

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADLY HUBILO, ACCUSED-APPELLANT.

G.R. No. 101741. March 23, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Appellant Adly Hubilo was found guilty by the trial court of "multiple (triple) murder" and of frustrated murder. The conviction was based on the following information:

"That on or about the 18th day of August, 1988 in Barangay Paitan Sur, Municipality of Cuyapo, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and by means of treachery as the attack was sudden and unexpected which method was employed by him to ensure execution of his plan without risk to himself from the defense which his victims might make, did then and there wilfully, unlawfully and feloniously attack, assault and shoot the persons of Rogelio Antonio, Hermogenia Cacayurin, Cesario Gamiz, and Ferdinand Gamiz who were then on board a tricycle passing along an uninhabited place, thereby inflicting fatal gunshot wounds on the persons of Rogelio Antonio, Hermogenia Cacayurin and Cesario Gamiz which resulted [in] their death, as well as inflicting fatal gunshot wounds on the person of Ferdinand Gamiz which ordinarily would cause his death, thus performing all the acts of execution necessary to produce the crime of murder but did not, however, produce the same due to some cause independent of the will of the accused, that is, the timely and able medical attendance rendered to Ferdinand Gamiz which prevented his death.

That as a consequence of the crime committed, the corresponding heirs of Rogelio Antonio, Hermogenia Cacayurin and Cesario Gamiz suffered actual, moral and consequential damages which could be estimated in the total sum of P50,000.00 each victim and Ferdinand Gamiz, P30,000.00.

Contrary to law."[1]

He is now before this Court on appeal.

The facts found by the trial court may be summarized in the following manner.

On 18 August 1988, at around 5:00 o'clock in the afternoon, Hermogenia Cacayurin, Cesario Gamiz and Ferdinand Gamiz were riding on a tricycle driven by Rogelio Antonio, proceeding north toward Barangay Nagcuralan, Cuyapo, Nueva Ecija, where they resided. As they approached the cemetery of Nagcuralan, gunfire greeted them and driver Rogelio, being hit, fell off the tricycle. Ferdinand Gamiz who had been seated behind the tricycle driver jumped off the tricycle and ran in a northerly direction. He was met or confronted by an armed man whose face was covered by handkerchief. The masked gunman lifted his weapon, a 2-1/2 foot long firearm and fired at Ferdinand, hitting him near the right armpit. As the gunman fired, the cover on his face fell off. Ferdinand recognized the assailant as Adly Hubilo, also a resident of Nagcuralan and known to him since he reached the age of reason. Wounded and fearing for his life, Ferdinand pleaded: "Please, have mercy on me, manong." Hubilo, however, squeezed the trigger again but this time the gun did not fire. Ferdinand seized his chance to escape death and ran away as fast as he could in a westerly direction. Hubilo tried to pursue Ferdinand and reload his weapon at

the same time. Ferdinand was able to elude him and as he looked back while fleeing, he saw Hubilo approach the stalled tricycle and fire many shots.

The wounded Ferdinand continued to run for sometime. He stopped at an inclined pass, where two (2) young boys saw him and he called to them for help. Two (2) barangay tanods, Lolito Balbas and his brother Loreto Balbas, later came upon the scene. Ferdinand told them that he had been shot by Adly Hubilo. Ferdinand was put on board another tricycle in order to bring him to the municipal building of Cuyapo. En route, the tricycle passed by the cemetery of Nagcuralan where the shooting had taken place, and where Cesario Gamiz, Rogelio Antonio, Hermogenia Cacayurin lay dead of gunshot wounds. Ferdinand's father, Roberto Gamiz, was at the scene and Ferdinand told him that they (Ferdinand and his brother Cesario and their companions) had been shot by appellant Hubilo.

Ferdinand was later transferred from the tricycle to an ambulance. When the ambulance reached the Cuyapo Municipal Building, Patrolman Eddie Damaso got on board and started questioning Ferdinand. After some initial reluctance, Ferdinand told the police officer that he and his companions had been shot by Adly Hubilo. Ferdinand was later taken to a hospital in Tarlac and there was operated on by Dr. Manuel Alzate who had decided that without proper medical attention, Ferdinand would die of his gunshot wounds.

Dr. Pilarcita Verde conducted post mortem examinations on Cesario Gamiz, Rogelio Antonio and Hermogenia Cacayurin on 18 August 1988. The examination showed that the three (3) died because of multiple gunshot wounds: (a) Cesario suffered eight [8] wounds; (b) Rogelio was felled by three [3]; while (c) Hermogenia sustained two [2] wounds.

On the morning of 19 August 1988, policemen went to Hubilo's house and asked him to go with them to the police station in Cuyapo. At the station, appellant Hubilo was informed that he was a suspect in the killings which had occurred on the afternoon of 18 August 1988. He, together with his farm helper Bernardo Silapan, who was also a suspect, was detained in jail. The two (2) suspects were later taken to Camp Olivas and underwent a paraffin test which, however, found them negative for powder burns.

