

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO LABALAN OCIMAR AND ALEXANDER CORTEZ MENDOZA,
ACCUSED-APPELLANTS.**

G.R. No. 94555. August 17, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

EDUARDO LABALAN OCIMAR and ALEXANDER CORTEZ MENDOZA, together with ALFONSO RAMOS BERMUDEZ, ALBERTO VENZIO CRUZ, VENZIO CRUZ alias "BOY PANA" and JOHN DOE alias "BUNSO" were charged in the court a quo for violation of P.D. 532, otherwise known as the "Anti-Piracy and Highway Robbery Law of 1974," in an Information alleging that -

"x x x on or about the 19th of October, 1986, in x x x Balagtas x x x Bulacan x x x the said accused Eduardo Labalan Ocimar, Alfonso Ramos Bermudez, Alberto Venzio Cruz and Alexander Cortez Mendoza, together with Venzio Cruz alias 'Boy Pana' and one John Doe alias 'Bunso' x x x conspiring and confederating together x x x did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation x x x take, rob and carry away with them cash money, jewelries and other valuables amounting to P36,100.00 more or less, belonging to the passengers and driver of the Baliuag Transit, Alejandro de Jesus, while he was driving the said bus along the North Expressway x x x and that on the occasion thereof, the said accused, in furtherance of their conspiracy, did then and there wilfully, unlawfully and feloniously attack, assault and shoot x x x Capt. Cirilo Cañeba, an Army Officer x x x thereby inflicting upon him serious physicals injuries which directly caused his death." [1]

On June 22, 1987, accused Eduardo Ocimar and Alexander Mendoza were arraigned. With the assistance of counsel de oficio, they pleaded "Not Guilty". [2] The other accused were not arraigned because they could not be accounted for.

On July 7, 1987, Alfonso Bermudez was finally brought before the court. He was accordingly arraigned and with the assistance likewise of counsel de oficio, he entered a plea of "Guilty". [3]

The other two accused, Alberto Venzio Cruz and Venzio Cruz alias "Boy Pana", were never arraigned as the former was never arrested, while the latter jumped bail before arraignment. [4]

On October 28, 1987, after the prosecution had already presented four witnesses, the prosecuting Fiscal moved for the discharge of accused Bermudez to be utilized as state witness. Although he had already entered a plea of guilt earlier, no judgment was as yet rendered against him.

On November 9, 1987, the trial court granted the motion of the prosecution for the discharge of Bermudez. On March 21, 1988, after he testified for the prosecution, Bermudez was released. [5]

On April 3, 1990, the trial court rendered judgment finding accused Eduardo Labalan Ocimar and Alexander Cortez Mendoza guilty beyond reasonable doubt as co-principals in the violation of P.D. 532 and accordingly

sentenced each of them to reclusion perpetua, and directing them jointly and severally to indemnify the heirs of the late Capt. Cirilo Cañeba, Jr., the amount of P30,000.00 for his death, P45,000.00 for funeral expenses, P25,000.00 for moral damages, and P720,000.00 representing loss of expected support of the victim's heirs, plus the costs.[6]

Accused Ocimar and Mendoza are now before Us on appeal.

Ocimar imputes ERROR to the court a quo in (a) discharging accused Bermudez, who had earlier pleaded guilty to the charge, to be utilized as a state witness; (b) giving credence to the testimony of Bermudez; and, (c) not holding that the prosecution failed to prove his (Ocimar) guilt beyond reasonable doubt.

On his part, accused Mendoza maintains that the lower court ERRED in (a) relying on the lone testimony of accused Bermudez; and, (b) convicting him (Mendoza) notwithstanding the failure of the prosecution to prove his guilt.

