

ARMANDO DE GUZMAN AND MARIO PUA, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 69386. April 04, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for review on certiorari seeking the reversal of the decision of the Intermediate Appellate Court in AC-G.R. CR No. 25808 entitled *People v. Mario Pua, et al.*, promulgated on February 28, 1984 affirming with modification the decision of the Court of First Instance of Rizal, Branch XXXIII, Caloocan City, which convicted the accused-appellants of the crime of Qualified Theft.

In an amended Information dated March 21, 1979, petitioners Armando de Guzman and Mario Pua, together with Romeo Bonoy, were charged before the then Court of First Instance (CFI) of Rizal, Caloocan City,[1] with Qualified Theft of various automotive spare parts valued at P418.20 belonging to their employer Isuzu Specialist Sales, Inc. All three (3) accused pleaded "not guilty". Before the initial hearing, on motion of the prosecution and over the opposition of herein petitioners, their co-accused Romeo Bonoy was discharged from the Information to be utilized as a state witness.

As ably summarized by the Solicitor General, the factual background of this case is as follows:

"Romeo Bonoy was in December, 1978, employed as an office and delivery boy in the Isuzu Specialist Sales, Inc., a dealer in automotive spare parts in Caloocan City. His immediate supervisors were petitioners, Mario Pua and Armando de Guzman, who, among other things, were authorized by the management to frisk company employees before leaving the work premises. Bonoy had been employed thereat since September of that year. Prior to that he was a farmer in the Mountain Province. He was only eighteen years old when he testified in the Court of First Instance of Rizal on June 14, 1979 (tsn., pp. 4-6, June 14, 1979).

"During the first week of December 1978, Bonoy was threatened by petitioners who said that if he wanted to keep his job he must cooperate with them. He was instructed by them to steal spare parts from the Isuzu Specialists Sales, Inc. and keep the stolen articles with him until such time as they could be sold. He would be given a portion of the proceeds. Cowed by petitioners' threat, Bonoy on three (3) occasions stole merchandise belonging to the Isuzu Specialists, Inc. during the second week of December 1978. Hiding them in his bag, he was able to spirit out the stolen articles easily since it was petitioners who searched him as he left the work premises. As instructed, Bonoy kept the stolen articles in a bag at his residence on Seventh Avenue, Caloocan City. Everytime a batch was stolen, petitioners would in the evening see Bonoy at his residence to inspect the articles. The stolen articles had a total value of P418.20 (tsn., pp. 6-12, June 14, 1979; Rec., pp. 3-4).

"On February 7, 1979, the General Manager of the Isuzu Specialists Sales, Inc., Norman Uy, received a tip that Bonoy had been stealing company property from its warehouse. Norman Uy immediately reported the matter to the Caloocan City Police which assigned Sgt. Aguilar and Detectives Lores and Padua to conduct the investigation. On the same day, the peace officers investigated Bonoy who initially denied complicity but later

admitted that he stole the articles upon the instructions of petitioners. At that, the peace officers and Jacinto Uy, President of Isuzu Sales, Inc. accompanied Bonoy to his residence where they recovered the stolen articles still kept in a bag (Exhibits D and D-1). They returned to the office of the Isuzu Specialist Sales, Inc. and then, this time with appellant Pua, proceeded to the police headquarters at Biglang Awa, Caloocan City. Thereafter, Bonoy executed a statement relating the story of how he stole the articles in question upon instructions of petitioners (Exhibit A; pp. 1-2, Folder of Exhibits). Pua did not execute a statement. Bonoy and Pua were thereupon detained at the police headquarters (tsn., pp. 12-16, June 14, 1979; 6-10, November 15, 1979). Petitioner de Guzman could not be investigated at that time because he had resigned earlier on February 1, 1979 (tsn. pp. 6-7, August 29, 1980).

"Sometime in the second week of February, 1979, Bonoy was released on bail. He was, upon his release, brought to the house of De Guzman where he was guarded by De Guzman's relatives and not allowed to leave that house. On March 2, 1979, he was taken to Legaspi Towers by Pua and De Guzman and there told to sign a prepared statement which he was not even allowed to read (Exhibit B), disavowing the one he had executed earlier and exculpating Pua and de Guzman from complicity in the theft in question (Exhibit A, supra). On March 11, 1979, Bonoy managed to escape from de Guzman's house as only the latter's mother stood watch over him then. Upon learning from his cousin, one Rafael, of the contents of his second statement, Bonoy forthwith executed another statement (Exhibit C) on March 13, 1979, affirming his first statement (Exhibit A) and duly explaining the circumstances which led to the signing of his second statement (Exhibit B) (tsn., pp. 16-21, June 14, 1979).[2]

