

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEDTAL PAMPALUNA Y MAKATAON AND REYNALDO TANEO Y BALLEQUE, DEFENDANTS-APPELLANTS.

G.R. Nos. L-33805-9. March 31, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Appellants were sentenced as follows:

"(1) In CCC-VI-307(70), both accused are hereby found guilty beyond reasonable doubt as principals of the crime of murder qualified by treachery and there being proved the aggravating circumstance of the use of motor vehicles without any mitigating circumstance to offset the same, the Court sentences each one of them to DEATH; to jointly and severally indemnify the heirs of the deceased, Cpl. Nicolas B. Formatilo, the sum of P12,000.00 for the death of the latter, the sum of P10,000.00 by way of moral damages and the sum of P10,000.00 by way of exemplary damages;

"(2) In CCC-VI-308[70], both accused are hereby found guilty beyond reasonable doubt as principals of the crime of frustrated murder, qualified by treachery and there being proved the aggravating circumstance of the use of motor vehicles without any mitigating circumstance to offset the same, the Court sentences each one of them to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum and to jointly and severally pay the victim Sgt. Ildefonso Aycocho, the sum of P6,000.00 by way of moral damages;

"(3) In CCC-VI-309[70], both accused are hereby found guilty beyond reasonable doubt as principals of the crime of attempted murder, qualified by treachery and there being proved the aggravating circumstance of the use of motor vehicles without any mitigating circumstance to offset the same, the court sentences each one of them to an indeterminate penalty ranging from two (2) years, ten (10) months and twenty-one (21) days of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum and to jointly and severally indemnify the victim, Guillermo Lucas, the sum of P6,000.00 by way of moral damages;

"(4) In CCC-VI-310[70], both accused are hereby found guilty beyond reason-able doubt as principals of the crime of attempted murder, qualified by treach-ery and there being proved the aggravat-ing circumstances of disregard of respect due to the victim, Congressman Salipada K. Pendatun, on account of his rank and the use of motor vehicles without any mitigating circumstance to offset the same, the Court sentences each one of them to an indeterminate penalty ranging from four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum and to jointly and severally pay the said victim the sum of P5,000.00 by way of moral damages;

"(5) In CCC-VI-311[70], both accused are hereby found guilty beyond reasonable doubt as principals of the crime of attempted murder qualified by treachery and there being proved the aggravating circumstance of the use of motor vehicles without any mitigating circumstance to offset the same, the Court sentences each one of them to an indeterminate penalty ranging from two (2) years, ten (10) months and twenty-one (21) days of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum and to

jointly and severally pay the victim, Cpl. Ibarra Santos, the sum of P3,000.00 by way of moral damages; and both accused to pay the costs proportionately."

About 8:00 o'clock in the evening of September 24, 1970, former Cotabato Congressman Salipada K. Pendatun and his party, composed of PC Corporal Nicolas Formatilo, PC T/Sgt. Ildefonso Aycocho, Manila Police Corporal Ibarra D. Santos, and driver Guillermo D. Lucas, were on board the Congressman's car - a red Continental limousine -- bound for his home in San Juan, Rizal. Driving the limousine was Lucas, to his right on the front seat was Cpl. Formatilo and to the latter's right was Police Cpl. Santos. Occupying the back seat was Congressman Pendatun who was seated on the right side, with PC T/Sgt. Aycocho on the left side. The car came from the old Congress of the Philippines at Burgos Avenue, Manila, passed through Ayala Bridge and Jose P. Laurel St. (formerly Aviles St.), to Ramon Magsaysay Boulevard (formerly Sta. Mesa Boulevard). Going down the Sta. Mesa railroad overpass, the car cruised along the left side of the right lane of Magsaysay Boulevard near the island to its left as it headed towards Cubao to turn right on J. Ruiz St. for M. Paterno St. in San Juan, Rizal. While approaching the junction of Magsaysay Boulevard and Old Sta. Mesa Street, the car stopped as the traffic signal system at the intersection flashed the red light.

As soon as the car stopped, the occupants heard a volley of shots coming from the rear. An "M-79 launcher grenade" hit the rear glass of the car, piercing it, but did not go through the front glass, and landed on the driver's seat. This was followed by three more volleys of fire. The bullets plowed inside the car, killing PC Cpl. Formatilo and wounding the rest, the most seriously injured of those who survived being Lucas, the driver, who suffered loss of vision of the left eye.

As the firing continued PC Sgt. Aycocho was hit on his back. Despite his injuries he was able to draw his revolver Magnum .357, and to open the left door of the car. As he was about to get out of the car, a shot hit his left toe. He lay prone on the ground and fired twice towards the rear of the car, although he did not see any person there. Driver Lucas, who also fired back 13 shots after reloading his pistol twice, was injured in the left eye; and Manila Police Cpl. Santos, who remained inside the car during the firing, suffered an injury on the small finger of his left hand. Congressman Pendatun came out unscathed; because he crouched on his knees on the car floor when told by Sgt. Aycocho to do so after the first volley.

Shortly thereafter, a team of Metrocom soldiers arrived and the passengers of the car, including the driver, were all rushed to the Magsaysay Memorial Hospital on Magsaysay Boulevard. The car of Congressman Pendatun, which he bought for P7,000.00 or P8,000.00 was riddled with bullets. There was a big hole on the front windshield. Within the vicinity of the ambush were found several empty shells and fragments of slugs. Moments later, an investigator of the Manila Police Department arrived to conduct an investigation of the crime. When interviewed, none of the victims of the ambush was able to identify the person or persons who committed the crime; neither could any one of them provide a description of the person or persons who staged the ambush.

The foregoing are the undisputed facts which spawned these five (5) cases now before Us, for automatic review.

On October 21, 1970, the accused were detained and forthwith five (5) separate informations were filed against them before the trial court, to wit: one for murder, two for frustrated murder and two for attempted murder.

