

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO SOMONTAO, DEFENDANT-APPELLANT.

G.R. Nos. L-45366-68. March 27, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an appeal from the decision rendered by the Court of First Instance, Branch VI of Malaybalay, Bukidnon, 15th Judicial District, which convicted Federico Somontao alone, among several named accused.

On May 14, 1975, Acting Provincial Fiscal Arcadio D. Fabria charged on three separate counts of murder and two frustrated murders before the Court of First Instance of Bukidnon the same group of accused: Ciriaco Ganahon, Florencio Albulario, Federico Somontao, Donato Donggo, Silvino alias Gaye Somontao, thus:

"That on or about the 28th day of July 1974 in the afternoon, in barrio Patpat, Municipality of Malaybalay, Province of Bukidnon, Philippines and within the jurisdiction of this Honor-able Court, the above-named accused together with Conrado Maniano, Celestino Miake alias Felomino Miake and Carido Meleston, who are still at large, with intent to kill and with the use of assorted unlicensed firearms with which they were conveniently provided by means of treachery and evident premeditation, conspiring together and mutually helping one another, did then and there wilfully, unlawfully, and criminally assault, attack, ambush and fire at the group of Dr. Casiano Navarro inflicting on the person of xx xx" (p. 13, rec.):

"xx xx Mrs. Emerita Navarro the following gunshot wounds xx x xx which directly caused her instantaneous death

xx xx xx xx

"Contrary to and in violation of Article 248 of the Revised Penal Code" (p. 4, rec. of CC 1129).

"xx xx Casiano Navarro Jr. the following injury xx xx thus the accused had commenced the commission of the murder directly by overt acts but did not perform all the acts of execution which would have produced the death of Casiano Navarro Jr. by reason of some cause other than their own spontaneous desistance.

"The crime is committed by a band.

"Contrary to and in violation of Article 248 in relation to Article 6 of the Revised Penal Code" (pp. 3-4, CC 1130). "xxx x on the person of the latter, the following injury to wit: xx thus the accused had commenced the commission of murder directly by overt acts but did not perform all the acts of execution which would have produced the death of Dr. Casiano Navarro by reason of some cause other than their own spontaneous desistance.

"The crime is committed by a band.

"Contrary to and in violation of Article 248 in relation to Article 6 of the Revised Penal Code" (p. 2, CC 1131 rec.).

On June 17, 1975, the accused were all arraigned. Assisted by their counsels, Nemesio Beltran, Rube Gamolo and Alfredo Aquino, all pleaded not guilty (p. 112, rec. of CC No. 1129; p. 65, rec. of CC No. 1130; p. 67, rec. of CC No. 1131). The joint trial of the three [3] crimes was commenced on August 11, 1975 and concluded on June 28, 1976 (pp. 22 & 234, rec. of CC No. 1129, Orders of August 6, 1975 & June 28, 1976).

The decision dated October 28, 1976 was promulgated on November 4, 1976 and all the accused were acquitted except herein defendant-appellant. The dispositive portion of said decision reads:

"WHEREFORE, as heretofore stated, the Court hereby acquits on reasonable doubt Ciriaco Ganahon, Florencio Albulario, Donato Dongo and Silvino Somontao in these three cases, and orders the immediate release of Ganahon, Dongo and Silvino Somontao unless detained for the commission of some other crime, and the cancellation of the bail bond posted for the provisional liberty of Albulario.

"In Criminal Cases Nos. 1129, 1130 and 1131 accused Federico Somontao is convicted in all the three charges against him and he is hereby sentenced to suffer imprisonment as follows:

"In Criminal Case No. 1129 -- reclusion perpetua, to suffer the accessory penalties provided for by law, to indemnify the heirs of Emerita Navarro in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay 1/5 of the costs.

"In Criminal Case No. 1130 -- the proper penalty for this case is prision correccional in its maximum period to prision mayor, medium period, this being two degrees lower from the penalty prescribed for the consummated crime of murder under Article 248 in relation to Article 51 of the Revised Penal Code, there being no mitigating or aggravating circumstance. Applying the Indeterminate Sentence Law, the Court hereby sentences the accused Federico Somontao to suffer an indeterminate penalty of six months and one day of prision correccional as minimum to six years and one day of prision mayor as maximum, to suffer the accessory penalties provided for by law, to indemnify Casiano Navarro, Jr. in the amount of P2,000.00 without subsidiary imprisonment in case of insolvency and to pay 1/5 of the costs.

