

## SECOND DIVISION

[ G.R. No. 125016, May 28, 1999 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NOMER VELASCO Y PANGILINAN, ACCUSED-APPELLANT.**

### DECISION

**BUENA, J.:**

Accused-appellant Nomer Velasco y Pangilinan together with Reynaldo Endrina y Roa and Ernesto Figueroa y Santos were charged with the crime of Murder in an Information filed on March 2, 1994 (and docketed as Crim. Case No. I.S. Nos. 94B-05391-93) before Branch 12 of the Regional Trial Court, National Capital Judicial Region at Manila. The Information reads as follows:

"That on or about February 20, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation and with the use of their superior strength, attack, assault and use personal violence upon the person of one **DANILO VALENCIA y MANZANO** by then and there stabbing him twice with a bladed weapon at the back and left side of his body thereby inflicting upon the latter serious mortal stab wounds, which were the direct and immediate cause of his death thereafter.

"Contrary to law."<sup>[1]</sup>

Upon arraignment on March 16, 1994, all three accused duly assisted by their counsel *de parte* pleaded not guilty to the offense charged in the Information.<sup>[2]</sup>

The testimony of prosecution witness SPO2 Jose Bagkus was dispensed with as the prosecution and defense agreed to stipulate on the following facts which said witness will be testifying on, to wit:

- (1) That SPO2 Jose Bagkus is an investigator assigned to the Crimes against Persons Division, WPDC since 1991;
- (2) That on February 21, 1994, he prepared an Advance Information Report regarding the reported stabbing of a victim who he later identified as one Danilo Valencia and who was allegedly stabbed on Capulong Extension, Tondo, Manila, on February 20, 1994 between 3:00 to 3:15 a.m.;
- (3) That in the course of his investigation, he also prepared an Additional Information Report dated February 22, 1994; and
- (4) That if SPO2 Jose Bagkus will take the witness stand, he will

testify and affirm the correctness of the contents of the Advance Information as well as the Additional Information Report.<sup>[3]</sup>

There being no other facts proposed for further stipulation between the parties, trial on the merits thereafter ensued.

Pieced together from the testimony of Leonardo Lucaban, the lone eyewitness to the incident, is the following set of facts:

It appears that at around 3:30 o'clock in the morning of February 20, 1994, Leonardo Lucaban, as he was walking along Capulong Highway, Tondo, Manila, saw a man whom he recognized as Danilo Valencia.<sup>[4]</sup> He saw Valencia grab a man.<sup>[5]</sup> This person was about 5'4" in height and of medium build<sup>[6]</sup> and was able to free himself from Valencia's hold.<sup>[7]</sup>

Danilo Valencia thereafter proceeded on his way. Two people approached him.<sup>[8]</sup> One of the two was short but with a big build while the other was tall but of a medium build.<sup>[9]</sup> The smaller of the two asked Valencia why he did not shoot the person he (Valencia) had earlier grabbed.<sup>[10]</sup> Valencia replied, among other things, that he did not have a gun.<sup>[11]</sup> He continued to walk away.

The lone eyewitness, Leonardo Lucaban afterwards saw the person who moments ago had been questioning Valencia follow the latter and stab him at the back.<sup>[12]</sup> Lucaban was about six (6) armslength away from the victim.<sup>[13]</sup> The companion of the assailant confronted Lucaban as he shouted "ilag" (duck).<sup>[14]</sup> Lucaban immediately ran towards a guardhouse.<sup>[15]</sup> It was there where he heard two gunshots.<sup>[16]</sup> He saw the assailant and his companion running towards Happy Land, Tondo, Manila<sup>[17]</sup> while the person whom Valencia grabbed was running towards Herbosa St., Tondo, Manila.<sup>[18]</sup>

The prosecution presented four (4) witnesses, to wit: Carmencita Valencia, Dr. Florante Baltazar, SPO2 Alejandro Yanquiling, Jr., and Leonardo Lucaban.

Carmencita Valencia, the wife of the victim, testified that: Leonardo Lucaban went to her house to inform her that he witnessed the incident; that he told her he will give a statement to the police;<sup>[19]</sup> that Lucaban did so on February 22, 1994;<sup>[20]</sup> that her statement was taken down in writing by the police;<sup>[21]</sup> that the reason why her husband was stabbed was because he gave sanctuary and helped a certain Jude who had snitched on the "akyat barko" gang;<sup>[22]</sup> that attempts on the lives of this Jude and his wife were made;<sup>[23]</sup> that Nomer Velasco and Reynaldo Endrina were some of the people who were trying to kill Jude and his wife;<sup>[24]</sup> that she knows that it was the accused who stabbed her husband because they have a grudge against him;<sup>[25]</sup> that she did not actually see that it was the accused who stabbed her husband;<sup>[26]</sup> that she was sleeping when she heard her husband calling out to her;<sup>[27]</sup> that he asked to be taken to the hospital because he had a wound;<sup>[28]</sup> that her husband was already dead when he reached the hospital.<sup>[29]</sup>

Dr. Florante Baltazar, Medico Legal Officer, conducted the autopsy examination on the cadaver of Danilo Valencia.<sup>[30]</sup> He confirmed the injuries sustained by the decedent,<sup>[31]</sup> the relative positions of the wounds,<sup>[32]</sup> the kind of instrument which could have caused the stab wounds,<sup>[33]</sup> and the cause of death of the victim.<sup>[34]</sup>

Leonardo Lucaban when he first testified on November 22, 1994 averred that "he cannot remember his (referring to the person who stabbed Danilo Valencia) face because it was dark"<sup>[35]</sup> contrary to the positive identification he made of the three accused which were given in his Supplemental Statement dated February 24, 1994.<sup>[36]</sup> He likewise testified that "because of financial difficulties he could not appear in court"<sup>[37]</sup> and was only able to go when he was apprehended by the police a day before the hearing.<sup>[38]</sup> At first he said that "he was not threatened by anybody"<sup>[39]</sup> but later admitted that he was being threatened by the family of the accused but he was not bothered because he had not pointed to anyone yet.<sup>[40]</sup>

The fourth prosecution witness is SPO2 Alejandro Yanquiling, Jr. He was the follow-up investigator in the stabbing incident of Danilo Valencia. In the course of his investigation he took down the Supplemental Statement of Leonardo Lucaban;<sup>[41]</sup> that in a line-up of six persons three (3) persons were identified by Leonardo Lucaban as the assailants of the victim;<sup>[42]</sup> that the said persons were Nomer Velasco, Endrina, and Figueroa;<sup>[43]</sup> that Lucaban identified these persons in the line-up by touching their right shoulders;<sup>[44]</sup> that Lucaban was able to identify the accused without any wavering.<sup>[45]</sup>

Leonardo Lucaban was thereafter recalled to the witness stand. He testified that he pointed to only one suspect in the line-up not three as testified to by SPO2 Alejandro Yanquiling, Jr.;<sup>[46]</sup> that the suspect he pointed to as the assailant of the victim Danilo Valencia is identified as Nomer Velasco;<sup>[47]</sup> that he saw the accused Nomer Velasco stab the victim by the light coming from a passing jeepney and after that he screamed "ilag" (duck) and he ran away;<sup>[48]</sup> that he could not see very well the other persons because of the darkness;<sup>[49]</sup> that the reason why he denied having pointed to the suspects in the last hearing was because of a threat he received and that a day before he was apprehended a person named Peter almost stabbed him because he was "*nagpapakabayani*" (pretending to be a hero);<sup>[50]</sup> that he personally knows Nomer Velasco because he recruited him before to be one of his workers<sup>[51]</sup> in the cutting of logs.<sup>[52]</sup>

The defense denied the accusation and raised the defense of alibi. Aside from accused-appellant Nomer Velasco three (3) other witnesses were presented. The witnesses and their testimonies consisted of the following:

(1) Reynaldo Endrina was one of the accused. He testified that he and the other two accused were neighbors at Happy Land;<sup>[53]</sup> that they have known each other for, more or less, two years;<sup>[54]</sup> that he knows the Spouses Danilo Valencia and Carmencita Valencia;<sup>[55]</sup> that Danilo Valencia is his "*compadre*" because the former is the godfather of his son;<sup>[56]</sup> that he was at home sleeping at 3:30 o'clock in the

morning of February 20, 1994;<sup>[57]</sup> that he did not go out of his house on or before 3:30 a.m. of February 20, 1994.<sup>[58]</sup>

(2) Ernesto Figueroa, the third accused in the case, testified, among other things, that he does not know the Spouses Danilo and Carmencita Valencia;<sup>[59]</sup> that he was also at home sleeping on that morning of February 20, 1994.<sup>[60]</sup>