Pleading not guilty at the arraignment on October 23, 1970, the trial court, on motion of one of the accused, gave the accused an opportunity to ventilate their defense at a reinvestigation which was conducted by the Office of the City Fiscal of Manila on December 12, 1970. At this reinvestigation only one witness -- a certain Mrs. Felicidad Besa, a supposed eyewitness of the daring ambush -- was presented and subjected to cross-examination by counsel for the accused on the basis of four (4) statements she gave to the Manila Police Department [Exhibits M, N, O & P; also marked Exhibits 1, 2, 3 & 4; pp. 110-115, rec.]. The reinvestigating fiscal having "found sufficient

evidence against the accused to sustain the allegations in the information," the trial court immediately set the trial of the cases on the merits which lasted for five (5) court sessions, morning and afternoon, beginning December 15, 1970, until the parties rested and the cases submitted for decision on February 8, 1971.

The records show that the prosecution utilized a total of 13 witnesses including doctors, ballistic experts, the four victims of frustrated and attempted murder, two rebuttal witnesses, the police investigator Detective-Cpl. Jesus Senen of the Manila Police Department, and the only supposed eyewitness in the person of FELICIDAD BESA (hereinafter to be referred to simply as BESA), who allegedly saw the ambush from beginning to end.

It thus becomes evident that BESA's testimony becomes crucial and decisive.

What is BESA's story? She claims that at about 8:30 o'clock in the evening of September 24, 1970, she was at the corner of Ramon Magsaysay Boulevard and Old Sta. Mesa Street, in front of the DMC (D & C) grocery (pp. 3-4, 5, t.s.n., Jan. 14, 1971), opposite the Stop & Shop grocery (Exhibit M; Exhibit 1, p. 110, rec.; Exhibit 5-B, p. 131, rec.). In other words, she was more along Old Sta. Mesa Street than along Magsaysay Boulevard (p. 13, t.s.n., Reinvestigation; p. 134, rec.). Since she was a general inspector of the Pasig Bus Operators Association, she was standing at that spot waiting for a bus of the Association which she could board and inspect (pp. 3-4, 49, 52-53, t.s.n., Jan. 14, 1971). While she was thus standing at the said place, which was well lighted by a bright bulb from a Meralco post, she heard a shot behind a red car (Congressman Pendatun's car) which stopped by the island near the junction of Ramon Magsaysay Boulevard and Old Sta. Mesa road when the traffic signal system at the intersection flashed the red light. She noticed two private jeeps following the red car, one of which was two or three meters, more or less, behind the red car, while the other one was on the left side of the red car. In each of the two jeeps, were six men, none of whom she recognized. Both jeeps, like the red car, were facing Cubao. Then the two jeeps turned right to Old Sta. Mesa Street and stopped in front of the Sta. Mesa Catholic Church (pp. 6, 9-10, 11-13, 17, t.s.n., Ibid; pp. 39-40, t.s.n., Reinvestigation, pp. 160-161, rec.).

After the first shot and after the two jeeps had passed by her, a station wagon passed in front of her. While the station wagon was slowly passing in front of her, she saw a man (whom she later identified as the accused Taneo) alight with a long firearm, in port-arm position, stopped in front of her, stared at her -- and she likewise looked at him and at his shoes -- for two or three minutes, then stood on her right side and looked around. Afterwards, another man (whom she later identified as the other accused Pampaluna) followed. This man also stopped in front of her but not for a long time, then stood at her left side. Afterwards, Taneo ran behind the red car and started firing, while Pampaluna went to the right side of the red car and threw something into it. Then Pampaluna moved backward towards the rear of the red car while Taneo went towards the left side of the same car and fired at it. After walking towards the rear of the red car, Pampaluna went to the front of the car and again hurled something into it (pp. 45-48, t.s.n., Reinvestigation, pp. 165-168, rec.; pp. 18-21, 26, 77-78, 79, 112, 113, 128-129, t.s.n., Jan. 14, 1971).

After Taneo and Pampaluna had alighted from the station wagon it proceeded to the Stop & Shop grocery in front of the Sta. Mesa Catholic Church and stopped at the rear of the two private jeeps which earlier passed by in front of her. After the two accused had fired and had thrown something into the red car, they ran to the place where they alighted, stopped and stood for about seven (7) minutes in front of her, then ran to the station wagon, waved to the men in the two jeeps, boarded the station wagon and, followed by the two jeeps, they all roared away in the direction of Mandaluyong, Rizal (pp. 27-28, 81-82, 113, t.s.n., *ibid.*). BESA did not move away from the place where she was standing from the time she heard the first shot to the time she heard the last shot (p. 112, t.s.n., *ibid.*).

Shortly thereafter, a Metrocom car arrived at the scene of the ambush. She pointed to the Metrocom soldiers the

route taken by the gunmen. She even volunteered to go with them in tracking down the culprits, but she was ignored (pp. 29, 83-84, t.s.n., *ibid*). She did not notice what happened to the occupants of the red car, because when the vehicles started moving, the bus she was expecting arrived. She boarded it and went home (pp. 29, 30, 84-85, t.s.n., *ibid*).

Both accused denied participation in the ambush imputed to them and put up the defense of alibi.

