

THIRD DIVISION

[G.R. No. 119722, December 02, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NEMESIO V. GANAN, JR., HARLEY S. FABICON, ACCUSED-
APPELLANTS, DELMAR ALUBOG, ACCUSED. VIRGILIO G. GANAN,
JOHN DOE, WILLIAM DOE, RICHARD DOE, CHARLIE DOE AND
HENRY DOE, AT LARGE.**

D E C I S I O N

FRANCISCO, J.:

In chronological sequence are the following pertinent antecedents in Criminal Case No. 203 of the Regional Trial Court of Odiongan, Romblon, Branch 82:

JUNE 5, 1986: An information for the Murder of Salvador Leaña, Sr., was filed by the 1st Assistant Provincial Fiscal of Odiongan, Romblon, Atty. R. Rocero, against accused Nemesio Ganan, Jr., Delmar Alubog, Harley S. Fabicon, Virgilio Ganan, John Doe, William Doe, Richard Doe, Charlie Doe and Henry Doe. The information alleges:

"x x x the said accused with intent to kill, conspiring, confederating and mutually helping one another, did then and there, with abuse of their superior strength and with evident premeditation, wilfully, unlawfully and feloniously take SALVADOR LEAÑO [SR.] Precinct No. 11 of San Andres, Romblon at gunpoint and loaded him on an ISUZU red jeep with Plate No. SBX-702, and brought him away and shot him with a firearm while inside the said vehicle, inflicting upon the latter, gunshot wound in his body and sustained several mortal injuries in different parts of his body which were the direct and immediate cause of his death." ^[1]

AUGUST 11, 1987: The case was archived, upon order of the court, "due to the non-arrest"^[2] of the accused.

DECEMBER 23, 1991: The court approved the cash bond posted by the accused Nemesio V. Ganan, Jr. and ordered his release.

FEBRUARY 12, 1992: An amended information against the same accused, based on the affidavits of Liwanag G. Leaña, dated February 3, 1992^[3]; Salvador G. Leaña, Jr., dated February 11, 1993^[4]; Benjamin Galicia, dated February 3, 1992^[5]; Gregorio Panaguiton, dated February 17, 1986^[6] and Dory Fabella, dated February 17, 1986,^[7] was filed by the Prosecutor II of Odiongan, Romblon, Atty. Alexander M. Mortel. The information avers in part:

"... the above-named accused, for the purpose of enabling them to commit election frauds, did then and there, with evident premeditation

and abuse of superior strength, unlawfully, criminally and feloniously conspire, confederate and help one another in removing and kidnapping SALVADOR F. LEAÑO [SR.] from his post as election watcher for the UNIDO in Precinct No. 11 of San Andres, Romblon, by forcibly taking him out of said precinct at gunpoint and forcing him to board with them in a red IZUZU jeep with Plate No. SHX-702 and thereafter killed him by shooting him and inflicting upon him mortal wounds in different parts of his body after which they concealed his body by burying him in a secluded grassy area in the ranch of the father-in-law of the accused Nemesio V. Ganan, Jr. in barangay Pili, Looc, Romblon where it was found decomposing six (6) days later and as a consequence thereof, his heirs incurred actual expenses for the recovery and burial of his body in the amount of P60,000.00 and to suffer moral damages in the sum of P500,000.00 due to physical suffering, mental anguish, serious anxiety and fright, and exemplary damages in the amount of P100,000.00."^[8]

Notably, in both the original and amended informations, the witnesses listed are the same, namely: Mrs. Dory M. Fabella, Mr. Gregorio Panaguiton, Mr. Val Leaño, Jr., Pag-alad, Ex-Mayor Daniel Mortel, Dr. Marcelino P. Badillo, and Mrs. Liwanag Leaño, and others.^[9]

APRIL 14, 1992: A motion for the cancellation of the bail of the accused Nemesio V. Ganan, Jr. was filed by the prosecution.

APRIL 20, 1992: Nemesio V. Ganan, Jr., upon arraignment, entered a plea of not guilty.

APRIL 28, 1992: Opposition to the motion for the cancellation of the bail was filed by the accused Nemesio V. Ganan, Jr.

