

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRESENCIO MARTINEZ, ACCUSED-APPELLANT.

G.R. No. L-39402. September 24, 1986

Ponente: PARAS, J.

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PARAS, J.:

On appeal is the decision of the then Court of First Instance (CFI) of Abra, in Criminal Case No. 349 for Murder, which convicted the accused of the crime charged, imposed the sentence of reclusion perpetua, and required him to indemnify the heirs of the victim in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency. The accused being a detention prisoner, was credited only with 4/5 of the whole period of his detention for failure to show his compliance with the conditions provided under Art. 29 of the Revised Penal Code.

Challenging said Decision, accused alleges:

I

"The trial court erred in not giving credence and weight to the testimony of Leonides Martinez whose presence during the ambush-shooting of the deceased Emilio Andallo was admitted by the prosecution witnesses.

II

The trial court erred in giving credence to the testimonies of Trinidad Andallo and Aurea Andallo who were not present in the ambush and did not see the shooting of the deceased Emilio Andallo and whose version of the shooting is incredible and contradicted by the only eye-witness Leonides Martinez.

III

The trial court erred in having favorably appreciated the evidence of the prosecution and in not having favorably appreciated instead the evidence of the appellant.

IV

The trial court erred in convicting the appellant Cresencio Martinez and in not having acquitted him on reasonable doubt." (p. 67, Record)

Appellant's version of the incident is summed up in his Brief as follows:

"Some days before December 1, 1971, Emilio Andallo of Sitio Caniogan, Barrio Abas, in Sallapandan, Abra, went to seek the help of his nephew Leonides Martinez to accompany him to go to Nueva Viscaya to look for his son Rodolfo Andallo. Leonides Martinez is a native of their place but had emigrated to Nueva Viscaya, and was vacationing in his native place of his birth to visit his parents. Leonides Martinez is a nephew of Emilio Andallo because the latter is a cousin of the former's father. He agreed to accompany his uncle Emilio Andallo to go to Nueva Viscaya and they decided to go on their trip on December 1, 1971.

After breakfast time on December 1, 1971, Emilio Andallo left his house and dropped by the house of Leonides Martinez in Sitio Tangtangbaoan to fetch him up. In going on their trip they were to walk a barrio road about seven (7) kilometers distance to the next municipality of Bucay, Abra and from there ride another

bus for Nueva Viscaya. They were only two, Emilio Andallo and Leonides Martinez, who started and went together on their trip hiking on the barrio road to Bucay, Abra.

When they had walked about a kilometer distance, the two, Emilio Andallo and Leonides Martinez, met three persons who were Fortunato Altero, Conrado Taberdo and Juanito Martinez who were on their way early to buy pigs. After having met these three persons, they continued on their way, and then they met again four public schoolteachers who were walking and returning to go to their teaching stations in Barrio Abas, Sallapadan, Abra as the day before was November 30, 1971, a legal holiday being Bonifacio Day, and they had been on vacation. They first met schoolteacher Mrs. Pineda on the road, and, after her, they met the three other schoolteachers, Mrs. Lovelina Tugadi, Mr. Simeon Barril, and Mrs. Marcelina Valera Taberdo going together walking on the road. These public schoolteachers knew very well Emilio Andallo. As a matter of fact, being teachers, they know very well almost everyone in the barrio where they teach.

After meeting the schoolteachers, Emilio Andallo and Leonides Martinez continued on their way to Bucay, Abra. The time was already about 9 o'clock that morning when they reached a place where North of the road was a precipice, Leonides Martinez was walking about three meters ahead of his uncle Emilio Andallo when, all of a sudden, there was a burst of gunfire coming from the forested mountainside from their backs South of the road. Immediately Leonides Martinez looked behind and he saw his uncle Emilio Andallo already lying flat on the ground hit by the gunfire. Acting on the instinct to escape, Leonides Martinez jumped into the precipice. North of the road and rolled downwards on the slope as fast as he could as sounds of bullets which missed him passed thru his sides. He continued running from the scene and in the process of his escape from the ambush he suffered bruises on his body.