In his defense, Reynaldo Taneo testified, among other things, that he was an Agent Corporal of the Philippine Constabulary, residing at Tamon-Taga, Cotabato City, 26 years old and single. He joined the PC in August, 1970 and was assigned to the 4th PC Zone, CIS, Camp Evangelista, Cagayan de Oro City. On September 13, 1970, he was sent to the Province of Davao to follow-up a mission regarding the hijacking case of the boat Doña Felipa, while bound from Hasa-an, Cagayan de Oro to Camiguin Island, Misamis Oriental. He stayed in Davao from September 13 to 21, 1970. On September 21, 1970, he met Supervising Civil Engineer Victorino La Peña of the Bureau of Public Highways, with assignment in Cotabato City, who was then with Dr. Pedro Balolong, Chief of the Cotabato Chest Center (p. 17, t.s.n., Feb. 1, 1971) and many others from Cotabato City. They proceeded to Cotabato City on September 21, arriving there at about 1:00 P.M., the same day. Since they had not yet taken their lunch, Engineer La Peña decided to proceed to the office of Dr. Balolong in order to invite him to have lunch with them at the VIP Restaurant, Cotabato City. From there, they went to the Cotabato City Engineer's Office. While in this office, an incident happened whereby the son of Engineer Reginaldo, one Ivanhoe, alias "Banjo" Reginaldo, Jr., pulled a revolver caliber .22 Smith & Wesson and attempted to shoot Engineer La Peña. Taneo was instrumental in disarming Reginaldo, Jr. and thereafter he issued a certificate of seizure (Exhibit 8, p. 196, rec.). The following day, September 22, 1970, Taneo deposited the confiscated gun, with 6 rounds of ammunition, with the Chief of Police of Cotabato (Exhibit 9, p. 197, rec.). In the morning of September 24, 1970, he saw Engineer La Peña in the residence of Dr. Balolong. From there he accompanied Engineer La Peña to the Cotabato City Engineer's Office, but shortly thereafter, he left for the PC Provincial Headquarters in Cotabato City. However, at about 6:00 o'clock in the early morning of that same day, he and Engineer La Peña went to the VIP Restaurant in Cotabato City, where there was a party. At the party were Engineer La Peña, Judge Japallani, Atty. Bueno of the Comelec, City Health Officer Dr. Balolong, Mr. Ado, the Chief Security Guard of the Cotabato City Engineer's Office, Terio Acosta and the bodyguards of Judge Japallani and company. On that occasion, Engineer La Peña gave him P50.00 to buy a bottle of "Fundador"; but he bought instead two small bottles of "Fundador" costing P48.00 as the long-necked "Fundador" was already out of stock, and he gave the change of P2.00 to one of his companions to buy a pack of cigarettes. The party finished the two small bottles of "Fundador" at about 8:00 P.M. of September 24, 1970. From the VIP Restaurant, at the suggestion of Dr. Balolong (p. 34, t.s.n., Jan. 26, 1971), they proceeded to Dawn's Hotel and Restaurant, also in Cotabato City, where they stayed up to 1:00 o'clock in the morning, September 25, 1970. He went home after that. In short, from 6:00 P.M. of September 24 to 1:00 A.M. of September 25, 1970, he had always been with the group of Dr. Balolong, Engineer La Peña, Judge Japallani and the rest of the group (pp. 21-22, 5-65, t.s.n., January 26, 1971; pp. 26-27, t.s.n., Feb. 1, 1971).

The foregoing testimony of accused Taneo, stripped of non-essentials, was corroborated in practically all its material particulars by Acting Cotabato City Engineer Victorino La Peña (pp. 21-49, t.s.n., Jan. 26, 1971, *Delim*) and by Iriel Ado, Chief Security Guard of the Cotabato City Engineering Office (pp. 53-80, t.s.n., Jan. 26, 1971, *Perez*).

In his defense, the other accused, Gedtal Pampaluna, testified, among other things, that on or before September 24, 1970, he was already a student of Criminology at the University of Manila, and the schedule of his classes was from 5:00 o'clock to 9:00 o'clock in the evening. On September 24, 1970, he was not able to attend his classes because he was sick with flu. He caught the flu at about 7:00 o'clock in the evening of September 23, 1970, and he

got well only on September 25, 1971, despite which he still stayed at home in the house of the Sinsuats at Timog Avenue, Quezon, City. During the time he was sick, Dr. Neri and his wife, Mrs. Alegria Neri, who is a pharmacist, came. Dr. Neri took his blood pressure because he was not feeling well, and then told the cook of the Sinsuats, Mrs. Galang, to buy medicine. Mrs. Neri was the one who gave him the tablets and a capsule. During all that time also, he was always lying down, resting, and only got up from bed when-ever it was time to eat. His employer was Datu Umbra Sinsuat, for whom he drove and who paid him P210.00 every month as driver. He had been with the Sinsuats for two years, more or less. His employer is an uncle of Datu Blah Sinsuat. He was a pensionado of the Commission on National Integration, then headed by Commissioner Mama Sinsuat. He became a pensionado during the time of former Senator Tamano, upon the recommendation of Congressman Pendatun. Before he came to Manila he was already staying with the Sin-suats in Dinait, Cotabato City.

The foregoing testimony was corroborated in all its material details by Mrs. Alegria J. Neri (not Marry) [pp. 2-10, t.s.n., Jan. 26 (p.m.), 1971] and by the cook, Mrs. Soledad Soliman-Galang (pp. 2-16, t.s.n., Jan. 26 [p.m.], 1971).

On October 27, 1971, the court a quo promulgated its decision of seventy-six (76) pages.

After reading and re-reading the entire testi-monial evidence, We are unable to shake off persistent doubts on the veracity of Besa's testimony.

Before pointing out the portions of the testimony of the star witness for the prosecution, which are inherently improbable or inconsistent with human experience and with motives that actuate human beings, or contain contradictions, or opposed to all reasonable probabilities as to be manifestly false, the place of the ambush and its immediate vicinity should be visualized.

This Supreme Tribunal, sitting in Manila, takes judicial notice of the following geographical facts in Manila:

- The former Stop & Shop Grocery store (now Shop Drug) is on the opposite corner of Old Sta. Mesa Street, but obliquely to the right [facing Cubao] of the former D & C Grocery store (now Fernando Super Market), also located at the opposite corner of Old Sta. Mesa Street. The front door of the D & C Grocery Store is directly opposite the service road beside Stop & Shop Grocery, it being an extension of the same service road beside D & C Grocery Store. This service road, which is about 11 meters wide, gradually goes upward, then it turns a little to the right as it approaches old Sta. Mesa Street, then left oblique on the right side of Stop & Shop Grocery, ending farther up till the beginning of Santol Street which crosses or intersects with Magsaysay Boulevard which goes towards Cubao, Quezon City.

