

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CATALINO QUIMING Y LOPEZ, HERMINIGILDO LAMIGO AND ROBIN ESTOESTA, ACCUSED, ROBIN ESTOESTA, ACCUSED-APPELLANT.

G.R. No. 92847. May 21, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The issues in this case are the validity of the dismissal of a state witness and the credibility of his testimony. The trial court resolved both affirmatively, resulting in the conviction of the accused-appellant. He seeks reversal, claiming the decision is erroneous.

On May 28, 1983, two dead bodies were found on the shoulder of a road in Barangay Carmay, in Rosales, Pangasinan. They were sprayed with bullets. Autopsy revealed that the cause of death was "shock, irreversible, due to massive internal and external hemorrhage, due to gunshot wounds." [1] Sixteen empty shells were recovered near the corpses.

Investigation focused suspicion on three soldiers, namely, Robin Estoesta, Herminigildo Lamigo, and Catalino Quiming, all of the 152nd PC Company stationed at Lingayen, Pangasinan. They had earlier used a mini-cruiser jeep found later with a dented bumper and bloodstains at the rear of the vehicle. Upon separate interrogations, Estoesta pointed to Lamigo as the killer; [2] Lamigo pointed to Estoesta; [3] and so too did Quiming. [4] The paraffin tests proved positive for Estoesta and negative for both Lamigo and Quiming. [5] The ballistics tests showed that the empty shells came from the firearms assigned to Quiming and Lamigo. [6]

On September 23, 1980, all three suspects were charged with the murders of Herminio Casimiro and Pedro Robina, committed with treachery and evident premeditation and with the aggravating circumstance of having taken advantage of their public position as members of the Philippine Constabulary. Each of the accused pleaded not guilty. On motion of the prosecution, Quiming was subsequently discharged, over the objection of the defense, to become a state witness. [7] After trial, during which Quiming as well as the remaining two accused took the stand, Judge Manuel D. Victorio of the Regional Trial Court of Rosales, Pangasinan, found Estoesta guilty of double murder and sentenced him to serve the penalty of reclusion perpetua for each of the offenses, to indemnify the heirs of the victims in the amount of P30,000.00 for each victim; and to pay the costs. Lamigo was acquitted for insufficiency of the evidence against him. [8]

In the appellant's brief, the discharge of Quiming to become a witness for the prosecution is challenged on the ground that his testimony, as revealed during his examination at the trial, was "perjurious" and full of contradictions. The ground is irrelevant. Credibility is not the test of the discharge of an accused so he can become a state witness. The requisites for this step are laid down in Section 9 of Rule 119 of the Rules of Court, and it is by these requisites, if satisfied, that the discharge is allowed.

The said section provides as follows:

When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- c) The testimony of said accused can be substantially corroborated in its material points;
- d) Said accused does not appear to be the most guilty;
- e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

Given the peculiar circumstances of this case, where the only eyewitnesses to the killings were the three original accused themselves, we feel that the trial court did not err in allowing the discharge. The grant of the motion to discharge was made in the sound discretion of the trial court after ascertainment of the presence of the conditions set forth in the above-quoted provision. Significantly, Quiming's discharge was ordered first by Judge Cornelio W. Wasan, Sr.,^[9] to whom the case was first raffled, and later, upon its transfer, by Judge Victorio in resolving the motion for reconsideration.^[10]

There was an absolute necessity for the testimony of Quiming because no other direct evidence was available against Estoesta and Lamigo, who remained accused of the killings. The testimony of Quiming could be substantially corroborated in its material points, particularly by the autopsy and ballistics reports and, curiously, by Lamigo himself. Quiming did not appear to be the most guilty (and in fact appeared to be the least guilty) because, while Estoesta and Lamigo accused each other, neither of them pointed to Quiming as the killer. Finally, it had not been shown that Quiming had ever been convicted of a crime involving moral turpitude.

Coming now to the commission itself of the offenses, we find from the testimonial and other evidence presented that Estoesta was, indeed, the lone killer.

The Court notes at the outset that he was the leader of the group that went on official mission that day, being a 1st Class constable whereas the other two were merely constables and so had to take orders from him.

It appears from the testimonies of the soldiers themselves that upon accomplishment of their mission in the afternoon of that day, they had a drinking spree in two towns before deciding to head back for their headquarters in Lingayen at about five-thirty.^[11] Lamigo, who was driving, hit an ipil-ipil tree and dented the bumper of the mini-cruiser.^[12] Seated beside him was Quiming while Estoesta was in the rear, sitting in one of the benches opposite each other.^[13] Estoesta and Quiming were at that time holding their respective firearms, with Lamigo's M-16 rifle lying near the gear shift. At Barangay Carmay, two men signaled to them, probably thinking they were hailing a passenger jeep. Estoesta ordered Lamigo to stop and take them in. The two hitchhikers, who appeared to be intoxicated, sat on the other bench facing Estoesta and immediately behind Quiming. After a while, Estoesta got Lamigo's gun, placing his own gun on his lap, as he moved to the rearmost part of the bench.^[14] About three or four kilometers later, Quiming was startled by the sound of gunfire, causing him to involuntarily fire his own gun, and when he looked back he saw the two hitchhikers sprawled and bloodied.^[15] Estoesta had shot them. Lamigo immediately stopped the jeep and asked Estoesta why he had done this. Estoesta's response was to order

Lamigo and Quiming to unload the two corpses, which they did, placing them face down, one on top of the other, on the shoulder of the road. Estoesta later alighted at Urdaneta to go home to La Union, telling them not to report the matter as he would take care of it. Lamigo and Quiming proceeded to their headquarters at Lingayen. The next morning, upon discovery of the bloodstains and the dented bumper in the jeep they had used, they were taken into custody. Estoesta returned on May 30, 1983, and was also detained in the stockade.

Quiming's testimony was substantially corroborated by Lamigo.

For his part, Estoesta insists that it was not he but Lamigo who shot and killed the two hitchhikers and later threatened him and Quiming against reporting the incident. He faults the credibility of his two companions, arguing that they were friends and province-mates and so supported each other against him. He also cites some contradictions in their separate testimonies that he says brand them as perjured and unreliable witnesses. For example, Quiming said in his sworn statement that Estoesta used his own gun in killing the hitchhikers but he changed his mind at the trial and said that the gun used was Lamigo's.

We have held that variance between the testimony and the affidavit of a witness does not of itself affect his credibility.[16] Affidavits executed during custodial investigation are as a rule abbreviated and inaccurate and usually made without the aid of an attorney.[17] Generally, standard questions are asked, laced with suggestions intended to elicit answers which turn out to be not wholly the product of the declarant's fallible power of recall.[18] So it must have been in the case of Quiming when he made the cited contradictions.

At any rate, we find that the discrepancies in Quiming's testimony are of minor character only and do not affect its veracity as a whole. As for the alleged bias of Lamigo and Quiming against him because of their relationship, this charge has not been proved at all.

It is a long-standing policy of the Court to defer to the factual findings of the trial court on the theory that it has the opportunity to observe the witnesses on the stand and determine by their deportment whether they are telling or distorting the truth. The only exception is where such findings are not supported by substantial evidence, but that exception is not applicable in the case at bar.

The decision found the accused-appellant guilty as charged beyond reasonable doubt, but the statement is not entirely accurate. We agree that the killings were qualified by treachery because, as all three eyewitnesses testified, the victims were completely defenseless and taken by surprise when they were shot down. But there is no showing that there was evident premeditation of the murders; in fact, the victims were picked up by happenstance and killed only minutes afterwards. Neither has it been proved that Estoesta took advantage of his official position as a constable when he murdered them.

There being no mitigating or aggravating circumstances, the imposable penalty for each of the murders is reclusion perpetua. The civil indemnity to be paid to the heirs of each of the two victims shall, however, be increased to P50,000.00, conformably to existing policy.

This Court has time and again warned that liquor and firearms are a deadly combination that must be shunned, especially by men in uniform, who are supposed to protect rather than endanger the public. The incidence of drunken soldiers and policemen killing or injuring defenseless civilians has grown to disconcerting proportions. The higher authorities in the military and the police must take more drastic measures against this evil lest the toll rise still higher even as respect for our law-enforcement agencies fall further down. There is no excuse for their tolerant inaction.

WHEREFORE, the appealed judgment is **AFFIRMED** as above modified and the appeal is **DISMISSED**, with costs against the accused-appellant.

SO ORDERED.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

- [1] Autopsy Report of Dr. Bienvenido G. Allas, Exhibits "A" and "D;" Records, pp. 34-37.
- [2] TSN., November 7, 1989, p. 9.
- [3] Ibid., May 22, 1989, pp. 10, 33-34.
- [4] Id., October 1, 1985, pp. 35-37.
- [5] Exhibits "R," "S" and "T;" Records, pp. 456, 459, 462.
- [6] Exhibit "P;" Records, p. 58.
- [7] Records, pp. 262-266.
- [8] Decision, Rollo, p. 32.
- [9] Order dated July 8, 1985; Records, p. 268.
- [10] Ibid., dated January 23, 1989; Records, Vol. II, pp. 161-167.
- [11] TSN, October 1, 1985, pp. 27-30; May 22, 1989, pp. 4-7; November 7, 1989, pp. 5-6.
- [12] Ibid., November 7, 1989, p. 6.
- [13] Id., October 1, 1985, p. 31; May 22, 1989, pp. 8-9.
- [14] id., October 1, 1985, pp. 32-35; May 22, 1989, p. 7.
- [15] id., October 1, 1985, p. 36.
- [16] People v. Fule, G.R. No. 83027, February 28, 1992.
- [17] People v. Caranzo, 209 SCRA 232.
- [18] Ibid.

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