

## FIRST DIVISION

[ G.R. No. 138400, July 11, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SERGIO CAÑETE, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

The brothers Sergio, Alfredo, Ruben and Trinidad together with their 67-year old father, Sotero, all surnamed Cañete, were temporarily detained at the municipal jail in Liloan, Cebu in relation to a murder case filed against them for the slaying of one Edith Tumayao. Upon learning that they would be “*salvaged*,” they refused to leave their cell and started a riot when the police came to transfer them to the Cebu Provincial Jail. For allegedly bashing the head of his 67-year old father, Sotero Cañete, with the wooden leg of a prison bunk during the ensuing melee, which resulted in the latter’s death, Sergio Cañete was charged with Parricide in Criminal Case No. DU-6233 in an Information<sup>[1]</sup> which alleges:

That on the 1<sup>st</sup> day of June 1997, at about 9:30 o’clock in the morning, at Liloan Police Station Jail, Municipality of Liloan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and by means of treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously strike the head of Sotero Cañete, his own father, with the use of a piece of wood, which caused the death of the victim.

CONTRARY TO LAW.

Upon arraignment, accused, assisted by counsel, pleaded “Not Guilty” to the charge.<sup>[2]</sup> After trial, the court *a quo*<sup>[3]</sup> rendered judgment finding accused guilty as charged, thus:

WHEREFORE, foregoing premises considered, Judgment is hereby rendered finding the herein accused Sergio Cañete guilty beyond reasonable doubt for the crime of Parricide, the said accused is hereby sentenced to undergo the penalty of *reclusion perpetua* and to pay the costs.

Accused being a detention prisoner shall be credited in the service of his sentence [the] full time during which he has undergone preventive imprisonment.

SO ORDERED.<sup>[4]</sup>

On appeal to this Court, accused-appellant faults the trial court with the lone assigned error that –

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF PARRICIDE.

Culled from the testimonies of its witnesses, the prosecution's version of what transpired is summed thus by the Solicitor General in the People's brief:

Accused-appellant Sergio Cañete, his three (3) brothers Alfredo, Ruben and Trinidad, and their father Sotero Cañete, were detained at the municipal jail of Liloan, Cebu, in connection with the murder of a certain Edith Tumayao of which they were being accused. On June 1, 1997 at about 9:30 a.m., they staged a riot inside the municipal jail to prevent their transfer to the provincial jail. They threw stones at the policemen outside the jail. The police had to use tear gas and water cannons to flush them out. Alfredo, Ruben and Trinidad were forced to come out of the detention cell, while Sergio and Sotero Cañete remained inside. PO3 Ricardo Cabalda Enriquez then entered the jail followed by SPO2 Eleazar Salomon and SPO1 Danilo Latoza. Enriquez was struck by accused-appellant with a piece of concrete on the right side of his face. After he was hit, his companions Salomon and Latoza dragged him out of the detention cell and brought him to a clinic.<sup>[5]</sup>

Thereafter, accused-appellant went amuck and started throwing broken pieces of concrete from inside the jail. This compelled the firemen outside to fire their water cannon at him to immobilize him. The policemen were then able to handcuff accused-appellant and pull him out of his cell. The police then loaded the Cañetes aboard the municipal service vehicle and brought Sotero to the hospital while delivering the rest to the provincial jail. Upon arrival at the hospital, Sotero Cañete was still conscious, but he later expired.<sup>[6]</sup>

Dr. Jose Dacudao of the Don Vicente Sotto Memorial Medical Center in Cebu City conducted the autopsy on the body of the victim. He testified that the victim suffered severe head injury due to a skull fracture. He also testified that the victim's chances of survival even with medical intervention was practically nil and that he would have died owing to the severity of the injury sustained.<sup>[7]</sup>

Accused-appellant had a different version of the incident.

In a nutshell, he claims that it was actually PO3 Ricardo "*Eking*" Enriquez who bludgeoned his father to death.<sup>[8]</sup> He narrates that he, his victim-father and his brothers were the only prisoners remaining in detention at the time because the others had already been transferred.<sup>[9]</sup> They were ordered to come out of their cell preparatory for transfer but they refused to leave because they overheard Enriquez saying at the time they were incarcerated that they would be "*salvaged*."<sup>[10]</sup> They pleaded with their captors not to transfer them to the provincial jail because it was a Sunday but their entreaties fell on deaf ears.<sup>[11]</sup> Thus, they refused to come out of their cell, prompting the police and firemen to fire tear gas and water cannons at them.<sup>[12]</sup> Accused-appellant and his father covered their faces to protect themselves from the tear gas and lay on the floor when the water cannon was fired at them. As accused-appellant and his father lay prostrate side by side on the ground, the police entered. It was at that time that PO3 Enriquez clubbed the deceased.<sup>[13]</sup> Accused-appellant pleaded with Enriquez to stop, but he was punched by another policeman named "*Toto*."<sup>[14]</sup>

Accused-appellant's account was corroborated by his sister-in-law, Charito Cañete, who was there at that time. She testified that shortly after, tear gas and water cannons were fired into the cell, Alfredo, Ruben and Trinidad called that they be let out. Sotero and Sergio, however, remained defiant and refused to leave. She overheard Sotero

say, "Which of my children will come with me to the end?" and it was Sergio who replied, "Pa, I will be with you." Water hoses were then fired at the two (2) remaining prisoners. A commotion ensued and she saw someone with a club enter the cell. She did not know what happened after that because they were taken to a vehicle and padlocked inside for about thirty (30) minutes. After that, the vehicle was opened and Sergio, who had several wounds on his face, was thrown inside. She then stepped out of the vehicle and proceeded to the cell where she saw an unconscious Sotero with broken wrists being carried by the police.<sup>[15]</sup>

Accused-appellant's mother and widow of the victim, Florentina Cañete, confirmed Charito's account of what happened. She testified that she was at the plaza on June 1, 1998 when she noticed that people were converging towards the municipal hall. She went there to find out what the commotion was all about and saw her husband and her sons being fired upon with tear gas. She saw Charito waving at the police to open the door of the prison cell because the inmates wanted to get out. Shortly thereafter, three of her sons emerge from the cell but her husband and Sergio remained.<sup>[16]</sup> She was able to enter the municipal hall but was prevented from going any further, was dragged out and locked inside a truck.<sup>[17]</sup> Later, she saw her husband and accused-appellant being brought out. Accused-appellant, who was badly injured and unconscious, was thrown inside the vehicle. She went with accused-appellant when the latter was brought to the Southern Islands Hospital where her husband was also admitted for treatment. On the 21<sup>st</sup>, they went to the hospital to secure a copy of the medical records but they were not able to.<sup>[18]</sup>

Generally, findings of the trial court are entitled to respect, considering that it was in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during trial.<sup>[19]</sup> Nonetheless, this rule is circumscribed by well-established exceptions.<sup>[20]</sup> Thus, the factual findings of the trial court may be reversed if by the evidence or lack of it, it appears that the trial court erred.<sup>[21]</sup> In other words, a trial court's evaluation of the credibility of witnesses will not be disturbed on appeal unless it is shown that it overlooked certain facts and circumstances of substance that, if taken into account, could have materially affected the outcome of the case.<sup>[22]</sup>

In the case at bar, we find several material circumstances which were overlooked by the court *a quo*, to wit:

*First*, PO3 Ricardo "Eking" Enriquez claimed he was pounced upon and assaulted by accused-appellant who hit him on right side of the head when he entered the cell. The severity of the alleged attack which purportedly drew blood from the wound,<sup>[23]</sup> coming as it does from a supposedly desperate assailant, was such that he had to be brought to a clinic for treatment by his co-policemen. *However, no medical certificate to prove the alleged attack on his person was presented. Neither was the supposed weapon used in the assault produced to substantiate this claim.* Indeed, other than the prosecution witnesses' bare avowals on this point, the wooden post of the bunk or the piece of cement allegedly used in fatally bludgeoning the victim was *never* presented in court. On the contrary, there is evidence on record which shows that it was one of the responding policemen who entered the cell where accused-appellant and his victim-father held out who *carried a club*.<sup>[24]</sup>

*Second*, the alleged assault imputed on the accused-appellant and his father becomes even more questionable considering that they both were forced to lay flat on the ground at the time Enriquez, Salomon and Latoza entered because of the tear gas and water cannon fired into their cell. In fact, the physical evidence tends to support the claim of the defense that it was *accused-appellant and his victim-father who were actually assaulted and beaten up by the police*. The record discloses that a severely injured accused-appellant who sustained many wounds on his face<sup>[25]</sup> was taken out of the cell and thrown into the truck.<sup>[26]</sup> He was unconscious with *broken wrists*.<sup>[27]</sup> Needless to state, such physical condition renders impossible the prosecution's claim that he attacked the policemen who came to take them out.

*Third*, the prosecution witnesses, all of them police officers who claim to have been at the scene of the incident, were one in declaring that accused-appellant assaulted PO3 Enriquez.<sup>[28]</sup> Curiously for all their supposedly eyewitness declarations of what transpired inside the cell, they were totally *silent* on the injuries sustained by accused-appellant, notably his broken wrists and the wounds on his face. Interestingly too, the medical certificate<sup>[29]</sup> issued by examining physician Dr. Dacudao but signed by Dr. Lemuel Lecciones<sup>[30]</sup> detailed only the head injuries of the victim but made *no* mention of the other wounds he sustained and described by Charito Cañete when he and accused-appellant were both thrown unconscious into the truck.

*Fourth*, even assuming *arguendo* that accused-appellant and his father were dangerous inmates with a predisposition for violence, as the prosecution pictured them to be, they practically had *no* opportunity to perpetrate the acts imputed on them on account of the extreme measures adopted by the police to subdue them. It appears that tear gas was first fired at them causing them to cover their faces to protect their eyes thus effectively limiting their movements. They were next blasted with water cannon forcing them to lie prone on the floor effectively immobilizing them. It was at this juncture, as they lay helpless and vulnerable on the ground, blinded by tear gas and dazed from the pounding they sustained from a high pressure water cannon, that PO3 Enriquez, SPO2 Salomon and SPO1 Latoza entered the cell.

*Fifth*, the conveniently dovetailing accounts of the prosecution eyewitnesses, all of them police officers belonging to the Liloan police unit, with regard to the alleged assault on their co-officer SPO3 Enriquez and the victim engenders doubt as to their credibility. Identical features in the testimony of witnesses cannot but generate the suspicion that the material circumstances testified to by them were integral parts of a well thought-out and prefabricated story.<sup>[31]</sup> It was in fact held in one case that because of the close camaraderie that developed between the witnesses-members of the same police force to which an accused belonged, they could not be expected to testify truthfully.<sup>[32]</sup> Furthermore, a circumspect scrutiny of their testimonies shows that having testified uniformly only to material facts, they have been forgetful or non-committal with particulars and details having relation with the principal facts. Worth remembering in this regard is *People v. Alviar*,<sup>[33]</sup> where we said that:

. . . "[i]t often happens with fabricated stories that minute particulars have not been thought of."<sup>[34]</sup> It has also been said that "an honest witness, who has sufficient memory to state one fact, and that fact a material one, cannot be safely relied upon as such weakness of memory not only leaves the case incomplete, but throws doubt upon the accuracy of the statements made. Such a witness may be honest, but his testimony is not reliable."<sup>[35]</sup>

*Sixth*, the deportment of SPO2 Salomon on the witness stand as he testified on the particulars of a serious crime which claimed the life of the victim only deepens the suspicion of the prosecution witnesses' claims on the alleged culpability of the accused-appellant. He was *smiling* even as he recounted the details of the supposed deadly assault by accused-appellant on SPO3 Enriquez.<sup>[36]</sup> It has been pointedly stated in *People v. Ganan, Jr.*<sup>[37]</sup> citing the old case of *U.S. v. Burns*<sup>[38]</sup> that:

The experience of courts and the general observation of humanity teach us that the natural limitations of our inventive faculties are such that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, ***or to expose in his demeanor the falsity of his message.***

*Seventh*, going by the account of the prosecution witnesses that the accused-appellant and his father were desperate and dangerous men with a propensity for violence, it stands to reason that they should have properly armed and protected themselves against a possible assault before entering the cell where the accused-appellant and his father defiantly held out. SPO1 Latoza, however, declared they went inside *barehanded*:

Q    *So that when you and your companions allegedly got inside the cell you were already aware that there might be some untoward incidents that may happen and you may sustain injuries and you were risking your lives and limbs?*

A.    Yes.

Q.    Being aware with that what precaution[s] have you made in order to avoid any untoward incident that would happen to your lives?

A.    First the door was sprayed with water and that is why we were able to have chance to go inside.

Q.    What do you want to impress [to] this Honorable Court is that while you were in a single file going inside there were hoses which were directed to that area?

A.    Yes.

X X X

X X X

X X X

Q.    ***By the way, being aware of the risk that you faced at that time, of course you did get inside the cell with some arms?***

A.    ***No sir.***

Q.    ***Do you mean to say you entered with bare hands?***

A.    Yes.

Q.    ***Do you want to impress [upon] this Honorable Court that you wanted to save people who were very brave at that time and who threw stones at you as you said with only your bare hands?***

A.    ***Yes. Because at that time there were only few stones left with them because (sic) the others were already thrown outside.***

Q.    While you cannot see how many few stones left?