- To the left of this service road, starting from the right side of the Sta. Mesa railroad over-pass facing Cubao, is a strip of land usually referred to as an island which is an extension of the right sidewalk of the railroad overpass. This strip of land or island is about six (6) meters wide and is on the same level as the right lane of Magsaysay Boulevard. It gradually goes up until it is cut by the intersection of Old Sta. Mesa Street coming from Mandaluyong or San Juan and the foot of the hilly extension. This portion of Old Sta. Mesa Street, which is actually the intersection of Magsaysay Boulevard and Old Sta. Mesa Street is about seventeen (17) meters wide.

- Below the curved tip of the island first described above, at a distance of about nine (9) meters from the right side of Old Sta. Mesa Street going to Mandaluyong or San Juan, stands a Meralco electric post with bulb. Near this post is a hook--like lamp post with a mercury lamp, the egg-shaped base of which is cemented up to a height of a little less than one (1) meter. This lamp post, together with another one opposite and standing on the side-walk of the left lane of Magsaysay Boulevard facing Cubao, illumines the entire junction at night.

- Magsaysay Boulevard proper from the foot of the railroad overpass is divided into two lanes. The right lane, as one goes to San Juan and Quezon City, is about eleven (11) meters wide. It gradually goes up to that high portion

on the same level as the island which intersects Santol Street.

- In between the right and left lanes of Magsaysay Boulevard is an island about two meters wide and one meter high.

- Just above the center of the intersection of Magsaysay Boulevard proper and Old Sta. Mesa Street, is the hanging traffic signal light system, supported by wires coming from three (3) high Meralco posts, one standing at the foot of the hilly island on the right side of Magsaysay Boulevard, another behind the Meralco post with light on the right edge of the island separating the right lane of Magsaysay Boulevard facing Cubao and right service road beside D & C Grocery, and still another one on the left sidewalk of the left lane of the same Boulevard facing Cubao.

- From the front door of the D & C Grocery (now Fernando Super Market) facing Stop & Shop Grocery, to the traffic signal light system is about 32 meters; from the same spot to the foot of the Meralco electric post with light and with cemented base is about 24 meters; from the same spot to the one-meter high and two-meter wide island separating the right and left lanes of Magsaysay Boulevard is about 35 meters; and from the Meralco electric post with light on the six-meter wide island on the same level as the right lane of Magsaysay Boulevard, to the front of Sta. Mesa Catholic Church is about 60 meters.

- Anyone standing by the Meralco electric post cannot possibly see that portion of Old Sta. Mesa Street in front of the Sta. Mesa Catholic Church, since the distance between the two points is curving and the two places are obstructed by the left corner of the building housing the former D & C Grocery and by a small tree immediately behind the Meralco post with light.

- The distance between the sidewalk in front of the D & C Grocery (now Fernando Super Market) and the place where the car of Congressman Pendatun allegedly stopped and was fired upon several times is about 36 meters.

Now, Besa's testimony. It is so shot full of contradictions and it so conflicts with the testimonies of the other prosecution witnesses that her credibility is badly impaired.

1. Testifying before the court a quo, Besa said:

"Q

In what particular building were you (there)?

A

I was in front of the DMC (should be D & C) grocery." (p. 5, t.s.n., Jan. 14, 1971; italics supplied).

And before the reinvestigating fiscal, she declared:

Q

You said that you were standing opposite the grocery Stop and Shop Grocery, located at Old Sta. Mesa Boulevard at the time at 8:30 am I correct?

A

I was standing in front of the MBC (D & C) Grocery at the corner of Old Sta. Mesa street and Ramon Magsaysay Boulevard.

xx xx xx xx

Q

I invite your attention to Exhibit A which you just identified as your statement, it appears here and I quote 'kahapon ng bandang 8:30 ng gabi September 24, 1970 saan ka naroroon? Sagot: Nandoon po ako sa kanto ng Ramon Magsaysay Boulevard sa harap ng Stop and Shop?'

xx xx xx

Atty. Soriano:

xx xx xx xx

A

That is it sir, I was there at the corner of Old Sta. Mesa and Ramon Magsaysay Boulevard which is in front of the Stop and Shop as well as the MBC (D & C) Grocery, but nearer to the MBC (D & C) Grocery.

Q

Assuming that you are facing Manda-luyong and you are on Old Sta. Mesa you are on the right side of Old Sta. Mesa Boulevard? Am I correct?

A

Yes sir" (Exh. 5-B; pp. 9-10, t.s.n., Reinvestigation; pp. 130-131, rec.; italics supplied).

Continuing, Besa declared:

"A

It is not exactly at the corner but I am about the vicinity of the corner. (And as demonstrated she was more along Sta. Mesa than along Magsaysay Boulevard)" [p. 13, t.s.n., *ibid*; p. 134, rec.; italic supplied].

From her aforequoted testimony before the trial court as well as before the reinvestigating fiscal, Besa had invariably fixed her position on the night of September 24, 1970 at about 8:30 P.M., to be: In a standing position, along Old Sta. Mesa Street, in front of the former D & C Grocery (now Fernando Super Market), opposite the former Stop & Shop Grocery (now Shop Drug). So much so that when she was asked later on:

"Q

And where did that burst of gun fire come from, from your left or from your right?"

she answered:

"A

From the left side" (p. 15, t.s.n., Reinvestigation; p. 136, rec.).

This simply means that she was directly opposite and facing Stop & Shop Grocery on Old Sta. Mesa Street when she heard the first burst of gun fire, because, as the record shows, the car of Congressman Pendatun was fired upon when it stopped near the center island on the left side of the right land of Magsaysay Boulevard facing Cubao. But then, examining the record further, Besa testified before the trial court, as follows:

"Q And to what direction were you then facing awaiting a bus to be inspected taking as basis that grocery you made as reference?

A I was facing the Ramon Magsaysay Boulevard.

x xx xx x x

"Q Why was it so bright at that particular place?

A Because from where I was standing there is a Meralco post with bright light.

xx xx xx xx

Q At the moment you were standing at that spot you mentioned did you notice any unusual incident that happened?

A There was.

Q What was that?

A I heard a shot near the Island.

Q Island of what street?

