

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PANTALEON PACIS, ELISEO (ELY) NAVARRO, GUILLERMO AGDEPPA,
AND GINES DOMINGUEZ, DEFENDANTS, GUILLERMO AGDEPPA,
DEFENDANT-AP...**

G.R. Nos. L-32957-58. July 25, 1984

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Appeal of the accused Guillermo Agdeppa from the judgment of the Court of First Instance of Cagayan finding him guilty of the crime of Frustrated Murder and sentencing him and his co-accused Pantaleon Pacis and Ely Navarro, to suffer an indeterminate penalty of from six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, and to indemnify, jointly and solidarily the victim, Macario Basco, in the amount of a P1,003.90 as actual damages, plus P8,000.00 for the diminution of his earning capacity, and P8,000.00, as moral damages, without subsidiary imprisonment in case of insolvency and to pay the costs.

The said accused, Guillermo Agdeppa, Pantaleon Pacis, Ely Navarro, and Gines Dominguez were charged before the Court of First Instance of Cagayan with the crimes of Murder and Frustrated Murder, docketed as Crim. Case Nos. 288-S and 289-S, respectively, committed as follows:

1. Crim. Case No. 288-S:

"That on or about November 15, 1967, in the municipality of Sanchez Mira, province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Pantaleon Pacis, Ely Navarro, Guillermo Agdeppa and Gines Dominguez, together with three other John Does who are still at large and unidentified, conspiring together and helping one another, armed with guns, with intent to kill, with treachery and with evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and shot one Manuel Franco who was then totally unarmed, inflicting upon him several gunshot wounds which caused his instantaneous death."

2. Crim. Case No. 289-S:

"That on or about November 15, 1967, in the municipality of Sanchez Mira, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Pantaleon Pacis, Ely Navarro, Guillermo Agdeppa and Gines Dominguez, together with three other John Does who are still at large and unidentified, conspiring together and helping one another, armed with guns, with intent to kill, with evident premeditation, with treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and shot one Macario Basco, inflicting upon him several gunshot wounds; that the accused have performed all the acts of execution, which would produce the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of their own will."

After hearing the evidence adduced by the parties during a joint trial, the trial court found the accused Pantaleon

Pacis and Elly Navarro guilty of the crime of Murder, as charged in Crim. Case No. 288-S and sentenced each of them to suffer the penalty of reclusion perpetua, to indemnify, jointly and severally, the heirs of the deceased Manuel Franco in the amount of P1,200.00 plus P25,000.00 for the loss of earning capacity, P12,000.00 indemnity for the death of the said Manuel Franco and P10,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs. Their co-accused Guillermo Agdeppa and Gines Dominguez were acquitted of the charge.

Gines Dominguez was also acquitted in Crim. Case No. 289-S, a prosecution for Frustrated Murder. Guillermo Agdeppa, however, and his co-accused Pantaleon Pacis and Elly Navarro were found guilty of the charge and sentenced to suffer the penalty heretofore stated.

From this judgment, the accused Pantaleon Pacis, Elly Navarro, and Guillermo Agdeppa appealed to this Court. However, sometime later, the accused Pantaleon Pacis and Elly Navarro withdrew their respective appeals.[1] Under consideration is the appeal of Guillermo Agdeppa from the judgment of the trial court which found him guilty of Frustrated Murder.

The facts of the case, as summarized in the People's Brief, are as follows:

"Pantaleon Pacis, one of the appellants herein and Atanacio Negre were contenders for the position of Municipal Mayor in the Municipality of Sanchez Mira, province of Cagayan on the elections of November 14, 1967. Pantaleon Pacis was the candidate of the Nacionalista Party and he was then the incumbent mayor running for re-election (p. 1051, tsn, March 12, 1970) and Atanacio Negre was the candidate of the Liberal Party (p. 13, tsn, August 5, 1969).

Manuel (Emmanuel) Franco, the deceased victim, was then the incumbent vice-mayor having been elected as the running mate of accused Pantaleon Pacis in the 1963 mayoralty elections but now the campaign manager of candidate Atanacio Negre against accused Pantaleon Pacis (p. 13, tsn, August 5, 1969). Macario Basco was one of the political leaders of Atanacio Negre (p. 12, tsn, August 5, 1969).

