

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISEO CALEGAN Y MATAVERDE, FLORENTINO FRASDILLA ALIAS “TINONG” AND WILFREDO MAGAT Y SILLIACOS, ACCUSED. ELISEO CALEGAN Y MATA...

G.R. No. 93846. June 30, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ELISEO CALEGAN Y MATAVERDE, Florentino Frasdilla alias "Tinong," and Wilfredo Magat y Silliacos were charged with robbery with homicide before the Regional Trial Court of Kalookan City in Crim. Case No. CC-31000. The Information alleged that on or about 4 June 1988, in Kalookan City, the three (3) accused, conspiring together, with intent of gain, by means of force and intimidation, willfully and feloniously took, robbed and carried away one (1) .38 cal. revolver marked Squires Bingham with SN INP 1023533 valued at P6,000.00 belonging to one Allan Ibardolaza, and on the occasion of the robbery and for the purpose of enabling them to take away the firearm pursuant to their conspiracy, shot and killed Allan Ibardolaza hitting him at the back of his head which caused his death.[1]

Of the three (3) accused, only Eliseo Calegan could be tried as his co-accused Florentino Frasdilla and Wilfredo Magat were never apprehended.

On 21 December 1989, the trial court convicted accused Eliseo Calegan of robbery with homicide as charged and, noting the absence of any aggravating or mitigating circumstance, sentenced him to reclusion perpetua, and ordered him to return the .38 cal. revolver to Liberty Investigation and Security Agency, and if unable to do so, to reimburse the agency its acquisition value of P6,000.00. Calegan was likewise directed to indemnify the heirs of Allan Ibardolaza in the amount of P30,000.00 and to pay the costs. He was declared entitled to full credit of his preventive imprisonment under Art. 29 of The Revised Penal Code. Meanwhile, the case against Florentino Frasdilla and Wilfredo Magat was ordered archived for their non--apprehension.[2]

Edmundo Legislador, a security guard of the Liberty Investigation and Security Agency assigned at the Isa Pa Nga Ihaw-Ihaw Balot-Balot Restaurant, located at the corner of Gen. Tinio Street and EDSA, narrated that at around seven o'clock in the evening of 4 June 1988, accused-appellant Eliseo Calegan and two (2) companions, later identified as Florentino Frasdilla and Wilfredo Magat, entered the restaurant. Earlier, they were seen by Legislador imbibing hard drinks on the stairs of the nearby Quality Laundry. Legislador had known accused-appellant for quite sometime because the latter frequented the restaurant.

At about eight o'clock that evening, Magat started creating trouble by throwing empty beer bottles inside the restaurant. Legislador pacified him. But after about fifteen minutes, Magat again threw an empty beer bottle at the customers of the adjoining table. He stood up and even introduced himself as a military man. Placing his identification card on top of the other table, he challenged its occupants saying, "Bumunot ka, military ako." They ignored the challenge; instead, they befriended him by joining him at his table.

Several minutes later, Magat again threw another empty bottle, this time at the customers occupying the table near the stage. Legislador again approached him. But as the former tried to pacify the latter, Frasdilla boxed one of the customers of the table near the stage. Then somebody hit Magat on the head with a chair, causing him to fall down and lose consciousness. The customers then left the restaurant. Later, accused-appellant and Frasdilla also left leaving Magat behind.

At around nine-thirty that same evening, Allan Ibardolaza, supervisor of the Liberty Investigation and Security Agency, arrived. Informed by Legislador of the melee, Ibardolaza approached Magat, who by then had already regained consciousness. They talked. Then Ibardolaza directed Legislador to call the police.

While Legislador was in front of the restaurant waiting for a bus to take him to the police station, appellant and Frasdilla arrived on board a tricycle and entered the restaurant. Upon seeing Ibardolaza, appellant embraced the latter. Then, almost simultaneously, Magat grabbed Ibardolaza's gun tucked to his waist, and struck him on the head. Ibardolaza blacked out.

Appellant Calegan, Magat and Frasdilla dragged the unconscious Ibardolaza out of the restaurant and placed him on the tricycle. With Frasdilla driving, they went towards Bagong Barrio. Soon after, Legislador heard a gunshot from the direction of the tricycle.