JULY 27, 1992: The trial court denied the motion for the cancellation of the bail filed by the prosecution. The order reads in part:

"The affidavits (Exhibits `1' and `2') executed by Gregorio Panaguiton and Dory Fabella, clearly repudiated the contents of their previous affidavits (dated February 17, 1986), as not true and correct, because they were merely made to sign these affidavits which were already prepared while they were in Looc, Romblon. The affidavit of Dory Fabella (Exhibit `2') further states, that the content of said affidavit of February 17, 1986, were suggested and supplied by Daniel Mortel, the former Municipal Mayor of San Andres, Romblon. The contents of their affidavits of February 17, 1986, were not based on their (witnesses') own personal perception. They could not be taken or considered as credible. Their subsequent affidavits (Exhibits `1' and `2') plus the subsequent affidavit (Exhibit `3') executed by Benjamin Galicia, repudiating his previous affidavit made the evidence for the prosecution in support of its motion for the cancellation of the bail for the accused weak and therefore did not fully meet or satisfy the requirement under Sec. 13 of Article III of our Constitution 'when the evidence of guilt is strong'. "^[10]

DECEMBER 20, 1993: A motion to discharge accused Delmar Alubog to be a state witness was filed by the prosecution on the ground that "for lack of a witness who

directly and actually saw how the deceased Salvador Leaño was shot and killed after being kidnapped at the Voting Center in the mountain barangay of Jun Carlo, San Andres, Romblon, and how his cadaver happened to be buried in a shallow grave in the ranch of the father-in-law of accused Nemesio V. Ganan, Jr. in barangay Pili, Looc, Romblon, more than fifty (50) kilometers away where his cadaver was found seven (7) days later, there is absolute necessity for the testimony of accused Delmar Alubog whose discharge is requested in order to establish clearly and unmistakably beyond any shadow of doubt who was or were responsible for the commission of the heinous crime, which testimony could not be supplied by any available witness except that of the accused Delmar Alubog."^[11]

JANUARY 10, 1994: A supplemental motion for the discharge of Delmar Alubog to become a state witness was filed by the prosecution alleging that:

"[A]s shown in said sworn statement (ANNEX-A) the testimony of accused Delmar Alubog is absolutely necessary to clinch the evidence for the prosecution in the above-entitled case and leave no room for any doubt that accused Nemesio V. Ganan, Jr. and his co-accused are guilty of the crime charged in the above-entitled case; however, in view of the provision contained in the last paragraph of Section 9, Rule 119, of the Revised Rules of Court which reads:

'Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for the discharge of the accused as state witness, the sworn statement shall be inadmissible in evidence.'

and of Section 20, Article IV of the New Constitution which provides that 'no person shall be compelled to be a witness against himself,' the discharge of Delmar Alubog as one of the accused in the above-entitled case is absolutely necessary and imperative."^[12]

JANUARY 13, 1994: Accused Delmar Alubog, assisted by counsel de oficio, also pleaded not guilty upon arraignment.

MARCH 15, 1994: An opposition to the prosecution's motion to discharge accused Delmar Alubog to become a state witness was filed by the accused Nemesio V. Ganan, Jr. It alleged in part: ". . . the Prosecution has illegally obtained the 'sworn statement' of the accused Alubog, only a few days after Prosecution filed the Motion, and while the accused was under detention; in fact the Prosecution even tried to represent the accused during the scheduled arraignment on January 11, 1994; the Private Prosecutor had actually stood up to do so; but the attempt was noted as improper when the undersigned counsel called the attention of the Court which postponed the arraignment of the accused Alubog to January 13, 1994 in order to let him be represented by a counsel of his choice or by counsel de oficio, and not by Private Prosecutor Victoriano, brother of the Public Prosecutor."^[13]

MARCH 28, 1994: A memorandum of authorities and jurisprudence in support of its motion to discharge Delmar Abulog to become a state witness was filed by the prosecution.

JUNE 29, 1994: A manifestation was filed by the accused Delmar Alubog to the

effect that "he never offered himself to become a state witness and that his sworn statement marked as Annex 'A' of the prosecution's supplemental motion for [his] discharge was improperly procured and should therefore be expunged from the records."^[14]

JULY 13, 1994: Accused Harley S. Fabicon, assisted by counsel de oficio, likewise pleaded not guilty upon arraignment.

