

EDWIN REANO, NELSON ROBLES AND JOSE REANO, PETITIONERS, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 80992. September 21, 1988

Ponente: CORTES, J.

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CORTES, J.:

The issue before the Court is hardly novel: whether or not a conviction can be obtained when the sole witness to the commission of the crime later retracted her testimony.

An information for homicide against petitioner Edwin Reano was filed in the Regional Trial Court on February 15, 1984 [Record, p. 1.] He posted a bail bond for his provisional liberty. Petitioners Jose Reano and Nelson Robles were then still at large. Upon arraignment, Edwin Reano pleaded not guilty [Id. at 41.] Thereafter, Jose Reano and Nelson Robles were apprehended and an amended information and second amended information were filed to include them as accused [Id. at 58 and 73.] They also filed bail bonds. Like Edwin Reano, they pleaded not guilty to the charge. Thereafter, trial on the merits commenced.

The testimony of the prosecution's first witness, Rosemarie Tialengco, the victim's widow, was summarized by the trial court and quoted in the decision of the Court of Appeals as follows:

Rosemarie Tialengco testified that on February 16, 1983 at about 3:30 to 4:00 in the afternoon when she alighted from the tricycle in Rosario, Cavite after buying ice cream from Poblacion her sister Erlinda Buendia was shouting "pulis, pulis" but no policeman came; that she saw her husband Danilo Tialengco being stabbed by the accused Joey Reano while her husband was lying face downward on the ground and several persons were ganging up on him namely: Edwin Reano holding the victim's hands and Nelson his feet while Joey stabbed him with a 29 inches balisong; that she entered the melee and held Joey Reano by the collar to pacify him and in so doing was almost stabbed herself; that thereafter the accused ran in the direction of their houses and she called for a tricycle to take her husband to Our Savior Hospital in Rosario, Cavite whereby he was pronounced dead on arrival and the corresponding death certificate was issued (Exh. A). Upon inquiry from the persons on the scene she was informed that the accused were trying to give her husband a valium tablet, a regulated drug and when he refused, he was stabbed to death.

She also said that the accused were from the same place in Wawa, Rosario, Cavite and entered the premises to drink because it was the birthday party of her husband and a despedida party for him as he was leaving for Saudi Arabia as a contract worker. She identified all the accused in open court. [Rollo, pp. 39-40.]

After Rosemarie Tialengco testified and identified all the accused, Edwin Reano jumped bail and an order of arrest and for confiscation of his bond was issued [Record, p. 107.] However, as he could not be apprehended, he was tried in absentia in view of the waiver of appearance clause in his bond and judgment was rendered on his bond for failure of the bondsmen to produce his body.

The only other witness for the prosecution was Pat. Apolonio Lamiao of the Integrated National Police who

identified the sworn statement he took from Rosemarie Tialengco during his investigation [TSN, February 5, 1986, pp. 4-15.] The other witnesses that the prosecution had intended to present had either died already or could no longer be found at their addresses.

On their part, petitioners Nelson Robles and Jose Reano interposed the defense of alibi. Robles claimed that he was some seventy (70) meters away from the scene of the crime when it was committed [TSN, March 5, 1986, p. 19] while Jose Reano claimed to be a thousand meters away [Id. at 24.] The defense also presented Rosemarie Tialengco, who recanted her previous testimony, saying that she did not actually see the petitioners kill her husband [Id. at 3-16.]

The trial court found all of the petitioners guilty beyond reasonable doubt of the crime of homicide and sentenced them to an indeterminate penalty of from 10 years and 1 day of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum, to jointly and severally indemnify the heirs of the victim in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency, and to each pay one-third of the costs [Rollo, p. 65.]

Dissatisfied with the trial court's verdict, petitioners appealed to the Court of Appeals.

After reviewing the testimonies of Rosemarie Tialengco, the appellate court gave credence to her earlier testimony for the prosecution and rejected her recantation, noting that when she again testified for the defense her answers to the questions propounded were "inept, shallow, unresponsive and certainly did not inspire belief" and that, as found by the trial court, she was "fidgety, nervous and could not look at the Presiding Judge straight in the eyes" [Rollo, p. 45.] Thus, the Court of Appeals affirmed the decision of the trial court in toto.

Convinced that their guilt has not been proven beyond reasonable doubt, and banking heavily on Rosemarie Tialengco's retraction, the petitioners have brought their case to this Court, arguing that in the absence of corroborative evidence, there arises a reasonable doubt that justifies their acquittal [Rollo, pp. 11-12.] Stated otherwise, petitioners argue for their acquittal on the premise that a solitary testimony which has been retracted can no longer sustain a conviction.

While the natural tendency would be to concentrate exclusively on the issue of whether or not the Court of Appeals erred in finding Rosemarie Tialengco's recantation incredible and affirming the decision of the trial court, the ultimate issue of whether or not the guilt of the petitioners has been proven beyond reasonable doubt remains primordial.

- The Court has looked with disfavor upon retractions of testimonies previously given in court. Thus, the Court has ruled against the grant of a new trial on the basis of a retraction by a witness [People v. Morales, G.R. No. L-37107, April 27, 1982, 113 SCRA 683; People v. Navasca, G.R. No. L-28107, March 15, 1977, 76 SCRA 70; People v. Genilla, G.R. No. L-23681, September 3, 1966, 18 SCRA 12; People v. Domenden, G.R. No. L-17822, October 30, 1962, 6 SCRA 343; People v. Concepcion, 84 Phil. 787 (1949).] The rationale for the rule is obvious:

Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for a monetary consideration (People v. Monadi, 97 Phil. 575; People v. Aguipo, 104 Phil. 1051; People v. Francisco, 94 Phil. 975; People v. Ulita, 108 Phil. 730, 734). Recanted testimony is exceedingly unreliable (People v. Pasilan, L-18770, July 30, 1965, 14 SCRA 694). There is always the probability that it may later be repudiated (People v. Galamiton, 95 Phil. 955). So courts are wary or reluctant to allow a new trial based on retracted testimony (People v. Castelo, L-10774, May 30, 1964, 11 SCRA 193). [People v. Saliling, G.R. No. L-27974, February 27, 1976, 69 SCRA 427, 442.]

However, when aside from the testimonies of the retracting witness or witnesses there is no other evidence to support a judgment of conviction, a new trial may be granted [People v. Bocar, 97 Phil. 398 (1955); People v. Lao

Wan Sing, G.R. No. L-16379, August 18, 1972, 46 SCRA 298.]

- Where a witness testifies for the prosecution and retracts his or her testimony and subsequently testifies for the defense, the test in determining which testimony to believe is one of comparison coupled with the application of the general rules of evidence, as enunciated in *People v. Ubina* [97 Phil. 515 (1955)], where the Court said:

The testimony of Ruben Francisco for the prosecution is claimed to be unworthy of credit because later on he testified for the defense, declaring that all he had stated against the defendants is not true

The theory of the defense that Francisco's previous testimony is false, as he subsequently declared it to be so, is as illogical as it is dangerous. Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement (Rule 123, section 91); not that a previous testimony is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e. that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. (*U.S. v. Magtibay*, 17 Phil. 417; *U.S. v. Briones*, 28 Phil. 362; *U.S. v. Dasiip*, 26 Phil. 503; *U.S. v. Lazaro*, 34 Phil. 871). We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one (*U.S. v. Acasio*, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. If Francisco says that when he testified for the prosecution he was paid P700, what can prevent the court from presuming that subsequently he testified for the defense because the defendants also paid him to testify for them? The rule should be that 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 given carefully scrutinized, the reasons or 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. [at pp. 525-526; underscoring supplied.]