Leonides Martinez escaped the ambushers and ran towards Sitio Sakkaang for help more than 3 kilometers away where there was a Philippine Constabulary Detachment. Exhausted from running, Leonides Martinez was not able to reach the PC Detachment. He was able to reach Sitio Salideng where he found Councilman Lino Blanza and told him about their having been ambushed. Upon hearing his report, Councilman Blanza was the one who hurriedly went to Sitio Sakkaang to report to the PC Detachment. Leonides Martinez rested for a while and was again about to follow up Councilman Blanza when the PC Detachment of four (4) soldiers under CPL Cesar Rafael, fetched by Councilman Blanza, came. Leonides Martinez went back with the soldiers to the scene of the ambush together with Councilman Blanza. They found the body of Emilio Andallo lying prostrate on the ground. The PC soldiers investigated the scene, asked questions of Leonides Martinez, and they found the probable place where the ambushers stayed on the forested mountainside, South of the road, where the ground was disarranged (Sketch of Scene of Shooting Exhibit I). While the PC soldiers were investigating the scene of the ambush the relatives of the deceased including his wife, Aurea Andallo, his sister, Trinidad Andallo, other relatives, and the barrio captain arrived later. The body of Emilio Andallo was carried back to Sitio Caniogan, Barrio Abas where he was later autopsied by Dr. Jose Dalisan.

As a result of the spot investigation made by the PC soldiers immediately after the shooting on that day of December 1, 1971, the PC made their Spot Report about the ambush to the First PC Zone Headquarters reporting that Emilio Andallo was shot to death by unidentified assailant sustaining multiple gunshot wounds, and that his nephew Leonides Martinez escaped unhurt, with motive still unknown. (PC Spot Investigation Report, Exhibit 2).

There were plenty of soldiers at the time of the incident in Sallapadan, Abra. One PC Detachment Force was stationed in Barrio Abas, the place of the deceased where he had his house. Immediately after the ambush, four PC soldiers under CPL Cesar Rafael were called to the scene by Leonides Martinez and Councilman Lino Blanza. But no one was found, and no one came forward to make immediate identification of the ambushers or assailants of Emilio Andallo. The PC continued the investigation but the relatives of the deceased which included his sister Trinidad, his wife Aurea Andallo, and his brother PC Sgt. Roberto Andallo never came forward to tell that they knew the assailant or assailants of the deceased. Then on October 11, 1972, more than 10 months after the ambush, Trinidad Andallo appeared before the PC Provincial Headquarters in Bangued,

Abra, instigated by her brother PC Sgt. Roberto Andallo, and said Trinidad Andallo claimed that she was with her brother Emilio Andallo during the ambush and that she saw the ambushers whom she identified as Cresencio Martinez and his brother Juanito Martinez.

In her declaration before the PC on October 11, 1972, and during the trial, Trinidad Andallo gave a version that Cresencio Martinez had a motive to kill her brother Emilio Andallo because the latter refused to help intercede in behalf of Cresencio Martinez approached the family of Alfredo Batoon to settle an existing case for murder for which Cresencio Martinez was then charged in the Court of First Instance of Abra; that in the morning of December 1, 1971, she (Trinidad Andallo) went together with her brother Emilio Andallo and Leonides Martinez as they travelled walking on the barrio road to Bucay, Abra; that as she was following her brother Emilio Andallo with their companion Leonides Martinez some meters ahead of them on the road, suddenly there was gunfire; that she took to the precipice and hid herself and took a look at the assailants who were Cresencio Martinez and Juanito Martinez; that the assailants were shooting at Emilio Andallo who was already lying on the ground; that she saw Cresencio Martinez and Juanito Martinez took the money of his brother Emilio Andallo as the latter was already lying dead imputing robbery committed by said assailants; that she went home and told Aurea Andallo wife of Emilio Andallo about what she saw; that she, Trinidad Andallo; and her sister-in-law Aurea Andallo, never told the PC investigators, or to any police, or peace authority about what they know of the ambush because the two brothers Cresencio Martinez and Juanito Martinez were hiding in the area and that it was possible that they would appear and do them harm if they would tell and identify them as the assailants of Emilio Andallo to the authorities. According to Trinidad Andallo she and her sister Aurea Andallo were emboldened by the declaration of Martial Law to have gone to the PC Provincial Headquarters in Bangued, Abra on October 11, 1972, ten months after the ambush, to tell about what they know of the ambush and the assailants Cresencio Martinez and Juanito Martinez.

Taking the witness stand, Leonides Martinez who was admitted by the prosecution witnesses to have been with Emilio Andallo at the time of the ambush, denied that Trinidad Andallo was with him and Emilio Andallo when they were ambushed. He, Leonides Martinez, asserted that he and Emilio Andallo were the only ones who had gone together on their trip to Nueva Viscaya and that they were only two walking together on the barrio road when they were ambushed without any companion.

Leonides Martinez was corroborated by the three public schoolteachers, Mrs. Lovelina Tugadi, Mr. Simeon Barril, Mrs. Marcelina Valera Taberdo, all of whom took the witness stand during the trial and asserted that in that morning of December 1, 1971 while they were walking to their teaching stations in Barrio Abas on the barrio road, they met the late Emilio Andallo and Leonides Martinez only the two of them, walking and traveling together without Trinidad Andallo.

The presence of Trinidad Andallo during the ambush was also denied and disputed by Herbert Tubana, a nephew of the Andallo, Herbert Tubana who was staying with Patricia Andallo, a sister of Emilio Andallo, testified and asserted that in that morning of December 1, 1971, he (Herbert Tubana) was with Patricia Andallo and Sabino Andallo, together with Aldona Martinez mother of the Andallo; that while he was with them, Ricardo Viernes arrived bringing news that Emilio Andallo was already dead; that thereafter, Sabino Andallo went to call for their sister Trinidad Andallo who was then harvesting rice in the fields at the time together with Juana Reyes mother of Cresencio Martinez. It was not true that Trinidad Andallo was with her brother Emilio Andallo and Leonides Martinez at the time of the ambush because she was in the fields harvesting rice more than three kilometers away from the scene of the shooting.

For his part, the accused-appellant Cresencio Martinez denied that he had anything to do with the shooting of Emilio Andallo. He is a nephew of the Andallo including the deceased Emilio Andallo because his late father Julian Martinez was a cousin of the Andallo. He asserted that he had not seen his brother Juanito Martinez for a long time because he, Cresencio Martinez, had been staying in Romblon from June 1970 until he came home in Abas, Sallapadan, Abra on May, 1973, and that he has no knowledge about the ambush or the assailants of his uncle Emilio Andallo.

Cresencio Martinez was formerly a Chief of Police of the small district town of Sallapadan, Abra from May 1966 to May 25, 1970. While he was Chief of Police one Alfredo Batoon was shot to death on April 14, 1969 and he and some members of his police force, together with the Municipal Mayor and Municipal Secretary were being blamed. As a result a complaint for murder for the killing of Alfredo Batoon was filed in the Office of the Provincial Fiscal of Abra against the Municipal Mayor Gregorio Banawa, the Municipal Secretary Federico Paredes, the Chief of Police Cresencio Martinez, and some members of the Municipal Police Force who were Victorino Cariño, Arnulfo Bayongan, Viernes Duclang and Roberto Martinez. After the preliminary investigation of the case in the Fiscal's Office, and before the Fiscal made a resolution on the same, Cresencio Martinez was suspended by the Municipal Mayor as Chief of Police to await the result of the case against them for the killing of Alfredo Batoon. Because the Fiscal was taking a long time to make a resolution on the complaint against them, Cresencio Martinez thought that he would go to Manila to look for employment. Without waiting for the result of their case in the Fiscal's Office, Cresencio Martinez left for Manila to find employment. With the help of Virgilio Blaze, a townmate who had been working with the Ayala Molasses Corporation since 1954 in Manila, Cresencio Martinez was able to find employment as a cargoman in the ship called "parao" owned by Adriano Pabonan, father-in-law of Virgilio Blaze, in Romblon. The ship was sailing the Romblon-Mindoro-Manila route hauling cargoes. Cresencio Martinez entered employment in the cargo ship on June, 1970 and continued in said employment until December, 1972 when he resigned and went back to Manila where, for six months, he was a helper in the truck of Virgilio Blaze hauling molasses until May, 1973. On May 25, 1973 Cresencio Martinez went home to his native place in Abas, Sallapadan, Abra.

In the meantime while Cresencio Martinez had been working in Romblon, the Provincial Fiscal of Abra had made a resolution on the complaint filed in that office about the killing of Alfredo Batoon. The Fiscal dropped the Municipal Mayor Gregorio Banawa, his Municipal Secretary Federico Paredes, the policemen Victorino Cariño and Roberto Martinez from the complaint. He filed information only as regards Arnold Bayongan, Viernes Duclang and Cresencio Martinez charging these persons as the only persons responsible for the killing of Alfredo Batoon. Arnold Bayongan was the only one present in the locality who was arrested and immediately put on trial. The Hon. Judge Leopoldo B. Gironella was the one who tried him and acquitted him pronouncing that it was Cresencio Martinez who was at large who killed the deceased Alfredo Batoon. Viernes Duclang one of the accused had died while preliminary investigation was pending in the Fiscal's Office. Cresencio Martinez had remained at large because he was in Romblon and a warrant for his arrest had been issued. He came home to his native place in Abas, Sallapadan, Abra on May, 1973 and, upon his arrival, he immediately surrendered himself to the PC to stand trial for the shooting of Alfredo Batoon. This charge against him for the killing of Alfredo Batoon is still pending in the Court of First Instance of Abra because the trial judge, the same Hon. Leopoldo B. Gironella, has not continued trying the case because he has been sued in the Supreme Court for Prohibition by Cresencio Martinez in G. R. No. L-37635 in an effort to have the said judge be enjoined from continuing the trial of the case because he (Judge Leopoldo B. Gironella) could not be an impartial judge anymore for the reason that he had already made a pronouncement that it was Cresencio Martinez who had killed the late Alfredo Batoon in his decision when he tried and acquitted Arnold Bayongan of the charge, and, therefore, the said judge was already prejudiced against said Cresencio Martinez. (Please refer for purposes of judicial notice to the records in the pending case in the Supreme Court G.R. No. L-37635, Cresencio Martinez, petitioner-versus-Hon. Leopoldo B. Gironella, respondent, for Writ of Prohibition).

As regards this instant charge against Cresencio Martinez for the killing of Emilio Andallo, he was supported by Herbert Tubana (sic) who testified and asserted that he, Cresencio Martinez, was in Romblon on December, 1971 working as a cargoman in the ship of Herbert Tubana's (sic) father-in-law. It was not possible that Cresencio Martinez could be in Sallapadan, Abra in the month of December, 1971 when Emilio Andallo was ambushed. And her witness, Tomas Sumalnap, the barrio captain in Abas, Sallapadan, Abra in December 1971 also took the witness stand to testify that as barrio captain he was aware that Cresencio Martinez was not and could not be present in Sallapadan, Abra in December, 1971.

After trial, the Hon. Judge Leopoldo B. Gironella who was not exactly impartial but was prejudiced against the

accused Cresencio Martinez rendered a decision giving credence to the testimony of Trinidad Andallo and disregarded the defense of the said accused Cresencio Martinez and found him guilty of the crime as charged in the information for the murder of Emilio Andallo.(pp. 68-78, Record)

On the other hand, the People's Brief presented the following version:

"Sometime in November, 1971, one Leonides Martinez went to the house of Trinidad Andallo at Barrio Caniogan, Sallapadan, Abra, to tell her brother, Emilio Andallo, that the latter's son was at the time in Bayombong, Nueva Viscaya (p. 30, t.s.n., Nov. 27, 1973). Since Emilio did not know the exact whereabouts of his son in Bayombong, he requested Leonides Martinez to accompany him (Emilio) there, to which request Leonides acceded (ibid). They were supposed to leave on a Monday but when the day came, Leonides postponed the trip to Saturday, December 1, 1971 (ibid).