"In Criminal Case No. 1131 -- an indeterminate penalty of six months and one day of prision correccional as minimum to six years and one day of prision mayor as maximum, to suffer the accessory penalties provided for by law, to indemnify Dr. Navarro in the sum of P2,000.00 without subsidiary imprisonment in case of insolvency, and to pay 1/5 of the costs.

"The penalties herein imposed shall be served one after the other beginning with Crim. Cases Nos. 1130 and 1131, but the accused Federico Somontao is entitled to full credit of his preventive imprisonment beginning July 28, 1974 pursuant to the provisions of Article 29 of the Revised Penal Code as amended by Rep. Act No. 6127, the Court taking judicial notice of the fact that detention prisoners are subjected to the same rules and regulations as convicted prisoners" (pp. 39--41, rec.).

On November 10, 1976, the Court granted the motion of defendant-appellant to post bail for his release. On April 13, 1977, the Court ordered his release after he posted bail in accordance with the November 10, 1976 order (pp. 79-81, rec. pp. 295--302, rec. of CC No. 1129).

On February 29, 1977, the notice of appeal filed by defendant-appellant was accepted by this Court (p. 67, rec.).

On December 14, 1981, Attys. Roldan Mangubat and Benjamin Estrada filed a brief for defendant-appellant. They impugned the decision of the court a quo which convicted the accused for hereunder assigned errors as per defendant-appellant's brief:

"1. In convicting accused-appellant without any basis in law and fact -- no proof that accused-appellant is the author of the crime and no proof of conspiracy;

"2. In not being consistent and firm in his Decision by believing the prosecution witnesses testimony against

accused appellant and at the same time not believing the testimonies of the same prosecution witnesses as against the four (4) other accused;

“3. In not acquitting accused-appellant as the case against him is not proved beyond reasonable doubt; and

“4. In convicting the accused-appellant without finding him guilty beyond reasonable doubt” (p. 227, rec.).

The Solicitor General, in his Manifestation in lieu of brief, recommended the acquittal of the appellant on the ground that his guilt had not been demonstrated beyond reasonable doubt.

It appeared that on July 28, 1974 at about 2:00 o'clock in the afternoon, Navarro Jr. drove their jeep from their ranch to the town proper of Malaybalay, Bukidnon. Aboard, beside Navarro Jr., was Mrs. Emerita A. Navarro, with Dr. Navarro at the other end, and three other passengers, Mr. and Mrs. Aniceto Palco and Mrs. Lamayo seated at the back. Along the way, they were ambushed by armed men. After the shooting subsided, the Navarros, without their three passengers, proceeded to the Bethel Clinic for treatment. On arrival thereat, Mrs. Navarro was pronounced dead (Exh. "M"). Dr. Navarro and son were admitted for treatment. The latter left the following day. Dr. Navarro stayed on for a few days.

The wounds sustained by Navarro Jr. were: "a wound entry on the lateral aspect of his left thigh and an exit wound on the medial aspect of the same thigh. No bone damage was seen in x-ray."

The wounds of Dr. Navarro were: "x x a small bullet wound (entry) on the lateral mid thigh (right) and a larger wound (exit) on the medial aspect of the same thigh. X-ray proved the bone to be unaffected and one slug to be lodged behind the right knee" (p. 21, rec. of CC No. 1130).

Dr. Navarro testified that during his confinement, around 200 of the townspeople visited him, among whom were friends including fiscals and investigators. He was pressed by the investigators for answers to their queries, despite his express request that the investigation be put off, because he did not know the answers and did not like to make mistakes, compounded by the fact that he was in a state of shock and pain, and may, as a consequence, be suffering from mental lapses as one under his condition at the time could suffer from. For said reasons, his responses to the queries which appeared in his several statements that were not uniformly signed, varied (pp. 57-60, t.s.n., Aug. 11, 1975; pp. 66-70, t.s.n., Aug. 19, 1975).

Dr. Navarro likewise stated that on that fateful day, after the first volley of fire, without having fully recovered from the shock caused by the sound which he mistook as flat tire, he almost simultaneously heard his spouse Mrs. Navarro's cry of pain, and as he turned towards her to determine her cause of anguish, his leg felt numb because he was also hit; that immediately within split seconds he jumped out of the jeep for cover and to safety; and that during the intervening period, he managed to look at, and thus recognized each of the accused including the guns that they used.

Navarro Jr. stated that he was also in a state of shock and pain when initially investigated (p. 16, rec. of CC No. 1130). During the ambush, Navarro Jr. further stated that he stayed in the jeep longer than Dr. Navarro as he attended to his mother, before he followed suit and jumped out of the jeep for cover.