Considering the peculiar circumstances attendant to the commission of the offense and in order to meet squarely the issues raised by accused Ocimar and Mendoza, We prefer to quote hereunder the findings of fact of the trial court, which makes a detailed account of the participation of each accused in the perpetration of the highway robbery. We are not usually prone to lift extensively word for word from narration of facts in decisions of lower courts elevated to Us, but in the instant case We resolve to, in view of the accurate and systematic reporting done by the trial court. Its factual findings are well backed up by the evidence on record, hence. We need not improve on them. Besides, it is an entrenched rule that the matter of assigning value to declarations at the witness stand is best and most completely performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial, and is thereby placed in a more competent position in to discriminate between the true and the false.[7] Thus, as vividly reported by the court a quo -

"At around 3:00 o'clock in the afternoon of October 19, 1986, Bermudez was fetched from his house in Amparo Capri, Novaliches, Quezon City by Eduardo Ocimar, Alexander Mendoza and others he knew only by their first names (Boy Pana, Bunso, Danny and Boylot) who invited him to a supposed drinking session at a place somewhere in Sta. Maria, Bulacan. It turned out that the said place served as a hide-out for the group. The contemplated drinking session in that hide-out did not take place. Instead, the members of the group were given instructions by one 'Boy Pana' on their seating arrangements inside the bus they intended to hold-up shortly thereafter.

"Not long afterwards, the group (this time in the company of additional persons named Fred Paraiso, Bebot, Beboy Baya, Fermin, Noel, Boboy and Agoy) boarded at the Malinta, Valenzuela (Metro Manila) toll gate of the North Expressway a yellow-painted Novaliches-Blumentritt passenger jeepney and proceeded to the Baliuag Transit bus terminal at Cubao, Quezon City.

"Herein accused and their companions boarded an airconditioned Baliuag Transit passenger bus bound for Cabanatuan City, and seated themselves in different places inside the vehicle according to their pre-arranged plan. Bermudez seated himself somewhere at the middle portion of the bus, Ocimar and Bunso at the far end, and Mendoza at the front behind the bus driver's seat. Each of them possessed a concealed firearm or bladed weapon.

"Not long after the bus had passed beyond the Malinta toll gate of the North Expressway, Mendoza rose from his seat, poked a .38 cal. pistol at the bus driver, and announced the hold-up. Forthwith, the other members of the group, with their respective weapons exposed to view, went about divesting the passengers of their wallets and handbags, items of jewelry and other personal effects of value. While the robbery was in progress, Bermudez heard gunshot reports from the rear end of the bus. He turned his head towards that direction and

saw Ocimar holding a .22 cal. magnum revolver pointed at the neck of a passenger seated at the back row of the bus (later identified as Capt. Cirilo Cañeba, Jr.) who was then about to drop to the floor, head first. At the same spot, Bunso was also seen standing close by with a gun on hand.

"Upon reaching that portion of the Expressway with a concrete overpass somewhere in Burol, Balagtas (Bulacan), Mendoza ordered the bus driver to stop the vehicle and, after the driver was ordered to proceed on his way, the robbers alighted and boarded the same yellow-colored passenger jeepney which was already waiting at the place to serve as a get-away transport. Aboard the passenger jeepney, the group fled to Bunso's house at Catmon, Sta. Maria where Bermudez was given P1,000.00 cash by Boy Pana. After they divided the loot among themselves, the robbers parted ways.

"After the robbers alighted at Burol, the bus driver with his passengers proceeded to Tabang, Guiguinto (Bulacan) where the incident was reported to the police station thereat. Said report was duly entered in the police blotter (Exhibit A).

"Eventually, Bermudez was arrested by the police authorities at Novaliches on November 4, 1986 and brought to the Northern Police District station at Sikatuna Village, Quezon City where he executed a written statement (Exhibit E; also marked Exhibit H) wherein he confessed his and his co-accused's participation in the highway robbery.

"Upon written request to this effect (Exhibit I), Dr. Dario L. Gajardo of the PC Crime Laboratory at Camp Crame, Quezon City performed on October 20, 1986 at the PCCL morgue a post-mortem examination of the cadaver of Capt. Cirilo Cañeba, Jr., after it was first identified by one Capt. Isabelo Almonte. The corresponding medico-legal report prepared by Dr. Gajardo (Exhibit J) indicates that the aforementioned deceased sustained, among other injuries, four (4) gunshot wounds, to wit, at the right temporal region, right clavicular region, left mammary region and right iliac region (See also sketches marked as Exhibits K and K-1). As indicated in the same medico-legal report, the cause of death of Capt. Cañeba was 'cardiorespiratory arrest due to shock and hemorrhage secondary to multiple gunshot wounds of the head and trunk.' (Exhibit J-2). Accordingly, Dr. Gajardo issued the corresponding Certificate of Death (Exhibit L).

"Norma Diaz-Cañeba testified that she and the late Capt. Cirilo Cañeba, Jr. were married on December 31, 1980 at the Nuestra Senora dela Guadalupe Parish in President Quirino, Sultan Kudarat before Parish Priest Rev. Fr. Domingo Tagura as evidenced by the corresponding Marriage Contract (Exhibit G). The couple have daughter named Belinda, five to six years of age at this time.

"For the wake and funeral of her late husband, Mrs. Cañeba incurred expenses amounting to P45,000.00.

"At the time of his death, Capt. Cañeba, Jr. (then 35 years old) was stationed at the Philippine Army Finance Center in Fort Bonifacio receiving a monthly salary of 'almost P3,000.00'. When shot inside the Baliuag Transit bus on that fateful day, the late military officer was on his way to Fort Magsaysay in Palayan City (Nueva Ecija) on official business.

"The testimony of State witness Bermudez was corroborated on material points by bus driver Alejandro de Jesus and Philippine Army Major Fernando Zabat, one of the four (4) military officers aboard the same bus at the time the highway robbery complained of was perpetrated, even as the latter witnesses could not identify any of the hold-uppers."[8]

Both Ocimar and Mendoza deny having any knowledge or participation in the commission of the crime imputed to them. They claim that they were physically present in different places far from the scene of the crime. Alibi, in other words.

For his part, appellant Ocimar, a car painter residing at Sanyo, Novaliches, Quezon City, testified that on October 19, 1986, after attending a morning mass with his wife and a child at the town proper of Novaliches, Quezon City,

they returned home and spent the whole day together.

On the other hand, accused Mendoza swore that from 8:00 A.M. to 9:00 P.M. of October 19, 1986, he reported for work as a helper electrician repairing television sets and electrical appliances at the shop of a certain Danilo Malaca located at Banlat, Commonwealth Avenue, Quezon City. He renders service thereat from Monday to Saturday. His alibi was corroborated by his employer who confirmed that Mendoza indeed performed a rush job on a television set on that date although only up to 3:00 o'clock in the afternoon.[9]

On the propriety of the discharge of Bermudez to be utilized as state witness, Sec. 9, Rule 119 of the 1985 Rules on Criminal Procedure provides:

"SEC. 9. Discharge of accused to be state witness. - 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."

As may be gleaned from the aforequoted Sec. 9 of Rule 119, the trial court must be satisfied that the conditions prescribed by the rule exist. The court therefore, upon prior determination by the public prosecutor, retains the prerogative of deciding when a co-accused may be discharged to become a state witness. With Sec. 9 providing the guidelines, the discharge of an accused depends on sound judicial discretion. Once that discretion is exercised under those guidelines and a co-accused is discharged to become a state witness, and subsequently testifies in accordance with his undertaking with the government, any legal deficiency or defect that might have attended his discharge from the information will no longer affect the admissibility and credibility of his testimony, provided such testimony is otherwise admissible and credible.[10]

Ocimar contends that is the case at bar Bermudez does not satisfy the conditions for the discharge of a co-accused to become a state witness. He argues that no accused in a conspiracy can lawfully be discharged and utilized as a state witness, for not one of them could satisfy the requisite of appearing not to be the most guilty. Appellant asserts that since accused Bermudez was part of the conspiracy, he is equally guilty as the others.

We do not agree. First, there is absolute necessity for the testimony of Bermudez. For, despite the presentation of four (4) other witnesses none of them could positively identify the accused except Bermudez who was one of those who pulled the highway heist which resulted not only in the loss of cash, jewelry and other valuables, but even the life of Capt. Cañeba, Jr. It was in fact the testimony of Bermudez that clinched the case for the prosecution. Second, without his testimony, no other direct evidence was available for the prosecution to prove the elements of the crime. Third, his testimony could be, as indeed it was, substantially corroborated in its material points as indicated by the trial court in its well-reasoned decision. Fourth, he does not appear to be the most guilty. As the evidence reveals, he was only invited to a drinking party without having any prior knowledge of the plot to stage a highway robbery. But even assuming that he later became part of the conspiracy, he does not appear to be the most guilty. What the law prohibits is that the most guilty will be set free while his co-accused who are less guilty will be sent to jail. And by "most guilty" we mean the highest degree of culpability in terms of participation in the commission of the offense, and not necessarily the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered least guilty if We take into account his degree of participation in the perpetration of the offense. Fifth, there is no evidence that he

has at any time been convicted of any offense involving moral turpitude.

