

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN MAGALLANES, ET AL., DEFENDANTS. PONTE ABINUMAN,
DEFENDANT?APPELLANT.**

G.R. Nos. L-21559-60. June 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Manuel Lagarde, Julian Bartido, Benjamin Magallanes, Arnold Viterbo, Quirino Cornal and Ponte Abinuman were prosecuted in the Court of First Instance of Masbate under separate Informations for Murder (Criminal Case No. 4136), and Frustrated Murder (Criminal Case No. 4138), which arose out of one and the same shooting incident near the wharf of Masbate, Masbate, at about 6:30 in the morning of May 21, 1962, resulting in the killing of Marcial Tamares and the near-fatal shooting of Moises Espinosa. Upon arraignment on June 21, 1962, all the accused entered separate pleas of "not guilty" to the two (2) Informations; but later, on August 7, 1962, accused Manuel Lagarde withdrew his previous plea and, thereafter, pleaded "guilty" to both charges. He was sentenced accordingly on the same date in both cases. The other accused stood trial.

As the two cases arose out of the same incident, a joint trial was had for the reception of evidence for the prosecution; but a separate trial for each of the accused insofar as their evidence was concerned, was allowed by the trial court. And in view of the impending transfer to the National Penitentiary of Manuel Lagarde who, as earlier explained, then stood convicted of both charges, his deposition was taken, and later offered as part of the evidence for all the remaining five accused.

Upon the conclusion of the trial, the court a quo rendered a single decision in both cases on March 7, 1963, acquitting accused Benjamin Magallanes, Arnold Viterbo and Quirino Cornal upon grounds of reasonable doubt, but finding accused Julian Bartido and Ponte Abinuman guilty of the crimes charged in both cases. In Criminal Case No. 4136 (For Murder), Julian Bartido and Ponte Abinuman were each sentenced to reclusion perpetua, to indemnify the heirs of the deceased Marcial Tamares in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. In Criminal Case No. 4138 (For Frustrated Murder), the same accused were each, likewise, sentenced to an indeterminate penalty of 8 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal, as maximum, with all the accessories of the law, and to pay the costs of the proceedings.

Only accused Ponte Abinuman has appealed from the decision.

From our own examination of the evidence, it appears that bad blood had existed for some time between accused Benjamin Magallanes and one of the victims, Moises Espinosa. Magallanes has been mayor of Masbate, Masbate, since 1945 up to the date of the incident on the wharf of the town on May 21, 1962, which brought about these cases; but on December 23, 1961, shortly after the national election, Moises Espinosa made a public announcement that he will run for the mayoralty of Masbate in the coming local election of 1963, and at the same time, made an accusation that Mayor Benjamin Magallanes had pocketed the money given him by the Espinosas

during the Proceeding congressional election in November 1961, intended for the campaign expenses of Moises' elder brother, the incumbent Congressman, Emilio Espinosa, Jr. From then on, Magallanes was not on speaking terms with Moises Espinosa. Their relationship became worse when at the waterfront, on January 6, 1962, Magallanes grabbed Moises Espinosa by the shirt as the latter was coming down a gangplank, drew his gun, and fired it twice at Moises. Fortunately, the gun did not explode, and soon cooler heads intervened. This precipitated the filing of an administrative charge against the mayor by Moises Espinosa. Magallanes, who was with accused Viterbo and Cornal along with Nemesio Heath at the time, warned Moises Espinosa that "next time he would not be as lucky". The antagonism was aggravated when Nemesio Heath was shot dead barely two days after the incident, for which Moises Espinosa was charged with murder. Moises Espinosa felt that Mayor Magallanes was behind the filing of that charge against him. These developments prompted Moises Espinosa to leave his own house and live in the house of his father, former Congress-man Emilio Espinosa, Sr., in the same municipality; and thereafter, always brought along with him Marcial Tamares as a sort of bodyguard.

It was also shown that accused Manuel Lagarde had a strong motive to kill Moises Espinosa. Although the latter claimed that they were childhood friends and, as a matter of fact, were together in forming the Masbate Free Workers Union, Manuel Lagarde believed that Moises Espinosa was responsible for his ouster from the union where, as representative, he derived a monthly income of about P200.00 representing 5% of collections. It appears that Lagarde's suspicion was not unfounded, for shortly before the union Members elected their officers, Moises Espinosa withdrew the bond he had previously posted for Lagarde who was then accused in another case for murder, resulting in Lagarde's re-arrest and his subsequent inability to work for his re-election as officer of the union. Besides, Lagarde is the brother-in-law of Mayor Magallanes, the latter being married to Lagarde's elder sister; and the enmity between Magallanes and Espinosa was no secret to Lagarde. Accused Arnold Viterbo and Quirino Cornal were policemen of the town of Masbate; while accused Julian Bartido and Ponte Abinuman were the constant companions or bodyguards of Manuel Lagarde who, aside from these cases, had already a string of convictions of various other crimes ranging from light threats to homicide.

The evidence further show that early in the morning of May 21, 1962, Moises Espinosa, along with Marcial Tamares, left the house of his father on Zurbito Street at about 6:00 o'clock bound for the wharf. As the jeep driven by Moises Espinosa turned left on Port Road, Moises saw Manuel Lagarde with other persons sitting at a store (Kakoy's Place). Farther down that road leading to the pier area, Moises allegedly saw Mayor Magallanes with policemen Cornal and Viterbo in the store owned by Lagarde's mother (mother-in-law to Mayor Magallanes), as Espinosa and Tamares proceeded to the wharf. They stopped beside the Escano bodega facing the sea, after turning left from the Port Road to the "riprap".

At about this time, according to Harry Cortes, he was taking coffee at the store of Lagarde's mother when Mayor Magallanes, Cornal and Viterbo entered the said store. Lagarde arrived later. The Mayor opened the door of the police pick-up truck parked on the side of the road near the house of Lagarde, out of which truck Lagarde got a long-barrelled gun for himself, and two short ones which he gave to accused Bartido and Abinuman. Then they all left towards the corner of the Escano bodega, and from that direction, the same witness declared, he heard about twenty gun shots of different detonations fired in succession. Afterwards, the said witness allegedly saw Mayor Magallanes, Cornal and Viterbo run back to the pick-up which they boarded and then drove fast along the Port Road to the upper portion of the town.

It appears that when the successive burst of gunfire broke out, Moises Espinosa was still in his parked jeep beside the Escano bodega. He was seated behind the steering wheel of the vehicle with Marcial Tamares at his right. No sooner did Moises Espinosa realize that he and his companion were the objects of the gun shots which came from behind them, for suddenly, he found himself and Marcial Tamares wounded and bleeding profusely. He

immediately looked back by peering at the left side of his jeep and saw all the accused some 7 or 8 meters behind them, with their guns pointed towards him and Marcial Tamares. Manuel Lagarde was holding a grease gun, while the rest were pointing their short guns. In spite of his wounds, Moises Espinosa was able to drive his jeep forward in a zig-zag manner to the corner of the road ahead, at the same time looking back at his assailants. He turned left upon reaching the corner, and with increased acceleration, headed for his father's house about 150 meters away from the scene of the shooting. In a minute or so, Moises Espinosa reached the house and shouted to his father, "Papa, Papa, I was shot by Magallanes and his companions." The father was apparently shocked at the sight of his wounded son and his companion, Marcial Tamares, whose head was then slumped on the lap of Moises Espinosa. Although the father, Emilio Espinosa, Sr., was a doctor by profession, he failed or forgot to give the victims any emergency or first aid treatment; all he could do under the circumstances was to order a relative, Jose Zurbito, to drive the same jeep and take the wounded Moises Espinosa and Marcial Tamares to the Provincial Hospital of Masbate where they were given emergency treatment at about 6:45 that same morning. Marcial Tamares was found to have sustained ten (10) bullet wounds in different parts of his body, all through and through, which snuffed out his life at about 9:30 a.m. of that day. Moises Espinosa sustained two bullet wounds, one piercing the left side of his back and coming out of his chest, while the other went through his right arm. He was airlifted to Manila in the afternoon of that day and taken to the Manila Doctors Hospital where he was successfully treated.

It appears that soon after the shooting at the wharf, Manuel Lagarde surrendered to the authorities and admitted and confessed his sole authorship of the offenses. Julian Bartido also surrendered and pointed to the authorities the place where the guns used were hidden. The other accused were taken into custody later.

Evidence for the defense tends to show that accused Benjamin Magallanes, Arnold Viterbo and Quirino Cornal were in their respective houses when the shooting at the wharf took place. Magallanes sought to prove that he was suffering from arthritis at the time, a rheuma of the joints of the feet, and that he did not leave the house in the morning of May 21, 1962, for then he could hardly walk. A host of witnesses also swore to the fact that Magallanes, Viterbo and Cornal were not seen in the pier area on that day, and that the police pick-up they supposedly rode in on the day of the killing was then out of order. In a word, they all denied any participation in the commission of the crimes charged. Accused Julian Bartido and Ponte Abinuman admitted that they were in the pier area that morning, but Abinuman claimed that he had left the place when the shooting took place, while Bartido declared that he did not participate in the shooting. He admitted though that Lagarde handed to him a 45-caliber pistol when they were still in the house of Lagarde; and that Lagarde returned to the house and grabbed it back from him after emptying the grease gun of its bullets, firing once again at the fleeing jeep of Moises Espinosa with the said pistol.

The foregoing evidence, briefly stated, was the basis of the decision of the lower court now under consideration; and as previously set forth also, resulted in the acquittal of accused Benjamin Magallanes, Arnold Viterbo and Quirino Cornal, and the conviction of accused Julian Bartido and Ponte Abinuman.

Appellant Ponte Abinuman claims that the trial court erred in finding him guilty beyond reasonable doubt of the murder of Marcial Tamares (Criminal Case No. 4136) and of frustrated murder of Moises Espinosa (Criminal Case No. 4138). It is contended that there is no clear evidence of record that would tend to show that appellant had directly participated in the commission of the crime, or that he ever conspired with any of the accused to commit the same. We have carefully examined the evidence pertinent to the above-assigned errors which we shall now set forth.

To be sure, the only inculpatory facts established by the prosecution insofar as herein appellant is concerned, were those testified to by one of the victims, Moises Espinosa, and one Harry Cortes, an alleged bystander near

the scene of the crimes charged in the morning of May 21, 1962. On this point, Moises Espinosa testified that on his way to the pier, he saw Manuel Lagarde with a group of men in a store at the corner of Zurbito Street and Port Road, some 45 meters from the Escano bodega where he later parked his jeep with Marcial Tamares; that at another place farther down the Port Road, he saw Mayor Magallanes with accused Arnold Viterbo and Quirino Cornal inside the store owned by Lagarde's mother (mother-in-law to Mayor Magallanes), about 15 meters from the scene of the shooting; that as he sat there in his jeep with Marcial Tamares beside him, just beside the Escano bodega, he kept the engine of his jeep running; that upon hearing the successive outburst of gunfire behind his jeep, he readily realized that he and Tamares were wounded and bleeding; that he immediately looked back by peering at the left side of his jeep and saw Manuel Lagarde about 7 meters away holding the grease-gun similar to Exhibit "F", with accused Benjamin Magallanes on the right side of Lagarde holding the pistol (Exh. G); that Viterbo was a little behind Magallanes with Cornal at his right, both holding short arms aimed at him; that he also saw Ponte Abinuman some meters away from Lagarde, with Bartido about one meter away from Ponte, both also holding short guns aimed at him; that at about the same time, he moved his jeep slowly forward in a zigzag manner as he looked back at his assailants; that he could not drive fast then because the corner of the road was near and he wanted to turn left; that after turning left at the corner, he drove faster towards the house of his father; that before reaching the house, Marcial Tamares who was vomiting blood, slumped his head on his lap, but he continued driving; that upon reaching the house, he shouted to his father, "Papa, Papa, binadil aco ni Magallanes cag san iya caoropod" (Papa, Papa, I was shot by Magallanes and his companions) ; that in the emergency room of the Masbate Provincial Hospital, his statement was taken by their family lawyer upon whose question, "Who shot you?", he gave the answer, "Liling, Mayor, Viterbo, Cornal and other policemen"; that at the time that statement (Exh. U) was taken at about 7:00 o'clock that same morning, he was already weak and getting dizzy, that is why he wanted to cut short or abbreviate the answers he gave at the time; that lining referred to in that statement is Manuel Lagarde; Mayor is Benjamin Magallanes; the two others are Viterbo and Cornal, while the "other policemen" spoken of in the statement are really Julian Bartido and Ponte Abinuman; and that as to herein appellant, he could not have been mistaken, for he had known him for about three(3) years already as a member of his union. He admitted, however, that he knows that appellant Ponte Abinuman is not a member of the police department of Masbate.

Harry Cortes, on the other hand, declared that he was inside the store of Manuel Lagarde's mother on Port Road at about 6:20 in the morning of May 21, 1962, taking his coffee; that he was already there when Mayor Magallanes, Arnold Viterbo and Quirino Cornal (police-men) entered the store and occupied another table in the store; that a short while after, Manuel Lagarde also entered the said store and whispered something to Magallanes, after which they got out of the place; that he saw Mayor Magallanes open the door of the police pick-up which was parked on the side of the road about four(4) meters from the store; that he saw Manuel Lagarde get from inside the vehicle a long-barrelled gun and then give other guns to Julian Bartido and Ponte Abinuman; that thereafter, he saw the group proceed towards the Escano bodega; that from the direction of the said bodega, he later heard about twenty (20) gun shots of varied detonations in succession; that he did not leave the place and watched, and he saw Mayor Magallanes with policemen Cornal and Viterbo run from the corner of the Escano bodega, back to the pick-up, which they boarded and drove fast towards the upper portion of the town along Port Road in the direction of the Post Office; that he left the store only after the Mayor's group had gone; and that in the afternoon of May 22, 1962, the day following the shooting, his statement was taken down in writing at the Fiscal's Office. (This statement was not presented in evidence). The witness admitted that he is a member of the union headed by the victim, Moises Espinosa.

For his defense, appellant Ponte Abinuman testified during the trial that at about 6:00 a.m., May 21, 1962, he went to the pier area to move his wares under the Wharf; that he used to do so because there is no public toilet in

the vicinity where he lives; that on his way down the road, he saw at the store on the corner of Zurbito Street and Port Road a group of men; that he recognized among those people there Manuel Lagarde; that he did not join the group nor talk or converse with any one there but proceeded to the wharf to answer the call of nature; that on his way back to his house, he met the jeep of Moises Espinosa, who was at the wheel, with Marcial Tamares sitting at his right side; that Tamares addressed him, "Ponte, where is Leling?"; that he informed Tamares that he saw Manuel Lagarde (Leling) with other persons at the store on corner Zurbito Street and Port Road (Kakoy's Place); that when he passed by the store of Manuel Lagarde's mother, he saw Lagarde there with his sister; that he was asked by Lagarde, "What did Marcial ask you?"; that he informed Lagarde that Marcial Tamares inquired from him where he (Leling) is; that after that he proceeded towards his house, but on the way, Remedios Danao requested him to help carry up her house a table which he and Celedonio Desuyo lifted up the new apartment; that when they were already inside the house, that was the time he heard successive shots, which he did not mind because he did not know then whether they were gunshots or firecrackers; that at about 6:45 that same morning, he was fetched from his place by a certain Poldo who informed him that the Chief of Police of Masbate and the PC wanted to see him at the wharf; that upon reaching the wharf, he was informed that they called for him because a boy had said that one of those who fired at Moises Espinosa and Marcial Tamares has a mustache, and since he has a mustache, it would be better for him to stay in the meantime at the PC barracks to avoid being suspected; that he consented and was taken to the PC Compound at about 7:00 o'clock that same morning; and that from that time up to about 4:00 o'clock in the afternoon of the following day when he was transferred to the Provincial Jail, nobody ever questioned or investigated him about the shooting incident, but he was never released after that.

Antonio Aum confirmed the fact that he saw Ponte Abinuman in the house of Remedios Danao in the morning of May 21, 1962; that he happened to be in the vicinity because he had gone out that morning on a bike for recreation and to go shopping. Asked by the court why he would go shopping so early in the morning, Aum explained that shopping and going out for fresh air are just the same to him.

It appears that during the taking of the deposition of Manuel Lagarde, the latter declared that he saw Moises Espinosa and Marcial Tamares that morning of May 21, 1962, as they passed by him at the corner of Zurbito Street and Port Road; that as soon as they were gone after turning left at the corner of the Escano bodega, he went to the house of his mother; that at that precise time, Ponte Abinuman passed by and told him not to go out because Moises Espinosa and Marcial Tamares were looking for him; that he felt grateful to Ponte because he gave him that warning; that he saw Ponte Abinuman went up the road to his house after giving him the warning; and that Ponte Abinuman was not present when he shot at Moises Espinosa and Marcial Tamares.

It appears further that as soon as all the accused in this case were picked up and confined in jail, the PC at Masbate requested the NBI Office in Manila to send a representative to Masbate to examine the suspects in the Provincial Jail. On May 23, 1962, a chemist from the NBI Office in Manila arrived in Masbate and a paraffin test was conducted of the suspects. The hands of Manuel Lagarde, Julian Bartido and Ponte Abinuman were examined, and from the results of the examination it was proven that Manuel Lagarde and Julian Bartido were positive of gunpowder or nitrates. Ponte Abinuman's hands, however, were found negative of powder burns, while accused Benjamin Magallanes, Arnold Viterbo and Quirino Cornal were not given the paraffin tests notwithstanding the fact that at the time they were all confined in the same jail.

After a careful examination of the evidence above set forth and the conclusions reached by the lower court on the basis thereof, We are more inclined to sustain the claim of herein appellant that the trial court fell into error in convicting him. Apparently, the court below did not give much credence to the testimonies of accused Ponte Abinuman and Antonio Aum, but it would seem that it gave no weight also to the testimonies of prosecution

witnesses Moises Espinosa and Harry Cortes, for notwithstanding the statements in Court of Espinosa and Cortes to the effect that they saw all the accused together near the scene of the shooting, accused Benjamin Magallanes, Arnold Viterbo and Quirino Cornal were acquitted. The matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial; and as far as credibility and veracity of witnesses are concerned, the conclusions of lower courts command great weight and respect, for their proximate contact with those who take to the witness stand places them in a more competent position to discriminate between the true and the false (See, *People vs. Catalino*, L-25403, March 15, 1968, and cases therein cited); And We find no compelling reasons, after examining the declarations of the principal witnesses, both for the prosecution and for herein appellant, to question the relative weight the trial court assigned on their testimonies. But it is quite illogical that on the strength of the same testimonies which appear to have been discredited by the court insofar as some of herein appellant's co-accused in the same case is concerned, would be given much weight in pinning liability as against said appellant (See *People vs. Aquino, et al.*, L-13789, June 30, 1960; and *People vs. Chaw Yaw Shun @ George Chua, et al.*, L-19590, April 25, 1968). Of course, such fact alone, even if indulged in by the trial court, cannot be the basis of acquittal, if apart from the testimonies of witnesses discredited by the court there are other inculpatory facts testified to by other credible witnesses upon which a verdict of conviction may be reached. But the situation is not such in this case either where, independent of the testimonies of prosecution witnesses Moises Espinosa and Harry Cortes, nothing appears in the record upon which we may deduce that Ponte Abinuman directly participated in the commission of the crimes charged in these cases. The lower court had referred to herein appellant as an "informer", intimating that Ponte Abinuman had conspired with the other accused Julian Bartido and the confessed gun-man, Manuel Lagarde, in the commission of said crimes; but this conclusion is not even supported by the evidence, because if we were to give any credence at all to the testimony of Ponte Abinuman, the situation would be worse, for according to him, all that he did was to relay the information to Manuel Lagarde that early morning of May 21, 1962, that Moises Espinosa and Marcial Tamares were looking for him. And this is confirmed by the declaration of Manuel Lagarde that herein appellant had warned him not to go out that morning because Moises Espinosa and Marcial Tamares were looking for him; and that after giving the said warning, Ponte Abinuman proceeded up the port road to his house. Such fact alone does not show that herein appellant had conspired with Lagarde in the commission of the crimes charged, even if it were true that upon receipt of such information, Lagarde decided to kill Moises Espinosa and Marcial Tamares under the fear that if he did not get them first, they will kill him. We agree with the observation of the court below, that the testimony of Manuel Lagarde, coming as it does from a co-accused with a string of convictions of various other offenses, deserves scant consideration; and perhaps it may be said that the testimonies of herein appellant and Antonio Aum are also not very reliable. But the weakness of a defense alone cannot be the basis of conviction. The guilt of the accused must be proved beyond reasonable doubt, and this, the prosecution failed to establish. It appears that the name of herein appellant was mentioned for the first time by the surviving victim, Moises Espinosa, only when he testified in court. When he came home immediately after the shooting, Moises appears to have reported to his father that they were shot by "Magallanes and his companions". In his statement taken during his confinement at the Masbate Provincial Hospital where he was taken a few minutes thereafter, Espinosa declared that his assailants were "Lagarde, Magallanes, Viterbo, Cornal and other policemen". He explained later in court that he failed to mention the names of Julian Bartido and Ponte Abinuman (herein appellant) on that occasion because then he was already feeling weak and dizzy as a result of the serious wounds he sustained; and that when he mentioned other policemen, he was really referring to Julian Bartido and Ponte Abinuman. However, we cannot overlook the fact that such failure on his part to make mention of the name of herein appellant at the time would create doubt in a reasonable mind as to the truth of his reference to Bartido and Abinuman as the persons he was referring to by saying "other

policemen", in the light of his admission in court that he knew accused Julian Bartido and herein appellant very well long before the shooting; and that he was aware of the fact that they were not policemen at the time. Added to this is the circumstance that Ponte Abinuman appears to have been taken into the custody of the authorities shortly after, at 6:45 a.m. of the same day, of the shooting, and remained in confinement thereafter, and wonderfully enough, his hands were found negative of gunpowder when he was examined by the NBI with Lagarde and Bartido who, on the other hand, proved to be positive of gun powder. Such circumstances, coupled with the fact, already mentioned, that the trial court appears to have doubted the veracity of the testimonies of Moises Espinosa and Harry Cortes to the effect that herein appellant was one of the men seen at the scene of the crime by said witnesses, give support to the inevitable conclusion that the guilt of herein appellant was not proved beyond per adventure of doubt. Consequently, the decisions in this case, as to him, should be reversed.

WHEREFORE, herein appellant Ponte Abinuman is acquitted, and his immediate release is hereby ordered. Costs de officio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro and Fernando, JJ., concur.

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