

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR LEGASPI AND TEOFILO BOSQUE Y NUNEZ, DEFENDANTS-APPELLANTS.

*G.R. Nos. 55103-04. August 18, 1988*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

Cesar Legaspi and Teofilo Bosque y Nunez were charged before the Court of First Instance of Bulacan, docketed therein as Criminal Case No. 771, with the crime of "Frustrated Robbery in Band with Homicide and Frustrated Homi-cide" committed as follows:

"That on or about the 7th day of May, 1972 in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdic-tion of this Honorable Court, the said accused Cesar Legaspi and Teofilo Bosque y Nunez toge-ther with Fernando Macapagal y Salgado, who is already accused in Criminal Case No. SM-445 of the Court of First Instance of Bulacan for the same offense, and one John Doe alias 'Bebet' who is still at large, conspiring and confederating together and mutually helping one another, all armed with pistol and revolver, and with intent of gain and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously, while all of them were riding in a jeep bearing plate No. 61-84E J-Bulacan '72, follow spouses Apolonio Gallardo and Irene Delicano, who were then riding in a tricycle reached the uninhabited place near Poblacion, overtook and blocked the said tri-cycle, drew their guns, and shouting, to wit: 'Hold-up ito', and by then and there pointing the barrel of the said guns to the victims and fired several shots hitting both of them, causing the death of said Apolonio Gallardo and wounding Irene Delicano in the abdomen which would have caused her death were it not for the timely medical attendance rendered to her.

"That in the commission of this crime, the aggravating circumstances of nocturnity, uninha-bited place and use of motor vehicle were pre-sent."[1]

After a joint trial with Criminal Case No. SM-445 of the Court of First Instance of Bulacan which was later docketed as Circuit Criminal Case No. CCC-V-765, entitled: "People of the Philippines, plaintiff, versus Fernando Macapagal and John Doe alias 'Bebet' defendants," judgment was rendered on 19 May 1975 by the Circuit Criminal Court of Bulacan[2] finding the accused Cesar Legaspi and Teofilo Bosque y Nunez guilty of the crime of "Attempted Robbery with Homicide and Frustrated Homicide" and each sentenced to suffer imprisonment of from ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and to indemnify, jointly and severally, the heirs of the offended parties the amounts of P12,000.00 by way of death compensation, P10,000.00 as moral damages, and to pay proportionate costs. The accused, Fernando Macapagal, upon the other hand, was acquitted of the crime charged.[3]

Upon appeal to the Court of Appeals, the appellate court affirmed the trial court's decision but increased the penalty to reclusion perpetua and certified the case to this Court for review.[4]

The facts, as found by the Court of Appeals, are as follows:

"Since 1966 and up to May 7, 1972, the late Apolonio Gallardo and his wife Irene Gallardo had been the owners-operators of an Esso gasoline station in barrio Bagbagin, Sta. Maria, Bulacan. Every night, at 11:00 to 12:00 o'clock P.M., after counting the day's sales and closing the station, a service tricycle used to transport them from the gas station to their home in Barrio Sta. Clara in the same municipality.

"On May 7, 1972 at eight o'clock in the evening, while the accused Teofilo Bosque of Meycauyan, Bulacan, was seated in his father's yellow-colored jeep at the Meycauyan cockpit, he was invited by Cesar Legaspi, son of Mayor Celso Legaspi of that municipality, to go with him ('may lakad tayo') for he needed Bosque's jeep. Bosque agreed. They went to the public market of Malabon, Rizal, where Legaspi picked up his friend, Fernando Macapagal. Macapagal fetched a certain 'Bebet', while Bosque and Legaspi waited at the Malabon market.

"On the way to Sta. Maria, Bulacan, they talked about the robbery that they planned to commit that night ('Ang pinag-usapan po namin ay tungkol sa isasagawang paghold up'). Legaspi was armed with a Cal. 22 revolver, Macapagal had a 'paltik', while Bebet had a P-38.