In the morning of November 15, 1967, the day after election day, Manuel (Emmanuel) Franco and Macario Basco with their companions went to Namuac Elementary School, Sanchez Mira, Cagayan to get the election results from precincts that were located in that school (p. 16, tsn, August 5, 1969). They were riding on a jeep and upon arrival there, they parked the jeep in front of the stairs of the Namuac Elementary School about a meter from the first step west end of the stairs (p. 17, tsn, August 5, 1969). Macario Basco and Manuel (Emmanuel) Franco ascended the stairs and entered a precinct which turned out to be precinct No. 20. As Basco's authority to get election results was only for precinct Nos. 18 and 19, he went out and Franco was left there (pp. 18-23, tsn, August 5, 1969). While Basco was in the porch, he saw Pantaleon Pacis who asked, "why are you here", to which he (Basco) answered, "the elections are over and we are entitled to get the results of the elections", and he went down with the intention to show Mayor Pacis his (Basco) authority to get election results (pp. 22-23, tsn, August 5, 1969) but Pacis grabbed the papers from him and so Basco went to sit on the elevated cemented portion of the stairs (p. 24, tsn, August 5, 1969). Later on Franco came out shouting that he already got the election results in precinct No. 20 (p. 25, tsn, August 5, 1969). When Pacis saw Franco, Pacis asked him "why are you here", and he (Pacis) beckoned him (Ibid). Franco went downstairs to go to Pacis. Pacis who was sitting on the hood of the jeep went down from the hood of the jeep and met Franco on the first step of the stair of the Namuac Elementary School and grabbed the papers from Franco. Franco went to sit at the right side of Basco (p. 26, tsn, August 5, 1969).

After looking at the papers, he had grabbed from Basco and Franco, Pacis then went upstairs to where his co-accused Elly Navarro and Guillermo Agdeppa were, and Pacis with Navarro looked again at the papers which the former had grabbed from Basco and Franco (p. 33, tsn, August 5, 1969).

Basco and Franco still seated on the stairs looked down towards the direction where they had parked their jeep

and saw two men on the right side of the jeep and another man on the left side (Ibid). When Basco looked at his back, he saw accused Pantaleon Pacis, Elly Navarro and Guillermo Agdeppa with drawn guns pointed at him and Franco, and moments later the accused started firing (pp. 34-37, tsn, August 5, 1969). Basco was hit. Then another volley of fire came from the three named-accused and Basco was hit again. He then lie prone between the jeep and the first step of the stairs. While in that po-sition, there was continuous firing coming from his left and right and he was hit again. He suffered several gunshot wounds (pp. 37-40, tsn, August 5, 1969, Exhibits "F" and "F-1").

After the second volley of fire, Basco heard the deceased Franco say "I am already hit Manong", (p. 37, tsn, August 5, 1969). Later on Basco heard Pantaleon Pacis in a commanding voice, "never mind that now, he (referring to Basco) is already dead. Vice-Mayor Franco was able to escape, you go after him and kill him", (pp. 40-41, tsn, August 5, 1969) and this was addressed to Elly Navarro, Guillermo Agdeppa and the three men beside the jeep who responded to the command by running towards the gate of the school (p. 42, tsn, August 5, 1969).

After three or four minutes, Basco heard gunshots, east of the direction where he was lying prone. Later on after about fifteen minutes he shouted for help and he was brought to Northern Cagayan Provincial Hospital, and one day after, to the Veterans Memorial Hospital at Quezon City where he was confined until December 31, 1967 (Exhibit "A", pp. 51-54, tsn, August 5, 1969). He suffered six gunshot wounds described in Exhibits "F" and "F-1", his left arm was disabled (p. 55, tsn, (p. 55, tsn, August 5, 1969) and the small bone on his right foot was fractured (p. 56, tsn, August 5, 1969).

Manuel (Emmanuel) Franco died due to gunshot wounds described in Exhibits "C" and "C-1" (pp. 255-260, tsn, August 26, 1969). His assailants were Pantaleon Pacis, Guillermo Agdeppa, Elly Navarro, Gines Dominguez and three other unidentified persons (p. 203, tsn, August 27, 1969)."

The appellant, Guillermo Agdeppa, denied participation in the commission of the crimes and interposed the defense of alibi. According to him, he was in Taguiporo, Sanchez Mira, where he was employed in the Agricultural Extension Office, at the time the shooting incident occurred in Namuac, Sanchez Mira, and learned of it only upon his return to Callungan in the evening. He declared that he left his house at Callungan at about 7:00 o'clock in the morning of November 15, 1967, for his office at Taguiporo; that he rode on a motorcycle which he borrowed from his brother, with his daughter as passenger, whom he brought to the Divine Word High School in time for her 7:30 a.m. class; that after dropping off his daughter at the school, one Jose Tabian came to him and asked for a ride; that they arrived at his office at Taguiporo at 7:40 o'clock in the morning where he found Faustino Sadama and Placido Lagran who wanted palay seedlings, waiting for him; that he stayed in his office preparing his monthly report and left at 12:05 o'clock in the afternoon to eat his lunch and returned at 12:45 p.m., and finally went home at past 5:00 o'clock in the afternoon.[2] To support his claim, he presented in evidence the time record he had accomplished,[3] and the testimony of Jose Tabian who allegedly rode with him on his motorcycle from the Divine Word High School up to his office at Taguiporo that morning of November 15, 1967.

The trial court, however, rejected the defense saying that the evidence for the prosecution is more worthy of credence, more natural in the light of human conduct and behavior, more credible, than that for the defense. The trial court specially cited the testimony of Macario Basco which, to its mind, is very natural, credible and from a witness who told nothing but the truth.

Counsel for the appellant now contends that the trial court erred in convicting the appellant on the testimonies of the witnesses for the prosecution which the lower court itself considered to be incredible and unworthy of belief. Counsel argues that all the witnesses for the prosecution implicated Gines Dominguez in the shooting of Basco and Franco but the trial court gave no credence to their testimonies and acquitted Gines Dominguez; however, the

trial court gave credence to the testimonies of the same witnesses in convicting the appellant for the shooting of Basco. Counsel cites the maxim of "falsus in uno falsus in omnibus."

The maxim of "falsus in uno falsus in omnibus," however, is not a positive rule of law. Neither is it an inflexible one of universal application. If a part of a witness' testimony is found true, it cannot be disregarded entirely. The testimony of a witness may be believed in part and disbelieved in part.

Counsel for the appellant also claims that the trial court erred in convicting the accused on the highly improbable, contradictory, and incredible tale of the witnesses for the prosecution, since all the bullet "pock" marks on the cement wall show conclusively that the shooting came from the street where the gravel and sand truck was, and not from the top of the stairs where Pacis, Navarro, and Agdeppa were standing; and that the said witnesses failed to notify the authorities or anyone until after the lapse of several months.

The trial court, however, discounted the defense theory that the shots came from the gravel and sand truck. The trial court said:

"From these photographs, with Macario Basco and Manuel Franco sitting on the elevated cemented portion facing a little to the southeast, back of them would be just behind the railing of the porch (p. 75 of Criminal Case No. 288-S; pp. 230 and 231 of the petition to bail; pp. 160-165 of Criminal Case No. 289-S) where Pantaleon Pacis, Eliseo Navarro and Guillermo Agdeppa were when they started to fire their guns. This is borne by the evidence.

To follow the defense theory that the firing came from the sand and gravel truck that was passing by would be absurd and downright preposterous for the following reasons:

1. The defense claim that those aboard the truck were armed partisans of Negre whose campaign manager Franco and political leader Basco were sitting by the stairs clearly visible from the truck a distance of forty meters.
2. If the armed partisans fired at Pacis as claimed by the defense at the time that the truck was moving slowly on the national road and at a time when Pacis had just gone up the stairs one to two minutes just after greeting Franco and Basco (testimony of Pacis) then it is incredible that these armed partisans would fire indiscriminately at Pacis from a moving vehicle when Basco and Franco their political leaders were very close to Pacis and could be shot.
3. The defense could assume too much credulity and childish credibility to the Court to make the Court believe that the alleged armed partisans of Negre were the same persons who fired at and wounded his own political leaders Manuel Franco and Macario Basco at the time these two were sitting by the stairs.
4. The testimony of Macario Basco is to the Court very natural, credible and from a witness who only told nothing but truth. In spite of thorough and provoking cross examination Basco was calm and very natural. He gave answers directly, never evasively, a sure and unmistakable sign that he was faithfully relating to the Court the actual events and factual circumstances. The defense failed to show cause or motive on the part of Basco why he should so testify against Pacis with whom he had cordial relations and who was born and a native of Namuac, Sanchez Mira, Cagayan, the birth place of Pacis - where his father and other relatives still reside nor against Eliseo Navarro and Guillermo Agdeppa.
5. On the defense theory that the evidence and theory of the prosecution is incredible because of the nature and number of wounds sustained by Macario Basco and Manuel Franco the evidence shows that Basco suffered fourteen (14) wounds, seven bullet wounds of entry, six wounds of exit and abrasions; and Basco suffered three gunshot wounds. The defense assumes (a) that if Pacis, Navarro, Agdeppa and three others as claimed by Basco and Bagasol were the ones who fired at both Basco and Franco - these six persons the defense assume are all good, dead shots, marksmen but there is no evidence to that effect - could have inflicted more wounds -

Franco would not have been able to run away. (b) The defense also claims that these persons - three in front and three behind - with Franco and Basco in between could have shot each other.

With regards to the first, there is no showing that these persons are good shots or marksman; neither is there evidence that they concentrated their fire on both so that Franco could have suffered more wounds right at the stairs and would not have been able to run. It is apparent that the gunshots was more concentrated on Basco because of the evidence that the accused Pantaleon Pacis had to say never mind that he is already dead go after the vice mayor he was able to escape and kill him. To show that the three who fired from the front were not good shots the Court can appreciate the exhibits more particularly the pictures (previously cited) with pop marks. The pop marks on the exhibits evidently were fired by the three men in front."

It is not true that the witnesses for the prosecution did not notify the authorities about the shooting incident, as claimed by the appellant. As early as November 19, 1967, Rogelio Bagasol executed a sworn statement before one Capt. Liganor and another one before CIS agents on December 9, 1967.[4] Macario Basco also executed an affidavit on December 8, 1967.[5] Other eyewitnesses were afraid to notify the authorities because Pantaleon Pacis and his men were in power.[6]

It should be stated, in conclusion, that the appellant's defense of alibi has nothing to support it except the doubtful testimony of Jose Tabian and the uncorroborated time record he had allegedly filled up that day, which certainly cannot prevail over the positive testimony of the witnesses for the prosecution who saw him shoot Macario Basco. Besides, there is no conclusive proof that it was physically impossible for him to be at the Namuac school building on that fateful morning of November 15, 1967. The place is only 18 kilometers from his office at Taguiporo,[7] and he could have left his office on his motorcycle after accomplishing the time record for arrival, go to Namuac, and be back in his office in time for his lunch break without his absence being noted.

WHEREFORE, the judgment appealed from should be as it is hereby, **AFFIRMED**, with the modification that the accused-appellant should be given 4/5 credit for the period of preventive imprisonment he had undergone, pursuant to Rep. Act No. 6127, approved on June 17, -1970. With proportionate costs against the appellant in this instance.

Makasiar, (Chairman), Aquino, Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] Rollo, pp. 131, 148.

[2] tsn of March 13, 1970, pp. 1286-1306.

[3] Exhibit "12".

[4] tsn of Aug. 26, 1969, pp. 239-240.

[5] tsn of Aug. 5, 1969, p. 124.

[6] tsn of Oct. 7, 1969, pp. 630-631.

[7] tsn of March 13, 1970, p. 1306.

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