According to the trial court, " (T)he testimony of the other prosecution witnesses, the extrajudicial confession of Romeo Bonoy (Exh. "A") wherein he pointed to De Guzman and Pua as the masterminds, the recovery of the articles involved (Exhs. "D" and "D-1"), and Bonoy's testimony confirming the truth of his confession, all provide sufficient bases for the conviction of the accused." [3]

In due course, the trial court on January 5, 1982, rendered judgment, the decretal portion reading:

"WHEREFORE, the Court finds both accused Mario Pua y Mabalot and Armando de Guzman guilty beyond reasonable doubt of the crime of Qualified Theft, and there being no mitigating nor aggravating circumstances, hereby sentences them to suffer the indeterminate penalty of from FIVE (5) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of prision correctional, as the minimum to NINE (9) YEARS, SIX (6) MONTHS and ONE (1) DAY of prision mayor as maximum, and to indemnify the offended party in the sum of P418.20, without subsidiary imprisonment in case of insolvency and to pay the costs." [4]

On appeal by Pua and de Guzman, the then Intermediate Appellate Court (now Court of Appeals) affirmed on February 28, 1984 the decision of the trial court with the sole modification that instead of requiring petitioners to indemnify the offended party, the trial court was ordered to return the recovered articles to the latter.[5]

Petitioners filed a motion for reconsideration dated April 25, 1984, but this was denied in a resolution dated August 29, 1984. On September 14, 1984, they filed a supplemental motion for reconsideration and/or new trial on the ground of newly-discovered evidence consisting of an affidavit of recantation executed by state witness Romeo Bonoy on September 12, 1984, or five (5) years after his testimony in court.

The central text of said affidavit reads:

"2. That being then under the employ of the complainant Isuzu Specialist Sales, represented by Norman Uy y Ching, I was threatened with bodily harm and subjected to various intimidation (sic) and pressures as used as foul and illegal means so I would succumb and agree to falsely testify and implicate Mario Pua and Armando de Guzman as the alleged mastermind of the frame-up case of theft reason of which the two accused were sentenced and convicted by the CFI now RTC of Caloocan and subsequently affirmed by the Intermediate Appellate Court;

"3. That my conscience would not allow me to see that two innocent persons would suffer in jail so that I now declare as I have previously stated in my affidavit of March 2, 1979 that Mario Pua and Armando de Guzman have never ordered me to steal, much less there was never a crime of theft committed and the case filed was a frame up fabricated and designed to harass the two accused who are innocent;

"4. That I am executing this affidavit to confirm and acknowledge the fact that Armando de Guzman and Mario Pua are innocent and that my affidavit dated February 7, 1979 and March 13, 1979 are executed under duress, threats, and intimidation. As well as to tell the truth and nothing but the whole truth.

"In witness hereof, I hereunto fix my signature this 12th day of September 1984 at Baguio City."[6]

Agreeing with the Solicitor General that the "alleged affidavit of recantation is not newly-discovered evidence and that appellants' (petitioners herein) supplemental motion for reconsideration and/or new trial amounts to a second motion for reconsideration which is not allowed under Section 11, paragraph 2 of Batas Pambansa Blg. 129 x x x,"[7] the appellate court denied the supplemental motion for reconsideration in the resolution of November 28, 1984.

Petitioners then filed a petition for review before this Court, which was denied in a resolution dated February 11, 1985 for being factual and for lack of merit.[8] Apparently unaware of this denial resolution, petitioners filed an amended petition on February 22, 1985. This was likewise denied for lack of merit on March 4, 1985,[9] but upon a motion for reconsideration, the Court on September 4, 1985 resolved among others, to set aside the resolution of March 4, 1985, to give due course to the amended petition, and to require the parties to file their respective memoranda.[10]

Petitioners raised the following issues:

"1. Whether or not the testimony of the lone prosecution witness which was thereafter repudiated in an affidavit of recantation, would still constitute as proof beyond reasonable doubt to sustain conviction of the accused. (herein petitioners);

"2. Whether or not the respondent court acted unjustly and with grave abuse of discretion denying petitioners' motion for new trial which was filed in view of the fact that the lone prosecution witness repudiated his extra-judicial confession that was the sole basis for convicting the appellants (petitioners hereof);

"3. Whether or not the failure of notice to the counsel on record whose appearances have not been withdrawn is a fatal defect amounting to denial of due process of law;