On 22 August 1988, the Police Station Commander of Cuyapo filed a complaint for multiple murder with frustrated murder against appellant Hubilo and Bernardo Silapan before the Municipal Trial Court ("MTC") of Cuyapo. The next day, which was also Ferdinand Gamiz' fifth day in the hospital, policemen brought appellant Hubilo with them to the hospital. There, Ferdinand identified appellant Hubilo as the person who had shot him.

In the MTC's resolution dated 26 August 1988, suspect Bernardo Silapan was dropped from the complaint and the records of the case were ordered forwarded to the Provincial Prosecutor of Nueva Ecija. Hubilo filed with the MTC a motion to fix bail and for provisional liberty upon the filing of the bail bond, dated 31 August 1988. At the hearing set on 9 September 1988, when the police prosecutor informed the Court that he was not ready, counsel for Hubilo manifested that they were waiving their right to present evidence at the preliminary investigation and prayed that the records of the case, including the motion to fix bail, be forwarded to the Regional Trial Court ("RTC") of Guimba, Nueva Ecija. Defense counsel also requested that- accused Hubilo be transferred and detained at Guimba. The MTC thereupon issued an order granting the request.

On 28 September 1988, an information was filed by Assistant Provincial Prosecutor Ubaldino A. Lacurom against appellant, with the RTC. On 17 October 1988, appellant Hubilo filed another motion to fix bail, but this motion was denied by the trial court. On a motion for reconsideration, however, the trial court reversed itself and held a hearing on the application for bail.

Ultimately, the RTC denied the application for bail, holding that the evidence of guilt of accused Hubilo was

strong. Appellant responded by filing, on 12 April 1989, a motion to disqualify or inhibit the judge alleging that . appellant would not be afforded a fair trial because of the findings of the RTC. Judge Raymundo Z. Annang then inhibited himself and ordered the records of the case forwarded to the Executive Judge, but Executive Judge Pablo D. Atienza ordered the return of the case to the sala of Judge Annang. Judge Annang set the case for arraignment, pre-trial and trial; but these settings did not materialize. Appellant Hubilo filed a Petition for Certiorari before this Court, questioning the denial of his application for bail and the order of Executive Judge Atienza returning the case to Judge Annang for continuation of proceedings. This Petition was dismissed by this Court for failure to attach clearly legible duplicate originals or certified true copies of the questioned orders. Appellant' then filed with the trial court a motion for preliminary investigation. This motion was denied. Appellant Hubilo was finally arraigned on 9 November 1989, and he pleaded not guilty. The case proceeded to trial on the merits. In due time, the RTC promulgated its judgment convicting the accused.

In the instant appeal, appellant Hubilo contends that the trial court committed the following errors:

"1. The trial court erred in denying the accused his constitutional right of due process of law, when it denied his 'Motion for Preliminary Investigation and/or Investigation' on August 29, 1989;

2. The trial court erred in considering the 'ante-mortem statement (Dying Declaration) (Exhibit A) of Ferdinand Gamiz taken from him by Pat. Eddie Damaso at 6:00 o'clock in the afternoon (one hour after he was shot) on August 18, 1988 has all the requisites of law which made it valid and admissible in evidence for the prosecution;

3. The trial court erred in disregarding the findings of the PC Crime Laboratory Service, Camp Olivas, San Fernando, Pampanga, wherein they found that both hands of the accused do not contain gunpowder residue (nitrate);

4. The trial court erred in ruling that 'from the evidence of the prosecution, the accused Adly Hubilo suddenly fired at the victim[s] Rogelio Antonio, Hermogenia Cacayurin, [and] Cesario Gamis when they were in [on] board a tricycle x x x ' ;

5. The trial court erred in disregarding the findings of Dr. Manuel Alzate, the medico-legal expert as follows:

Point of entry 10th ICS AAL right

Point of exit epigastric area

lacerated wound 5 cm.

right lobe liver;

6. The trial court erred in not considering that there was evil motive in the filing of the charges against the accused;

7. The court erred in relying too much on the testimony of Ferdinand Gamiz despite the unnatural, unreliable and unbelievable declarations of said witness which are replete with several falsehoods leading to the conviction of the accused;

8. The trial court erred in disregarding the evidence and defenses of the accused;

9. The trial court erred in finding the accused guilty of the crime of multiple murder (triple) with frustrated murder as charged."[2]

In principle, the first alleged error, if it were proven, is a serious one, considering that the right to preliminary investigation is a substantive right and its denial amounts to a denial of due process of law.[3] An accused in a

criminal case, however, may waive his right to preliminary investigation,[4] and here appellant Hubilo expressly waived preliminary investigation. Moreover, appellant, by applying for bail[5] and by submitting to arraignment and proceeding to trial, must be deemed to have foregone his right to preliminary investigation and his right to question any irregularity that might have attended such investigation.[6] We note, still further, that appellant did not question the supposed denial of his right to preliminary investigation by going to an appellate court on certiorari and prohibition. In the light of the foregoing circumstances, and considering that the trial court has rendered after trial on the merits a judgment of conviction on what it regarded as proof beyond reasonable doubt, it is too late in the day for appellant to make an issue of his right to a preliminary investigation.