A Ramon Magsaysay Boulevard.

Q And how far were you to that Island on Ramon Magsaysay Boulevard when you heard a shot?

A More or less seven meters.

Q And did you notice from where that shot came?

A From what I heard it came from the red or behind the red car I was facing" (pp. 6, 8, t.s.n., Jan. 14, 1971; italics supplied).

Continuing, Besa declared further:

"Q

Besides these two men with a long arm and the one throwing something to the car, did you see any other man in the immediate vicinity of this red car?

A

I saw also other four men in the Island running towards the Altor (referring to Altura St.).

xx xx xx xx

Q

And this place that you were stand-ing is the DNC (D & C) Grocery, that was the place that you were standing?

A

I was still far in the corner near the post, but far from the DNC (D & C) Grocery.

Court

Q

How many meters were you from the DNC (D & C) Grocery, in meters?

A

More or less 10 meters. I was then at the corner near the Meralco post which is about 10 meters from the door of the DNC (D & C) Grocery" [pp. 21, 74, t.s.n., *ibid*; italics supplied].

A perusal of the immediately preceding testimony, both given to the trial court, shows that Besa first stated that she was in front of and near the D & C Grocery, opposite the Stop & Shop Grocery. Then later, obviously to show that she saw and could identify the gunmen -- she declared that she was near the island whereon stands the Meralco post with a cemented base between the right lane of Magsaysay Boulevard and the service road on the extreme right of said boulevard and just beside D & C Grocery. Placed in proper focus, Besa's aforesaid self-contradiction and inconsistency on a very material and substantial matter placed her credibility on a very shaky foundation. Her last statement as to where she stood during the firing was obviously to place herself about 7 meters, not about 37 meters, from the Congressman's car, so that she could say that she saw who fired and who threw something at the car, as well as who went behind and to the left of the car.

2. Besa's statements are not only inconsistent with each other as pointed out above, but is also inherently improbable, contrary to human experience and human instinct. For instance, during the reinvestigation, the following transpired:

Q

When you said Pampaluna and Taneo alighted from the station wagon did they alight together, at the same time?

A

No sir, they were one after the other.

Q

Who went down ahead?

A

Taneo, with the gun.

xx xx xx

Q

When you saw Taneo alighted from the station wagon there did Taneo go?

A

He went behind the red car.

Q

What about Pampaluna, when you saw him alighted where did he go?

A

Near the car, he threw something.

Q

Were they the only two persons you saw alighted from the station wagon?

A

Yes sir.

Q

What did Taneo do when he went behind the red car?

A

He fired at the car? (pp. 33-34, Rein-vestigation; Exh. 5, pp. 154-155, rec.).

Later on, in the same proceedings, Besa declared:

"A

As soon as Taneo got down from the station wagon holding his gun, he looked around, he stood up looking around for about three minutes more or less after which he went behind the red car and fired at the red car.

Q

And during these three minutes more or less before he proceeded to the red car you were immediately oppo-site him one meter away?

A

Yes sir, in front of me.

Q

And you were facing each other?

A

No sir, it was only at the time when he went down that we were fronting each other but when he was standing, his side, I was on his side.

Q

On which side were you in relation to this person whom you called Taneo on his right side or left side?

A

I was at his left side.

Q

And he was holding a gun?

A

Yes sir.

Q

At that moment when you saw him holding a gun you did not even move(d) from where you were standing?

A

No sir.

Fiscal:

Q

You did not become afraid?

A

No, sir, I was not.

Q

You said Taneo stayed there for about three (3) minutes before he proceeded behind the car, in the meantime the two jeeps were slowly moving away and after three minutes according to your early testimony, Pampaluna alighted also is that correct?

A

They were one after the other, not three minutes.

Q

But like Taneo, Pampaluna also stopped at the place where he alighted?

A

Yes sir.

Q

How far were they from each other?

A

They were near each other because after Pampaluna went down he went near Taneo (witness indicating a distance of about one meter)" [pp. 45-48, t.s.n., Reinvestigation; Exh. 5, pp. 166-168, rec.].

A careful scrutiny of Besa's aforequoted testimony, both given to the reinvestigating fiscal, tends to show that when Taneo alighted from the station wagon with his long gun, he went behind the red car and fired at it; while Pampaluna, after alighting from the station wagon, went near the car and threw something into it. Later on, as the cross-examination became more rigid, Besa claims that Taneo alighted from the station wagon in front of her, looked around for about three (3) minutes, and then stood on her right side (Besa on the left side of Taneo), hold-ing his gun, before Taneo proceeded behind the red car; and that while Taneo was standing on her right side, Pampaluna alighted and then went near Taneo at a dis-tance of about one (1) meter.

Before the trial court, however, Besa became all the more incredible when, on cross-examination by Atty. Doroja, she testified:

"Q

And you also said that when Taneo alighted from the station wagon how long were you able to look at Taneo?

A

I said before that my estimate is around 2 or 3 minutes because I did not watch them.

Q

When you said that you looked at Taneo 2 or 3 minutes, you were staring at him, correct?

A

Yes, sir.

Q

And as a matter of fact, you were looking at each other's eyes during those 2 or 3 minutes?

A

Yes, sir, we looked (at) each other.

Q

Was Taneo smiling at you?

A

No, sir, we looked at each other only.

Q

And Taneo was holding a long gun, is that correct?

A

Yes sir.

Q

Will you please describe to this court how long was that gun that Taneo was holding?

A

About this long, about a yard.

Q

How was Taneo holding this gun?

A

It was at port-arm position.

Q

And at this port-arm position that Taneo was staring at you for 2 or 3 minutes, you did not do anything?

A

No sir.

Q

You just stared at him?

A

Yes, sir, I was looking at him only.

Q

And after the 2 or 3 minutes Taneo turned to the left, is that correct?

A

Going right, he turned right and ran to the rear of the red car" (pp. 77-79, t.s.n., Jan. 14, 1971; emphasis supplied).