The Navarros impressed upon the Court that despite the terrorizing rapid succession of occurrences, amidst the volleys of continuous firing, within fleeting seconds, both still managed to pause and thus not only noticed the presence of the ambushers, but that they were able to recognize clearly each one of them, as well as their positions and the guns they used.

Situated as the Navarros were, not even a man with the quickest reflexes will tarry and bother to know who and where the sources of the danger were except to respond to the instinct of self-preservation in the fastest manner

possible, to secure one's life by seeking cover or running for safety. On the other hand, were the ambushers keen on liquidating all of them, they could have done so, equipped allegedly as they were with guns. Nothing appeared to have prevented them from firing continuously until they have killed all persons aboard the jeep that was at full stop. The alleged assailants were about eight (8) or twenty (20) men in all firing their guns from all directions (pp. 4-5, CFI decision; p. 6, t.s.n., Aug. 11, 1975). WE are hard put to believe that the Navarros, not only noticed, but also recognized, each of the faces of their ambushers, the kind of firearms each used, and their positions at the time of the ambush, or that there was a concerted desire among those they named and charged to kill all of them. As the trial court noted, "the testimony of Dr. Navarro on many points detracts from its credibility" (p. 19, decision of the court a quo; p. 137, rec.).

Thorough examination of the testimonies showed that prior to, or at the time of, the ambushade, the Navarros did not see who actually fired the shots that wounded them.

Dr. Navarro's testimony was, to wit:

"Q. More or less, how many people ambushed your group?

"A. In my estimate, around twenty persons ambushed us.

xx xx xx

"Q. When the first burst was heard the jeep was immediately put to a stop?

"A. Yes.

"Q. What happened next?

"A. After it stopped many volleys of fire came x x.

xx xx xx

"Q. Did you notice Mrs. Navarro hit by the first burst?

"A. The second burst.

xx xx xx

"Q. The volleys of fire were rapid and simultaneous?

"A. Yes, they were rapid and simul-taneous.

"Q. And as the firing was going on you noticed that Mrs. Navarro was hit?

"A. Yes.

xx xx xx

"Q. And it was also in the same occasion when the volleys of fire were directed towards you that you were hit?

"A. Yes.

"Q. There was no appreciable interval of time at the time Mrs. Navarro was hit to the time when you were hit?

"A. A split second.

"Q. And when Mrs. Navarro shouted indicating that she was hit you also noticed that you were hit?

"A. Yes.

"Q. What part of your body was hit?

"A. Right leg.

xx xx xx

"Q. When your wife shouted that she was hit the volleys of fire were continuously bursting?

"A. Yes.

xx xx xx

"Q. What is the gap of time when you were hit to the time you jumped out of the jeep?

"A. It did not amount to a few seconds.

xx xx xx

"Q. When you were on the ground after you jumped what was your position?

"A. Crawling.

xx xx xx

"Q. And when you were already in front of the jeep having crawled to that place, the volleys of fire were going on?

"A. Still going on.

xx xx xx

"Q. How long did the volleys of fire continue from the first fire that made you thought it was a tire explosion to the time the jeep was started again by your son Nono to pick you up?

"A. Three minutes firing. Very long" (pp.6, 45-49, 52, t.s.n., Aug. 11, 1975).

"Q. How many seconds have you actually seen the ambushers?

"A. The ambushers on the right, I saw them, more or less, a split second. You cannot stare at them" (p. 94, t.s.n., Aug. 19, 1975).

Navarro Jr.'s testimony was, to wit:

"Q. When you heard the first shot was that also the precise time you noticed your mother hit by the gunfire?

"A. Few seconds later.

xx xx xx

"Q. How many gunshots did you hear before you noticed your mother already wounded?

"A. Several gunshots but I cannot be so sure about the number.

xx xx xx

"Q. Did I hear you right that although when you heard the shots before you found out that your mother was wounded you did not suspect that it was an ambush, is that correct?

"A. Not yet.

xx xx xx

"Q. In other words, at the time when you noticed these volleys of fire or heard these volleys of fire and before you saw your mother wounded, you already saw that group which fired the volleys of fire?

"A. No.

xx xx xx

"Q. Did I hear you right when you said that when you noticed your mother already wounded you attended to her without jumping out of your jeep?

"A. Yes.

"Q. You did that despite the fact that you already knew that it was an ambush?

"A. Yes.

"Q. Your father was also in the jeep attending to your mother?

"A. He jumped out of the jeep as the firings were raging.

"Q. And that was before you noticed your mother wounded?

