Supreme Court E-Library

EN BANC

[G.R. Nos. 66497-98. July 10, 1986]

VIRGILIO V. SACAY, *petitioner, vs.* **SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; ORDER OF TRIAL; RULE AND EXCEPTION.— Petitioner claims that the order of trial provided in Section 3, Rule 119 of the Rules of Court was not followed and in support of his claim quotes the ruling of this Court in the case of *Alejandro vs. Pepito*, (96 SCRA 322) as follows: "It behooved respondent Judge to have followed the sequence of trial set forth. That procedure observes in the words of Chief Justice Fernando, the 'Mandate of reason and the guarantee of fairness with which due process is identified.' The procedure outlined safeguards and protects the fundamental right of the accused to be presumed innocent until the contrary is proved. That right is founded on the principle of justice and is intended not to protect the guilty but to prevent as far as human agencies can, the conviction of an innocent person. Indeed, the form of a trial is also a matter of public order and interest; the orderly course of procedure requires that the prosecution shall go forward and present all of its proof in the first instance." However, this ruling is not applicable in the case at bar inasmuch as the accused did not object to the procedure followed. In the above-cited case of *Alejandro vs. Pepito,* this Court also stated: "It is true that in the case of *U.S. vs. Gaoiran*, 17 Phil. 404 (1910), relied upon by the prosecution and the trial Court, the defense had produced its proofs before the prosecution presented its case, and it was held that no substantial rights of the accused were prejudiced. There is one radical difference, however, since in that case, no objection was entered in the Court below to the procedure followed in the presentation of proof. In this case, the change in order of trial made by respondent Judge was promptly and timely objected to by the defense." It should be noted that this procedure is now expressly sanctioned in Section 3(e), Rule 119 of the 1985 Rules on Criminal Procedure which provides as follows: "However, when the accused admits the act or

Supreme Court E-Library

omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly."

2. **ID.; EVIDENCE; WITNESSES; RULES GOVERNING THE EXAMINATION OF WITNESSES ARE INTENDED TO PROTECT THE RIGHTS OF LITIGANTS AND TO SECURE ORDERLY DISPATCH OF THE BUSINESS OF THE COURT.**— In the case of *People vs. Estenzo*, this Court frowned upon the procedure proposed by counsel for the defense of submitting the affidavits of his witnesses subject to cross-examination by the prosecution, and stated: "There is an additional advantage to be obtained in requiring that the direct testimony of the witness be given orally in court. Rules governing the examination of witnesses are intended to protect the rights of litigants and to secure orderly dispatch of the business of the courts. Under the rules, only questions directed to the eliciting of testimony which, under the general rules of evidence, is relevant to, and competent to prove, the issue of the case, may be propounded to the witness. A witness may testify only on those facts which he knows of his own knowledge. Thus, on direct examination, leading questions are not allowed, except on preliminary matters, or when there is difficulty in getting direct and intelligible answer from the witness who is ignorant, a child of tender years, or feeble-minded, or a deaf-mute. (Section 5, Rule 132, of the Rules of Court.) It is obvious that such purpose may be subverted, and the orderly dispatch of the business of the courts thwarted, if trial judges are allowed, as in the case at bar, to adopt any procedure in the presentation of evidence other than what is specifically authorized by the Rules of Court."

3. **ID.; ID.; ID.; CREDIBILITY; FINDINGS OF COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES AND THE SUPREME COURT; EXCEPTION.**— It is well settled that the findings of facts of the Court of Appeals (now Intermediate Appellate Courts are conclusive on the parties and on this Court, unless (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7)

Supreme Court E-Library

the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by evidence on record.

4. **ID.; ID.; ID.; ID.; WHEN DELAY IN REPORTING THE CRIME AFFECTS CREDIBILITY OF THE WITNESS.—** This witness volunteered to testify only about five (5) months after the incident when she executed her affidavit on September 14, 1979. Asked why it took her so long a time to go to the police headquarters, she replied: "Because I thought the relatives of Antonio Tepace would not file a complaint." In the case of *People vs. Mula Cruz,* it was held that the long delay of forty-two (42) days after the incident by a witness, an Army man, in reporting a crime to the authorities, not caused by threat, intimidation or coercion, rendered the evidence for the prosecution insufficient to establish appellant's guilty connection to the requisite moral certainty.

DECISION

FERIA, *J.*:

This is a petition for review on *certiorari* of the decision of the Sandiganbayan. Although petitioner did not join the People of the Philippines as party respondent, it is necessarily impleaded as such. Petitioner was found guilty beyond reasonable doubt of two (2) separate crimes of homicide in the dispositive portion of the decision which reads as follows:

"WHEREFORE, in Criminal Case No. 5003, accused PAT. VIRGILIO SACAY Y VALDEZ is hereby found guilty beyond reasonable doubt as principal of the crime of HOMICIDE, defined and penalized under Article 249 of the Revised Penal Code.

"With the aggravating circumstance of taking advantage of his public position and absent any mitigating circumstance to offset the same, said accused is hereby sentenced to an indeterminate penalty

Supreme Court E-Library

ranging from EIGHT (8) YEARS and ONE (1) DAY of prison mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *reclusion temporal,* as maximum, and to pay the heirs of the deceased PATERNO N. LERMA:

P15,000.00 – as indemnity for the death of the said deceased;

P 1,650.00 – as actual damages;

P24,600.00 – as compensatory damages representing the lost earning capacity of the same deceased; and

P5,000.00 – as moral damages.

"In Criminal Case no. 5004, accused Pat. Virgilio Sacay Y Valdez is also found guilty beyond reasonable doubt as principal of a separate crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code.

"With the presence of the aggravating circumstance of taking advantage of his public position, with no mitigating circumstance to offset the same, he is hereby sentenced to suffer another indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of prison mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, to pay to the heirs of the deceased, ANTONIO N. TEPACE:

P15,000.00 – as indemnity for the death of said victim;

P 3,683.40 – as actual damages;

P34,800.00 – as compensatory damages, representing the lost earning capacity of the said deceased for a period of 29 years; and

P 5,000.00 – as moral damages.

"Subject .22 caliber paltik revolver marked Exhibit "11" together with the three (3) live ammunitions and one (1) used cartridge contained in an envelope marked Exhibit "12" and four (4) test shells are hereby confiscated in favor of the government. Let the same be brought to the Firearm Section of the Philippine Constabulary, Camp Crame, Quezon City, Metro Manila, for disposition in accordance with law."[1]

Arraigned on February 24, 1982 in both cases, the accused entered a plea of Not Guilty after which, upon motion of the

---

[1] Decision of the Sandiganbayan, *Rollo*, pp. 22-24.

Supreme Court E-Library

prosecution and without objection from the accused, joint trial was held.[2]

Petitioner Virgilio V. Sacay was a Patrolman in the Western Police District, Masinop Street, Tondo, Manila. He was on duty on April 12, 1979, the date of the riot incident in Don Bosco Compound in Tondo, Manila. He admitted having shot with a .38 caliber Smith and Wesson revolver Antonio Tepace and Paterno N. Lerma who were among the rioters, but invoked self-defense and fulfillment of duty to justify his act of shooting said deceased.

As correctly stated by respondent Court: "Having admitted the two gun-shot killings charged, the accused assumed the burden of showing legal justification therefor. He has to substantiate the justifying circumstance invoked. He is called upon to spell out and describe convincingly how he acted in complete self-defense and/or due fulfillment of official duty, as claimed by him; otherwise, he must suffer all the consequences of his malefaction. And he has to rely on the qualitative and quantitative strength of his own evidence; not on the weakness of the prosecution; for even if it were weak it could not be disbelieved after he had admitted the killings."[3]

The first witness for the prosecution in the killing of the deceased was Veneranda Lagrimas. As summarized by the Sandiganbayan, her testimony was as follows:

"She narrated that as she was outside the church near Marcos Road, some twenty (20) meters from the NHA and NHCC Compound, at about 4:00 o'clock in the afternoon of April 15, 1979, Patrolman Virgilio Sacay shot Antonio Tepace inside the Don Bosco Compound near said Church. Many people, including Boy Rodrigo, were then playing basketball inside the Don Bosco compound, she recalled."[4]

Her testimony was, however, cut short when the defense admitted the killings in question and the prosecution asked

---

[2] *Ibid.*

[3] *People vs. Ansoyon*, 75 Phil. 772; *People vs. Cruz*, 53 Phil. 635; Decision of the Sandiganbayan, *Rollo*, p. 37.

[4] *Ibid*; *Rollo*, p. 26.

Supreme Court E-Library

that the reverse procedure be adopted as in the other cases in that court. Justice Rallos commented that it would be improper for the Court to provide or suggest the procedure to follow. Thereafter, the prosecutor opted to submit the case on the basis of the admission of the accused, but without prejudice to presenting the medical certificates on rebuttal. Witness Lagrimas was discharged.[5] To prove civil liability, Leonida Nubio Tepace, mother of Antonio N. Tepace, and Francisca Lerma Y. Naldo, mother of Paterno N. Lerma, were placed on the witness stand."[6]

With the admission thus made by the defense, the testimonies of the aforementioned witnesses and its documentary evidence consisting of Exhibit "A", death certificate of Paterno N. Lerma: Exhibit "B": death certificate of Antonio N. Tepace Exhibit "C", post mortem findings on the body of Antonio N. Tepace and Exhibit "D", post mortem findings on the body of Paterno N. Lerma, the prosecution closed its evidence in chief.[7]

For the defense, the following testimonies were also summarized by the trial court, as follows:

Testimony of Juanito Yang, member of WPD and assigned with the Homicide Investigation Section:

"He prepared on April 16, 1979, the report marked Exhibit "I" and took down the statement of Alfredo Madrigo (Exhibit "2"), of Robert Catangjas (Exhibit "3") and of Leonila Galit (Exhibit "4"). As stated in the report Exhibit "I", he received from Pfc. Cabildo in the afternoon of April 15, 1979 the 10-inch long knife (Exhibit "5") together with a firearm which he submitted for ballistic examination per receipt (Exhibit "7"). According to Pfc. Cabildo, the aforesaid knife and firearm were confiscated by Patrolman Virgilio Sacay during a gang war inside the Don Bosco compound in Tondo, Manila. In connection with the shooting of Antonio N. Tepace and Paterno N. Lerma, he invited Pat. Virgilio Sacay for investigation but the latter refused to give any written statement. The accused opted, instead to submit the affidavit (Exhibit "6") rather than to be interrogated.