At the Kalookan Police Headquarters, Legislador reported the incident to P/Cpl. Alberto David who immediately responded. Together with two (2) other policemen, P/Cpl. David and Legislador boarded a police prowl car and proceeded towards the restaurant, retracing the route taken by the tricycle. But failing to locate the vehicle, they returned to the restaurant. Legislador called Dra. Celesdenia Palacio, General Manager of the Liberty Investigation and Security Agency, to inform her of the incident.

Legislador gave his sworn statement to the police on 20 July 1988[3] and additional sworn statements on 3 August 1988 and 12 October 1988.[4]

At eleven o'clock in the evening of 4 June 1988, the Kalookan Police Force received a report from their sub-station in Bagong Barrio that a dead man was found sprawled along Waling-Waling Street, Malabon. Immediately, P/Cpl. David and three (3) other policemen proceeded to the scene. After identifying the body, they brought Ibardolaza to the funeral parlor for autopsy.

On 5 June 1988, members of the Kalookan Police Force recovered the tricycle where the victim was loaded shortly before the gunshot was heard. The tricycle was taken to the NBI Forensic Chemistry Section for examination of the bloodstains found thereon. Forensic Chemist Evelyn Pizarro, found the bloodstains positive for human blood.[5] It was Type "O," the same blood type of the victim.[6]

On 20 June 1988, appellant was arrested by operatives of the Kalookan Police Force and, in a police lineup composed of eight to ten persons, he was singled out and positively identified by Legislador as one of the three persons who abducted the victim in the evening of 4 June 1988.

On 5 June 1988, Dr. Ricardo Ibarola, Medico-Legal Officer of the NBI, conducted an autopsy and reported that the victim sustained abrasions and contusions on the face which he theorized were caused by the rubbing of the skin against a rough surface. A fatal gunshot wound was found to have entered the middle portion of the nape and exiting at the mouth. He opined that the gun used in inflicting the fatal injury was a .38 cal. because of the size of the entry wound and that the gun was fired about half an inch away from the skin because of powder burns and blackening of the entry wound. The cause of the victim's death was intra-cranial hemorrhage and intra-spinal cord injury, secondary to gunshot wound on the nape.[7]

Dra. Celesdenia Palacio, General Manager of the Liberty Investigation and Security Agency, confirmed that the deceased was a supervisor of the security agency; that he was issued a licensed .38 cal. Squires Bingham revolver with Serial No. 1023533 bought at P6,000.00 three (3) years before; that the gun was never recovered after the incident.

The accused, on the other hand, admitted that he was at the stairs of the Quality Laundry located at the corner of Gen. Tinio Street and EDSA at around five o'clock in the afternoon of 4 June 1988. However, he denied that he was drinking at that time; it was only Magat and Frasdilla who were drinking. Inasmuch as it was raining between six and seven o'clock in the evening, he ran towards the Isa Pa Nga Ihaw-Ihaw Balot-Balot Restaurant for shelter and stayed there for about twenty minutes. He then went home. He denied having seen Legislador or the victim that night.

Marina Vanzuela, waitress at the Isa Pa Nga Ihaw-Ihaw Balot-Balot Restaurant, reported for work at six o'clock in the evening of 4 June 1988. Between six-thirty and seven in the evening, she saw accused-appellant go to the comfort room of the restaurant. Afterwards, he talked to her and left at about seven-twenty that same evening. She admitted that a commotion ensued inside the restaurant at about nine o'clock in the evening after Magat started throwing bottles, as a result of which, he was hit on the head by a customer and fell unconscious. Ibardolaza, the victim, then arrived and requested Magat, who already regained consciousness, to leave the place. A few moments later, Frasdilla returned with Joe Magat and another military man aboard a tricycle. Then these three (3) men helped one another in getting the firearm of the victim and mauling him until he became unconscious. Wilfredo Magat, Joe Magat, Frasdilla and the unnamed soldier loaded the victim on a tricycle parked outside the restaurant and left. She emphasized that during the entire incident, the accused was not there. Neither did she see Legislador when Joe Magat, Frasdilla and the other soldier arrived and entered the restaurant.

The trial court convicted accused-appellant of robbery with homicide. The ruling was based on the principal finding that although there was only one witness to the commission of the offense, his testimony being credible and positive was sufficient to convict.

In this appeal, accused-appellant reiterates his arguments before the trial court assailing the credibility of Legislador, *videlicet*: (a) Legislador stated in his testimony on 20 January 1989 that he saw the abduction of the victim while he was waiting for a bus in front of Isa Pa Nga Ihaw-Ihaw Balot-Balot Restaurant. However, in his sworn statement of 20 July 1988, he stated that he had already boarded a bus when he heard shouts and saw Wilfredo Magat grabbing the gun of the victim; (b) Legislador also stated in his testimony that after witnessing the abduction of the victim, he reported the incident to P/Cpl. David at the Police Headquarters. However, P/Cpl. David denied meeting or talking to him at the Police Headquarters; and, (c) Legislador was a biased witness considering that the victim was his supervisor to whom he owed some degree of loyalty and the owner and manager of the security agency was the aunt of the victim who employed him.

We find accused-appellant Eliseo Calegan guilty beyond reasonable doubt of the crime charged.

The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him^[8] because it is a matter of judicial experience that an affidavit, being taken *ex-parte*, is almost always incomplete and often inaccurate.^[9] The exceptions thereto, which impair the credibility of witnesses, are: (a) when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness would not be expected to fail to mention,^[10] or (b) when the narration in the sworn statement substantially contradicts the testimony in court.^[11] The point of inquiry, therefore, is whether the omission is important or substantial. We quote the relevant portions of the sworn statement of Legislador dated 20 July 1988:

T Maari (sic) bang isalaysay mo sa akin ang buong pangyayari na naganap?

S x x x x Pagsakay ko po sa DM bus, ay nakarinig ako ng hiyawan at ng (sic) tumingin ako ay nakita ko na inagawan nitong nagpakilalang sundalo ng baril si Allan at yon (sic) kasama naman niyang isa ay akap-akap si Allan at sapilitan (sic) isinakay sa isang tricycle na minamaneho nitong kasama naman nilang isa pa x x x x" (underscoring supplied).

We note that Legislador did not state that the bus was already moving when he saw the incident. For comparison, we quote the pertinent portions of his testimony on 20 January 1989:

Q In what particular place in relation to the restaurant were you waiting for the bus to come by?

A It was in front (sic) of the restaurant, sir.

Q How far were you from the restaurant?

A About five to six meters, sir.

Q Now, while waiting for the bus, do you know whether anything else happened inside the restaurant?

A No more, sir. But while I was waiting for a bus, I saw these Eliseo Calegan and Tinong on board a tricycle, sir.

Q Who was driving the motorized tricycle?

A Florentino Frasdilla, sir.

Q And upon the arrival of Florentino Frasdilla and Eliseo Calegan, what happened?

A They went inside the restaurant, sir.

Q And what did they do inside the restaurant?

A Eliseo Calegan embraced Allan Ibardolaza, sir.

Q Will you demonstrate to The Court how Eliseo Calegan embraced Allan Ibardolaza?

A As if putting his arms around the body of Allan Ibardolaza, sir.

Q What happened after Eliseo Calegan embraced Allan Ibardolaza?

A Wilfredo Magat grabbed the gun of Allan Ibardolaza which was tucked on his waist.

Q And what did Magat do with that gun?

A He hit the head of Allan Ibardolaza with the butt of the gun, sir.

Q What happened to Allan Ibardolaza when he was hit on the head by Magat?

A He lost consciousness, sir.

Q What else did the three persons do after that?

A They pulled him and boarded him on the tricycle, sir.

Q Who helped each other in pulling Allan Ibardolaza to the tricycle?

A Wilfredo Magat, Eliseo Calegan and Florentino Frasdilla, sir.

Q Were these three persons whom you named and who pulled or dragged Allan Ibardolaza to the tricycle able

to board Allan Ibardolaza in the tricycle?

A Yes, sir^[12] (underscoring supplied).

The claimed inconsistency refers to a trivial matter because whether Legislador was already on board the bus or while still waiting for a bus, the significant circumstance common to both the sworn statement and the testimony in court is that he witnessed the perpetration of the crime. Assuming in *gratia argumenti* that the imputed inconsistency is substantial, the next point of inquiry is whether it was satisfactorily explained by the witness. This calls to mind the doctrine that unexplained disparities between a previously executed sworn statement of a witness and his testimonial declarations regarding the participation of an accused in a crime erode the veracity of his account thereon.^[13] In this regard, we find the explanation of Legislador sufficient:

WITNESS (LEGISLADOR):

A That was what appeared on the blotter of the policeman, sir, and when I was investigated by the police they asked me to narrate to them the story before typing it and after they typed the same they asked me to sign my statement, sir, which I readily signed without reading the same.

ATTY. MERCADO:

Q Why did you not read your statement?

A Because the policeman was in a hurry, sir. He just ordered me to affix my signature because he was in a hurry and it was then late at night, sir.^[14]

The second alleged inconsistency, referring to whether it was P/Cpl. David to whom Legislador reported the incident, is likewise a minor matter. Even the most truthful witnesses can make mistakes, but such innocent lapses do not necessarily affect their credibility. The testimony of a witness must be considered and calibrated in its entirety and not by its truncated portions or isolated passages.^[15]

That the victim was the supervisor of Legislador and that the aunt of the victim was his employer do not by themselves render his testimony inadmissible or devoid of probative value. He is not to be disqualified on account of bias because there is none. Moreover, as found by the trial court, it has not been shown that he was ill-motivated in testifying against accused-appellant.^[16]

Appellant refutes further the testimony of Legislador that he witnessed the abduction of the victim. He intimates that if that were true, Legislador should have arrested on the spot the perpetrator of so heinous a crime considering that he at the moment had all the power to do so, being clothed with authority within the premises of the restaurant he was guarding.^[17] In effect, appellant faults Legislador for his passivity.

Perhaps Legislador at that moment was less than heroic. But the Court understands his posture then. As he admitted candidly, he did not assist the victim when the latter was being mauled because he (Legislador) was outnumbered by the three (3) malefactors. Obviously, he was overcome by fear.^[18]

At the bottom line of this appeal is the credibility of Legislador. The trial court having had the opportunity to observe his demeanor when testifying more than the reviewing tribunal, was in a better position to gauge his credibility and properly appreciate the relative weight of the often conflicting evidence for both parties.^[19] We defer to the finding of the trial court on the trustworthiness of his testimony.

Once the prosecution witness is afforded full faith and credit, the defense version necessarily stands discredited.^[20] Hence, in the case before us, appellant's defenses of alibi and denial were correctly disregarded by the trial court thus -

The allegations of the accused Eliseo Calegan that he left the Isa Pa Nga Restaurant at about 7:20 p.m. on June 4, 1988 in order to go home and that he was no longer at the restaurant when the abduction of Ibardolaza happened, is one of alibi. This is an inherently weak defense. Alibi, to be believed, must be supported by clear and convincing evidence (People vs. Cruz, 142 SCRA 576). This clear and convincing supporting evidence is absent in this case at bar. The accused Eliseo Calegan failed to prove that it was physically impossible for him to return to the scene of the crime (People vs. Perente, 143 SCRA 56).

It is true that the alibi set up by Eliseo Calegan was corroborated by Marina Vanzuela. However, the testimony of Marina is of doubtful credibility. Marina did not inform the police authorities of what she allegedly witnessed. It is of record that Caloocan City policemen went to the Isa Pa Nga Restaurant several times to investigate the case and to arrest the suspects. In fact, Eliseo Calegan was arrested inside said restaurant on July 20, 1988 (TSN, August 2, 1989, p. 26). Marina showed during the trial two sworn statements which she swore to before the Investigating Fiscal on October 6, 1988 and on October 19, 1988. These two statements were executed four months after the incident in question.[21]

The conspiracy to commit the crime of robbery was conclusively shown by the coordinated acts of the three (3) accused, as vividly narrated in the previous testimony of Legislador. On the same occasion, the crime of homicide was committed the details of which were also supplied by Legislador:

Q What did they do after Allan Ibardolaza was loaded in the tricycle?

A They brought him towards Gen. Tinio Street, sir.

Q Who was driving the motorized vehicle at that time?

A Tinong, sir.

Q When you said Tinong, you are referring to Florentino Frasdilla?

A Yes, sir.

Q At that particular time when you saw Allan Ibardolaza being loaded in the tricycle, where were you?

A When they had loaded this Allan Ibardolaza to the tricycle and going towards the direction of General Tinio Street, that's the time I was able to board a bus, sir.

Q While you were on the bus, did you hear or see anything?

A Yes, sir.

Q What was that?

A Because at that time, sir, I was on the running board of the bus and I was able to see to what direction the tricycle went, I heard a gun report from that tricycle.[22]

Legislador even confirmed during the cross-examination that he actually heard a gunshot and not just a firecracker explosion because as a security guard, he had fired a gun.[23] He heard the gunshot at about ten o'clock[24] that evening and the body of the victim was discovered at around ten-thirty to eleven o'clock that same evening.[25] Thus, the prosecution has clearly established a direct and intimate connection between the robbery and the homicide.[26]

Where conspiracy is shown to exist, the act of one is the act of all. While it has not been established that it was accused-appellant who actually shot the victim, conspiracy having been found to exist, he is equally guilty of the special complex crime of robbery with homicide. Stated differently, whenever homicide has been committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be

held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide.[27]

WHEREFORE, the decision of the court a quo finding accused-appellant Eliseo Calegan y Mataverde guilty beyond reasonable doubt of the special complex crime of robbery with homicide penalized under par. 1 of Art. 294 of The Revised Penal Code and imposing upon him a prison term of reclusion perpetua, and directing him to return to the Liberty Investigation and Security Agency the subject .38 cal. revolver, or if unable to do so, to reimburse the agency for its acquisition value of P6,000.00, is AFFIRMED. The amount of P30,000.00 awarded by the lower court as indemnity to the heirs of Allan Ibardolaza is increased to P50,000.00 conformably with existing jurisprudence.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Rollo, p. 8.

[2] Decision penned by Judge Rene Victoriano, Regional Trial Court, Kalookan City, Br. 124; Rollo, pp. 22-31.

[3] Exhs. "D" to "D-1."

[4] Exhs. "F" and "G," respectively.

[5] Exh. "H."

[6] Exh. "I."

[7] Exh. "E."

[8] *People v. Dumpe*, G.R. Nos. 80110-11, 22 March 1990, 183 SCRA 547.

[9] *People v. Laredo*, G.R. Nos. 81249-51, 14 May 1990, 185 SCRA 383, citing *People v. Pasco*, G.R. No. 68520, 22 January 1990; *People v. Baybayon*, No. L-49856, 3 April 1990.

[10] *People v. Anggat*, Nos. L-38101-02, 29 June 1981, 105 SCRA 168, 175.

[11] *People v. Uson*, G.R. No. 101313, 5 July 1993.

[12] TSN, 20 January 1989, pp. 12-13.

[13] *People v. Tulagan*, G.R. No. 68620, 22 July 1986, 143 SCRA 107; *People v. Casim*, G.R. No. 93634, 2 September 1992, 213 SCRA 390, cited in *People v. Uson*, *supra*.

[14] TSN, 11 May 1989, p. 28.

[15] *People v. Dabon*, G.R. No. 102004, 16 December 1992, 216 SCRA 656.

[16] Rollo, p. 65.

[17] Rollo, p. 55.

[18] TSN, 12 May 1989, p. 91.

[19] *People v. Mabunga*, G.R. No. 96441, 13 November 1992, 215 SCRA 694.

[20] *People v. Peran*, G. R. No. 95259, 26 October 1992, 215 SCRA 152.

[21] Rollo, pp. 66-67.

[22] TSN, 20 January 1989, pp. 13-14.

[23] TSN, 12 May 1989, p. 95.

[24] Id., p. 94.

[25] TSN, 20 January 1989, p. 19; TSN, 8 June 1989, p. 11.

[26] *People v. Opero*, No. L-48796, 11 June 1981, 105 SCRA 40.

[27] *People v. Pugal*, G.R. No. 90637, 29 October 1992, 215 SCRA 247.

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