Besides, the matter of discharging a co-accused to become state witness is left largely to the discretion of the trial fiscal, subject only to the approval of the court. The reason is obvious. The fiscal should know better than the court, and the defense for that matter, as to who of the accused would best qualify to be discharged to become state witness. The public prosecutor is supposed to know the evidence in his possession ahead of all the rest. He knows whom he needs to establish his case.

The rationale for the rule is well explained thus:

"In the discharge of a co-defendant, the court may reasonably be expected to err. Where such error is committed, it cannot, as a general rule, be cured any more than any other error can be cured which results from an acquittal of a guilty defendant in a criminal action. A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. In coming to his conclusions as to the 'necessity for the testimony of the accused whose discharge is requested,' as to 'availability or non-availability of other direct or corroborative evidence,' as to which (who) of the accused is the 'most guilty' one, and the like, the judge must rely in a large part upon the suggestions and the information furnished by the prosecuting officer x x x x." [11]

Thus, We agree with the observations of the Solicitor General that the rule on the discharge of an accused to be utilized as state witness clearly looks at his actual and individual participation in the commission of the crime, which may or may not have been perpetrated in conspiracy with the other accused. Since Bermudez was not individually responsible for the killing committed on the occasion of the robbery except by reason of conspiracy, it cannot be said then that Bermudez appears to be the most guilty. Hence, his discharge to be a witness for the government is clearly warranted. [12]

The credibility of Bermudez as a witness is placed on the crucible by appellants. They point to the inconsistency in his testimony on whether or not he knew appellants before the commission of the crime and assert that necessarily discredits the rest of his testimony under the maxim "falsus in uno, falsus in omnibus." But We are reminded, time and again, that this is not mandatory. It does not apply where there is sufficient corroboration on many grounds of the testimony; where the mistakes are not on the very material points; where the errors do not arise from an apparent desire to pervert the truth but from innocent mistakes and the desire of the witness to exculpate himself though not completely. [13] Indeed, We have long jettisoned its absolute application for the better rule that the trial court is the best judge of the witness' credibility or lack of it. The reason is that the trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying. The impressions of the trial court on the matter are binding upon appellate courts, the Supreme Court not excepted, unless there appears a grave abuse of discretion or obvious misapprehension of facts. These exceptions to the rule do not obtain in the instant case. We are thus in complete agreement with the trial court when it ruled -

"The Court finds no reason at all to disbelieve the testimony of State witness Bermudez.

"For one thing, it was Bermudez alone among the available accused who pleaded guilty at the very outset, thereby signifying that he had actually participated in the highway robbery herein complained of. In turn, such participation inexorably connotes, among other things, adequate knowledge on his part of the circumstances leading to and surrounding the commission of the crime, including the identities of the other perpetrators involved therein.

"The Court, too, has keenly observed that -- despite its minor imperfections which may be ascribed to his low

educational attainment -- the testimony of Bermudez was rendered in a manner more candid and unrehearsed than the testimonies of Mendoza and Ocimar.

"Furthermore, Mendoza and Ocimar themselves could not provide any improper or evil motive on the part of Bermudez to have testified falsely as the defense would wish it to appear.

"Tersely said, the identities of Mendoza and Ocimar as active participants in the accomplishment of the hold-up herein referred to have been positively established."

It must be noted that Bermudez' account of the holdup incident is corroborated on material points by the other prosecution witnesses, like the bus driver and some passengers, like Major Fernando Zabat, an officemate of Capt. Cañeba, thus enhancing further the credibility of Bermudez.

Ocimar argues that he cannot be made liable for the crime charged as he did not shoot the victim and the prosecution failed to identify the person who fired the fatal shot.