---

[5] TSN, Hearing of May 31, 1982, pp. 17-20.

[6] Decision, *Rollo,* p. 26.

[7] *Ibid*; *Rollo*, p. 27.

Supreme Court E-Library

"As the investigator designated to look into the case, he went to and saw at the Tondo General Hospital the cadavers of Paterno Lerma and Antonio Tepace bearing tatoo marks of BCJ as indicated in the third paragraph (Exhibit "1-A") of Exhibit "I". Starting the investigation of the incident at bar in the afternoon of April 15, 1979, he prepared his report (Exhibit "I") the following day. It was 1:00 to 2:00 a.m. of April 16, 1979 that the accused presented the already finished affidavit (Exhibit "6"). He interviewed not only Madrigo and Catangjas but also Pat. Rodolfo Amado, the one who dispatched Sacay to verify a reported rioting at the scene of the incident in question. Pat. Amado sent only Sacay because it was just for the purpose of verifying the veracity of said report."[8]

Testimony of Bonifacio Abaño, Jr. Y Rom, security guard of Don Bosco Youth Center:

"Bonifacio Abaño, Jr. Y Rom, security guard of Don Bosco Youth Center whose tour of duty on April 15, 1979 was from 8:00 a.m. to 4:00 p.m., identified his "Sinumpaang Salaysay" of May 8, 1981, marked Exhibit "8" and reaffirmed its contents. He narrated that at about 3:00 o'clock in the afternoon of April 15th, he phoned Police Station I about a brewing confrontation between the warring Sigue Sigue-Sputnik and Batang City Jail Gangs which were outside the Don Bosco compound, with the latter positioning themselves at Marcos Road and the former along Carlos P. Garcia Street, Tondo, Manila. Respondent to his call for police intervention, Patrolman Sacay arrived in civilian clothes. Sacay was the lone policeman to show up at the place where the rioters were already shouting and throwing stones and darts at each other. The first thing Sacay did was to fire two warning shots and identify himself as a peace officer by shouting "I am a policeman." Then, he ordered the fight to stop but, instead five of the rioters one of whom holding a revolver and a bladed weapon, ran towards and unsuccessfully tried twice to stab Sacay who shot and felled the said aggressor. At the precise moment when the said aggressor named "Fernando" was thrusting a bladed instrument towards Sacay, and the latter fired at the former, the two were just 3 & 1/2 feet apart. After hearing two more gun rapports, two men fell but did not see any particular person being hit by Sacay's tirades. Others docked and ultimately surrendered, this witness who claims to have been twenty meters from the protagonists, recounted.

---

[8] Decision; *Rollo*, pp. 27-28.

Supreme Court E-Library

"Cross-examination elicited from witness that after firing the last shot, Sacay stood up and ordered the trouble makers to stop even as some of them were running. He did not notice Sacay leaving the crime scene because when people were coming, he was preoccupied closing the gate of the Don Bosco compound. He did not also see what ride was used by Sacay who was alone. He could not tell if Sacay fired immediately but he did observe that Sacay fired only after the aggressor's second thrust towards Sacay. He heard a shot and saw Sacay shooting the fellow. There were four shots, all in all, witness said."[9]

Testimony of Ramon Pintado y Baguio, Ballistician or Firearm Identification Technician, WPD Evidence Laboratory:

"Ramon Pintado y Baguio, ballistician or firearm identification technician of WPD's Evidence Laboratory, also mounted the witness stand for the defense to state that on April 20, 1979, Cpl. Yang requested ballistic examination of a .38 caliber revolver with Serial Number SN-243277 used by Pat. Virgilio Sacay on April 15, 1979 in repelling aggression coming from Antonio Tepace and Paterno Lerma. Subject firearm was accompanied with the "Reference Slip" marked Exhibit "9". Then, on April 24, or four days later, Yang was back to ask ballistic examination also of a .22 caliber Magnum revolver having serial No. SN-2424 (Exhibit "11") with three (3) rounds of live ammo and one (1) fired cartridge contained in the envelope marked Exhibit "12". The subsequent request was embodied in the "Reference Slip" marked Exhibit "10". Placed in another envelope marked Exhibit "13" are two (2) test shells and two (2) test bullets utilized for the examination of subject .22 caliber revolver, the result of which ballistic test is shown in the findings and conclusions (Exhibit "14-B ") in the Laboratory Report No. 5790.

"As thus requested, he conducted on May 7, 1979 the desired ballistic examination for the purpose of determining whether the .22 caliber discharged cartridge with the initial "JY" was fired from the said .22 caliber paltik revolver bearing Serial Number 2424. The spent cartridge was found inside the chamber of subject firearm but no spent bullet from the same gun was submitted to him for examination, this witness revealed."[10]

---

[9] Decision of Sandiganbayan, *Rollo*, p. 29.

[10] *Ibid; Rollo*, p. 30.

Supreme Court E-Library

Testimony of Virgilio Sacay y Valdez, accused member of the Western Police District:

"On April 15, 1979, he was a station reserve from 7:00 a.m. to 7:00 p.m. In the afternoon, he was instructed by the Actg. Desk Officer, Patrolman Amado Adolfo, to verify a phoned report regarding a riot at the Don Bosco premises in Barangay Magsaysay Tondo, Manila. Right away, he boarded a passenger jeepney. He was alone and in plain clothes. Upon arrival at the reported scene of trouble, shooting of darts between members of the Sigue Sigue-Sputnik gang and Batang City Jail gang was taking place. He knew the identity of the warring groups because he grew up in the area. At the right side facing north were members of the Sigue Sigue-Sputnik gang. On the left side of the Don Bosco compound were those belonging to the Batang City Jail gang. He entered the compound via the left gate (the right gate was closed) and met Virginia Nacar who told him that the throwing of stones and darts by about twenty (20) people had been going on for quite a time. Among the people involved were Paterno Lerma, Antonio Tepace, Alfredo Mondrigo and Roberto Catangjas. Closing in on the protagonists, he identified himself as a policeman and fired two warning shots.

"After the warning shots were fired, members of the Sigue Sigue-Sputnik gang dispersed. They ran towards the right gate of the Don Bosco compound. But members of the Batang City Jail Gang ran to the place where he was and one of them, Paterno Lerma who was only an arm's length away, lunged an 8-inch knife at him. Luckily, he was able to evade the thrust by moving backward. In so stepping to the rear, however, a big stone blocked his leg, causing him to sit on the buttocks and while in such position Lerma approached at the left and as he (accused) stood up, Lerma tried once more to stab him with the same weapon; and so he fired his service gun at Lerma who was mortally hit.

"Denying the imputation that he shot Paterno Lerma when the latter was kneeling down, the accused went on to narrate that after Lerma was fatally wounded, Antonio Tepace, Lerma's gangmate, shot him (accused) with a .22 caliber magnum revolver from a distance of two meters but missed him so that to protect his life, he fired back at Tepace who thereafter slumped on the ground.

"To reinforce his theory of self-defense and fulfillment of duty, the accused also declared that the .22 caliber magnum revolver (Exhibit "11") with three (3) live ammo and one spent shell (Exhibit "12") was picked up from the ground near the hands of the deceased Antonio

Supreme Court E-Library

Tepace and the knife (Exhibit "5") was taken near the hands of Paterno Lerma inside the Don Bosco compound that afternoon of April 15, 1979. Investigated later by P/Cpl. Johnny Yang of WPD's Homicide Section on the same day of the unfortunate happening, he gave the affidavit (Exhibit "6") to said police investigator. To the Tanodbayan, he turned in the counter-affidavit (Exhibit "18") including the annexes marked Exhibits "18-A" to "18-D" pertaining to the derogatory police and court records of the deceased Paterno Lerma and Antonio Tepace who were full of tatoo marks of the Batang City Jail Gang.

"Such in a nutshell, was the tale of the accused before the court."[11]

Testimony of Eusebio Arguelles y Magpantay, police chemist of Manila's finest.

"He testified that Patrolman Rodolfo Buenaventura who is now retired, was under his administrative supervision. Upon the request of P/Cpl. Yang, Buenaventura subjected to paraffin test the body of the late Antonio Tepace about 7:30 in the afternoon of April 16, 1979 at the Capitol Memorial Chapel. Although he did not actually see the written request of P/Cpl. Yang therefor, Buenaventura informed him of the paraffin test thus made whereby the latter took a paraffin cast from the dorsal side of the right and left hands of Antonio Tepace. Thereafter, he conducted thereon a diphenylamine test which gave positive reaction to the presence of nitrates or nitrites, a finding mentioned in that portion marked Exhibit "16-1" of the laboratory report marked Exhibit "16".

"The witness pointed to Exhibits "17" and "17-A" as the patterns of the right and left hands of Antonio Tepace y Nubia.

"On cross-examination, he opined that the presence of nitrates on the dorsal side of the right hand of Antonio Tepace could have been caused by gun powder residues. Because of the possibility of contamination upon touching any object, the palm of subject cadaver was not examined anymore, he justified. Told that the deceased Antonio Tepace died a day before the paraffin examination was made, he did not discount the possibility that during the 24-hour period following the death of Antonio Tepace, the dead man's hand could have been used by someone to fire a gun thereby rendering the dorsal side of such hand positive of nitrates."[12]

---

[11] *Ibid.; Rollo*, pp. 31-32.

[12] *Ibid.; Rollo*, p. 33.

Supreme Court E-Library

Testimony of Veneranda P. Lagrimas, on rebuttal for the Prosecution:

"Veneranda P. Lagrimas testified that at about 4:00 o'clock in the afternoon of April 15, 1979, she was in the church near Don Bosco compound in Tondo to fulfill her Sunday obligation. While outside the said church, she saw Patrolman Sacay, the accused herein, alighting from a passenger jeepney. There was no clash between the Sigue-Sigue Sputnik gang and the Batang City Jail gang, she said. According to her, upon the arrival of the accused at the place of the incident complained of, he did not say "magsitigil kayo, pulis ako, si Sacay ako" but said "magsilapit kayo" and commanded the three persons, including Antonio Tepace, to "raise your hands, kneel, lie flat on your stomach" which order the three obeyed. The accused fired no warning shot; he aimed his gun at the people. Paterno Lerma was unarmed, had no knife and never lunged any knife at the accused who shot Lerma even as Lerma was running away with face looking backward at the accused, witness recalled.

"As regards the deceased, Antonio Tepace, she categorically revealed that the latter was equally unarmed. He never fired, had no gun to fire and was actually lying flat on his stomach with hands stretched forward when fatally shot by the accused, she recounted. Shown Exhibit "F", she acknowledged the same to be the sworn statement she executed in connection with the shooting incident at bar. She affirmed the truth of its contents.

"On cross-examination, she went on to state that she had known the late Antonio Tepace even prior to April 15, 1979 because he used to buy viand in her house. But she never saw Paterno Lerma alive. He was already dead when she saw his lifeless body. As to why she failed to present herself for police investigation not long after the tragic happening under inquiry, she pointed out that it was her impression that no complaint would even be filed in relation thereto. It was only when the mother of Antonio Tepace was crying over lack of witnesses to testify against the feared accused that she became aware of the intention of the bereaved family to sue. So, three days later, she was accompanied to the police station by the sorrowful mother of Antonio Tepace and, then and there, she executed her affidavit (Exhibit "F").

"More on the environmental facts surrounding the shooting litigated upon, she further divulged that there were a lot of churchgoers and

Supreme Court E-Library

no basketball game was being played at the time because a Sunday afternoon mass was about to begin."[13]

Testimony of Dr. Luis Larion y Craig, medico-legal officer of the Western Police District, sur-rebuttal witness for the defense:

"Sometime in April, 1979, he performed post-mortem examination and autopsy on the cadaver of the deceased, Antonio Tepace, and in the course thereof, recovered a bullet embedded in the head of said victim who sustained two gunshot wounds, one of which was just a "grazing gunshot wound." The bullet was without a point of exit, he ventilated.

"Judging from the trajectory of the bullet, he ruled out the infliction of such a wound on a victim lying face down. The kind of wound sustained by Antonio Tepace could be possible if the assailant was in front and the head of the victim was raised upward by about a foot, making it almost perpendicular to the ground, the doctor theorized."[14]

The Sandiganbayan, giving credence to the lone testimony of the prosecution witness and finding the version of the defense too incredible and repugnant to human experience, convicted the accused as charged.[15]

Hence this petition, with the following assignment of errors:

(a) There has been an error by the Court in giving weight and evidentiary worth to conjectures and beliefs in finding the accused guilty of the offenses charged against him; the decision is not based on the evidence adduced;

(b) There has been an error by the Court in utterly ignoring and disregarding all the evidence adduced by the accused;

(c) There has been an error by the Court in giving too much weight and reliance on the testimony of Veneranda Lagrimas, the lone witness for the prosecution whose testimony is never free from serious legal defects; and

---

[13] *Ibid; Rollo*, pp. 34-36.

[14] *Ibid; Rollo*, pp. 36-37.

[15] *Rollo*, pp. 38-39.

Supreme Court E-Library

(d) There has been a serious error in the trial of these cases in the sense that the Order of Trial provided for in Section 3, Rule 119 of the New Rules of Court had never been observed, thus depriving this accused of the right to due process of law.[16]

The accused begs, in the interest of justice and fair play, that all the evidences presented be fairly and justly evaluated through this sought-for judicial review by this Honorable Court.[17]

The first three errors assigned question the appreciation of the evidence by the trial court while the fourth raises the denial of procedural due process to the accused.

In his comment, the Solicitor General maintains that petitioner's contentions raise the question of sufficiency of evidence upon which his conviction is predicated and necessarily a question of fact. However, because of the sufficiency of evidence against the accused, said question of fact cannot be transformed into one of law under the exceptions as have been noted by this Court by which a question of fact may be passed upon even under a petition for certiorari.

Accordingly, the Solicitor General supports the view of respondent Court that the version of petitioner as to how he shot the two victims to death is unworthy of credence, so that the plea of self-defense is not established by clear and convincing evidence. He adds that there was no denial of due process to the accused as there was no reverse order of trial followed, but on the contrary the order of trial as provided in Section 3, Rule 119 of the Rules of Court was religiously observed.[18]

The main issue in this petition is whether or not petitioner has convincingly established that he acted in self-defense and/or in fulfillment of duty. Relative thereto, petitioner also claims that he has been deprived of procedural due process.

We shall deal first with the procedural issue.

---

[16] Petition; *Rollo*, p. 17.

[17] Petition; *Rollo*, p. 20.

[18] *Rollo*, pp. 96-131.

Supreme Court E-Library

At the initial hearing, the testimony of Veneranda Lagrimas was interrupted when the accused, through his counsel, admitted that he shot the deceased Tepace and Lerma, but invoked self-defense and fulfillment of duty. The prosecution then moved that the reverse procedure be adopted in view of the admission that the accused shot the deceased. No objection was interposed by the accused or his counsel. After presenting Mrs. Leonida N. Tepace and Mrs. Francisca Lerma Y. Naldo to prove damages and the death and medical certificates of the deceased, the prosecution rested.

Petitioner claims that the order of trial provided in Section 3, Rule 119 of the Rules of Court was not followed and in support of his claim quotes the ruling of this Court in the case of *Alejandro vs. Pepito*, as follows:

"It behooved respondent Judge to have followed the sequence of trial set forth. That procedure observes in the words of Chief Justice Fernando, the 'Mandate of reason and the guarantee of fairness with which due process is identified.' The procedure outlined safeguards and protects the fundamental right of the accused to be presumed innocent until the contrary is proved. That right is founded on the principle of justice and is intended not to protect the guilty but to prevent as far as human agencies can, the conviction of an innocent person. Indeed, the form of a trial is also a matter of public order and interest; the orderly course of procedure requires that the prosecution shall go forward and present all of its proof in the first instance."[19]

However, this ruling is not applicable in the case at bar inasmuch as the accused did not object to the procedure followed. In the above-cited case of *Alejandro vs. Pepito,* this Court also stated:

"It is true that in the case of *U.S. vs. Gaoiran*, 17 Phil. 404 (1910), relied upon by the prosecution and the trial Court, the defense had produced its proofs before the prosecution presented its case, and it was held that no substantial rights of the accused were prejudiced. There is one radical difference, however, since in that case, no objection was entered in the Court below to the procedure followed in the

[19] February 21, 1960, 96 SCRA 322, 326.

Supreme Court E-Library

presentation of proof. In this case, the change in order of trial made by respondent Judge was promptly and timely objected to by the defense."[20]

It should be noted that this procedure is now expressly sanctioned in Section 3(e), Rule 119 of the 1985 Rules on Criminal Procedure which provides as follows:

"However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly."

We shall now deal with the main issue – the sufficiency of petitioner's evidence of self-defense and/or fulfillment of duty.

After petitioner had presented his evidence, the prosecution presented its sole rebuttal witness, Veneranda Lagrimas, who disputed the testimony of petitioner. At the close of her direct examination she was asked to confirm the truth of the contents of her sworn statement, Exhibit "F", which she did, after which the following took place:

"PJ PAMARAN

Cross examination?

ATTY. SANCHEZ

If Your Honor please, I think this is the only witness for the prosecution. In order to give the accused, Your Honor, the prepared cross-examination. x x x I am not or I was not able to read all the stenographic notes neither all the affidavit, may I be given an opportunity. x x x

PJ PAMARAN

Denied. You cross examination her based on that. Proceed."[21]

Atty. Demetrio Sanchez, an attorney of the Citizens Legal Assistance Office, who had been appointed counsel *de officio* for petitioner upon the withdrawal of counsel *de parte*, Atty. Santiago Inoferio, on the ground of a permanent ailment, should

---

[20] *Id.*, p. 327.

[21] TSN, pp. 15-16, June 13, 1983 Hearing.

Supreme Court E-Library

have been given a little time to prepare for cross-examination. Moreover, in the case of *People vs. Estenzo*, this Court frowned upon the procedure proposed by counsel for the defense of submitting the affidavits of his witnesses subject to cross-examination by the prosecution, and stated:

"There is an additional advantage to be obtained in requiring that the direct testimony of the witness be given orally in court. Rules governing the examination of witnesses are intended to protect the rights of litigants and to secure orderly dispatch of the business of the courts. Under the rules, only questions directed to the eliciting of testimony which, under the general rules of evidence, is relevant to, and competent to prove, the issue of the case, may be propounded to the witness. A witness may testify only on those facts which he knows of his own knowledge. Thus, on direct examination, leading questions are not allowed, except on preliminary matters, or when there is difficulty in getting direct and intelligible answer from the witness who is ignorant, a child of tender years, or feeble-minded, or a deaf-mute. (Section 5, Rule 132, of the Rules of Court.) It is obvious that such purpose may be subverted, and the orderly dispatch of the business of the courts thwarted, if trial judges are allowed, as in the case at bar, to adopt any procedure in the presentation of evidence other than what is specifically authorized by the Rules of Court."[22]

Similarly, Veneranda Lagrimas should have been examined directly on the statements in her affidavit.

Respondent Sandiganbayan gave credence to the testimony of Veneranda Lagrimas and found "the version of the defense too incredible and repugnant to human experience to induce faith and reliance."