Then on further cross-examination by Atty. Soriano, Besa made a complete turn-about, contradicting her declaration before the reinvestigating fiscal that after Pampaluna alighted from the station wagon, Pampaluna went near Taneo, who was then standing on her right side, and that the distance between Taneo and Pampaluna was about one meter. Following is Besa's testimony:

"Q

When Pampaluna alighted from the car (station wagon) where was Taneo?

A

He ran towards the rear of the red car.

xx xx xx

Q

When Pampaluna alighted was Taneo already firing at the rear of the car?

A

Yes sir.

Q

And you are sure because you were looking at Taneo at the time he fired?

A

Yes, sir" (pp. 129, 130, t.s.n., *ibid*).

The immediately preceding portion of Besa's testimony gravely contradicts what she said on direct examination, thus:

"Court:

Q

The second one who alighted what did he do?<!--

A

The other one also stood on my left side and then afterwards the first man with a long gun run behind the red car and started firing" (p. 19, t.s.n., *ibid*; italics supplied).<!--

Clearly, from the abovequoted portion of her testimony, Besa was sandwiched between Taneo and Pampaluna since, according to her, as soon as Taneo got down from the station wagon, holding his long gun, Taneo stood by her right side (she on the left side of Taneo), and Pampaluna likewise stood by her left side, for two or three minutes, before the two ran to the red car -- Taneo firing at it and Pampaluna throwing something into it.

3. Again, on further cross examination, Besa exaggerated and made her testimony all the more incredible. Thus --

"A

How long was the time from that time that Taneo alighted from the station wagon and started to stare at you up to the time that he returned (back) to the station wagon which you said was parked in front of the church, how long more or less?

A

About 15 or 20 minutes.

xx xx xx

Q

I'll recall your memory on page 44 of your testimony on Exh. '5', of the testimony on page 43 I mean, Q -- In that space of 3 minutes did you see throughout the faces of Taneo and Pampaluna for that matter? A - From that time I first saw them got down from the station wagon and then went behind the car, fired at the car and then returned to the station wagon it took them about 7 minutes, did you make that statement?

A

That is my statement.

Court:

Q

Why is it that you estimated now 15 to 20 minutes?

A

Because after they came from the place of shooting they still stopped and stood for a while and then went to the station wagon and then they left one after the other.

Q

How long did the two gentlemen stood (sic) in front of you more or less? After coming from the red car or shooting?

A

That was my estimate about 7 minutes.

Q

So when Taneo and Pampaluna returned from the red car after the shooting they stopped in front of you for about 7 minutes, is that correct?

A

That is my estimate.

Q

And of course you know how long is 7 minutes?

A

Yes, sir, I know how long it is" (pp. 8-82, t.s.n., Jan. 14, 1971).

What Besa wanted to establish by her immediately foregoing testimony is something extraordinary for a murderer to do, no matter how hardened and notorious he may be. From her story, Besa wanted to make it appear that the two accused stood in front of her for about 7 minutes soon after firing at and throwing something into the red car. This is incredible. Assailants do not tarry long in the busy vicinity of the incident; they would escape as fast as possible, the place of the occurrence being a busy intersection to elude any pursuit by the armed victims or by a

police mobile patrol that may be cruising nearby or by concerned citizens.

4. Besa's own account impugns her credibility for her testimony defies human nature and reason. She testified that she was then at the time of the incident about five, or six to seven months pregnant; that while after hearing the shots the people in the vicinity scampered for safety, she remained standing beside the lighted Meralco post at the end of the island on the left side of Magsaysay Boulevard between the service road on the extreme right of said island and the right lane of Magsaysay Boulevard facing Cubao, waiting for the Mandbusco bus which she was to inspect as inspector of the Pasig Bus Operators' Association, instead of waiting at the bus stop along old Sta. Mesa and about 60 meters beyond the D & C grocery or at least at the concrete curb at the corner of Magsaysay Boulevard and old Sta. Mesa just beside D & C grocery store. Her testimony cannot be believed; because she admits that passenger buses are only allowed to pick up passengers at the bus stop. What makes her testimony more incredible is the fact that despite her advanced -- 6 or 7 months -- pregnancy, she claims that she could board a moving or running passenger bus without endangering herself or her unborn foetus or risking miscarriage. Underscoring the exaggerated character of her story, she said she was not afraid upon hearing the volley of shots, because she was covered by the concrete base of the Meralco post which base is about 1½ meters high or up to her breast-level, and that she did not run for safety like the others but continued to look at the direction of the shots coming from the rear of the car of Congressman Pendatun, despite the fact that one of the assailants threw something at the car. While that something did not actually explode, she had no reason to anticipate that it would not explode. Her natural main concern should have been if the thing should explode, it would set fire to the car and splinters or fragments of the car might possibly hit her.

Moreover, she claims that one of the assailants ran behind the red limousine of Congressman Pendatun and went to the left side of the car facing Cubao and fired at the left side of the Congressman's car, pre-sumably towards the persons inside the car. She was therefore obliquely, if not directly, in the line of fire because the Meralco post was obliquely in front of and about 7 meters from the Congressman's car facing Cubao which was the object of the ambush.

As heretofore stated, a woman, more so if she is about six or seven months pregnant, would not stay put at the scene of the ambush after the first shots, or would have lain flat on the ground to avoid being hit by stray bullets.

5. Then again, if it were true that she saw one of the assailants run to the left side of the car of Congressman Pendatun and fired at its occupants, the said assailant could have either hit state witness, Guillermo Lucas, the driver of Congressman Pendatun, who was lying prone on the ground facing the rear of Pendatun's car and who was able to fire a total of 13 shots at the persons firing at the Congressman's car from behind said car. As driver-bodyguard of Congressman Pendatun, Lucas was able to reload twice which allowed him to fire 13 shots at the ambushers and therefore had sufficient opportunity to shoot at and to hit one of the assailants. But the fact that his shots did not hit any of the attackers confirm Congressman Pendatun's testimony that the ambushers fired partly from the right and from the rear of the car.

She became afraid the following days when her neighbors informed her about persons asking for her, which compelled her to transfer her residence. This conflicts with her pretended coolness and courage under fire during the ambushade.

6. Besa is also contradicted on material points by the other state witnesses.

According to state witness PC Sergeant Ildefonso Aycocho, one of the victims of the ambush, about 2 minutes after the last shot, members of the Metro-politan Command arrived. The Metrocom team leader was Sergeant Versosa, his former companion in Lanao, to whom he shouted that they were ambushed and to bring Congressman Pendatun to their car and take care of him; and that Sgt. Versosa carried him to the Metrocom car

and brought him to the UE Memorial Hospital along Magsaysay Boulevard (about 2 kilometers away). State witness Aycocho testified that about two (2) minutes after they stopped behind another car at the inter-section of Magsaysay Boulevard and Old Sta. Mesa Street because the red traffic light flashed, they heard a shot. This contradicts the testimony of principal state witness Felicidad Besa, who claims that after the last shot was fired, the two assailants stopped near her for about seven (7) minutes before proceeding to their alleged station wagon and the jeep allegedly parked near the church on Old Sta. Mesa Street.

The story of Sgt. Aycocho must be the truth; because the Metrocom could have apprehended the assail-ants, if they tarried in the vicinity for about seven minutes. And if Mrs. Besa told the Metrocom that she saw the ambushade and the two attackers, the Metrocom could not just ignore such important or vital informa-tion and instead could have taken her with them to take down her testimony after bringing the victims to the hospital or could have taken her with them in pursuit of the culprits since she also could have pointed out to the Metrocom the direction they took upon fleeing from the crime scene.

Furthermore, state witness Sgt. Aycocho declared that there was a car ahead of them at the intersection of Magsaysay Boulevard and Old Sta. Mesa Street and there were many cars parked behind them. From his testimony, the passengers of the car in front of them had a better view of and could identify the two assailants if it were true that they stopped for about seven (7) minutes beside Besa under the lighted Meralco post; and the passengers of the cars behind the Pendatun car also could have a better view of the two assail-ants who fired from about 10 yards behind the Penda-tun car, and could better identify the assailants.

It is interesting to note that Mrs. Besa never mentioned the car ahead of and the several cars behind the Pendatun limousine.

Former Congressman Salipada T. Pendatun, the principal target of the ambush, testified that about one or two minutes after his car stopped at the intersection of Magsaysay Boulevard and Old Sta. Mesa Street due to the red traffic light at said intersection, the firing started from the rear of the car, followed by three volleys of fire which lasted for about five to seven minutes. This conflicts with the testimony of principal state witness Felicidad Besa who claims that the appellants, before firing any shot, stopped, looked directly at her for about two or three minutes and lingered beside her for about four or five minutes -- a total of about seven minutes -- before running to and firing at the rear and left of the car of Congressman Pendatun and then after firing the last shot, appellants again stopped beside her for about seven minutes before proceeding to the station wagon allegedly parked near the Catholic church at Old Sta. Mesa Street about 60 meters away from the Meralco electric post beside which she allegedly stood while waiting for the bus which she was going to inspect. As heretofore stated, if the first shot were fired directly from the rear of the car, then the passengers of the vehicles following the Congressman's car were in a better position to identify the assailants.

Congressman Pendatun further stated that the first fire was from an M-79 launcher grenade which hit and went through the center of the rear wind-shield between him and Sgt. Aycocho, hitting like-wise the upper portion of the front glass near the wheel which partly destroyed the said front windshield but did not go through the same and instead the grenade fell on the driver's seat. Congressman Pendatun added that the first volley of shots after the firing of the launcher grenade directly from the rear of his car, came partly from the rear and partly from the right side of the car which hit Sgt. Formatilo who shouted "Sir, I am hit"; that the second volley likewise came partly from the rear and partly from the right of the car, while the third volley mostly came from the rear; and that the second volley threw him down to the car floor as if he was boxed from the rear and as he squatted on the floor with his body resting on the car seat, his buttock was hit. But at the trial, Congressman Pendatun did not exhibit any injury nor present a medical certificate that he sustained some injury.

From the testimony of Congressman Pendatun, the assailant never fired directly from the left side of his car, which again conflicts with the testimony of Besa who testified that one of the assailants ran to the left side of the car and fired at its occupants. It should be recalled that Sgt. Guillermo Lucas, the driver, was hit on the left eye while he was still inside the car, with the shot which hit the side mirror. He was not hit by any shot when he was already lying prone on the ground on the left side of the car from which position he was firing back at the persons who were also firing from the rear, not from the left side, of the car.

7. The record belies the observation of the trial court that no evil or bad motive was presented by the defense why Besa would testify in the manner she did if such were not the fact; because from Besa's testimony, We find the following:

"Court:

Q

Let's clarify that, did you resign already?

A

Not yet, sir.

Q

But are you reporting for work?

A

I did not resign but I am not reporting for work but I am calling in the phone.

Atty. Soriano:

Q

Are you receiving any salary from the bus company?

A

No, sir, at present, not now.

Q

Since when did you stop receiving salary from the bus company?

A

Only this October 1970.

Q

In fact from the time that you were not receiving salary from the bus company, it was October, up to the present you are living, you are getting an allowance from Congressman Pendatun, is that correct?

A

Once he gave me.

Q

Are you sure that you were only given one time by Congressman Pendatun?

A

They gave me only once but they are offering me that they will give the salary due me but since I told them I am on maternity leave they will just help me.

Q

Did you receive any money as a result of your maternity leave from your firm?

A

Yes sir, I received something from the company.

Q

During the reinvestigation of the case you were asked this question and I quote: Page 74, transcript: "Q - Since the time you stopped work-ing you are not earning anymore? A - I do not earn anymore from the company because I stopped working but I received from Congressman Pendatun. Q - How much do you receive from Congressman Pendatun? A - The same salary that I receive from the bus company," did you state these answers during the reinvesti-gation of this case before the Fiscal?