When December 1, 1971 came, Trinidad and Emilio left Barrio Caniogan early in the morning. Trinidad was bound for Bangued while Emilio for Bayombong (p. 31, t.s.n., Nov. 27, 1973; p. 5, t.s.n., Dec. 11, 1973). Emilio and Trinidad met Leonides Martinez, who as earlier stated was to accompany Emilio to Bayombong, in Barrio Tangtangbabaoan, Abas, Sallapandan, Abra (p. 31, t.s.n., Nov. 27, 1973). The trio proceeded towards the direction of Bucay, with Leonides walking ahead, followed by Emilio from a distance of about one kilometer and Trinidad following behind (p. 31, tsn, Nov. 27, 1973). When they were about a kilometer away from Barrio Tangtangbabaoan, and as Trinidad, who lagged further behind because she answered the call of nature, was about to ascend a crest, she heard gun detonations and saw her brother fall on the ground (p. 32, tsn, Nov. 27, 1973). Trinidad hid herself behind a tree trunk (p. 33 ibid). As Emilio Andallo lay prostrate on the ground, she saw the assailants, Cresencio Martinez and Juanito Martinez, go near her brother. Cresencio Martinez was holding a carbine and Juanito Martinez, a shotgun (p. 33, 34, tsn, Nov. 27, 1973). Trinidad heard her dying brother Emilio appeal for mercy to his assailants (p. 35, tsn, Nov. 27, 1973). Notwithstanding Emilio's plea of mercy, Cresencio and Juanito continued shooting the former (ibid). When Emilio expired, Cresencio Martinez took Emilio's bag which contained his clothings and P200.00 and proceeded towards the mountains (pp. 35, 36, tsn, Nov. 27, 1973; p. 40, tsn, Dec. 11, 1973).

After Cresencio and Juanito had left, Trinidad ran away and went back to her barrio (p. 37, tsn, Nov. 27, 1973). She proceeded to the house of her sister-in-law, Aurea Borje Andallo, wife of Emilio, and narrated the shooting of Emilio (ibid; p. 14, tsn, Dec. 11, 1973). Trinidad did not report the matter to the PC detachment, then in Abas, Sallapandan, Abra as she was afraid (p. 38, tsn, Nov. 27, 1973). She was afraid because Cresencio Martinez was an influential figure in their community since not too long ago, Cresencio was Chief of Police but was suspended and later became at large being wanted by the authorities for his complicity in the killing of ex-mayor Batoon of Sallapandan, Abra in 1969 (pp. 14, 20, 29, tsn, Dec. 11, 1973). Neither did Emilio's widow, Aurea Borje Andallo, report the killing of Emilio Andallo to the PC. At that time, Cresencio Martinez was already in the custody of the PC (pp. 54, 56, tsn, Dec. 11, 1973) for the killing of ex-mayor Batoon.

It appears that as Cresencio Martinez was wanted by the authorities for the killing of ex-mayor Batoon (p. 38, tsn, Nov. 27, 1973; p. 48, tsn, Dec. 11, 1973), sometime before the shooting of Emilio, in October, 1971, Cresencio approached the former for help in effecting amicable settlement of the case relating to Batoon's death, but Emilio refused (ibid). Since then, the relations between Emilio and Cresencio had become strained (pp. 39, 40, tsn, Nov. 27, 1973).

The necrosy report of the doctor who conducted an autopsy on the cadaver of Emilio Andallo reads in part:

"POST MORTEM FINDINGS

- Wound, gunshot, entrance, 3/4 cm. in diameter, forehead, head, left.

- Wound, gunshot, entrance, 3/4 cm. in diameter chest, left, 9 cm. from midsternal line at the level of the lower border of the 4th rib perforating the left ventricle of the heart.
- Wound, gunshot, entrance, 3/4 cm. in diameter, chest, left, 11 cm. from midsternal line 1 1/2 cm. below the nipple perforating the ventricle of the heart.
- Wound, gunshot, entrance, 3/4 cm. in diameter, epigastric region 2 cm. below the xyphoid process perforating the stomach.
- Wound, gunshot, entrance, 3/4 cm. in diameter epigastric region, 3 cm., below wound No. 4 perforating the descending colon.
- Wound, gunshot, entrance, 3/4 cm in diameter iliac region, right, 5 cm. above the pelvic bone (thru & thru)
- Wound, gunshot, exit, 1 cm. in diameter lumbar region, right, 12 cm. from the mid-vertebrae.
- Wound, gunshot, entrance, 3/4 cm. in diameter, umbilical region, 1 cm. below the navel.
- Wound, gunshot, entrance, 3/4 cm. diameter, umbilical region, 2 cm. below Wound No. 8.
- Wound, gunshot, entrance, 3/4 cm. in diameter, hypogastric region, 2 cm. below wound No. 9, perforating the urinary bladder.
- Wound, gunshot, entrance, 3/4 cm. in diameter, chest right, 2 cm. lateral to the nipple (thru & thru).
- Wound, gunshot, exit, 1 cm. in diameter, back right, about 2 cm. below the scapula.
- Wound, gunshot, entrance, 3/4 cm. in diameter upper third, anterior forearm right (thru & thru).
- Wound, gunshot, exit, 1 cm. in diameter, upper third, posterior, forearm right.
- Wound, gunshot, entrance, 3/4 cm. in diameter, upper, third, thigh anterior right (thru & thru).
- Wound, gunshot, exit, 1 cm. in diameter, upper third, thigh, right, posterior.
- Wound, gunshot, entrance, 3/4 cm. in diameter, middle third anterior, right, 3 cm. below wound No. 15(thru & thru).
- Wound, gunshot, exit, 1 cm. in diameter third, thigh, right, posterior.
- Wound, gunshot, entrance 3/4 cm. in diameter, middle third, medial aspect, thigh right.

CAUSE OF DEATH - Hemorrhage, severe, internal, intrathoracic, due multiple gunshot wounds." (Exh. A, p. 47, Records).

(pp. 1-7, Appellee's Brief)

The issues raised before Us center on the credibility of the witnesses. The trial court in its decision accepted as true the prosecution's version giving credence to the testimony of the witnesses for the prosecution Aurea Andallo, wife of the victim and Trinidad Andallo who claims that she was an eyewitness to the killing of her brother Emilio Andallo by the accused. The trial court disregarded the testimonies of the witnesses for the defense and the defense of alibi interposed by the accused, as a defense which is manufactured and cannot overcome the positive identification of the accused by Trinidad Andallo.

The Appellate Court will generally not disturb the findings of the Trial Court, as the latter is in a better position to decide said question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial unless it has plainly overlooked certain facts of substance and value which if considered,

might affect the result of the case. The exception holds true in the case at bar.