It is well settled that the findings of facts of the Court of Appeals (now Intermediate Appellate Court) are conclusive on the parties and on this Court,[23] unless (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken;

---

[22] August 25, 1976, 72 SCRA 428, 434.

[23] Cases cited in *Tolentino vs. de Jesus*, 56 SCRA 67; *Cesar vs. Sandiganbayan*, January 17, 1985, 134 SCRA 105, 121.

Supreme Court E-Library

(3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees;[24] (7) the findings of facts of the Court of Appeals are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;[25] (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by evidence on record.[26]

The same exceptions apply to the findings of fact of the Sandiganbayan. As this Court stated in the case of *Cesar vs. Sandiganbayan*: "Considering further that no less than three senior members of this Court, Justices Teehankee, Makasiar and Fernandez dissented from the Court's opinion in Nuñez (111 SCRA 433) partly because of the absence of an intermediate appeal from Sandiganbayan, this Court has been most consistent in carefully examining all petitions seeking the review of the special court's decisions to ascertain that the fundamental right to be presumed innocent is not disregarded. This task has added a heavy burden to the workload of this Court but it is a task which is steadfastly discharged."[27]

Since the testimony of Veneranda Lagrimas is the only evidence of the prosecution to rebut the evidence of petitioner, it becomes necessary to scrutinize the same carefully.

Moreover, this witness volunteered to testify only about five (5) months after the incident when she executed her affidavit

---

[24] *Ramos vs. Pepsi-Cola Bottling Co.*, February 8, 1967, 19 SCRA 289, 291-292; *Roque vs. Buan*, Oct. 31, 1967, 21 SCRA 648, 651.

[25] *Garcia vs. CA*, June 30, 1970, 33 SCRA 622; *Alsua-Bett vs. Court of Appeals*, July 30, 1979, 92 SCRA 322; 366.

[26] *Salazar vs. Gutierrez*, May 29, 1970, 33 SCRA 243, 247.

[27] 134 SCRA 105, 121.

Supreme Court E-Library

on September 14, 1979. Asked why it took her so long a time to go to the police headquarters, she replied: "Because I thought the relatives of Antonio Tepace would not file a complaint."[28]

In the case of *People vs. Mula Cruz,* it was held that the long delay of forty-two (42) days after the incident by a witness, an Army man, in reporting a crime to the authorities, not caused by threat, intimidation or coercion, rendered the evidence for the prosecution insufficient to establish appellant's guilty connection to the requisite moral certainty.[29]

The fact that there was a riot going on at the Don Bosco Youth Center in Tondo and that petitioner was dispatched to proceed to the place and investigate the incident was clearly established by the testimonies of Corporal Juanito Yang and the Security Guard, Bonifacio Abaño.[30] And yet, Lagrimas denied that there was a clash between the two gangs in the Don Bosco compound.[31]

On May 31, 1982, Lagrimas testified that before the shooting there were many people who were playing basketball,[32] but on June 13, 1983, she stated that no basketball game was going on that afternoon and that the people were to enter the church to attend mass.[33]

More significant is the fact that according to Lagrimas, Antonio Tepace was lying flat on his stomach with his hands stretched forward when he was shot.[34] This is contradicted by the expert testimony of Dr. Luis Larion, medico-legal officer

---

[28] TSN, p. 21, June 13, 1983 Hearing.

[29] April 30, 1984, 129 SCRA 156.

[30] Exhibits "1" and "8"; TSN, pp. 4-6, 22-24, 29-31, August 24, 1982 Hearing.

[31] TSN, p. 7, June 13, 1983 Hearing.

[32] TSN, pp. 12-13.

[33] TSN, pp. 27-28.

[34] TSN, p. 14, June 13, 1983 Hearing.

Supreme Court E-Library

of the Western Police District, who testified on sur-rebuttal as follows:

"ATTY. SANCHEZ

Q But having examined the deceased, could you tell this Honorable Court what was the relative position of the deceased when he was shot at?

A The relative position of the deceased in relation with the assailant when he was shot was that, if they were both on standing position, the assailant could have been in a higher elevation x x x in relation with the victim. That is assuming that both were standing, that the assailant could have been in a higher elevation, if they are both facing each other.

ATTY. SANCHEZ

Q Now Doctor, a prosecution witness, Veneranda Lagrimas Pepito, when she testified before this Honorable tribunal in rebuttal evidence, stated in answer to a question of the prosecutor that the deceased Tepace was lying flat on his stomach with his hands stretched forward. My question, sir, is, considering the entry of the bullet wound that you found, is it possible that the deceased was in this position when he was shot at?

FISCAL VIERNES

I object, the question is misleading because the witness Lagrimas stated in her testimony that the deceased was lying down flat on his back but his head was lifted. It was looking up.

ATTY. SANCHEZ

Yes, but in the stenographic notes it shows that it was not so stated, Your Honor.

"FISCAL VIERNES

The deceased lifted his head.

PJ PAMARAN

What does your note say?

ATTY. SANCHEZ

The stenographic notes says that Tepace was lying flat on his stomach with his hands outstretched forward.

Supreme Court E-Library

PJ PAMARAN

Answer.

WITNESS

A With that position, it is not possible."[35]

On the other hand, the testimony of petitioner was corroborated by the testimony of Bonifacio Abaño, the security guard of Don Bosco Youth Center.

Ramon Pintado, Ballistic expert of the Western Police District, testified that the .22 caliber empty shell (Exhibit "12") had been discharged or fired from the .22 caliber paltik Magnum revolver (Exhibit "11") which had been submitted to him for examination by Corporal Yang.[36] This was the revolver which petitioner testified had been fired at him by Antonio Tepace.

Eusebio Arguelles, Police Chemist, testified that the right hand, dorsal side, of Tepace was positive for the presence of nitrates or nitrites, a strong indication that the deceased had recently fired a gun.[37]

Of course, one cannot discount the possibility that the knife (Exhibit "5") which petitioner testified was used by Paterno Lerma in attacking him, and the gun (Exhibit "11") were planted evidence. Nor can one easily dispel the nagging suspicion that the deceased were "salvaged." But possibilities and suspicions are not evidence. That respondent Court harbored such suspicions may be gleaned from the following statements in its decision, to wit:

"x x x What is more, the accused also admitted that his place of abode is only a barangay away from the residence of Lerma and Tepace for the past ten (10) years he had known and used to see them. The existence of ill-feeling or grudge between the deceased and the accused is not, therefore, improbable; and the actuations of the accused at the crime scene that afternoon of April 15, 1979 could

---

[35] TSN, pp. 7-8, August 10, 1983 Hearing.

[36] TSN, pp. 7-20, September 13, 1982, Hearing; Exhibit "14".

[37] TSN, pp. 7-15, April 14, 1983 Hearing.

Supreme Court E-Library

have been far from being impersonal. He could have been laboring under some prejudice or bad impression against some people in that area where he spent many years of childhood."[38]

This conclusion is not supported by the evidence as shown by the following:

"ATTY. INOFERIO:

q Now Mr. Witness, you have known previously this Tepace and Lerma, is that correct?

a Yes, sir.

q For how long have you known them?

a About 10 years ago, sir.

PJ PAMARAN:

q Those two belong to one gang?

a Yes, Your Honor.

JUSTICE PURISIMA:

q What gang?

a Batang City Jail, Your Honor.

JUSTICE MOLINA:

q Would you say that they also knew you for the same period of time?

a Yes, Your Honor.

q And they know you to be a member of the Western Police District?

a Yes, Your Honor.

q And during that ten-years period that you knew each other until April 15, 1979, had there been any untoward incident between you and these two?

a So far, none, Your Honor.

JUSTICE MOLINA:

q There had been no ill-feelings between you and these two deceased persons?

---

[38] Decision, *Rollo*, pp. 41-42.

Supreme Court E-Library

a None, Your Honor.

JUSTICE PURISIMA:

q You are neighbors?

a One barangay away, Your Honor.[39]

"JUSTICE MOLINA:

q By the way, what is your educational attainment?

a I am a graduate of Criminology, Your Honor."

Respondent Court also had to resort to speculation when it attempted to reconcile the testimony of Lagrimas with the expert testimony of Dr. Luis Larion, as follows:

"x x x The late Antonio N. Tepace lay flat on his stomach as ordered by the accused but while listening and talking to the accused who was in front of him, he could have raised his head such that when he was fatally shot his (victim's) head was almost perpendicular to the ground."[40]

Prejudice against petitioner is shown by the following incident when petitioner presented Police Chemist Eusebio Arguelles as one of his witnesses.

"AJ PURISIMA:

Q But you are not testifying in your own capacity. You were hired to testify here by the defense.

A I was subpoenaed, Your Honor.

Q You were sent here by your Chief?

A I am the Chief of the Section.

Q What about your Chief of Police? You are testifying against the prosecution now, is it not?

A Not exactly, sir. I will be testifying on my findings based on the incident."[41]

---

[39] TSN, pp. 48-50, January 3, 1983 Hearing.

[40] Decision, *Rollo*, p. 42.

[41] TSN, pp. 6-7, April 14, 1983 Hearing.

Supreme Court E-Library

Well established is the rule that every circumstance favorable to the accused should be duly taken into account. The evidence against him must survive the test of reason. The strongest suspicion must not be allowed to sway judgment. In brief, We are not morally certain of the guilt of petitioner.

WHEREFORE, the decision of the Sandiganbayan is reversed and the petitioner is acquitted, with costs *de officio.*

SO ORDERED.

Teehankee, C.J., Abad Santos, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 71117. July 10, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO NG y DOANE,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; CONSTRUED.—** We agree with the foregoing manifestation and motion. From the earliest years of this Court, it has emphasized the rule that reasonable doubt in criminal cases must be resolved in favor of the accused. The requirement of proof beyond reasonable doubt calls for moral certainty of guilt. It has been defined as meaning such proof "to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty — a certainty that convinces and satisfies the reason and the