramos about ten (10) meters away. Four (4) men surrounded the jeepney where Aguinaldo was and Gregorio de Leon hit Aguinaldo with the butt of a .45 caliber pistol. When Aguinaldo protested, Gregorio hit him again. Thereafter, Isidro Ramos and his wife came out of the house and decided to interfere, but were unable to do anything. Apolonio Santos, a Barrio Policeman, boarded the jeepney and helped push Aguinaldo out of the vehicle. Aguinaldo was dragged by Gregorio de Leon and two (2) other men towards the other jeep where Flavio de Leon was waiting. Apolonio Santos at that time was holding a revolver. Aguinaldo was placed in between the two (2) men at the back seat with Apolonio Santos seated beside him. Gregorio sat beside Santos. Flavio then started the engine and passed the portion of the road he was hidden (sic) proceeding towards the dumping area. He witnessed the incident because the fence along the side of the house of Ramos is made of hollow blocks about two (2) and one-half (1/2) feet high on top of it. After a few minutes he left his hiding place and walked along Daan Ilaya going towards the main road when he heard five (5) shots in succession coming from the direction of the dumping area. He got apprehensive, and hid himself at the compound of a school which was about eighty (80) meters away from the dumping area. After several minutes, he walked towards the national road where he boarded a jeepney and went home. He did not report what he saw because of fear. The following morning, that is March 3, 1970, Teresita Aguinaldo, wife of Benjamin Aguinaldo, went to his house accompanied by a certain Eddie to inquire about her husband. He advised Teresita to inquire from Mang Abio (Flavio de Leon) and in the afternoon of the same day, Teresita returned to him saying that Mang Abio denied knowing where her husband was. It was only at that moment when Teresita was told of the incident he witnessed the night before. Flavio de Leon is the father of Gregorio de Leon.

"Likewise, on the basis of the transcript presented by the prosecution, the following facts appear to have been testified to by Marcelino Quinto, Jr., at the preliminary investigation:

"Sometime on March 2, 1970, he went to Wawa to look for Efren Zamora who just won in a race bet, but was

not able to see him. That evening, he saw Mang Abio, Apolonio, Goring and Benjamin Aguinaldo on board a jeep. He was then at that time coming out of Wawa proceeding towards Quirino Avenue. He recognized Benjamin Aguinaldo, so he shouted 'Ben', 'Ben ano ang nangyayari?' Since the jeep was moving slowly, it stopped and Goring alighted from the jeep poking towards him a .45 caliber pistol with a warning not to interfere or he might get involved. He was unable to move until the jeep left towards the direction of the fields (bukid). Although the jeep had its dim lights on, there was a fluorescent lamp in the street and he recognized Benjamin inside the jeep with the accused. He did not report the incident to the police because he thought Benjamin Aguinaldo had committed something wrong since two (2) barrio policemen were on board the jeep with Aguinaldo. At first, he did not know the first names of Flavio, Goring and Apolonio and Saro. But in the morning of March 3, 1970, he asked a tricycle driver who knew those persons and they were identified respectively as Flavio de Leon, Gregorio de Leon, Apolonio Santos, while the first name of Saro could not be given. He inquired about the first names of those people because he received information that they will liquidate all witnesses. It was only on March 4, 1970 when he learned that Benjamin Aguinaldo died. On that date when he saw the wife of Benjamin with Eddie Flores waiting for a ride, he approached them and told them of what he saw in the evening of March 2, 1970. The two (2) then invited him to go to the parents of Benjamin Aguinaldo at Araneta Avenue. Subsequently, on March 16, 1970, he was informed that he, together with Toring, Fabian, Ricardo Reyes and Boy Bungi and another one were being hunted by Goring and Mang Abio. He did not know anyone of these people except Ricardo Reyes. According to his information, Goring planned to liquidate them all. At first, he did not believe the information. But one day, he saw Goring riding a blue owner jeep with two (2) companions. A stout man alighted with a carbine, asking for Quinto. He became frightened, so he went to Sta. Rita to hide. When he was told that the people looking for him were gone, he proceeded to Cubao to the parents of Aguinaldo, telling them that he will testify as a witness in this case against the accused. He did not report the incident that happened to him because the accused were officers in the company of policemen." (Rollo, p. 20-28)

The defense's version, on the other hand, as narrated by the accused and summarized by the lower court is as follows:

"Flavio de Leon, one of the accused, testified that as far as he can recall, he was at their home in the evening of March 2, 1970 suffering pain due to stomach ulcer which had afflicted him since the Japanese occupation. He was certain that March 2 was a Monday because at that time he was watching a TV program called 'Tawag ng Tanghalan' and after the program, he went to bed and woke up in the morning about 4:00 o'clock. The following day, Teresita Aguinaldo sought his help informing him that her husband failed to come home the night before. He did not know this Teresita Aguinaldo or her husband Benjamin. But he assured his visitor that he will assist her the moment his stomach pain ceased. It was only after the third (3rd) day that he was able to leave his house when he went to see Isidro Ramos whom Teresita claimed was the owner of the jeep which her husband Benjamin was driving. It was then that Ramos informed him that the body of Benjamin Aguinaldo lay in state at a funeral parlor in Pasay City. He came to know of the charge against him when he received a subpoena from the Fiscal's Office and the accusation was against him together with Gregorio de Leon (sic). Apolonio Santos and two (2) other unknown persons, charging them for the killing of Benjamin Aguinaldo on March 2, 1970 at Barrio Sto. Niño, Parañaque, Rizal (sic).

"He further testified that he came to know of a person called Benjamin Aguinaldo only during the preliminary investigation conducted by Assistant Fiscal Luis Victor. However, if Benjamin Aguinaldo was a former driver of his son, Gregorio, he would personally know Benjamin Aguinaldo. He had never left his residence in Sto. Niño, Parañaque, to belie the testimony of the prosecution witness that he could not be found thereat. He did not know of the incident between Gregorio de Leon and Benjamin Aguinaldo. Ricardo Reyes implicated him in the preliminary investigation because of a grudge which he harbored regarding the refusal of Flavio to pay the balance of an account for the recovery of Flavio's jeep. Flavio's jeep was stolen and Eduardo Flores approached him with the information that his jeep could be recovered for P3,000.00. He agreed to his proposal only if the jeep would be returned without being cannibalized. The initial payment of P2,000.00 was paid and

the jeep was returned by Eduardo Flores, Ricardo Reyes and one Jessie Parañaque or Marcelino Quinto. Flavio refused to pay the balance of P1,000.00 when he found out that some parts of his stolen jeep were replaced by old and worn out parts. His refusal to pay the balance made Reyes angry and even threatened him. Three (3) days thereafter, Ricardo Reyes returned not to demand for the balance but to borrow (dilihensia) some money. Reyes informed him that the money was necessary to settle a matter in order to avoid being suspected as having caused the death of a friend, Benjamin Aguinaldo. Flavio learned that the Benjamin referred to by Ricardo Reyes and the Benjamin subject of the case referred to one and the same person. Flavio contends that this Ricardo Reyes was a bad man, a holdupper and also suspected as one of those who stole his jeep. He arrived at this conclusion on the basis of the information given by Marcelino Quinto who told him about this after Ricardo Reyes was found missing, he had no particular person yet in mind who had a hand in the theft (sic). When Aguinaldo was found dead, his jeep was still missing. It was Marcelino Quinto who reported to him that Jessie Parañaque, a certain Ricardo Reyes, Benjamin Aguinaldo, Toning Parañaque and many others who took this jeep (sic). Marcelino Quinto further told him that this Ricardo Reyes had already killed several persons. Marcelino Quinto asked for forgiveness for having testified falsely against him in the Fiscal's Office. Quinto promised to retract his testimony given in the Fiscal's Office. Unfortunately, before Quinto could make any retraction, he was arrested by AMCAR and detained at Camp Crame. Subsequently, he learned that Marcelino Quinto died.