We need only quote again for emphasis a portion of the factual findings of the court a quo in this regard:

"Not long after the bus had passed beyond the Malinta Toll Gate of the North Expressway, Mendoza rose from his seat, poked a .38 cal. pistol at the bus driver, and announced the hold-up. Forthwith, the other members of the group, with their respective weapons exposed to view, went about divesting the passengers of their wallets and handbags, items of jewelry and other personal effects of value. While the robbery was in progress, Bermudez heard gunshot reports from the rear end of the bus. He turned his head towards that direction and saw Ocimar holding a .22 cal. magnum revolver pointed at the neck of a passenger seated at the back row of the bus (later identified as Capt. Cirilo Cañeba, Jr.) who was then about to drop to the floor, head first." [14]

Needless to stress, these circumstances are clear enough to show that appellant Ocimar acted in concert with his cohorts in the implementation of a common design to rob the Baliuag Transit bus. As oft-repeated, conspiracy need not be proved by direct evidence. Neither is it essential that there be shown a previous agreement to commit robbery as the crime of robbery with homicide can be inferred from the acts of the accused. [15]

Certainly, Ocimar's protestation that he cannot be held liable as there was no categorical identification of the assailant is simply unavailing. For, where conspiracy has been established, evidence as to who among the accused rendered the fatal blow is not necessary. [16] After all, in conspiracy, the rule is that the guilt of one is the guilt of all. [17]

As to appellants' defense of alibi, suffice it to state that the places (Sanyo, Novaliches, and Banlat, Commonwealth Avenue, both in Quezon City) where they claim to be at the time the crime was committed, are places which are not so far away from the Baliuag bus station in Cubao, Quezon City. Indeed, for alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed, but he must, likewise, demonstrate that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. [18]

Now on the civil aspect of the case. We find the awards made by the trial court to be supported by the evidence on record. At any rate, they are not disputed. However, as regards the indemnity to the heirs of Capt. Cirilo Cañeba, Jr., which the court a quo fixed at P30,000.00, the same should be increased to P50,000.00 in accordance with prevailing jurisprudence. [19]

PREMISES CONSIDERED, the judgment of the court a quo convicting the accused-appellants EDUARDO LABALAN OCIMAR and ALEXANDER CORTEZ MENDOZA for violation of P.D. 532 ("Anti-Piracy and Highway Robbery Law of 1974") and imposing upon each of them a prison term of reclusion perpetua, together with the award for funeral expenses, moral damages, and loss of expected support of the heirs of the late Capt.

Cirilo Cañeba, Jr., in the amounts of P45,000.00, P25,000.00 and P720,000.00, respectively, are AFFIRMED. The indemnity to his heirs for his death is increased from P30,000.00 to P50,000.00. Costs against accused-appellants.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] Record, pp. 1-2.

[2] Ibid., p. 12.

[3] Ibid., p.18.

[4] Ibid., p. 333.

[5] Ibid.

[6] Ibid., pp. 332-340; Decision was penned by Judge D. Roy A. Masadao, Jr., RTC, Br. 9, Malolos, Bulacan.

[7] People v. Castillo, G.R. No. 93408, April 10, 1992.

[8] Decision, pp. 3-5; Records, pp. 334-336.

[9] Tsn, March 13, 1987, p. 10.

[10] Jariol, Jr. v. Sandiganbayan, G.R. Nos. 52095-52116, August 13, 1990, 188 SCRA 475; see also People v. Cañete, No. L-30491, January 21, 1972, 43 SCRA 14, 15; also, 4 Moran, Comments on the Rules of Court, 1970 Ed., p. 324, citing U.S. v. De Guzman, 30 Phil. 416, and People v. Velasco, 42 Phil. 75.

[11] Francisco, Vicente J., The Revised Rules of Court (Criminal Procedure) Annotated and Commented, 1969-1980 Supp., Vol. VI, p. 287, citing People v. Cañete, 43 SCRA 15 (1972).

[12] See People v. Padilla, G.R. No. 52119, April 24, 1989; 177 SCRA 644.)

[13] People v. De la Cruz, No. L-30912, April 30, 1980; 97 SCRA 385.

[14] Decision, p. 3; Rollo, p. 21.

[15] People v. Palino, G.R. No. 60169, March 23, 1990; 183 SCRA 620.

[16] People v. Obando, G.R. No. 72742, February 25, 1990; 182 SCRA 95.

[17] People v. Repe, G.R. No. 64935, July 19, 1989; 175 SCRA 422.

[18] People v. Coringal, G.R. No. 75368, August 11, 1989; 176 SCRA 404.

[19] See People v. Tormentos, G.R. No. 101208, April 3, 1992; People v. Sison, G.R. No. 86455, September 14, 1990, 189 SCRA 643; People v. Lugtu, G.R. No. 89214, October 18, 1990, 190 SCRA 754.

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