

## FIRST DIVISION

[ G.R. No. 175999, July 01, 2015 ]

**NELSON LAI Y BILBAO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

The accused assails the affirmance of his conviction for homicide through the assailed decision promulgated on May 27, 2005 by the Court of Appeals (CA).<sup>[1]</sup> The conviction had been handed down by Judge Fernando R. Elumba of the Regional Trial Court, Branch 42, in Bacolod City (RTC) in Criminal Case No. 17446 entitled *People of the Philippines v. Nelson Lai y Bilbao*.<sup>[2]</sup>

#### **Antecedents**

The Prosecution's version was summarized by the RTC as follows:

On December 16, 1995, at around 9 o'clock in the evening, the victim Enrico Villanueva, Jr. together with his friends Burnie Fuentebella (a prosecution witness), Butsoy Arenas, Raffy Gustilo, Nonoy Martinez, and Mark Anthony Merre, were seated inside the passenger jeepney owned by the accused, Nelson Lai y Bilbao, which was parked at the back of Pala-pala, Brgy. 6, corner North Capitol Road - San Juan Streets, Bacolod City, where they were waiting for a female friend of theirs who was supposed to arrive at 9:30 o'clock of the same evening per their agreement. While they were waiting for their friend to arrive, the accused Nelson Lai y Bilbao suddenly approached the vehicle and ordered all the persons who were seated inside (including the deceased Enrico Villanueva, Jr.) to alight therefrom. After all of them have alighted from the jeepney, the accused instantaneously grabbed the victim by the latter's left arm and accused him (the deceased) of having stolen the antenna of his (Lai's) vehicle. Denying that he was responsible for the theft of the antenna, the victim was able to free himself from the hold of the accused and ran away towards the direction of the house of Christopher Padigos located at Purok Narra Bukid North, Brgy. 8, Bacolod City, across the Pala-pala. Upon arriving at the house of Christopher Padigos, the victim ran all the way to the second floor room he shared with Jemuel V. Gepaya (a prosecution witness). Finding his roommate inside the room, the victim confided to the former that Nelson Lai had just accused him of stealing his (Lai's) car antenna and that he (the deceased) was grabbed and hit by the accused at the neck but that he (the victim) was able to retaliate by kicking the accused. There the victim remained until about 11:00 o'clock of the same evening when he left the house of Christopher Padigos to go to the dancehall located at nearby

Purok Azucena, Barangay 6, Bacolod City where a benefit dance was being held.

At around 11:00 o'clock of the same evening, both the accused and the victim were inside the dancehall, the latter being seated on a bench together with his friends while the former was dancing to the tune of the cha-cha. After dancing the accused stood immediately in front at about one and a half arms length (sic.) from where the victim was seated. Thereafter, the accused stepped towards where the victim was seated. As the accused was about to approach the victim, a brownout suddenly occurred. Immediately after the lights went out, a spark was seen and a gunshot rang out right in front where the victim was seated. Suddenly, the victim fell down bloodied. Immediately thereafter, the victim was rushed to the provincial hospital by his friends led by Burnie Fuentebella, a prosecution witness, for treatment. Similarly, Jemuel V. Gepaya, a cousin of the victim, also followed to the hospital after hearing the news that the victim was shot.

Inside the Emergency Room of the Provincial Hospital, while the victim lay (sic) bleeding from a gunshot wound in the neck and awaiting medical attention, he was able to tell Burnie Fuentebella and Jemuel Gepaya, both prosecution witnesses, that the accused Nelson Lai was the one who shot him. Moreover, the victim likewise shouted the name "Nelson Lai" when he was asked by PO3 Homer Vargas who shot him. Likewise, when Enrico Villanueva, Sr., the father of the victim, arrived at the Emergency Room and asked the victim who shot him, the latter replied that it was "Nelson Lai", (parenthetical citations omitted)<sup>[3]</sup>

In contrast, the CA summed up the Defense's own version in its assailed decision, to wit:

Appellant Nelson Lai drives his own passenger jeep plying the Banago-Libertad route. At around 8:30 o'clock in the evening of December 16, 1995, appellant parked his jeepney at the back of his house located at Purok Azucena, Barangay 6, Bacolod City. After resting for a while, he went to the house of their Purok President, Ramero Jarabelo, where he drank three bottles of beer. Thereafter, he went home at around 9:00 o'clock, passing by the dancehall where (sic.) a benefit dance was being held as a thanksgiving party for the Sangguniang Kabataan. There, he was invited by Merlyn Rojo, who acted as emcee of the program, to open the first dance. Appellant acceded and danced the first dance with Merlyn Rojo. After their dance, appellant went home as he still had to work early the next morning.

When appellant arrived home, he noticed that eight (8) persons, including the victim, were seated inside his jeepney. He approached them and requested them not to stay inside his jeepney. Thereafter, all of them went away without any untoward incident. When the accused and his wife were about to have their late dinner at around 11:00 o'clock, a brownout occurred. About two seconds after the lights went out; he heard a gunshot which he initially thought was merely a firecracker. Later, when he overheard that someone was shot at the dancehall which

was only 40 meters away from his house, he went out to look for his two sons. Along the way, he met Daisy Panes, who, together with her husband, were also on their way to the dancehall.

At the dancehall, someone told appellant that his son, Windel, was the one who carried the victim to the hospital. So appellant went home and proceeded to eat his dinner. At around 11:45 o'clock of the same evening, while appellant was already resting, three policemen came to his house and told him that the victim mentioned his name as the one who shot him. Believing that he has done nothing wrong, appellant volunteered to go with the policemen. Appellant claims that when they arrived at the police station, he even asked that a paraffin test be conducted on him, the result of which was negative.<sup>[4]</sup>

### **Judgment of the RTC**

In its judgment dated August 22, 2001,<sup>[5]</sup> the RTC, through Judge Elumba, disposed as follows:

WHEREFORE, premises considered, this Court finds the accused NELSON LAI y BILBAO guilty beyond reasonable doubt of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code of the Philippines, as amended, and, in the absence of neither mitigating nor aggravating circumstances which may be considered in the imposition of the penalty thereof, this Court hereby sentences the said accused to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, 8 months and one (1) day of reclusion temporal as maximum and orders the accused to indemnify the heirs of the victim Enrico Villanueva, Jr. in the amount of Fifty thousand (P50,000.00) Pesos only without subsidiary imprisonment in case of insolvency as well as to suffer the accessory penalty provided for by law and to pay the costs.

SO ORDERED.<sup>[6]</sup>

### **Decision of the CA**

On appeal, the petitioner raised the following errors, to wit:

[T]hat the lower court:

1. ERRED in giving full credence to the alleged dying declaration of Enrico Villanueva, Jr.;
2. ERRED in considering the alleged earlier untoward incident between accused and the group of Enrico Villanueva, Jr. as sufficient to motivate the former to kill the latter;
3. ERRED in discarding *en (sic) toto* the defense of alibi and the negative result of the paraffin test conducted on the accused;

4. ERRED in failing to see that the entire evidence presented by both the prosecution and defense engender a reasonable doubt which should be resolved in favor of the accused;
5. **ERRED as accused was deprived of due process when this case was decided by the honorable presiding judge who acted as the public prosecutor in this case before he was appointed to the bench;**
6. ERRED when it completely disregarded appellant's motion for reconsideration below with nary a look into any issue raised therein; and
7. ERRED when it denied appellant's motion for new trial.<sup>[7]</sup>

On May 27, 2005, the CA promulgated its decision,<sup>[8]</sup> disposing:

**WHEREFORE**, the assailed Decision of the Regional Trial Court of Bacolod City, Branch 42, in Criminal Case No. 17446 is hereby **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>[9]</sup>

### **Ruling of the Court**

In this appeal, the petitioner continues to assail the conviction, but the Court has immediately noted that the right to due process of the petitioner had been denied to him by Judge Elumba, the trial judge, by not disqualifying himself from sitting on and trying Criminal Case No. 17446 despite having participated in the trial as the public prosecutor. Thus, it is necessary for the Court to first determine if the non-disqualification of Judge Elumba prejudiced the petitioner's right to a fair and impartial trial.

As the records indicate, Judge Elumba had been assigned on March 23, 1998 as the public prosecutor in Branch 42 of the RTC in Negros Occidental to replace the previous public prosecutor,<sup>[10]</sup> but became the Presiding Judge of Branch 42 on April 27, 2000.<sup>[11]</sup> Branch 42 was the trial court hearing and ultimately deciding Criminal Case No. 17446 against the petitioner. As such, Judge Elumba should have disqualified himself from having anything to do with the case once he became the trial judge because he was compulsorily disqualified. The petitioner pointed to the need for Judge Elumba's disqualification in his *Motion for Reconsideration*,<sup>[12]</sup> but the latter ignored his concerns upon the excuse that he had appeared in Criminal Case No. 17446 only after the Prosecution had rested its case. Judge Elumba argued that he did not personally prosecute the case, and that, at any rate, the petitioner should have sought his disqualification prior to the rendition of the judgment of conviction.<sup>[13]</sup>

On appeal, the petitioner focused the CA's attention to the denial of due process to him by the non-disqualification of Judge Elumba, but the CA upheld Judge Elumba's justifications, stating:

As to the fifth assigned error, appellant claims that he was denied due process because the judge who rendered the assailed decision was also, at one time, the public prosecutor of the instant case. First, the record of

this case shows that when the judge, who was then a public prosecutor, entered his appearance, the prosecution had already long rested its case, more specifically, he appeared therein only when the last witness for the defense was presented, not to mention the fact that it was a private prosecutor who cross-examined the last witness, Merlyn Rojo. Thus, it cannot be said that the presiding judge personally prosecuted the instant case, nor supervised the prosecution thereof when the same was still pending. Second, settled is the rule that a petition to disqualify a judge must be filed before rendition of judgment by the judge. Having failed to move for the disqualification of the judge, appellant cannot thereafter, upon a judgment unfavorable to his cause, take a total turn about (sic.) and say that he was denied due process. 'One surely cannot have his cake and eat it too.'<sup>[14]</sup>

It is not disputed that the constitutional right to due process of law cannot be denied to any accused. The Constitution has expressly ordained that "no person shall be deprived of life, liberty or property without due process of law."<sup>[15]</sup> An essential part of the right is to be afforded a just and fair trial before his conviction for any crime. Any violation of the right cannot be condoned, for the impartiality of the judge who sits on and hears a case, and decides it is an indispensable requisite of procedural due process.<sup>[16]</sup> The Court has said:

This Court has repeatedly and consistently demanded 'the cold neutrality of an impartial judge' as the indispensable imperative of due process. To bolster that requirement, we have held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise they will not go to him at all. They must believe in his sense of fairness, otherwise they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.

Due process is intended to insure that confidence by requiring compliance with what Justice Frankfurter calls the rudiments of fair play. Fair play calls for equal justice. There cannot be equal justice where a suitor approaches a court already committed to the other party and with a judgment already made and waiting only to be formalized after the litigants shall have undergone the charade of a formal hearing. Judicial (and also extra-judicial) proceedings are not orchestrated plays in which the parties are supposed to make the motions and reach the denouement according to a prepared script. There is no writer to foreordain the ending. The judge will reach his conclusions only after all the evidence is in and all the arguments are filed, on the basis of the established facts and the pertinent law.<sup>[17]</sup>

The adoption of rules governing the disqualification of the judges from hearing and deciding cases should there be any cause that diminishes or negates their impartiality is a firm means of ensuring their impartiality as judges. In particular, Section 1, Rule 137 of the *Rules of Court* embodies the rule on self-disqualification by a sitting judge, viz.: