

FIRST DIVISION

[G.R. No. 94494, March 15, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIONISIO LAPURA Y CAJAN, ACCUSED-APPELLANT**

D E C I S I O N

VITUG, J.:

On appeal is the decision,^[1] dated 04 June 1990, of the Regional Trial Court of Manila, Branch 12, in Criminal Case No. 88-61209, convicting herein appellant Dionisio Lapura y Cajan of murder and imposing on him the penalty of reclusion perpetua. The trial court has reserved to the heirs of the victim, Petronilo Lim, the right to file a separate suit for civil indemnification.

The information, dated 01 March 1988, which opened the criminal case against appellant read:

"That on or about February 19, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, attack, assault and use personal violence upon one Petronilo Lim, by then and there shooting him several times with a .45 caliber pistol hitting him on left anterior lumbar and left thigh, thereby inflicting upon said Petronilo Lim, multiple gunshot wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law."^[2]

Following his arraignment on 13 April 1988, at which the accused pleaded not guilty to the charge, a petition for bail was heard. On 14 September 1988, the trial court rejected the petition. A motion for the reconsideration of the denial order, itself, was later denied.

The prosecution's evidence would tend to establish that at approximately 7:30 in the morning of 19 February 1988, Petronilo Lim, said to be a special agent of the Criminal Investigation Service,^[3] was on board his car, with his sister, driving along Honorio Lopez Blvd., Balut, Tondo, Manila. Just as he started slowing down the car before turning left to Infanta Street, two persons suddenly came forward and fired at him.

Edgardo Samson, a 27-year-old bicycle maker, then working for the Teen's Bicycle Enterprises at Honorio Lopez Blvd., was only around ten (10) meters away from the shooting incident. Instinctively turning his head to where the sound of gunshots

emanated, he saw two person - a hunchback ("kuba") who was positioned at the front right side of the car and another person at the left side of the vehicle.

The victim, now all bloodied, got out of the car and fired back using his "baby" armalite. Instantly, a person who was wearing a white undershirt, "maong" pants and white shoes, grabbed the armalite but one Ambet Zabala immediately grappled for its possession. Ambet succeeded in recovering the armalite which he turned over to "Amang" Manalo. The man in "maong" pants fled towards nearby San Rafael Village.

On 26 February 1988, Samson executed a sworn statement before Senior Investigation Agent Jesus Cañizares and Sgt. Feliciano Garcia at the Special Investigation Unit, Criminal Investigation Service Command, Camp Crame, Quezon City. Later that day, he identified appellant in a police line-up to be the person who positioned himself at the left side of the victim's car and who fired a .45 caliber pistol at the victim. He executed another statement to this effect before Cañizares.

The victim, 55-year-old Petronilo Lim, died of three gunshot wounds: two (2) at the left anterior lumbar area which lacerated the small intestine, the liver, the kidney and the ascending colon, and one (1) "thru and thru" at the left thigh.^[4] According to Dr. Marcial Ceñido, who conducted the autopsy, the victim must have been fired at while his body was inclined towards the right^[5] and that, because there was "tattooing" on his left posterior forearm, the muzzle of the gun must have been pointed at close range.^[6]

The defense interposed alibi. Appellant, then 32 years of age and a combo drummer by profession, testified that at the time the shooting took place he was sleeping at his sister's house in 1039 Int. 17, P. Vargas St., Tondo, Manila. He woke up rather late that day for he had performed the night before at the North Mall in Caloocan City. His sister, Adelaida Lapura Cuison, corroborating appellant's alibi, testified that on 19 February 1988, when she left the house at about 6:30 a.m., her brother was still sleeping in their living room and, coming back to the house around thirty minutes later, she found him still asleep. He did not wake up until around ten o'clock that morning.

Appellant was arrested by police officers in the afternoon of 25 February 1988 at the house of a fellow musician, Danilo Cabrera, in Mata Street, Divisoria, Manila. Appellant and Cabrera, along with another musician friend, Reynaldo Eliezer, were brought to Station 1 at North Bay, Tondo, Manila, where statements were taken. They were later brought inside the office of Col. Maganto where appellant was informed that his being a suspect in the killing of Petronilo Lim was because he resembled the cartograph of the killer. Cabrera added that they were watching television when the arresting policemen suddenly entered their house shouting, "You are NPA's, no one must move."^[7]

After evaluating the evidence presented before it, the trial court gave credence to the prosecution's case, particularly to the eyewitness account of Samson, and accordingly rendered judgment convicting appellant of murder.

In this appeal, it is initially argued that the trial court should have outrightly dismissed the case against appellant considering (a) that the information was filed

without the written authority of the city fiscal or prosecutor and (b) that the certification of the investigating fiscal appended to the information was defective for (i) not being under oath, (ii) having failed to state that a preliminary investigation under Section 3, Rule 112, of the Rules of Court was conducted, and (iii) not having stated that the accused was duly informed of the complaint and given the opportunity to present controverting evidence.

The sufficiency of the allegations found in the complaint, conformably with Section 6, Rule 110, of the Rules of Court,^[8] has not been questioned; what, instead, is being assailed centers on the supposed failure of the investigating prosecutor to obtain the prior written authority of the city prosecutor in the manner required under Section 4,^[9] Rule, 112, of the Rules of Court, before the filing of the case. This assertion contradicts the certification of the investigating fiscal attesting to the fact that the information has been duly filed under the authority of the City Fiscal; viz:

"I hereby certify that an *ex-parte* investigation in this case has been conducted by me in accordance with law; that there is reasonable ground to believe that the offense charged has been committed; that the accused is probably guilty thereof and that the filing of this information is with the prior authority and approval of the City Fiscal."^[10] (Italics supplied.)

Absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be upheld. Moreover, this matter should have been raised below in a proper motion to quash^[11] that appellant could have done but did not.

Relative to the claim that the certification did not fully comply with the requirements of Sections 4,^[12] Rule 112, of the Rules of Court, we need merely to reiterate the settled rule that such certification is not an indispensable part of, let alone invalidate even by its absence, an information.^[13] In People vs. Marquez,^[14] the Court has had occasion to explain:

"x x x It should be observed that Section 3 {now Section 4} of Rule 110 defines an information as nothing more than 'an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court' Thus it is obvious that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. True, as already stated, Section 14 of Rule 112 enjoin that 'no information x x x shall be filed, without first giving the accused a chance to be heard in a preliminary investigation,' but, as can be seen, the injunction refers to the non-holding certification. In other words, what is not allowed is the filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted."

As the Court has also said in Pecho vs. Sandiganbayan^[15] -

"If the absence of a certification would not even invalidate the information, then its presence, although deficient because of some

missing clauses or phrases required under Section 4, Rule 112 of the Rules of Court, can do nothing worse than the former."

In passing, the question of whether or not a preliminary investigation has been properly conducted is itself one that should be interposed prior to an arraignment. [16] It does not here appear that appellant did before entering his plea of "not guilty" to the charge.

On the merits of the case, appellant faults the trial court for believing the testimony of Samson despite supposed contradictions and inconsistencies of the witness. A close look at the records betrays any validity to the allegation.

First of all, in his first sworn statement, Samson identified the three perpetrators [17] of the crime; thus:

"16. T: Maari mo bang masabi ang mga anyo ng tatlong lalake na tinutukoy mo?

"S: Yon nasa harap ng kotse ay medyo kuba at katamtaman ang katawan at kulay ng balat, at iyon nasa gawing kaliwa ng kotse ay mahaba ang buhok, may bigote, mataas at regular ang lake ng kanyang katawan at katamtaman ang kulay ng balat at iyon dumamput ng Armalite ni Mr. Lim at (sic) payat at mababa at kayumanggi ang kulay" [18]

Then, in his second sworn statement, Samson pointed to appellant:

"04. T: Ihinaharap namin sa iyo ngayon ang anim na lalaki na nadito (sic) sa loob ng tanggapan ng Special Investigation Unit ng CIS Camp Crame, Quezon City maari mo bang makilala at maituro sa mga lalaki na ihinarap sa iyo kung meron man sa kanila ang bumaril kay Petronilo Lim?

"S: Mayroon pong isa yong lalaki may bigote na nakasuot ng puting T-shirt at maong na pantalon na ikalawa sa aking gawing kaliwa. (Affiant pointing to the person of Dionisio Lapura y Cajan in a Police line-up composed of six persons)

"05. T: Ito bang tao na itinuturo mo ngayon ay nasisiguro mo siya na isa sa tatlo na magkakasama na bumaril kay Petronilo Lim na tinutukoy mo sa iyong salaysay?

"S: Opo siya ang isa sa tatlo na tinutukoy ko na bumaril kay Mr. Petronilo Lim at siya iyong bumaril na nasa gawing kaliwa ng kotse." [19] (Italics supplied.)

Most importantly, on the witness stand, Samson, although visibly shaken [20] and notwithstanding the vigorous and dramatic [21] cross-examination by defense counsel, still stood by his statement that appellant was the assailant who fired from the left side of the victim's car.

The defense could not attach any evil motive on the part of Samson that might have impelled him to testify falsely against appellant. [22] Absent the most compelling