

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAYMUNDO MADERA @ “MUNDO”, MARIANITO V.
ANDRES @ “TOTOY”, GENEROSO ANDRES
“ROSS”, DEFENDANTS-APPELLANTS.**

G.R. No. L-35133. May 31, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This case is now before Us on appeal of the three appellants from a decision of the Circuit Criminal Court[1] finding them guilty of the crime of murder, and sentencing them to suffer the penalty of reclusion perpetua and to jointly and severally indemnify the heirs of the victim in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the cost proportionately.

There is no question that at about 2:00 o'clock in the early morning of April 20, 1970, three men barged at the doorstep of the house of the victim Elin0 Bana in Sitio Baag, Barrio Bantug, Gabaldon, Nueva Ecija. The gunman, standing on the first rung of the stairs of the house, fired a volley of shots from a .45 caliber gun at Elin0 Bana who was then sleeping on the floor of his house near the stairs. Two gunshot wounds were inflicted on the victim but the fatal one was the one that hit him on the abdominal region. Elin0 Bana did not die immediately. He stood up and told his wife to call for his brother Conrado who lives not far away from their house. The victim's wife fetched Conrado; but when they returned, the wounded man was no longer at home for he was already brought to the Municipal Building of Gabaldon. He was carried by his son-in-law, Francisco Vilorio, with the assistance of some people. From the Municipal Building, he was brought to the Nueva Ecija General Hospital, but he died on the way that same day, April 20, 1970.

We affirm the lower court's finding that the prosecution has proven beyond reasonable doubt that appellant Raymundo Madera was the one who fired the shots at the victim Elin0 Bana, one of which was the fatal shot, and that appellants Marianito Andres and Generoso Andres were with Madera at the time.

Juanito Bana, a son of the victim, testified that he was awakened by the gunfire and saw the appellant Raymundo Madera standing on the first step of their stairs holding a .45 caliber firearm. He also saw the appellants Marianito Andres and Generoso Andres just behind the appellant Madera, at a distance of 1 1/2 meters from the stairs. Bernarda Bana, wife of the victim, declared that she saw Raymundo Madera as the one who shot her husband with a foot-long firearm, and appellants Marianito Andres and Generoso Andres were then with Madera.

In addition to the testimonies of these two witnesses, the prosecution presented the dying declaration of the victim Elin0 Bana. The trip from the house of Elin0 Bana to the Municipal Building took only about thirty minutes. On the way, they were met by policeman Ambrosio Feliciano from Gabaldon who was fetched from his house by Barrio Captain Emiliano Jurnadal of Ban tug to look into the shooting incident. Upon reaching the Municipal Building, Patrolman Feliciano told Elin0 Bana that he would have to take down his written statement regarding the shooting incident, and the latter agreed. The latter was then in agony. It was then 3:00 o'clock in the morning.

In said dying declaration, he was asked who shot him and the answer was: Mundo Madera and two others whom he could not recognize.

The lower court was correct in refusing to give credence to the testimony of Patrolman Feliciano that while they were on their way to the Municipal Building, Elino Bana told him that he could not identify the persons who shot him. Said policeman has been an investigator in the police force since 1964. He should have asked Elino Bana while he was giving his dying declaration in the Municipal Building why he said earlier that he did not know who shot him. But Patrolman Feliciano did not do this. It must be noted that not only Patrolman Feliciano but also Francisco Viloria, a witness to the dying declaration, testified to its lawful execution.

The fact that Juanito Bana and Bernarda Bana failed to reveal right away the identities of the appellants to the victim himself and to their relatives Conrado Bana and Francisco Viloria, does not militate against their credibility. There is no evidence on record that they were asked by their relatives about the identity of the appellants. Had they been asked, they would have readily revealed appellants' identities as they did to the Chief of Police and Municipal Mayor of Gabaldon only a few hours after the fateful incident, during a formal investigation of the case in the Office of the Chief of Police when and where they executed their respective sworn statements.

In their respective written statements taken on April 20, 1970, subscribed and sworn on the same date before the Mayor of Gabaldon, Bernarda Bana and Juanito Bana categorically stated that Elino Bana was shot by Raymundo Madera @ Mundo, while Ross and Totoy Andres were downstairs.

Juanito Bana was then living with his parents. He must be familiar with their house. He testified on direct examination that he slept in the balcony of their house. On cross examination, he said that he slept inside their house. That does not show any inconsistency in his testimony, because on further questioning, he said that the balcony referred to by him was inside their house. Yes, he said that after he heard the shots, he jumped to the ground through the back portion of their house. The falsity of this statement has not been shown by the defense. The pictures presented by it which apparently show that there was no such opening, can be explained by the fact that the tall grasses could obscure the back portion of the house where the kitchen door was located.

Juanito Bana admitted that he was gripped with fear when he heard the burst of gunfire. But that would not prove that he failed to recognize the appellants.

"An excited person may overlook the presence of another whom he would otherwise have observed."

"Under some circumstance, however, excitement may whet the attention to a keen edge. x x x in some other cases, it has been observed, in effect, that the emotion incident to the impending peril may not be the kind of excitement which confuses, but that which focalizes the faculties to scrutinize the circumstance of the threatened danger in order to avoid it.[2]

The appellants asserted in their briefs[3] that "the evidence on record does not show that there was a moon shining in the early morning of April 20, 1970, at Barrio Bantug, Gabaldon, Nueva Ecija;" that it was then "a moonless night;" hence, Juanao Bana and Bernarda Bana could not have recognized the appellants. This position is untenable. Why?

The Court can take judicial notice of the "laws of nature"[4] and, under this rule, of the time when the moon rises or sets on a particular day.[5] This notwithstanding and for certainty, We took it unto Ourselves to get a certification from the Weather Bureau[6] which shows that the moon was bright at the time of the shooting incident. It reads:

"To whom It May Concern:

"This is to certify that, based on the computations made by this office, the following astronomical data for Gabaldon, Nueva Ecija are true and correct:

- That the moon rose at 4:11 P.M. on April 19, 1970 and set the following day, April 20, at 4:27 A.M.;
- that at 2:00 A.M. on April 20, 1970, the moon was at an altitude of 34 degrees above the western horizon with bearing of South 73 degrees West;
- and that the moon was illumined 97% at 2:00 A.M. on April 20, 1970, full moon having occurred at 00.21 A.M. on April 22, 1970.

"This certification is issued upon the request of Mr. Estanislao Fernandez, Associate Justice, Supreme Court, Manila.

For the Administrator:

(Sgd) Simeon V. Inciong
SIMEON V. INCIONG
Chief, Astronomical Division"

It was not necessary for the prosecution to prove motive on the part of the appellants for there is no doubt as to their identities.

It is true that, according to Maximo A. Obra, the forensic chemist of the NBI, appellant Raymundo Madera was found negative in a paraffin test. But Obra himself admitted that, the paraffin test having been conducted fourteen days after the incident, the test could have given a negative result even if the appellant had fired a gun fourteen days earlier, because the nitrate deposits on his hands could have been washed off by washing or could have been removed by perspiration.

The defense of the appellants was alibi. But said defense cannot prevail over the positive identification of the appellants by the prosecution witnesses. The house of appellant Raymundo Madera is just about 400 meters away from that of the victim Elinio Bana.

We need not discuss further the defense of alibi of the appellants Marianito Andres and Generoso Andres because the Solicitor General recommended their acquittal. And We agree. The fact that these two appellants were standing behind appellant Madera when the latter fired shots at Elinio Bana, did not make them liable for what Madera did, there being no proof whatsoever of any conspiracy among the three appellants. They were not armed. They did nothing to help Madera. Their mere passive presence at the scene of the crime did not make them liable either as co-principals or accomplices. In one of the latest decisions of this Court, penned by Justice Felix Q. Antonio, We held:

'It is well to recall the settled rule that conspiracy presupposes the existence of a preconceived plan or agreement and in order to establish the existence of such a circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be established a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design. Considering the far-reaching consequences, of criminal conspiracy, the same degree of proof required for establishing the crime is required to support a finding of its presence that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.

"The evidence fails to meet such requirements. To hold him liable, upon the other hand, as an accomplice, it must be shown that he had knowledge of the criminal intention of the principal, which may be demonstrated by previous or simultaneous acts which contributes to the commission of the offense as aid thereto whether

physical or moral. As aptly suited in *People vs. Tamayo*: 'It is an essential condition to the existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice, but it is further necessary that the latter, with knowledge of the criminal intent, should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious way.' From our view of the evidence it has not been convincingly established that appellant cooperated in the commission of the offense, either morally, through advice, encouragement or agreement or materially through external acts indicating a manifest intent of supplying aid in the perpetration of the crime in an efficacious way. Such circumstances being absent, his mere passive presence at the scene of the crime certainly does not make him either a co-principal or an accomplice in the commission of the offense." [7]

This is good a time as any to emphasize upon those in charge of the prosecution of criminal cases that the prosecutor's finest hour is not when he wins a case with the conviction of the accused. His finest hour is still when, overcoming the advocate's natural obsession for victory, he stands up before the Court and pleads not for the conviction of the accused but for his acquittal. For indeed, his noble task is to prosecute only the guilty and to protect the innocent. We, therefore, commend Solicitor General Estelito P. Mendoza, Assistant Solicitor Dominador L. Quiroz and Solicitor Sinfronio I. Ancheta for having correctly recommended the acquittal of the appellants Marianito Andres and Generoso Andres.

WHEREFORE, the decision appealed from is hereby affirmed with respect to the appellant Raymundo Madera alias "Mundo", with 1/3 of the cost charged against him; and it is hereby reversed as regards appellants Marianito Andres alias "Totoy" and Generoso Andres alias "Ross", who are hereby acquitted of the crime charged with proportionate costs de oficio. Their immediate release from confinement is hereby ordered unless they are held for another legal cause.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Aquino, JJ., concur.

[1] Fourth Judicial District, Cabanatuan City, Nueva Ecija.

[2] II Moore on Facts, pp. 751;753.

[3] One brief was filed for the appellants Marianito Andres and Generoso Andres, and another for the appellant Raymundo Madera.

[4] Section 1, Rule 129, revised Rules of Court.

[5] Francisco's Evidence, Vol. VII, Par I, p. 80.

[6] Now called the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA).

[7] *People vs. Custodio*, 47 SCRA 289, 302 to 303.

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