"4. Whether or not the outright denial of the motion for new trial constitutes gross abuse in the light of the recantation."[11]

In their memorandum, petitioners contend that with the recantation of state witness Romeo Bonoy, the case against them "have (sic) been punctured to such an extent that there exists no more evidence upon which to base a verdict of guilt beyond reasonable doubt."[12] They likewise argue that even without such recantation, the testimony of Bonoy "did not tilt the fulcrum in favor of the prosecution" as the same, being uncorroborated, is insufficient to "pin down" his co-accused.[13] But subsequently, they pray not for a new trial, but for outright acquittal by this Court.[14]

Stripped to bare essentials, the pivotal issue in this case is whether or not the solitary testimony for the prosecution which has been retracted can no longer sustain the judgment of conviction.

This issue has been squarely settled in a recent case,[15] reiterating the disfavor with which such retractions of testimonies previously given in court, are viewed by this Court. As a general rule, a motion for new trial will not be granted if based on an affidavit of recantation of a witness whose effect is to free the appellant from

participation in the commission of the crime. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.[16] Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for a monetary consideration,[17] the Court has invariably regarded such affidavits as exceedingly unreliable.[18] At best, they constitute a ground for a new trial where aside from the testimonies of the retracting witness or witnesses there is no other evidence to sustain a judgment of conviction.[19] They are rarely, if ever, accepted at face value, but subjected to a careful examination and comparison with the retracted testimony in accordance with the recognized rule that "x x x a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each was given and the reasons and motives for the change carefully scrutinized -- in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth." [20]

In the case at bar, it will be recalled that even during the trial, Bonoy executed an affidavit dated March 2, 1979 (Exhibit "B") alleging that the charges against petitioners were mere fabrication, only to be repudiated in his subsequent affidavit dated March 13, 1979 (exhibit "C"), wherein he affirmed the truth of his statement (Exhibit "A") given before the police on February 7, 1979. Furthermore in his testimony in court, Bonoy re-affirmed the truth of the contents of Exhibits "A" and "C" and denied the veracity and voluntariness of Exhibit "B". Thus, both the trial and appellate courts gave credence to his testimony implicating petitioners as the masterminds of the crime charged.

Moreover, the Court of First Instance of Rizal rejected Bonoy's second affidavit (Exhibit "B") because the evidence showed that it was executed under dubious circumstances.[21] It is therefore not improbable that his present affidavit of recantation which is identical with Exhibit "B" had been executed under like circumstances, particularly as it was executed five (5) years after Bonoy's testimony in court, and after the appellate court had affirmed with modification the trial court's decision and had denied petitioners' motion for reconsideration. Thus, taken from a different angle, no error was committed by the appellate court in refusing to characterize Bonoy's affidavit of September 14, 1984 as a newly-discovered evidence that would warrant the conduct of a new trial. Indeed, for the appellate court to have ruled otherwise would put no end to litigation as every convicted accused could simply wangle an affidavit of retraction from a principal witness to succeed in prolonging the trial period during which he is free on bail.

In any event we have carefully gone over the records and evidence in this case and we are persuaded that Bonoy's testimony in court deserves credence. We further find the same sufficient for conviction.

A striking characteristic of Bonoy's lengthy testimony is its consistency. The trial court has this to say on his manner of testifying: "x x x Bonoy has been consistent and straightforward in his testimony and has not been shaken by the lengthy and exhaustive cross examination by the defense counsel x x x." [22] Indeed, through the gruelling cross and re-cross examinations of petitioners' counsel, Bonoy remained steadfast and consistent in his testimony that the crime was committed upon petitioners' instructions. He was just as steadfast and consistent in saying that he was made to sign Exhibit "B" without having been given the chance to read the same. Having thoroughly convinced the trial and appellate courts as well as this Court of the truth of his testimony, we do not see, how he can hope to convince us on the veracity of his affidavit of September 12, 1984, the context and import of which are the same as Exhibit "B". In other words, the claim that petitioners were merely framed had previously been considered yet rejected for being incredible.