A

Yes, sir, that is true but I told Congressman Pendatun that since I'll be on maternity leave there is no need, just help when I deliver.

xx xx xx

I request that the portion of Exh. '5' be marked as Exh. '5-K' as bracketed" (pp. 133-136, t.s.n., Jan. 14, 1971; italics supplied).

And from the testimony of Detective-Corporal Senen, another witness for the prosecution, We find the following:

"Q

Will you please tell this court just how much did you spend for all the trips that (when) you went to Cagayan, Davao and back?

Fiscal Herrera:

Immaterial, objection.

A

For that trip we made to Cagayan I did not exactly knew how much we spent because the plane we used was chartered (by) Miss Farales.

Q

What relation has that woman with Congressman Pendatun?

A

He is the brother-in-law.

Q

Therefore, all these expenses that you have in going and back was spent by Congressman Pendatun?

A

Yes, sir, because the City of Manila cannot afford to spend in our going to Cagayan, Davao, Cotabato and back to Manila" (pp. 187-188, t.s.n., Jan. 14, 1971; italics supplied).

A perusal of the two immediately preceding extracts of testimony given by Besa and Detective Senen, both witnesses for the prosecution, insinuates bias in favor of Congressman Pendatun, one of the complainants and the main target of the ambush. The witness, by receiving money from the complainant, morally becomes or feels beholden to the giver, and in the case at bar, there is no telling how far this "quid pro quo" arrangement had been carried on.

As a consequence of Our finding that Besa's testimony does not deserve full faith and credit, appellants' defense of alibi assumes importance since there is a total absence of positive and clear proof that the appellants were the ones responsible for the crimes charged in the information which gave rise to the instant appeal. Of course, We have time and time again stressed that alibi is the weakest of all defenses. It is easy to concoct, difficult to disprove (People vs. Cunanan, L-17599, April 24, 1967, 19 SCRA 769, 783, citing U.S. vs. Olais, 36 Phil. 828, 829; People vs. Pili, 51 Phil. 965, 966; People vs. Dizon, 76 Phil. 265, 272; People vs. Bautista, L-17772, Oct. 31, 1962, 6 SCRA 522, 529; People vs. Dayday, L-20806 & L-20807, Aug. 14, 1965, 14 SCRA 935, 942). Nonetheless, where, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant. It is noteworthy to reiterate here what former Justice J.B.L. Reyes, speaking for this Court in the case of People vs. Fraga, et al. (L-12005, Aug. 31, 1960, 109 Phil. 241, 250), said: "The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." (Cited also in People vs. Bulawin, 29 SCRA 710, 722).

WHEREFORE, THE GUILT OF THE ACCUSED NOT HAVING BEEN DEMONSTRATED BEYOND REASONABLE DOUBT, THE JUDGMENT OF THE COURT A QUO IS HEREBY REVERSED AND SET ASIDE, THE DEFENDANTS-APPELLANTS, GEDTAL PAMPALUNA Y MAKATAON AND REYNALDO Taneo Y BALLEQUE, ARE HEREBY ACQUITTED OF THE CHARGES AGAINST THEM, AND THEIR IMMEDIATE DISCHARGE FROM CUSTODY, UNLESS THEY ARE HELD ON SOME OTHER VALID CHARGE, IS HEREBY ORDERED.

NO COSTS.

Barredo, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Aquino, J., see dissenting opinion.

Teehankee, Acting C.J., took no part.

Fernando, C.J., on leave.

DISSENTING OPINION

AQUINO, J.:

I dissent. How the defendants-appellants were apprehended is recounted in the Solicitor General's brief as follows:

"On September 25, 1970, Felicidad Besa went to the headquarters of the Manila Police Department, Precinct 4, where she narrated what she witnessed on the night of September 24, 1970. In a sworn statement given to the

police, Besa gave a description of the two men she saw alighting from the station wagon.

"On or about October 10, 1970, Felicidad Besa was invited by a certain Atty. Senen, an MPD detective assigned to investigate the shooting incident, to go to Mindanao where she might identify the persons whom she saw attack the red car of Congressman Pendatun. She accepted the invitation and together with Atty. Senen and another MPD police officer, they left for Cagayan de Oro City in the afternoon of that same day, October 10, 1970.

"The day after their arrival in Cagayan de Oro City, Felicidad Besa was told by Atty. Senen that they were to go to Davao the next day. Before leaving for Davao the next day, Besa with her police officer companions took a morning snack at the Casino Restaurant. While they were inside the restaurant, Besa noticed accused Taneo enter the place with two companions. Taneo was taken aback and tried to retreat upon seeing Besa inside the restaurant. Taneo however entered finally with two companions.

"Besa immediately told Atty. Senen that he (referring to Taneo) was the very person' whom she 'saw firing shots at Sta. Mesa'. She was however cautioned by Atty. Senen to just pretend that she did not see anybody. Accused Taneo kept glancing at Besa and did not even attempt to partake of the food served to him. When Taneo and his group left the restaurant, Taneo returned, opened the door and menacingly stared at Besa. Subsequently, the latter executed a sworn statement confirming her identification of accused Reynaldo Taneo. Atty. Senen corroborated the foregoing incident at Casino Restaurant when Taneo reacted guiltily.

"On October 21, 1970, Felicidad Besa was fetched by the police at her residence and brought to MPD headquarters Precinct 4. From a line-up of some eight (8) persons, she was asked whether she could recognize anybody. She pointed to the fourth person from the right end of the line as the man whom she saw throw something at the red car on the night of September 24, 1970. This man was identified as the accused Gedtal Pampaluna. Later, she identified again accused Taneo in another line-up at the headquarters of MPD Precinct 4.

"Pampaluna was the driver of the Sinsuats while Taneo was assigned to the Sinsuats as security guard. The Sinsuats were known political opponents of the ambushed Cong. Pendatun. (pp. 8-11, Brief).

I agree with Judge Manuel T. Pamaran and the Solicitor General that the guilt of the accused was proven beyond reasonable doubt.

However, I am of the opinion that the death penalty should be commuted to reclusion perpetua because the accused were mere tools of the mastermind who was not prosecuted and convicted.

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