"Gregorio de Leon in his defense testified that in the evening of March 2, 1970, he was taking his supper at his house at Sto. Niño, Parañaque. He did not go out of his house since the following day was a working day. The following morning, he reported for work. He also reported for work in the succeeding working days as shown by his daily time record (Exhibit 16). At the time, he was working as a market laborer. He admitted however, that the person in charge of the daily time record is the Municipal Health Officer, Dr. Felimon de Leon, a cousin of his. He never knew a person by the name of Benjamin Aguinaldo until he received a subpoena to appear at the preliminary investigation (Exhibit 14). Prior to his receipt of the subpoena, he was never investigated by any police agency or the NBI in connection with the death of Benjamin Aguinaldo. At the preliminary investigation, he learned for the first time that Benjamin Aguinaldo was a driver of a jeepney owned by Isidro Ramos who is his uncle and ninong. The wife of Isidro Ramos and his mother are sisters. The house of Isidro is located at Danganan Street about 200 meters from his house which is inside an alley. The jeepneys of Ramos are usually parked at night at the side of Ramos' house. There is a fence made of hollow blocks along side the alley and a person of average height cannot see beyond this fence. He contended that Ricardo Reyes testified against him in the preliminary investigation, because he had previously terminated the services of Reyes in driving his PUJ jeepney as he was reliably informed that his jeepney was being used by Reyes in committing hold-ups. Furthermore, upon inquiry with the Pasay LTC agency, he found that Ricardo Reyes did not have any license. With respect to Marcelino Quinto, he testified that he met said person only at the preliminary investigation conducted by Fiscal Luis Victor. When Ricardo Reyes was reported dead, Marcelino Quinto approached him one evening at the Baclaran market to inform him that since Ricardo Reyes is already dead, he did not fear anybody anymore. Quinto informed him that Ricardo Reyes had forced him to testify against the de Leons and it was his suspicion that Ricardo Reyes was responsible for the death of Benjamin Aguinaldo. Quinto promised to retract what he testified to before the Fiscal, but before he could do so, Quinto met his death.

"Apolonio Santos, the third accused testified that in the evening of March 2, 1970, at past 7:00 o'clock, he and the Barrio Captain of Sto. Niño, Gerardo Basilio were patrolling around the barrio when they chanced upon a vehicular accident. A scooter driven by Eddie Cariño and a tricycle driven by Sony Ompico, collided, with each other. As barrio policeman, he was instructed by their barrio captain to look for Ompico who had left the scene of the incident. An hour thereafter, he was able to locate Ompico and the two (2) then proceeded to the scene of the accident to settle the matter since the parties involved came from their barrio. When the parties could not settle, they brought the parties to the Municipal Hall of Parañaque accompanied by Pat. Prudencio de Leon whom they met on their way to the Police Station. At about 10:00 P.M. they reached the Police Station and the accident was recorded in the Police Blotter. Thereafter, Pat. Balagtas brought Cariño to the hospital for

treatment of his injuries. At about 11:00 that evening, he and Basilio left the Police Station to continue with their patrol. At about 11:30 that same evening, Basilio left him at the Police Outpost where he stayed up to 5:00 o'clock in the morning of March 3, 1970. During this time, he did not see nor hear anything unusual that occurred. As barrio policeman, he was only armed with a nightstick, flashlight and whistle. He never owned a gun. It was only in the evening of March 3, that he learned about the body of a man found at the garbage dumping area at Wawa. Nobody requested him to identify the body. Their outpost where he was, is about one (1) and one-half (1/2) kilometers away from the dumping area. He knew Flavio and Gregorio de Leon but not too closely. He knew Isidro Ramos who is the brother-in-law of Flavio de Leon. The house of Isidro Ramos is about fifty (50) meters away from that of Flavio de Leon. He knew Ricardo Reyes since he transferred residence to Sto. Niño for the reason that neighbors had reported that Ricardo Reyes is engaged in nefarious activities. He contended that Ricardo Reyes testified against him because he had accompanied the ANCAR agents to the residence of Ricardo's mother located at Francisco Garcia compound on two (2) instances, the first was in the evening of February 15, 1970. On this occasion, he was then at the outpost when a car with two (2) men, a woman and a child stopped in front of him requesting that he accompany them to the Garcia compound. He boarded the car and it was then that he was informed that the persons therein were agents of the ANCAR and they were looking for Ricardo Reyes who was reported to be involved in carnapping and hold-ups. The woman was reported to be the wife of Ricardo Reyes. The other incident was about the end of February, 1970, when he received news from his barrio mates that Flavio de Leon lost his jeep. He was, however, unable to verify this from Flavio because they seldom meet each other." (Rollo, pp. 28-33)

The lower court, relying primarily on the testimonies of prosecution witnesses Ricardo Reyes and Marcelino Quinto, rejected the alibi interposed by the defense and rendered a decision finding all of the accused guilty of the crime of homicide. On appeal, the Intermediate Appellate Court, affirmed the lower court's decision and subsequently denied the Motion for Reconsideration filed by the accused. Hence, the present petition.

Meanwhile, on July 2, 1988, Flavio de Leon who is one of the petitioners herein, died. Flavio's death occurring during the pendency of his appeal, his criminal as well as civil liability are extinguished (Article 89 Revised Penal Code; *Tangan v. People*, 155 SCRA 435 [1987]; *People v. Jose*, 71 SCRA 273 [1976]). The present petition, then, involves only Gregorio de Leon and Apolonio Santos.

The petitioners raise the following assignment of errors:

I

"THE RESPONDENT COURT ERRED IN SUSTAINING THE ADMISSION BY THE TRIAL COURT OF THE NBI SWORN STATEMENTS AND PRELIMINARY INVESTIGATION TESTIMONIES OF RICARDO REYES AND MARCELINO QUINTO, JR.

II

"EVEN ASSUMING THAT THE RESPONDENT COURT DID NOT ERR IN SUSTAINING THE ADMISSION OF THE NBI SWORN STATEMENTS AND PRELIMINARY INVESTIGATION TESTIMONIES OF RICARDO REYES AND MARCELINO QUINTO, JR., IT ERRED IN ADOPTING THE TRIAL COURT'S FINDING THAT SUCH STATEMENTS AND TESTIMONIES DESERVE TO BE GIVEN CREDENCE AND WEIGHT.

III

"THE RESPONDENT COURT ERRED IN HOLDING THAT THE INCONSISTENCIES AND CONTRADICTIONS IN THE DECLARATIONS OF RICARDO REYES AND MARCELINO QUINTO, JR. REFER ONLY TO MINOR AND COLLATERAL MATTERS AND IN NOT FINDING THAT, APART

FROM SAID INCONSISTENCIES AND CONTRADICTIONS BEING INDICATIVE OF WILFUL FALSEHOODS ON THEIR PART, THEIR DECLARATIONS ARE INHERENTLY IMPROBABLE AND UNWORTHY OF CREDENCE AS WELL AS PURELY SPECULATIVE AND CONJECTURAL.

IV

"THE RESPONDENT COURT ERRED IN HOLDING THAT THE TESTIMONIES OF RICARDO REYES AND MARCELINO QUINTO, JR. STOOD UNREBUTTED AND UNCONTRADICTED.

V

"THE RESPONDENT COURT ERRED IN HOLDING THAT THE FACT THAT RICARDO REYES WAS A HOLD-UPPER AND A PERSON OF BAD REPUTE AND THAT MARCELINO QUINTO, JR. HAD AN UNSAVORY REPUTATION DID NOT DETRACT FROM THE TRUTH OF THEIR TESTIMONIES.

VI

"THE RESPONDENT COURT ERRED IN AFFIRMING THE TRIAL COURT'S REJECTION OF THE DEFENDANTS-APPELLANT'S ALIBI.

VII

"THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE GUILT OF THE DEFENDANTS HAS NOT BEEN PROVED BEYOND REASONABLE DOUBT.

VIII

"THE RESPONDENT COURT ERRED IN EVERY MANNER OR RESPECT THAT, UNDER SETTLED JURISPRUDENCE, JUSTIFIES REVIEW OF ITS FINDINGS ON ISSUES OF FACT AND CREDIBILITY." (Rollo, p. 165-166)

It is worthy of note that except for the question as to the admissibility of the sworn statements taken during the NBI investigation which comprised the direct testimony of Reyes and Quinto during the preliminary investigation, as well as the admissibility of the rest of the testimonies taken during the said proceeding, the issues raised are factual.

It is a well-settled rule that findings of fact of the Court of Appeals are conclusive and binding on the Supreme Court (Fernan v. Court of Appeals, 181 SCRA 546 [1990]; De Ocsio v. Court of Appeals, 170 SCRA 729 [1989])' save only in certain instances, among them:

1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly absurd, mistaken or impossible; and 3) when the judgment is premised on a misapprehension of facts (Dichoso v. Court of Appeals, 192 SCRA 169, [1990]).

After a very thorough review of the records, we find that no circumstance exists to warrant a deviation from the general rule enunciated above as to the conclusiveness of the factual findings of the Court of Appeals.

The petitioners admit that the contradictory and inconsistent statements attributed to Reyes and Quinto have no direct bearing on the commission of the crime. They argue, however, that the manner by and the occasion in which the contradictory statements were uttered (Reyes' statements regarding his age, place of birth, educational attainment, relationship with the victim and incarceration at the Bulacan provincial jail; Quinto's statements regarding his previous criminal charges) are such that they indicate the patent propensity on the part of these

claimed eyewitnesses to wilfully falsify, prevaricate and perjure.

After a perusal of the testimonies of Reyes and Quinto, this Court concludes otherwise. The narrations are straightforward and consistent. Petitioners' insistence as to the improbability and incredibility of Reyes' and Quinto's testimonies is misplaced. There is nothing incredible in Reyes' capacity to observe an incident at a distance of about ten (10) meters. There is no showing that Reyes suffers from any infirmity that would impair his vision. Isidro Ramos' testimony as to the impossibility for any person in Reyes' location to witness the alleged incident due to the fence which obstructs the view could not be given much credence. In the first place, Ramos cannot be altogether regarded as a disinterested witness inasmuch as he is the brother-in-law of Flavio de Leon's wife. Secondly, as between the statement of Reyes on his actual experience and the answer of Ramos to a hypothetical question, the former should definitely be given more weight inasmuch as it pertains to the specific incident in question while the latter is a mere generalization expressed by someone who even denied his presence at the scene of the alleged incident.

The petitioners, then, question Reyes' testimony regarding the victim being whipped on the head with a pistol. They stress the fact that in the certificate of post-mortem examination, there is no indication that the victim suffered from any wound or trauma on the head and face area. Such discrepancy could be explained by the fact that the victim's face and other parts of his body were burned which indicates a plan to make identification impossible. A complete examination, then of the corpse of the victim is extremely difficult.

At any rate, the Court of Appeals correctly observed that the inconsistencies and contradictions in the declarations of Reyes and Quinto refer only to minor and collateral matters that do not impair the credibility of the sworn statements and testimonies. This Court has consistently held that minor inconsistencies in the testimony of a witness do not affect his credibility as they refer only to collateral matters which do not touch upon the commission of the crime itself (*People v. Arbolante*, G.R. No. 96713, October 17, 1991; *People v. Velasco*, 175 SCRA 442 [1989]; *People v. Natipravat*, 145 SCRA 483 [1986]).

The petitioners next challenge the fact that Reyes and Quinto failed to report immediately what they claimed to have witnessed. According to the petitioners, Reyes should have called the aid of the barrio residents so that the victim could be rescued. Such action would have been too much of a demand on the witnesses who stated that they were gripped with fear when they were confronted with the incident. It is not uncommon for a witness who is afraid for his life not to report to the police authorities what he has witnessed. Such action should not detract from his credibility (*People v. Bustarde*, 182 SCRA 554 [1990]; *People v. Coronado*, 145 SCRA 250 [1986]). Moreover, both witnesses explained that the group of men who accosted the victim included barrio policemen such that they were uncertain if going to the police was advisable. Quinto even thought that Aguinaldo was arrested so he did not find it proper to interfere. The foregoing reasons sufficiently explain Reyes' and Quinto's reaction to the incident.

It is finally suggested by the petitioners that the testimonies of Reyes and Quinto should be totally rejected considering the witnesses' questionable reputation and personal background as evidenced by the previous criminal charges against them. Reyes even died in an encounter with the authorities while Quinto died in the custody of anti-carnapping (ANCAR) agents at Camp Crame.

A witness cannot be impeached by evidence of particular wrongful acts; there must be a showing of previous conviction by final judgment such that not even the existence of a pending information may be shown to impeach him (*People v. Arceo*, 187 SCRA 265 [1990]; citing Sec. 15, Rule 132 of the Rules of Court). In the present case, Reyes and Quinto are not shown to have been previously convicted by final judgment. Therefore, the facts established as to their alleged illicit activities will not detract from their competence as witnesses.

Moreover, as the Appellate Court has correctly observed:

x x x x x x x x

"In this particular case, while both Ricardo Reyes and Marcelino Quinto, Jr. may have been shown to be persons of questionable repute and that they may have a hand in the loss of the jeep of Flavio de Leon which must have culminated in the death of Benjamin Aguinaldo in the evening of March 2, 1970, this Court cannot close its eyes to the principle that a person must not take the law in his hand. x x x" (Rollo, p. 43)

The issue as to the admissibility of the sworn statements and testimonies of Reyes and Quinto deserves scant consideration at this stage of the case because this Court had already put the issue to rest when it denied the petition for certiorari earlier filed by herein petitioners questioning the decision of the Court of First Instance to admit the transcripts in question. By the express provision of section 1 (f) Rule 115 of the Rules of Court, the testimonies given by witnesses during the preliminary investigation of the case on trial should be admitted into evidence when such testimony was taken by question and answer in the presence of defendant or his attorney, and there was an opportunity for the defendant to cross examine the witness "who is dead or incapacitated to testify or cannot with due diligence be found in the Philippines" (People v. Villaluz, 125 SCRA 116 [1983]).

On the defense of alibi, we quote with approval the lower court's ruling adopted by the appellate court insofar as petitioners Gregorio de Leon and Apolonio Santos are concerned, in the following manner:

x x x x x x x x

"This Court finds that the evidence, for the prosecution has sufficiently established the participation of these three (3) accused in the abduction of Benjamin Aguinaldo in the evening of March 2, 1970 and of having caused the liquidation of said abducted person. Their claim of not knowing Benjamin Aguinaldo or of having heard of him except during the preliminary investigation is too incredible to warrant belief. Benjamin Aguinaldo was the driver of a PUJ jeepney owned and operated by Isidro Ramos. The De Leons are also in the transportation business while Santos is a Barrio Policeman. All these people must have known each other in the community especially those engaged in the same business. The testimonies of Ricardo Reyes and Marcelino Quinto, Jr. at the preliminary investigation have established in such detail sufficient facts to link these three (3) accused, Flavio de Leon, Gregorio de Leon and Apolonio Santos, to the death of Benjamin Aguinaldo. Although Marcelino Quinto, Jr. and Ricardo Reyes may have been persons of unsavory reputation and had previously been implicated in robberies and carnaping, nonetheless, there has been no showing that these two (2) witnesses had prevaricated when they gave their version of the abduction of Benjamin Aguinaldo in the evening of March 2, 1970. These witnesses were subjected to cross-examination by counsel for the accused in the preliminary investigation and their testimonies linking the three (3) accused with the death of Benjamin Aguinaldo stood un rebutted and uncontradicted. The narration given by these witnesses at the preliminary investigation was clear and devoid of any contradictions. There is no showing that they were coached to give their separate testimonies before the Provincial Fiscal or to give their sworn statements before the investigating officers of the NBI. Their detailed narration of the circumstances that took place on the evening of March 2, 1970 could only come from an eyewitness. These two (2) distinctly and unerringly pointed to accused Flavio de Leon, Gregorio de Leon and Apolonio Santos as among the group of persons who were in a jeep and who took Benjamin Aguinaldo and brought him towards the dumping area of Wawa, Parañaque, Rizal, where the body of said Benjamin Aguinaldo was finally recovered the following morning. The alibis of these three (3) accused cannot stand in the light of this direct testimonial evidence of the two (2) eyewitnesses." (Rollo, pp. 41-43)

Additionally, Gregorio de Leon relied solely on his uncorroborated testimony which in the light of the direct testimonies of Reyes and Quinto can only be viewed as self-serving statements. Apolonio Santos' alibi, on the other hand, although corroborated by the former barrio captain and a member of the traffic division of the

Parañaque police force, should likewise fail. It must be noted that the police blotter of the accident which Santos allegedly helped bring to the attention of the authorities does not bear any indication of his participation therein. Moreover, it is not shown that it was physically impossible for him to have participated in the crime considering that the alleged accident happened in the same small barrio. The foregoing circumstances strengthen the conclusion that Santos' testimony cannot prevail over that of Reyes and Quinto.

Well-entrenched in our jurisprudence is the rule that alibi is a considerably weak defense which cannot prevail over the positive identification of the accused (*People v. Bugho*, G.R. No. 91849, September 30, 1991; *People v. Camarao*, 188 SCRA 671 [1990]; *People v. Repe*, 175 SCRA 422 [1989]; *People v. Khan*, 161 SCRA 406 [1988]).

Although the positive identification made by the key witnesses is not on the actual killing of the deceased, all the circumstances testified to are sufficient to convince this Court that the petitioners are the authors of the act charged. It is not only by direct evidence upon which the guilt may be predicated (*People v. Cagadas*, 193 SCRA 216 [1991]). The accused may be convicted on circumstantial evidence (*People v. Torre*, 184 SCRA 525 [1990]).

This case was assigned to the Third Division fairly recently.

At this point, this Court would like to stress that it is aware of the fact that the surviving petitioners have advanced in age, the act complained of in the present case having been perpetrated about twenty years ago. At present, Apolonio Santos would be in his late seventies while Gregorio de Leon would be in his late forties. Be that as it may, this Court's duty to apply the full force of the law shall not be compromised. However, it is precisely the province of the indeterminate sentence law to give considerations to the personal circumstances of each convict. And after a review of the sentence which the lower court has imposed, this Court is of the considered opinion that the minimum and maximum periods imposed are still applicable. This Court expresses its confidence that the authorities shall execute this Court's decision in a manner that shall consider the relative conditions of each petitioner.

WHEREFORE, all the foregoing premises considered, the challenged decision of the Court of Appeals is hereby **AFFIRMED** with respect to petitioners Gregorio de Leon and Apolonio Santos with the sole modification that the indemnity awarded to the complainant should be increased to P50,000.00 consonant with recent case law.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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