It is an admitted fact that Leonides Martinez was present during the ambush. He is a nephew of the deceased because he is the son of a first cousin of the victim. His uncontroverted presence during the commission of the crime, his close relation to the deceased being a nephew, and his actuations of being the person to have gone to report the shooting immediately after its commission, makes him the most trustworthy and reliable witness to the shooting of Emilio Andallo. In convicting the accused, the trial court relied heavily on the testimony of Trinidad Andallo whose alleged presence during the commission of the crime was belied by the testimony of Leonides Martinez and the corroborative testimonies of the other witnesses for the defense to the effect that Leonides Martinez and the victim were the only ones who had gone along travelling and walking on the barrio road, with no other companion. The narration of events by the witnesses for the defense strikes us as positively credible, probable and entirely in accord with human experience. Leonides Martinez is not a biased witness against the cause of the prosecution and there is no reason to discredit him. The same holds true for the other witnesses for the defense namely the schoolteachers, Mrs. Lovelina Tugadi, Mr. Simeon Barril, and Mrs. Marcelina Valera Taberdo. These three public schoolteachers are from other towns with assignments in Sallapandan, Abra; they are not relatives of the parties involved in the case and being public schoolteachers their integrity entitles them to better respect and credibility. Their failure to remember exactly what day was December 1, 1971 is not enough to discredit their testimonies as they were one in testifying that they met the victim and Leonides Martinez on the first working day on December, 1971 because the previous day, November 30, was a National Holiday as National Heroes Day. These abovementioned testimonies were not refuted by the prosecution. The version of the prosecution's witness Trinidad Andallo was not even corroborated by other testimonies. Even the testimony of the other prosecution witness, Aurea Andallo, failed to corroborate it. On the other hand, her testimony corroborated the posture of the defense that it was only her husband Emilio Andallo alone, who had left their house for the trip to Bayombong (tsn, p. 39, Dec. 11, 1973). The fact also that Trinidad Andallo and Aurea Andallo made a belated report ten (10) months after the killing to the PC about the assailants of Emilio Andallo, without credible reasons for the delay was very unnatural and against the ordinary conduct of men under similar circumstances. The reason given was that they were afraid to tell anyone, even the peace officers and the PC investigators about the assailants of their brother because the said assailants were at large. They claimed they were only emboldened to report it to the PC because of the declaration of martial law and because the accused was already in the custody of the PC. Such pretensions hold no water. It is a matter of record that Cresencio Martinez surrendered to the PC on May 26, 1973 while Trinidad and Aurea Andallo had already made their report to the PC on October 11, 1972. The presence therefore of Trinidad Andallo during the ambush of the victim remains doubtful in the light of the foregoing circumstances.

Appellant invoked the defense of alibi alleging that during the ambush or shooting of the victim he was not in Abra but was in Romblon. His testimony was corroborated by Virgilio Blaze who was instrumental in getting him his job in the ship of Blaze's father-in-law. Accused-appellant only went back to his hometown in Abra in May, 1973 and gave himself up to the PC voluntarily upon learning of the charges against him for the killing of Alfredo Batoon because he desired to clear himself. It was while he was detained facing trial that the charge of killing of the deceased Emilio Andallo came up. He also claims that it is not true that during the incident or ambush he was staying in their house in Abra only 80 meters away from the house of Trinidad and Aurea Andallo. A PC Detachment Force was stationed in their barrio. With their barrio swarming with PC soldiers, the place could not have provided a safe place for him to hide and it could have been easy for Trinidad and Aurea Andallo to give his whereabouts away to the police.

While alibi is generally a very weak evidence, this is not so in the present case. Here, the alibi of the accused can stand searching scrutiny, as already discussed hereinabove; the accused was in far away Romblon, and his

presence there has been sufficiently explained. . Moreover, We do not believe Trinidad Andallo was present at the scene of the crime. Her so-called identification of the accused was no identification at all.

Only by proof beyond reasonable doubt (which requires moral certainty, a certainty that convinces and satisfies the reason and conscience of those who are to act upon it) may the presumption of innocence be overcome. For the reasons aforesaid the culpability of appellant Cresencio Martinez has not been demonstrated to meet the requisite legal and moral certainty for a judgment of conviction (*People vs. Somantao* 128 SCRA 415). Aside from the testimonies of witnesses for the prosecution Trinidad Andallo and Aurea Andallo which have been rendered unreliable in the light of the foregoing circumstances, the prosecution failed to present other proof which could have corroborated or strengthened their weak testimonies.

ACCORDINGLY, the judgment of the court a quo is REVERSED and Cresencio Martinez is hereby ACQUITTED on reasonable doubt. Costs de oficio.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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