(3) Nomer Velasco, the accused-appellant, likewise denied knowing the Spouses Danilo and Carmencita Valencia<sup>[61]</sup> and Leonardo Lucaban.<sup>[62]</sup> He testified that he was also at home sleeping at 3:30 a.m. of February 20, 1994;<sup>[63]</sup> that he did not go out of his house prior to or at 3:30 o'clock in the morning;<sup>[64]</sup> that he and his co-accused were not friends but only acquaintances;<sup>[65]</sup> that he had last seen his co-accused in 1993;<sup>[66]</sup> that he came to know that Danilo Valencia was killed only after he and the other two accused were apprehended;<sup>[67]</sup> that it was a police officer who told them to admit that they killed Danilo Valencia.<sup>[68]</sup>

(4) Rosemarie Velasco, the wife of Nomer Velasco, corroborated her husband's testimony that he was sleeping at their house<sup>[69]</sup> on the morning of February 20, 1994. She testified, among others, that she had asked Leonardo Lucaban why he should point to her husband as the assailant in the killing of Danilo Valencia and he told her that he was being threatened by the police;<sup>[70]</sup> that the scene of the crime (Capulong Highway) and the residence of the accused at Happy Land are twenty (20) meters apart from each other.<sup>[71]</sup>

After the presentation of evidence, the trial court in its decision promulgated on February 19, 1996 found the accused-appellant to be guilty beyond reasonable doubt and ordered the acquittal of Reynaldo Endrina and Ernesto Figueroa. The dispositive portion thereof reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ACQUITTING accused Reynaldo Endrina y Roa, and accused Ernesto Figueroa y Santos for lack of sufficient evidence to sustain their conviction beyond reasonable doubt. Their immediate release from detention is hereby ordered, unless their continuous confinement is necessitated by other lawful orders.

"Accused Nomer Velasco y Pangilinan is hereby declared GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of reclusion perpetua and the accessory penalties provided by law. He is also condemned to pay the heirs of victim Danilo Valencia the amount of P50,000.00 as actual damages and the sum of P50,000.00 as moral damages. With costs. His immediate transfer to the New Bilibid Prisons, Muntinlupa is hereby ordered.

"SO ORDERED."<sup>[72]</sup>

Accused Nomer Velasco comes to this Court on appeal praying that the decision of the trial court be reversed and set aside and that a new one be entered acquitting him of the charge.

The accused-appellant assigns the following errors in his brief:

- I. THE COURT A QUO SERIOUSLY ERRED IN NOT HOLDING THAT ACCUSED NOMER VELASCO WAS NOT POSITIVELY IDENTIFIED BY THE LONE EYEWITNESS, LEONARDO LUCABAN.
- II. THE COURT A QUO SERIOUSLY ERRED IN RELYING UPON THE TESTIMONY OF LEONARDO LUCABAN, CONSIDERING THAT THE SAME IS REplete WITH INCONSISTENCIES.
- III. THE COURT A QUO SERIOUSLY ERRED IN FAILING TO FAVORABLY CONSIDER THE DEFENSE OF HEREIN PETITIONER.
- IV. THE COURT A QUO SERIOUSLY ERRED IN NOT HOLDING THAT THE GUILT OF THE ACCUSED WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The contentions are without merit.

In assailing the questioned decision the accused-appellant attacks the credibility of the lone eyewitness by pointing out that when Leonardo Lucaban first testified on November 22, 1994 he failed to name the appellant as the assailant even though the latter was in the courtroom at that time.<sup>[73]</sup> But when he was recalled to the witness stand three (3) days thereafter or on November 25, 1994, he was able to do so.<sup>[74]</sup>

This change of heart by the said witness is attributed by the appellant Nomer Velasco to the former being thoroughly "prepared" by the police authorities when he was taken into custody for five (5) days.<sup>[75]</sup>

Accused-appellant likewise imputes that the "physical, emotional and psychological stress consequent to an apprehension of a prolonged and indefinite detention"<sup>[76]</sup> provoked the witness to testify "in the manner desired by the police or the prosecution if only to win back his life and freedom."<sup>[77]</sup>

The counsel for accused-appellant is trying to mislead us into thinking that the police authorities had a hand in the change of the eyewitness' earlier testimony just because he was placed under detention. Or that the arrest was made as a result of a whim.

We find that the deduction arrived at by the appellant is totally baseless. The police apprehended the eyewitness in compliance with two lawful orders of the trial court. And for the accused-appellant to impute otherwise is uncalled for, as is the implication that while under their custody the witness was coached into pointing an accusing finger at Nomer Velasco.

Quoted below in full are the orders of the court *a quo* dated October 12, 1994 and November 22, 1994 explicitly stating why there was a need for the apprehension of the said witness, to wit: