

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AMELITO BELTRAN, DEFENDANT AND APPELLANT.***G.R. No. L-31860. November 29, 1974*

Ponente: ANTONIO, J.

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Appeal from the judgment of the Court of First Instance of Agusan dated May 13, 1969, finding appellant Amelito Beltran guilty of murder in Criminal Case No. 2769 and sentencing him to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, to indemnify the heirs of Clemente Pingol in the sum of P6,000.00, and to pay the costs.

There appears to be no dispute as to the basic fact that on the evening of September 21, 1963, Clemente Pingol was fatally shot from behind with a shotgun while he was in the sala of the unfinished house of Crisanto Tubo at Barrio Tagpangahoy of the Town of Tubay, Province of Agusan. A report of the incident reached the Chief of Police of Tubay and on the following day, September 22, 1963, Chief of Police Zotico Cepeda, Pat. Juanito Antiporda, Municipal Judge Edgardo Batitang, and Dr. Jose Encarnado, of Tubay, proceeded to the scene of the crime. They saw the body of Clemente Pingol sprawled on the floor of the sala in the unfinished house of Crisanto Tubo. As shown by the sketch (Exhibit "A") prepared by Pat. Antiporda, the house is situated 19 meters from the seashore, and consisted of a small sala which was completely open because it had no walls, and the living quarters on the western portion thereof which was enclosed with walls. On the western wall were found two pellet holes (Exhibits "E-3" and "E-4"). Northeast of the sala about four and a half (4-1/2) meters away was a coconut tree (Exhibit "A-6"). An autopsy on the deceased was performed. According to the necropsy report, the victim sustained eight (8) punctured wounds which were caused by shotgun pellets, the right lung was totally mutilated and the third right rib fractured. Death was due to internal hemorrhage as a consequence of the injury to the right lung and to the brain.

It was only on September 30, 1963, however, when Ernesto Dua and Raymundo Dua implicated Amelito Beltran as the person who fatally shot the deceased. On the basis of the statements of the Dua brothers, Sgt. Francisco Umbao of the constabulary filed, on October 1, 1963, with the Justice of the Peace Court of Tubay, a complaint for murder against appellant Amelito Beltran. Solely on the basis of the identification made by the Dua brothers, the court a quo found appellant guilty beyond reasonable doubt of murder and rendered the judgment heretofore adverted to.

Since the conviction of appellant was based on the testimonies of Ernesto Dua and Raymundo Dua, there is, therefore, a need to scrutinize carefully their respective testimonies. Raymundo Dua, 25 years of age, farmer of Tubay, Agusan, testified that at about 8:00 o'clock on the evening of September 21, 1963, while he was at the porch of their house at Bo. Tagpangahoy, Town of Tubay, Agusan, conversing with his brothers, mother and father, he saw appellant helping one Felimon Sandigan haul a banca from the sea to the shore; that afterwards, appellant walked past their house carrying a shotgun on his shoulders and proceeded directly towards the house of Crisanto Tubo and upon reaching a coconut tree in front of the house, concealed himself behind said tree and fired

with his shotgun at Clemente Pingol; that at the time of the shooting, Pingol was then sitting and facing Crisanto Tubo with whom he was conversing; that Tubo was with his wife and adopted child; that appellant was then about three (3) arms length from Pingol when he fired the shot; that he could recognize the face of Amelito Beltran because of the light coming from a torch locally known as "moron"; that after shooting the victim, appellant Beltran fled from the scene by taking the same route, passing near the porch of the house of the witness; and on the following morning, he went to the house of Crisanto Tubo where the police were already investigating the incident and saw the body of the deceased still sprawled on the floor. On cross-examination, he indicated that their house was about fifty to sixty meters distant from that of Crisanto Tubo, and between those two houses was the unoccupied house of Eulogio Tilleno; that in spite of that distance, he claimed that he could distinctly hear the ordinary conversation going on between Tubo and Pingol who were talking and joking with each other for quite some time in the presence of Anselma, Tubo's wife; that at the time they were conversing, they were facing each other with the back of Clemente Pingol towards the coconut tree; that when he saw somebody aim a shotgun at Pingol, he did not shout because he was afraid; that he did not inform the police immediately of what he saw.

His younger brother, Ernesto Dua, gave substantially identical testimony.

I

The important question to be determined is whether the appellant was the person who perpetrated the offense. Examining carefully the evidence of the prosecution about the identity of the assailant, We find that the prosecution's evidence leaves much to be desired. The identity of the offender, like the crime itself, must be proven beyond reasonable doubt. The question of the identification of an accused as the perpetrator of an offense might seem to be the simplest that could possibly come before a court. But the fact is precisely the reverse. The question of identification has proved itself over and over again, by far, instead the most perplexing. As one court has observed: "There are few more difficult subjects with which the administration of justice has to deal. The carelessness or superficiality of observers, the rarity of powers of graphic description, and the different force with which peculiarities of form or color or expression strike different persons, make recognition or identification one of the least reliable of facts testified to even by actual witnesses who have seen the parties in question. x x x"[1]

In the case at bar, the identification of appellant bears heavily on the reasonableness or probability of the testimony of these witnesses. It has been observed that the most positive testimony of a witness may be contradicted by the fact that the testimony is contrary to common observation or experience,[2] or the common principles by governed,[3] The courts are not required to believe that which they judicially know to be incredible.[4]

II

According to appellant, the credibility of the testimonies of Raymundo and Ernesto Dua is impaired by their apparent improbability. We agree. We find it highly improbable that appellant would make his presence so conspicuous to these witnesses by passing near them with a shotgun on his shoulders immediately before and even after shooting the victim. According to the prosecution witnesses, a person can bring his banca ashore immediately behind the house of Crisanto Tubo, and, therefore, can go to the coconut tree in front of Tubo's house without passing by the house of the Duas. It is quite incredible, therefore, that appellant, instead of taking the shorter and more direct route, should have taken the longer and more circuitous route by landing behind the house of the Dua brothers, then walk past the porch of their house where the Dua brothers were conversing with the rest of their family and in plain view of these people, proceed to the place of the victim.

Considering that visibility was practically nil, as according to the prosecution evidence, the night was so dark that a person ten meters away could not be seen, much less recognized, it is highly improbable that the Dua brothers could have distinctly recognized appellant who was allegedly hiding behind a coconut tree about fifty to sixty

meters away. It is true that they claim that they were able to recognize appellant by the light of a torch ("moron"), but the infirmity of this assertion lies in the fact that an assassin hiding behind a coconut tree would certainly not expose his face to the light to enable others to identify and recognize him. Apart from this, according to the sketch prepared by the police (Exhibit "A"), the kerosene lamp was placed inside the sleeping quarters of Crisanto Tubo which was partly enclosed with walls, and not in the sala of the house where Tubo, with his wife and adopted child, were conversing with the victim. Considering the location of the lamp, its limited luminosity and the pitch-black darkness of the night, it is highly implausible that even with the aid of such light, Raymundo and Ernesto Dua could have positively recognized the face of an assailant hiding behind a coconut tree about fifty or sixty meters away. Moreover, if it were true that Crisanto Tubo was talking with Pingol at the time when the latter was shot from behind, it is evident that Tubo was in the best position to see the assailant, but it appears that this person was neither investigated nor questioned by the police in connection with the incident. This indicates that the assailant was able to conceal his presence in such a manner that even Tubo was not able to see him. It should be noted also that the conduct of these witnesses immediately after witnessing a startling occurrence shows lack of spontaneity and sincerity. Thus, after seeing a neighbor killed in a shocking manner, in an apparent indication of lack of concern, they continued chatting until nine o'clock that night, then retired and slept soundly, and although they saw the police authorities inquiring from the people there as to how and by whom the victim was killed, when they went to see the cadaver of the victim in the house of Tubo the following morning, they never bothered to inform the police of what they knew.

"Q.

After that conversation that night, you slept?

A.

Yes, sir.

Q.

So with Raymundo Dua you were able to sleep?

A.

Raymundo Dua did not go to bed yet.

Q.

You mean to say you left Raymundo Dua when you went to sleep?

A.

No, sir, we were still conversing.

Q.

Up to what time were you conversing in the evening?

A.

Up to nine o'clock in the evening.

Q.

And after nine o'clock you and Raymundo Dua and your parents went to sleep?

A.

Yes, sir.

Q.

And you woke up the next morning already?

A.

Yes, sir.

Q.

And when you woke up you had your breakfast?

A.

Yes, sir.

Q.

You did not go to your farm that morning?

A.

No, sir.

Q.

And you said you went to the house of Tubo that morning, you went there because you saw some persons and policemen going to the house of Tubo that morning, is it not?

A.

Yes, sir.

Q.

And when you went there you did not talk with anybody?

A.

Nobody.

Q.

And nobody talked to you?

A.

Nobody.

Q.

You feel uneasy on the witness stand, are you sick?

A.

I have just recovered from malaria.

Q.

On that morning after the incident, you did not go to the municipal building of Tubay, Agusan, is it not?

A.

No, sir.

Q.

As a matter of fact, when the policemen brought the body of Pingol to the municipal building you did not go with them?

A.

I did not go.

Q.

How about your brother Raymundo Dua, did he go with them or not?

A.

He did not go." (t.s.n., April 5, 1968, pp. 41-42).

The testimony of Raymundo on this point is the same (t.s.n., April 3, 1968, p. 20):

"Q.

You went to the house of Tubo because you noticed there were already policemen there?

A.

Yes, sir.

Q.

If you did not see any policemen, you would not have gone to the house of Tubo?

A.

That is right.

X X X X X X X X

Q.

You did not bother to talk or give them any information?

A.

No sir, I did not."

It should be noted that the Dua brothers themselves were also arrested as suspects in the commission of the crime and it was only then that they executed their respective statements implicating the appellant. This circumstance renders their motive in so incriminating appellant highly suspicious:

"Q. On that morning of the incident you did not go to the municipal building of Tubay, Agusan, is it not?

A. Yes, sir.

Q. As a matter of fact, when the policemen brought the body of Pingol to the municipal building you did not go with them?

A. I did not go.

Q. How about your brother Raymundo Dua, did he go with them or not?

A. He did not go.

Q. From that date you did not go anymore or report the matter to what you narrated to the authorities in the municipal building of Tubay, Agusan?

A. We were arrested by the police.

Q. You were arrested because you were suspected as having shot Clemente Pingol?

A. Yes, sir.

Q. As a matter of fact the PC soldier told you that if you will not testify against Amelito Beltran you will be the

one in jail, is it not?

A. Yes, sir.

Q. And because you were afraid that you will be sent to jail, you agreed to testify against Amelito Beltran?

A. Yes, sir.

"Q. And when you were brought to the municipal building of Tubay you were told by the PC Sgt. Umbao to sign a certain paper or affidavit, is it not?

A. Yes sir, he made us sign.

Q. And this is the affidavit which we request to be marked as Exhibit 2, which is found on pages 3 and 4 of the record, which Sgt. Umbao told you to sign, is it not?

A. Yes, sir.

Q. And after you signed, PC soldier Umbao told you that he will bring you to the judge and to tell the judge that the contents of this affidavit are true and you will answer yes, is that correct?

A. Yes, sir.

Q. And in compliance with his order, when you were brought before the judge and when the judge asked you whether the contents of the affidavit were true, you answered 'Yes', is it not?

A. We were made to swear before him.

Q. And after you have appeared before Judge Batitang you were released and you were told to go home, is it not?

A. Yes, sir." (t.s.n. supra, pp. 42-43, Sanchez).

Finally, there is nothing in the record any fact or circumstance from which We can deduce or infer the existence of any possible motive on the part of appellant to commit this heinous crime. It is true that motive is not essential for the conviction of an accused where there is no doubt as to his identity as the culprit, but where the identification proceeds from an unreliable source and the testimony is inconclusive and not free from doubt, then evidence of motive becomes necessary.[5] Here, the identification of the appellant as the assailant of the victim is not convincing. In view of the unreliability of the identification of appellant, the defense of alibi interposed by him, therefore, assumes importance. According to appellant, he was in Barrio Lucbon of the said municipality from the afternoon of September 21, 1963 to the early morning of September 22, 1963 attending to the making of copra for Ofemio Novero. This testimony was corroborated by Realino Botoy, a farmer and resident of Tubay, and by Ofemio Novero, the person who employed appellant. These witnesses also affirm that on the evening of September 21, 1963, it was dangerous to travel by means of a baroto or small banca from Lucbon to Tagpangahoy, the situs of the incident, as the tide was not only high but the waves were very big. Appellant also

explained that prior to this incident, Ernesto and Raymundo Dua were ejected from the land of his grandfather because they stole his coconuts, which act the Duas must have resented.

While it is true that an "alibi is the weakest defense that an accused can avail of, it acquires commensurate strength where, as in this case, no positive and proper identification has been made by the witnesses of the offender. The prosecution has the onus probandi in establishing the guilt of the accused and the weakness of the defense does not relieve it of this responsibility." [6]

Considering the aforecited infirmities of the testimonies of the prosecution witnesses, We are not satisfied that the constitutional presumption of innocence accorded to appellant has been overcome. To overcome that presumption, the guilt of appellant must be shown beyond reasonable doubt. While this does not connote absolute certainty, it means that degree of proof which after an investigation of the whole record, produces moral certainty in an unprejudiced mind of appellant's culpability. It signifies such proof "that convinces and satisfies the reason and conscience of those who are to act upon it" that the defendant is guilty of the crime charged. [7]

As Justice Fernando emphasized: "The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime." [8]

Accordingly, the judgment a quo is reversed, and the appellant, Amelito Beltran, is hereby acquitted. Costs de officio.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] Estate of Bryant, 176 Pa. 309, 318, 35 Atl. 571, 577 cited in Wall, Eye-Witness Identification in Criminal Cases, 1965 ed.

[2] People vs. Vergara, 82 Phil., 207; People vs. Bentley, 191 NE. 230, 357 Ill. 82, 98 C.J.S. p. 340, note 45.

[3] People vs. Sagayno, Nos. L-15961-62, October 31, 1963; Tierney vs. Hotz, 55 A. 2d 39, 141 N.J. Eq. 114, 98 C.J.S., p. 341, note 46.

[4] People vs. Zapata, No. L-11074, February 27, 1960; Larsen vs. Bliss, 91 P. 2d 811, 43 N.M. 265, 98 C.J.S., p. 341, note 47.

[5] Cf. U.S. vs. McMann, 4 Phil., 561; People vs. Tagasa, 68 Phil., 153; People, vs. Caggavan, 94 Phil., 118; U.S. vs. Sespene, et al., 102 Phil., 209, 210; People vs. Murray, 105 Phil., 591; People vs. Cunanan, 19 SCRA 769, 781; and People vs. Herila, 51 SCRA 31.

[6] People vs. Baquiran, 20 SCRA 451, 460-61; and People vs. Cruz, 32 SCRA 181, 187.

[7] People vs. Lavarias, L-24339, June 29, 1968; and People vs. Dramayo, L-21325, October 25, 1971.

[8] People vs. Reyes, L-36874-76, September 30, 1974.

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