"At around nine o'clock that night, they arrived in Sta. Maria, Bulacan. They proceeded to a Mobil gas station opposite Gallardo's Esso station in Barrio Bagbagin. While they were buying gasoline at the Mobil gas station, Legaspi indicated to his companions that their target that evening would be the cashier of the Esso station ('iyan ang ating titirahin, sabay ang turo sa kahero ng Esso'). After putting gas in their yellow-colored jeep, they drove to Bocaue so that they would not be noticed by their intended victims. Then they returned to the gas station and, on Legaspi's order, Bosque pretended to wash his jeep. After washing the jeep, they drove off again then came back to eat in the ambulant eatery of Bonifacio Guballa on the premises of the Esso gas station. Legaspi tendered a P50-bill to Guballa to pay for their food, but Guballa did not have enough change.

"At that time, Irene Gallardo was counting the proceeds of the day's sales inside the glass-enclosed office of the Esso station. While she was thus occupied, Legaspi knocked on the door of her office, indicating his desire to change his P50-bill. Irene opened the door and changed his money.

"After paying for the food they had eaten, the four men sat in their jeep which was parked across the street.

"At around 10:30 P.M., Apolonio Gallardo and his wife closed the gas station and boarded the tricycle of Mario Capalad which would take them home. Upon seeing them leave, Legaspi directed Bosque to follow the tricycle, but not to get too close to it until they reach the sabana or open field ('sinabi po sa akin ni Cesar na sundan mo ang tricycle at huwag mong didikitang masyado at duon sa may bandang sabana natin titirahin').

"Upon reaching the sabana, the jeep overtook the tricycle then cut across its path. The tricycle veered toward the shoulder of the road. A shot was fired and someone on board the jeep shouted 'This is a hold-up!' (Hold-up ito!). The four passengers in the jeep were seen clearly by Irene Gallardo by the light from the headlamp of the tricycle. Legaspi, who had been sitting in the front seat of the jeep, jumped out, firing his gun continuously. Irene Gallardo told her husband that she was hit. Her husband pulled out his gun and fired back. During the exchange of fire, Apolonio was hit and fell from the tricycle.

"Because of Apolonio's resistance, Legaspi fled on foot across the field toward Barrio Batya, Bocaue where he boarded the tricycle of Mariano Salvador. At his request, Salvador brought him to the Mac-Arthur Highway.

"His companions, Bebet, Bosque, and Macapagal, drove off in the jeep without him. After driving for a while, Bosque discovered that he was wounded ('ako ay may tama') so Bebet took the wheel from him. They were later apprehended at the cemetery of Bocaue by members of the Bocaue and Sta. Maria police forces.

"Although she was hit by a bullet in the stomach, Irene Gallardo forced herself to walk to the poblacion where she requested a certain Nene to bring her to a hospital. She underwent an operation to save her life and was hospitalized for 12 days (Exhs. E and F). However, her husband, Apolonio Gallardo, was not as fortunate, for he died from the gunshot wound which penetrated his chest (Exhs. B and C).

"The tricycle driver Mario Capalad abandoned his tricycle and also ran to the town. He reported the incident to the police and later returned with policemen to the scene of the crime.

"Radio messages, describing the hold-uppers and their yellow-colored jeep, were immediately flashed to the neighboring towns. Pat-rolmen Santos and De Vera of the Bocaue police were patrolling the vicinity of Barrio Wakas, Bocaue, when they received a call, on their walkie-talkie radio, directing them to investi-gate a yellow jeep that was seen parked in the cemetery of Bocaue. They found the jeep with Bosque slumped on the steering wheel and moan-ing. He had a gunshot wound in the back. He was alone. Inside the jeep were empty bullet sheels and a hand grenade under the seat. The plate number of the jeep (61-84E J-Bulacan 72) was tied with a string which could be pulled and manipulated to conceal the plate number. The policemen brought Bosque to Dr. Yanga's clinic near the Bocaue municipal building. The jeep was brought to the municipal building and photo-graphed (Exhs. R, R-1 to R-3).