"A. Simultaneously.

xx xx xx

"Q. And during that specific second you merely were hearing gun-fires?

"A. I merely saw three persons during that particular moment.

xx xx xx

"Q. Did you recognize anybody or not?

"A. I was not able to recognize yet, but I was able to recognize later.

xx xx xx

"Q. At the time when according to you several shots were fired towards you. What was your position?

"A. I was running.

"Q. But you actually did stay running?

"A. I only stopped after I was hit" (pp. 137-140, 144-147, t.s.n., Oct. 8, 1975).

Aside from the Navarros' testimonies which had been rendered unreliable because of their mental and physical conditions when they gave their initial statements, the prosecution failed to present other proof which could have corroborated or strengthened their weak testimonies. The court a quo in fact bewailed the lack of evidence when it said in its decision:

"x x It is pertinent to make an observation in the lamentable and half-hazard manner the police authorities made in the investigation of these cases, thus making the prosecution labor under a handicap. No evidence was shown that all the accused possessed licensed firearms, or that, if they did not have, that an immediate search of the houses of the accused and the vicinities were made to locate the firearms. And as firearms were really used as shown by the wounds inflicted upon the victims, considering the gravity of the offenses committed, no stone should have been left unturned to subject all accused to a paraffin test to determine if they have recently fired guns. A positive finding would have clinched the case for the prosecution, in that there would have been no doubt in the identification made by the prosecution witnesses" (p. 39, rec.).

Neither was there evidence nor proof presented by the prosecution to show that defendant-appellant acted in any manner in conspiracy with the other named ambushers. The absence of proof on conspiracy was settled by the acquittal of all the accused, except appellant Federico Somontao.

Under the foregoing circumstances, Federico Somontao's individual culpability for the crimes charged cannot be determined, much less sustained; and acceptance of his alibi is thus warranted. Alibi of the accused Federico Somontao, was the same as the other accused, that on the date of the ambush he was at a barangay meeting which started at 1:00 o'clock and lasted up to 3:00 o'clock in the afternoon. His presence thereat was confirmed by their witnesses Aida Gumindan, secretary-treasurer of their barrio, who had records of those who were at the meeting (Exh. "4" -- Federico Somontao's name was marked Exh. "4-0") and Chief of Police Litanon who testified that he saw Federico Somontao with Ganahon at the meeting.

Whether the alibi appeared convincing to the court a quo or not in the absence of other stronger and more convincing proof, its acceptance must prevail. "The defense is alibi, known to be the weakest of all defenses, as it is easy to concoct and difficult to disprove. But x x x where the accused's identification is weakened and rendered unreliable, the defense of alibi assumes importance and may be given credence. And while the alibi may not have been proven so satisfactorily as to leave no room for doubt, such an infirmity cannot invigorate at all the weakness of the prosecution's evidence, the reason being that in a criminal prosecution, the State must rely on the strength of its own evidence, not on the weakness of the defense xx x" (People vs. Basuel, 47 SCRA 222-223).

If at all Federico Somontao was seen at the site of the ambush, his presence cannot automatically justify the conclusion that he perpetrated any, much less committed all, of the crimes as even the Navarros themselves did not zero in or pinpoint on him as the person who actually fired all the shots that wounded all or any of them.

WE also said:

"Only by proof beyond reason-able doubt, which requires moral certainty, 'a certainty that con-vinces and satisfies the reason and conscience of those who are to act upon it,' may the presumption of innocence be over-come. For the reasons aforestated, the culpability of appellant Raymundo Basuel has not been demonstrated to meet the requisite legal and moral certainty for a judgment of conviction" (People vs. Basuel, supra, p. 224).

The Solicitor General assailed Federico Somontao's conviction, citing aptly the case of People vs. Beltran (61 SCRA 250-51), in which We said:

"The important question to be determined is whether the appellant was the person who perpetrated the offense. Exam-ining 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 iden-tification 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.'"

WE continued to say:

"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" (People vs. Beltran, supra, p. 255).

WHEREFORE, THE JUDGMENT APPEALED FROM IS HEREBY REVERSED, THE ACCUSED-APPELLANT FEDERICO SOMONTAO IS HEREBY ACQUITTED, AND THE BAIL BOND FOR HIS PROVISIONAL LIBERTY IS HEREBY CANCELLED.

NO COSTS.

Concepcion, Jr., Guerrero, De Castro and Escolin, JJ., concur.

Aquino, J., he dissents. As found by the trial court, the guilt of Federico Somontao was proven beyond reasonable doubt.

Abad Santos, J., no part.

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