As to the sufficiency of Bonoy's testimony, we share the observations of the Solicitor General that:

"Bonoy, while he was not corroborated by another witness, was fully corroborated by the circumstances of the case, namely: (a) he could not have taken the stolen articles out of the premises of his employer without the knowledge of petitioners as they were the ones who frisked employees leaving the work premises; (b) Bonoy on three occasions spirited out the stolen articles, yet he was never detected and no report thereof made to the management; (c) Bonoy, a farmer from the Mountain Province with a below average mentality (Appellant's Brief, p. 49), could not have outwitted petitioners, and thus he could not have stolen the subject articles without criminal knowledge and consent; (d) even before his sworn statement was taken and after his arrest, Bonoy implicated petitioners as the masterminds; and (e) the stolen articles were recovered. x x x"[23]

Further, in the determination of the sufficiency of evidence, what matters is not the number of witnesses but their credibility and the nature and quality of their testimonies.[24] It is axiomatic that witnesses are weighed, not numbered and the testimony of only one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict.[25]

WHEREFORE, the instant petition is DENIED. The decision of the Intermediate Appellate Court, now the Court of Appeals, dated February 28, 1984 is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Feliciano, Bidin and Cortes, JJ., concur.

Gutierrez, Jr., J., see dissenting opinion.

[1] Judge Marcelino N. Sayo, presiding.

[2] pp. 180-184, Rollo.

[3] pp. 225-226, Original Records.

[4] p. 227, Original Records.

[5] p. 99, Rollo, Justice Rodolfo A. Nocon, ponente, concurred in by Justices Juan A. Sison and Federico B. Alfonso, Jr.

[6] p. 133, Rollo.

[7] p. 185, Rollo.

[8] p. 58-a, Rollo.

[9] p. 151, Ibid.

[10] p. 208, Ibid.

[11] p. 9, Rollo.

[12] p. 209, Rollo.

[13] p. 210, Rollo.

[14] Manifestation, p. 233, Rollo.

[15] Edwin Reano, et al. v. Court of Appeals, et al., G.R. No. 80992, September 21, 1988, 165 SCRA 525.

[16] People v. Morales, 113 SCRA 683 (1982).

[17] *People v. Monadi*, 97 Phil. 575; *People v. Aguipo*, 104 Phil. 1051; *People v. Francisco*, 94 Phil. 975; *People v. Urita*, 108 Phil. 730, 734; cited in *Reano v. Court of Appeals*, *supra*; *People v. Morales*, *supra*.

[18] *People vs. Pasilan*, L-10770, July 30, 1965, 14 SCRA 694.

[19] *People vs. Bocar*, 97 Phil. 398; *People vs. Lao Wan Sing*, G.R. No. L-16397, August 18, 1972, 46 SCRA 298.

[20] *People v. Ubina*, 97 Phil. 515 (1955).

[21] Decision, p. XIV, Amended to Brief for Accused-Appellants.

[22] p. 226, Original Records.

[23] p. 197, Rollo.

[24] *People v. Marasigan*, 85 Phil., 427 [1950].

[25] *People v. Canada*, 144 SCRA 121 [1986]; *People v. Obenque*, 147 SCRA 488 [1987]; *People v. Nulla*, 153 SCRA 471 [1987]; *People v. Argana*, G.R. No. L-19448, February 28, 1964, 10 SCRA 311; *People v. Vengco*, G.R. No. L-31657, January 31, 1984, 127 SCRA 242.

DISSENTING OPINION

GUTIERREZ, JR., J.:

I am constrained to dissent because the evidence presented by the prosecution is not the kind of evidence that should convict beyond reasonable doubt.

I agree that an affidavit of recantation is not a ground to reject the earlier testimony of the recanting witness. However, it should subject the testimony of that witness to more than the usual scrutiny because the witness may not only be vacillating and unreliable but may also be unscrupulous. (See *People v. Morales*, 113 SCRA 683 [1983] which warns against unscrupulous retracting witnesses).

In this case, the unreliability of the witness upon whom the judgment of guilt or innocence of the petitioners completely depends, is clearly shown.

The affidavits of Romeo Bonoy, the only witness to the alleged theft show that not much reliance can be placed on what he says.

On February 7, 1979, Bonoy admitted having stolen the spare parts, pointing to the petitioners as the people who induced him to steal on the rather strange ground that he would not keep his job for long unless he steals the spare parts.

On March 2, 1979, Bonoy completely repudiated the earlier admissions.

On March 13, 1979, Bonoy retracted his second affidavit and went back to his February 7 affidavit, amplifying the first affidavit in order to overcome the statements made in the March 2 repudiation or retraction.

On September 12, 1984, Bonoy executed a fourth affidavit again retracting his incriminating statements against the petitioners. He felt more free at the time to speak out because he was no longer under the employ of the complainant owner of Isuzu Specialist Sales. He was already in his familiar surroundings and in the presence of his mother and the municipal mayor.

Any witness who goes back and forth four times in diametrically opposed statements is not one whom I would believe for the purpose of convicting his two supervisors of qualified theft. Bonoy was an eighteen year old native of Tadian, Mountain Province who arrived in Manila in September, 1978 or three months before the alleged theft. He worked as an office boy and delivery boy. The petitioners cite ten reasons why the testimony of Bonoy should not lead to a conviction beyond reasonable doubt:

"First, let us consider the person of Bonoy. Admittedly, this witness as the prosecution witness NORMAN UY describes, is below average and a slow learner. He is a, in the vernacular, 'bagoong singkaw'. It would be contrary to human nature, experience and reason to conclude that the accused would utilize a person who is only a new employee and without any knowledge much less experience in Isuzu spare parts. In fact the records will bear out that he does not even know the kind of parts allegedly ordered stolen.

"Second, let's take a look at the kind of spare parts allegedly pilfered. No thief worth his salt would steal washers, brass, bulks, tire range, electric plug and the like. These are the parts with negligible commercial value. These could be found in repair or junk shops.

"Third, the value of the parts. It would be unthinkable that in a span of almost a month the value of parts allegedly stolen would only amount to Four Hundred Eighteen Pesos and Twenty Centavos (P418.20). This is incredible may unbelievable.

"Fourth, the parts were never recovered from the custody or possession of the accused-appellant.

"Fifth, the case was filed only after Armando de Guzman had resigned from the company. Why did they wait till after he is resigned?

"Sixth, the records will show that the spontaneous response of Bonoy was to deny the charge. Whatever changed his mind afterwards only God knows. The fact remains that when first confronted by the police, he denied.

"Seventh, after the case was filed Armando de Guzman and Mario Pua were hired with a higher salary by Dy's marketing and in so short a time they were able to establish a branch all because their former customers followed them at their new establishment. The rise of Dy's marketing had all the more incensed the complainants and make them hunger for the blood and hide of the accused-appellants.

"Eight, the alleged order to steal was made by the accused-appellants when they were at the counter. Could we believe that such instructions would be done in such a place where there are other employees, when the possibility of being heard is imminent, if not sure?

"Ninth, there was no proof nor evidence introduced to prove that such items were lost or missing. Even in the stock card which is checked everyday, it does not reflect any shortage or loss. All of these things would show the improbability of the cause of the prosecution.

"Tenth, if it were true that the information relayed by the mysterious phone caller were true, why did not the Manager wait for the opportune time to catch the thief redhanded? Could it be that this was really the scenario? These facts were not properly appreciated by the respondent court. It simply adopted the theory of the prosecution hook and sinker.

"Against these array of incontrovertible facts is the feeble, anemic and polluted testimony of Bonoy, reason of which the accused-appellants were now condemned and sentenced to suffer five (5) to nine (9) years of their prime and precious life in prison." (Rollo, pp. 12-14)

There is no question that Bonoy is the most guilty among the accused. Yet, he was chosen as state witness. He admitted stealing the spare parts and stashing them in his room but pointed to the petitioners as the ones who ordered him to steal. The stolen goods were allegedly found in his room. Bonoy was a delivery boy who could

easily bring parts out of the shop. He was not inspected during regular office hours as it was his job precisely to bring out those items and deliver them to customers. The majority opinion sustains the conviction because Bonoy's testimony was lengthy and consistent. Of course, it was consistent. He was only narrating what he actually committed. However, when he starts pointing to two supervisors as the principals by inducement and these two supervisors happen to be former employees already working for a competitor of Isuzu Specialist Sales, his testimony is not necessarily consistent. It is the kind of testimony so easy to fabricate. It comes from a state witness interested in exculpating himself and who would have gone to jail were it not for the interesting story he narrates against two persons against whom his employer is exceedingly angry and bitter. He is trying to distance himself from the crime. He must also justify the act of the prosecution and the court of freeing him from criminal culpability.

There is another factor which raises doubts. The P418.20 worth of spare parts were stolen in December, 1978. They were still there in February, 1979. It is inconceivable why the two supervisors - top ranking employees of the store would keep P400.00 worth of stolen items in the room of a newly hired errand boy instead of disposing of them immediately. The evidence is clearly consistent with Bonoy's having committed the theft solely on his own but when facing a jail sentence agreeing with a vengeful employer to incriminate two former employees who had moved over to a competitor. Or perhaps there was no theft at all and the whole incident was a clever fabrication.

There are ample grounds for reasonable doubt. I regret that I cannot concur with the majority opinion.

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