"Later, two fishpond guards arrived in the municipal building of Bocaue with Macapagal who had been wounded in the left leg. That same day, Sta. Maria policemen arrived and took cus-tody of Bosque and Macapagal. They were taken to the Sta. Maria General Hospital where they were investigated while their wounds were being treated. They gave statements before Chief of Police Arcadio Zalamea of Sta. Maria, Patrolman Rufino Buenviaje and Dr. San Diego on May 8, 1972, narrating how the robbery was planned and their respective participation therein (Exh. H-Macapagal; Exh. I-Bosque). They identified each other in the hospital (Exhs. J, J-1 & J-2).

"Bosque admitted in a second extrajudicial statement dated May 18, 1972 (Exh. L) his parti-cipation in the hold-up and identified his com-panions as Cesar Legaspi, Fernando Macapagal and Bebet. He affirmed both statements at the preliminary investigation on May 20, 1972 before Muni-cipal Judge Roura (Exh. K). However, at the second stage of the investigation on July 15, 1972, he repudiated them as well as the admis-sions he had made before Judge Roura on May 20, 1972 (Exh. BB). He denied that he and his companions fired at the tricycle, although he admitted that he heard shots. He alleged that Cesar Legaspi, the son of the mayor of Meycaua-yan, was not the same person named 'Cesar' who hired his jeep to go to Sta. Maria, Bulacan. He alleged that his statements (Exhs. I & L) were involuntary and that they were extracted from him by certain policemen of Sta. Maria and by Councilor Ramon Gallardo, the son of the deceased Apolonio Gallardo, through force, violence, and intimidation.

"Similarly, Macapagal repudiated his state-ment (Exhs. H & W). His defense was an alibi. He alleged that he was at the Zamboanga Night Club in Bocaue, Bulacan, on the night in ques-tion and that his injury was the result of a fight between his group and another group inside the night club.

"Upon being informed by the Sta. Maria police that his son Cesar had been implicated in the crime, Mayor Celso Legaspi of Meycauayan promised to, and did, surrender his son to them.

"With the help of his father and some Caloocan policemen, Legaspi also set up an alibi. He alleged that at the time of the commission of the crime in Sta. Maria, Bulacan, he was in the Caloocan City jail because he got drunk. An entry was made in the police blotter at 1:15 A.M. on May 8, 1972 by Caloocan City detective Honor Lozano, purporting to show that Legaspi was apprehended by him at 7:00 P.M. of the previous night, and detained in the Caloocan City jail up to 1:30 A.M. the next day."[5]

The first issue raised by the appellants in their Brief is whether or not the extra-judicial confessions of the accused Teofilo Bosque, given on 8 and 18 May 1972, are admissible in evidence against them. The accused-appellants claim that said extra-judicial confessions are not admis-sible in evidence since Teofilo Bosque was allegedly subjected to different forms of maltreatment, threats, and intimidation before he signed the same.

The contention is without merit. It should be noted that the confessions were given on 8 and 18 May 1972, when the presumption of law was in favor of spontaneity and voluntariness of a confession and it was incumbent upon

the accused to destroy that presumption.[6] In this case, it appears that no evidence had been presented to overcome the presumption except the retracting testimony given at the trial; hence, the confession is presumed to have been given voluntarily. Besides, it appears that Teofilo Bosque him-self admitted having freely signed the confessions before Municipal Court Judge Reynaldo V. Roura of Sta. Maria, Bulacan, during the preliminary investigation of this case. Bosque was asked whether or not he had read the statement before he signed it and he answered that the statement was read to him and that he understood its contents. He did not make any complaint about his alleged maltreatment. Not satisfied, Judge Roura asked Bosque about the circumstances attending the commission of the crime complained of and Teofilo Bosque related anew the details thereof.[7] Moreover, the recitals therein reflect spontaneity and coherence. It is replete with details that only Teofilo Bosque could have supplied.

At any rate, the question of voluntariness of a confession is one that depends upon the credibility of witnesses, and we find no reason to disturb the findings and conclusions of the trial court that the confessions were voluntarily given.

The accused-appellants also assail the testimony of the widow. Irene Delicano de Gallardo as improbable and unnatural, because this witness readily pointed to the accused-appellant Cesar Legaspi as one of the persons who tried to rob them in the evening of 7 May 1972. It is argued that Irene Gallardo could not have recognized the accused Cesar Legaspi in view of the lapse of a considerable period of time and the fact that the said accused was not wearing a pair of colored eye-glasses during the trial.

It should be noted, however, that Irene Gallardo had seen Cesar Legaspi twice during the incident complained of: first, when Cesar Legaspi came to her office to change a P50-bill; and second, when he leaped from a yellow-painted jeep shouting: "Hold-up ito!" and fired his gun at her and her late husband. As the trial judge stated, "It has been said that victims have a way of recognizing or identifying their tormentors." Irene Delicano Gallardo must have noticed something in the countenance of the accused Cesar Legaspi or in the configuration of his head that caused her to remember him as one of the malefactors, in the same manner that Mariano Salvador recognized Cesar Legaspi as the man with a high-bridged nose who paid him twice the usual fare for tricycle ride from Barrio Batya, Bocaue, Bulacan, to the MacArthur Highway.

The accused-appellants also raise, as an issue, the refusal of the trial court to give credence to the alibi of the accused Cesar Legaspi. Counsel for the accused-appellants poses the following question:

"The lower court ruled that facts and circumstances surrounding the defense of alibi interposed by accused Cesar Legaspi, despite the foregoing, run short of the requirements of a believable alibi and thus cannot give it credence. If the alibi of Legaspi cannot be given weight, why did the lower court give credence to the alibi defense of Fernando Macapagal whose alibi was to the effect that he sustained gun-shot wound on the leg as a result of a fight which started at Zamboanga Night Club located at Bocaue, Bulacan which by proximity is much nearer to Sta. Maria, which are in fact neighboring towns, than Caloocan City which is the alibi of Legaspi? The alibi of Fernando Macapagal was based only on his testimonial evidence whereas (that) of Cesar Legaspi was supported by fool-proof documentary evidence as well as credible testimonies of police officers let alone the fact that Fernando Macapagal is wounded, which circumstance is in perfect accord with the theory of the prosecution regarding the Sta. Maria shooting incident, whereas Cesar Legaspi is not so wounded. Why the undue discrepancy in the ruling?"[8]

Counsel's assumption that Fernando Macapagal was exonerated because of his alibi is erroneous. Fernando Macapagal was acquitted of the crime charged, not because of his alibi, but because not one of the prosecution witnesses pointed to him as a participant in the commission of the crime and there was no evidence against him except his extra-judicial confession which he repudiated during the trial of the case. The trial court said:

"Unlike Bosque and Legaspi, who were identified by prosecution witnesses as having been present immediately before, during and after the incident at bar, Macapagal enjoys a different standing as can be seen in the following: Bosque was identified by Guballa at the gasoline station as one among four (4) people riding a yellow-colored jeep who are at his place. He was the one who was found slumped on the steering wheel of said jeep due to a gunshot wound. These facts are aptly corroborated by his extra-judicial confessions (Exhs. I and L) and judicial admissions before Judge Roura (Exhs. K and RB) wherein he, likewise, mentioned prominently the name of Cesar Legaspi. Legaspi was positively identified by Guballa as one of the companions of Bosque who were riding in a yellow-colored jeep who ate at his place and exchanged a P50.00 bill at the victims' gasoline station office. The widow-victim also identified Legaspi as the same person who exchanged a P50.00 bill at the station that evening and the one who jumped out of the jeep and shoot at them. Salvador likewise identified accused Legaspi as one of his passengers the morning after the incident, whom he ferried from Batya, a place within the vicinity of the crime.