FEBRUARY 7, 1995: A decision was rendered by the trial court the dispositive part of which reads as follows:

"WHEREFORE, this Court finds the accused (1) NEMESIO V. GANAN, JR., (2) DELMAR ALUBOG, and (3) HARLEY S. FABICON GUILTY beyond reasonable doubt of the crime of KIDNAPPING under the Amended Information, dated February 12, 1992, and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law.

"These three (3) accused, jointly and severally, are ORDERED to pay Mrs. Liwanag Gadon Leaño, Sr. the sums of P20,000.00 by way of actual damages and P150,000.00 by way of moral damages; the heirs of the deceased Salvador F. Leaño, Sr. the sum of P50,000.00 by way of civil indemnity for his death, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"The bail bonds of the three (3) accused are ORDERED CANCELLED and all said accused are ORDERED immediately confined in jail.

"The period of preventive imprisonment the accused had undergone shall be credited in their favor to its full extent pursuant to Article 29 of the Revised Penal Code.

"The case against co-accused VIRGILIO G. GANAN and the five (5) other co-accused who are at large is ORDERED ARCHIVED pending their arrest or surrender.

"SO ORDERED."^[15]

The case is now before us on appeal by Nemesio V. Ganán, Jr. and Harley Fabicon alleging the following common grounds in their respective briefs:

"I

THE TRIAL COURT ERRED IN RELYING ON THE LONE SO-CALLED 'EYEWITNESS' AGUSTIN TAN, (1) WHOSE TESTIMONY HAS BEEN SHOWN TO BE ENTIRELY FALSE, FABRICATED, OVERCOME BY VERY RELIABLE, REPUTABLE, HONEST, RESPECTABLE, TRUSTWORTHY WITNESSES, (2) WHOSE TESTIMONY IS REplete WITH SERIOUS CONTRADICTIONS ON MATERIAL POINTS, INCONSISTENCIES, INCREDIBILITIES, AND IMPOSSIBILITIES, (3) WHOSE TESTIMONY WAS GIVEN FOR A MONETARY CONSIDERATION, AND WHOSE TESTIMONY HAS BEEN SHOWN TO BE

COMPLETELY UNTRUSTWORTHY AND UNRELIABLE."^[16]

"II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF THE BOARD OF ELECTION INSPECTORS CHAIRMAN JESSIE FAMADICO, THIRD MEMBER SIONY GALUS, POLL CLERK LUDELENE GAAC, ELECTION REGISTRAR DOMINGUITO TACASA AND TAN'S NEIGHBOR LEA MORTEL."^[17]

"III

THE TRIAL COURT ERRED IN NOT BELIEVING THE DEFENSE OF ACCUSED-APPELLANT NEMESIO V. GANAN, JR., THAT HE WAS IN FAR-AWAY ROMBLON ISLAND AT THE TIME WHEN SALVADOR LEAÑO, SR., WAS ALLEGEDLY KIDNAPPED, WHICH DEFENSE WAS THE PLAIN AND SIMPLE TRUTH, ALBEIT IT IS AN ALIBI."^[18]

"IV

THE PROSECUTION HAS NOT DISCHARGED ITS ONUS TO PROVE BEYOND REASONABLE DOUBT THE CULPABILITY OF THE ACCUSED."^[19]

"V

THE COURT A QUO COMMITTED GRAVE ERROR WHEN IT FOUND THAT THE ACCUSED CONSPIRED IN COMMITTING THE CRIME."^[20]

"VI

THE COURT A QUO COMMITTED GRAVE ERROR WHEN IT FOUND THE ACCUSED GUILTY OF KIDNAPPING UNDER PAR. 1, ART. 267 OF THE REVISED PENAL CODE."^[21]

In lieu of appellee's brief, the Solicitor General in behalf of the People of the Philippines filed instead a 101 page Manifestation and Motion with the following:

"PREFATORY STATEMENT

"Studying the evidence, the applicable laws and relevant jurisprudence, the Solicitor General finds that the guilt of appellants has not been established by proof beyond reasonable doubt as required by law. Hence, pursuant to the pronouncement of this Honorable Court in *Gonzales vs. Chaves* (205 SCRA 816, 817) that it is not entirely impossible that the Solicitor General may take a position adverse to his clients, like the Civil Service Commission, the National Labor Relations Commission, and even the People of the Philippines, the Solicitor General is submitting this Manifestation and Motion recommending appellant's acquittal, in lieu of appellee's brief."^[22]