In reviewing the judgment of the trial court, this is exactly what the trial court and the Court of Appeals endeavored to do. That both courts carefully scrutinized the contradictory testimonies of Rosemarie Tialengco and considered the attendant circumstances cannot be seriously disputed. Thus, the Court of Appeals stated in its decision:

This was precisely what the trial judge did. He carefully compared and weighed the conflicting testimonies given by the widow of the deceased and came out with the conclusion that her later testimony was not credible. Describing her subsequent testimony, the trial court observed: "From her demeanor on the witness stand, the court finds that she was fidgety nervous and could not look the Presiding Judge straight in the eyes." (p. 218, rec.) Indeed, perusing her retraction, we take note that her answers to the questions were inept, shallow unresponsive and certainly did not inspire belief. For instance, when she was asked to explain why she implicated the three accused in her testimony, all that she could say was: "I was taken aback. I really did not see." (p. 7, tsn., March 5, 1986.) When she was confronted with her previous testimony that the three accused tried to give valium tablets to her late husband and when he refused he was assaulted, she replied: "No sir, I did not see it anymore because I was confused at that time." (p. 14, tsn., id.) Again when she was asked regarding the correctness of her previous testimony that she was almost stabbed by one of the assailants during the incident, she said: "No sir, because I was taken aback during that time" (p. 13, tsn., id.). [Rollo, p. 45.]

While the Court of Appeals found that Rosemarie Tialengco's testimony for the defense did not inspire belief, it

was fully convinced of the credibility of her prior testimony for the prosecution. Thus, the respondent court stated:

We have carefully examined the testimony of Rosemarie Tialengco as witness for the prosecution. Without any doubt, her testimony has all the earmarks of truthfulness. She testified in a straightforward manner without lapsing into any contradiction. She was extensively cross-examined by defense counsel, but her testimony on how her husband was killed stood unshaken. She saw accused Jose Reano stabbing her husband who was lying face downward while Nelson Robles held him by the feet and accused Edwin Reano held his hands. [Rollo, p. 41.]

- To ensure that justice is not denied petitioners, the Court has carefully gone over the transcript of stenographic notes of her two testimonies and has reached the same conclusion as that of the trial court and the Court of Appeals. Between the testimony of Rosemarie Tialengco as witness for the prosecution and that as defense witness, the former must be given credence and the latter rejected.

Her testimony as a prosecution witness was coherent, clear, precise and unwavering even in the face of the cross-examination conducted by the defense counsel. In so doing, she positively identified the petitioners as the assailants and lucidly described how Jose Reano stabbed her husband with a knife while the other two held him. [See TSN of November 6, 1984 and January 3, 1985.]

That she was certain of the identities of the accused and the details of the incident is also reflected in her sworn statement given to the police on February 17, 1983, the day after the commission of the crime, the pertinent portion of which states:

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* * *

T:

Sino ang iyong ididimanda at bakit mo siya ididimanda?

S:

Una po ay aking ididimanda ay sina Edwin Reano, Nelson Robles at Jowie Reano dahilang sa pinagtulungan nila na mapatay sa saksak ang aking asawa na si Danilo Tialengco at ang pangalawa ay sinaksak din ako ni Jowie Reano at buti na lamang ay nakailag ako at hindi ako tinamaan pero ang suot kong damit na parang sando ay inabot po ng saksak at iyon ay napunit.

T:

Kailan, saan at anong oras ito nangyari?

S:

Kahapon po Pebrero 16, 1983, doon po sa may labas ng bahay namin sa Barangay Wawa, Rosario, Cavite na ang oras ay humigit kumulang sa 3:30 ng hapon.

T:

Maaari mo bang maisalaysay sa akin ang buong pangyayari kung papaano sinaksak ni Jowie Reano, Edwin Reano at Nelson Robles ang iyong asawa at gayon din ikaw?

S:

Opo. Noon pong mga oras na 3:30 ng hapon ako ay parating sa aming bahay at may dala akong ice cream at kababa (sic) ko po lamang sa trisekel ang sigaw ng kapatid kong si Erlinda Buendia ay PULIS PULIS at ako ay tuloy-tuloy na umuwi sa aming bahay at nakita ko ang aking asawa na si Danilo Tialengco ay nakadapa at nasa tabi niya sina Nelson Robles, Edwin Reano at Jowie Reano at ako ay lumapit at sa paglapit kong iyon ay nakita ko na sinaksak niya ang asawa ko at ang ginawa ko ay hinawakan ko siya (Jowie Reano) sa kuwelyo at hinila ko at ang ginawa naman ni Jowie ay hinarap ako at inundayan ako ng saksak at ako ay napatagilid na atras at iyon suot kong damit na sando na may guhitan kulay Pula, Asul at Puti ay nahagip ng biente nuwebe na tuloy ay napunit iyon at tapos nagtatakbo na sila at nakita ko ang aking asawa na duguan na at nilalabasan ng dugo sa bunganga at ako ay tumawag ng trisekel at ang aking asawa (sic)[*] ay binuhat ang aking asawa at isinakay sa trisekel at dinala namin sa Our Saviour Hospital ang aking asawa pero hindi na po nabuhay "o" nagamot pagkat patay na ng idating doon.

T:

Gaano ba kahaba ang ipinangsaksak sa iyo na biente nuwebe nitong si Jowie Reano?

S:

Humigit kumulang po sa isang dangkal.

T:

Alam mo ba kung bakit sinaksak nina Nelson Robles, Edwin Reano at Jowie Reano?

S:

Noon pong una ay hindi ko alam pero nitong huli na ay nalaman ko at nagalit itong si Nelson Robles dahilang sa ayaw bilhin ng asawa ko iyong Ballom [Valium] na tableta na ipinagbibili ni Nelson at iyon po ay pinagsimulaan.

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[Record, p. 5.]

On the other hand, her testimony for the defense was characterized by irresponsible answers to simple questions and an uncalled for insistence on the explanation that she was "confused" and "taken aback" and that she did not really see the commission of the crime and that her conscience was bothering her [TSN, March 5, 1986, pp. 5-9, 12.] This sort of an explanation, far from exculpating the petitioners, casts doubts on the reason for the retraction. Coupled with the observation of the trial court judge that when she testified for the defense she was "fidgety, nervous and could not look the Presiding Judge straight in the eyes" [Rollo, p. 62], the rejection of her retraction is inevitable.

- At this stage, the question now before the Court is whether on the basis of the evidence on record the guilt of the accused has been proved beyond reasonable doubt.

The Court finds that it has.

The petitioners have been positively identified by Rosemarie Tialengco as the victim's assailants. Through her testimony for the prosecution and the other evidence presented the elements of the crime charged have been proved. That such testimony was uncorroborated does not detract from its credibility. 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 [People v. Marasigan, 85 Phil. 427 (1950).] The testimony of only one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict [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.]

On the other hand, petitioners claim alibi as their defense. But then, the defense of alibi is an inherently weak defense for it is easy to fabricate. It cannot prevail over positive identification. For such defense to prosper, it must be shown that it was physically impossible for the accused to have been at the scene of the crime or at the vicinity thereof at the time it was committed. [U.S. v. Garcia, 9 Phil. 434 (1907); U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Badilla, 48 Phil. 718 (1926); People v. Coronado, G.R. No. 68932, October 28, 1986, 145 SCRA 250; People v. Detuya, G.R. No. L-39300, September 30, 1987, 154 SCRA 410; People v. Melgar, G.R. No. 75268, January 29, 1988.]

In the instant case, not only have the accused been positively identified as the assailants but in their testimony Nelson Robles and Jose Reano have admitted that they were only 70 and 1,000 meters away, respectively, from the scene of the crime [TSN, March 5, 1986, pp. 19, 25.] Their defense of alibi cannot therefore prosper.

That the petitioners are guilty of the crime of homicide has been proved beyond reasonable doubt. No reversible error has therefore been committed by the Court of Appeals in affirming the decision of the trial court.

WHEREFORE, in view of the foregoing, the petition is DENIED and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, C.J., Feliciano and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

[*] In her testimony for the prosecution, Rosemarie Tialengco said that it was her brother Efren Buendia who carried her wounded husband to the tricycle that would bring him to the hospital [TSN, November 6, 1985, p. 15.]

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