"Not one of the prosecution witnesses ever identified herein accused Macapagal, much less intimated his participation in the commission of the crime at bar. The only evidence which may link him to the case are his extra-judicial confessions, which he repudiated in Court. In effect, therefore, the prosecution, independent of his confessions, has no evidence as against Macapagal and the presumption of innocence comes to his rescue. When the prosecution has no evidence to bolster its theory and the only evidence comes from the defense and therefore stands uncontradicted, conviction is not warranted (People vs. Malapitan, L-34090, Nov. 26, 1973)."[9]

But, be that as it may, we find that the trial court did not commit any error in not giving credence to the alibi of the accused Cesar Legaspi. Alibi is a weak defense, easy to concoct, which cannot prevail against the positive identification of the accused, as the perpetrator of the crime charged, by witnesses who have no motive to testify falsely against the accused.[10] We cite with approval the following observations of the Court of Appeals on the alibi of the accused Cesar Legaspi:

"The trial court correctly rejected Legaspi's alibi. An alibi being the easiest defense to concoct, courts are generally wary of it. To be credible and convincing, an alibi must be proven by clear and positive evidence, reasonably satisfying the mind of the Court as to its truthfulness (People vs. Llamora, et al., L-21604-06, May 25, 1973).

"Legaspi's alibi was that in the afternoon of May 7, 1972 he was engaged in a drinking spree in his uncle's house in Caloocan City. He left the house at seven o'clock in the evening because he got drunk. He passed out and woke up at 1:30 A.M. the next morning in the Caloocan City jail. A Caloocan City detective, Honor Manzano, corroborated his alibi by entering in the police blotter, at 1:30 in the morning of May 8, 1972, a report that he allegedly picked up Legaspi at 7:00 P.M. the previous night and detained him in the police station up to 1:30 a.m. (Exhs. 7, 7-A and 7-B).

"The weakness of that alibi lies in the fact that the entry in the police blotter was made, not at seven o'clock in the evening of May 7, 1972 when Legaspi was allegedly picked up by Manzano, but only at 1:15 A.M. of the next day when Manzano submitted his report. Between the commission of the crime in Sta. Maria, Bulacan, at 10:30 P.M. on May 7th up to 1:15 A.M. of the next day (approximately three hours) the accused certainly had sufficient time to flee from Sta. Maria and reach Caloocan City, which is not more than 20 kilometers away or less than an hour's ride by motor vehicle. The trial court also noticed interpolations in the police blotter which cast serious doubts on the integrity of that record:

We also entertain serious doubts as to the veracity and authenticity of the particular entry in the police blotter concerning accused Legaspi for the following reasons: 1) the unusual interest displayed by Det. Honor (Manzano) on the matter. In spite of his assertion that his tour of duty that day (May 7) 8:00 a.m. to 8:00 p.m. (although the blotter itself not contain such a tour of duty, neither does his name appear to be on duty on said

date), he stayed until past 1:00 o'clock in the morning of the following day and waited for Legaspi to regain consciousness long after the expiration of his tour of duty; 2) The time when Legaspi was supposedly picked up (about 7:00 o'clock in the evening) does not appear on the blotter. It is only when Det. Honor supposedly submitted his written report, that the entry was made. Normally, entries in the police blotters are made at the time of the incident - not at the time of submission of written report of the event as done in this case. This will prevent fabrication of entries by scheming police officers from making insertions; 3) The police officers contradicted each other regarding seeing the accused Legaspi at the Jail. Pat. Dagumbay said he arrived at the office before 11:00 o'clock p.m. of May 7, 1972, but he did not see Det. Honor or the accused at said time. The first time he saw Honor was when he handed his report which is 1:15 a.m.; 4) The entries are not chronologically made, which indicate the facility of making entries even prior or after the happening of an event. While the entry (Exh. 7-A and Exh. 7-B) appear to have been made at 1:15 a.m. followed by a 2:00 a.m. - 2:25 a.m., the next entry is 1:00 a.m. The above mentioned infirmities of the police blotter entries had destroyed its reliability. It has all the earmarks of concoction was entered to support the alleged alibi.

"Legaspi's alibi cannot prevail against the positive identification made by three witnesses for the prosecution namely; (1) Irene Gallardo who saw him before and during the commission of the crime, (2) Bonifacio Guballa who saw him and his companions in Bosque's yellow jeep and in his (Guballa's) canteen, and (3) Mariano Salvador, the tricycle driver who picked him up at barrio Batya, Bocaue, and dropped him at the MacArthur Highway after the commission of the crime (People vs. Cardenas, L-29090, April 29, 1974; People vs. Tatlonghari, 27 SCRA 726; People vs. Carino, L-33608, Feb. 12, 1974; People vs. Contrades, L-26009, Feb. 22, 1974). The appellants have not suggested any possible ill-motive for these prosecution witnesses to falsely implicate Legaspi in the commission of the crime." [11]

We also find no merit in the motion for new trial filed by counsel for the defendants-appellants and consequently, deny the same, for the reasons that: (1) the alleged newly discovered evidence, consisting of statements of Cesar Reyes, Guillermo Roxas, and Rogelio San Juan, can-not be considered newly discovered evidence within the meaning of the law since they could have been discovered and produced during the trial with the exercise of due diligence; and (2) the proffered evidence is essentially impeaching in character and/or tend to corroborate the alibi of the accused Cesar Legaspi. The testimony of Guillermo Roxas, as could be gathered from his Sinumpaang Salaysay, [12] is to the effect that the prosecution witness Mariano Salvador is a "fake" witness who knew nothing of the incident complained of, while Cesar Reyes was to testify that Irene Delicano Gallardo did not recognize the person who shot her husband. [13] The gist of the testimony of Rogelio San Juan, upon the other hand, was to the effect that he saw the accused Cesar Legaspi inside the detention cell of the Caloocan City Police Department in the evening of 7 May 1971. [14]

The Court has ruled that evidence which merely seeks to impeach the evidence upon which the conviction was based, or retraction of witnesses, will not constitute grounds for new trial, unless it is shown that there is no other evidence sustaining the judgment of conviction except the testimony of the retracting witness, [15] and that where the evidence would merely tend to corroborate or strengthen the defendant's evidence, the motion for new trial should be denied. [16] Besides, the proffered evidence can not, in any way, alter the judgment. It can only affect, if at all, the credibility of witnesses.

The Court of Appeals correctly imposed the penalty of reclusion perpetua upon the accused-appellants, there being three (3) aggravating circumstances attending the commission of the crime, namely: nocturnity, despoblado or uninhabited place, and use of motor vehicle, with only one (1) mitigating circumstance of voluntary surrender, to offset the same, in the case of Cesar Legaspi. However, the indemnity to be paid for the death of Apolonio Gallardo should be increased to P30,000.00.

WHEREFORE, with the modification as to the civil indemnity, above indicated, the judgment imposed by the

Court of Appeals is hereby AFFIRMED, with costs against the defendants-appellants.

**SO ORDERED.**

Melencio-Herrera, (Chairperson), Paras, and Sarmiento, JJ., concur.

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[1] Rollo, pp. 4-5

[2] Penned by Judge Constante A. Ancheta

[3] Rollo, p. 38, et seq.

[4] Decision penned by Justice Carolina C. Griño-Aquino, with the concurrence of Justices Crisolito Pascual and Serafin R. Cuevas.

[5] Rollo, pp. 59-62

[6] People vs. Garcia, G.R. No. L-8298, 101 Phil. 616

[7] Exhibit "K", p. 126, Original Record

[8] Rollo, pp. 37-38

[9] Decision, pp. 40-42, Rollo, p. 38

[10] People vs. Gapasin, G.R. No. 52017, Oct. 27, 1986, 145 SCRA 178 and cases cited.

[11] Rollo, pp. 64-66

[12] Rollo, p. 75

[13] Id., p. 77

[14] Id., p. 76

[15] U.S. vs. Dacir, G.R. No. 8621, 26 Phil. 503

[16] People vs. Venegas, G.R. No. L-4928, 95 Phil. 209

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