The so-called ante mortem statement (Exhibit "A") which is the subject of the second assignment of error, was properly admissible even though declarant Ferdinand Gamiz did not eventually die. That statement which was made by Ferdinand as he lay wounded in the ambulance before being brought to a hospital shortly after the shooting, is properly considered as part of the *res gestae*. The rule on admissibility of statements forming part of the *res gestae*,[7] as one of the exceptions to the hearsay rule, requires that: (a) the principal act, the *res gestae*, be a startling occurrence; (b) the statements forming part thereof were made while the startling occurrence was taking place or immediately prior or subsequent thereto, that is, before the declarant had the opportunity to reflect upon such occurrence and to contrive possible falsehood; and (c) the statements relate to the occurrence in question and its attendant circumstances.[8] The gunfire that greeted Hermogenia Cacayurin, Cesario Antonio, and Ferdinand Gamiz while riding on the tricycle and as they approached the cemetery of Nagcuralan, was certainly a very startling occurrence. So too was the sudden appearance of an armed man who suddenly shoots and hits the fleeing Ferdinand Gamiz. In his statement (Exhibit "A"), the declarant Ferdinand Gamiz referred to the shooting that had just occurred and positively identified Adly Hubilo as the assailant. Since all the requisites were present, we consider that the statement of Francisco Gamiz (Exhibit "A") was properly admissible as part of the *res gestae*.

Appellant Hubilo also contends that the trial court erred in disregarding the finding of the PC Crime Laboratory Service that both his hands yielded no trace of gunpowder residue. This Court, however, has observed that it is quite possible for a person to discharge a firearm and yet exhibit no trace of nitrates: when, e.g., the assailant fired the weapon while wearing gloves or where the assailant subsequently washes his hands.[9] As Marlyn Salangad of the PC Crime Laboratory Service stated in her testimony before the trial court, if a person covers his hand with a handkerchief or wears rubber gloves before firing a gun, or pulls the trigger with a strong wind blowing away from the gunman, gunpowder residue would not be found in that person's hands.[10] In *People v. Pasiliao*,[11] a finding that the paraffin test on the person of the appellant yielded negative results, was held to be not conclusive evidence to show that the appellant indeed had not fired a gun.

The rest of the assignments of error may be discussed together. Appellant Hubilo attacks the testimony of Ferdinand Gamiz as unnatural, unreliable and unbelievable. Hubilo, however, failed to show any animosity or ill-feeling on the part of Ferdinand Gamiz which could have motivated Ferdinand falsely to accuse Hubilo of the crimes of multiple murder and frustrated murder. Appellant did voice his suspicion that Buenaventura Flores, Barangay Captain of Nagcuralan, had a hand in the filing of the criminal charges against appellant. Appellant suggested that because he was the strongest political rival of Flores, Flores was interested in seeing to it that appellant was incarcerated.[12] We consider, however, that this contention is much too speculative, considering that appellant did not show that Ferdinand had named appellant Hubilo as his assailant only after strong pressure applied by Flores. In fact, appellant failed to show any connection between Ferdinand Gamiz and Buenaventura Flores that could have established an ill-motive on the part of Ferdinand in accusing appellant Hubilo of multiple murder and frustrated murder. Appellant did not even show that he was a political rival of Flores, considering that appellant himself admitted that he had never run for any public position in the Barangay of Nagcuralan.[13] No

evil or improper motive in testifying against the appellant having been shown, the presumption is that Ferdinand did not have any such motive and so his testimony is entitled to full faith and credence.[14] Ferdinand was a lone eye-witness. In *People v. De la Cruz*,[15] and many other cases, this Court has, however, held that the testimony of a single eye-witness, if positive, reasonable and credible, is sufficient to support a conviction, especially where the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner. In the case at bar, the trial court was able to observe the demeanor of prosecution witness and victim Ferdinand Gamiz on the stand and to assess the credibility of that witness. Thus, the familiar applicable rule is that the trial court's conclusion on the credibility of witnesses is accorded great weight on appeal, absent a showing that such conclusion was reached in a merely arbitrary and capricious manner.[16]

Ferdinand's statement concerning the point of entry (the stomach) and the point of exit (his right side) of the bullet which had hit him is, it is true, not consistent with Dr. Manuel Alzate's finding that the bullet had entered Ferdinand's right side and exited from his stomach. We do not believe, however, that this inconsistency requires us to regard Ferdinand's entire testimony as, in the words of appellant's counsel,[17] "replete with patent falsities contradictory to one another." Ferdinand was not a medical doctor and therefore, quite possibly did not know which of his wounds was the entry wound and which the exit wound. It takes only a split second for a bullet to pierce and to traverse a person's body. Ferdinand knew that appellant Hubilo was generally facing him when the shot rang out, and so could well have assumed that his stomach wound was the wound of entry and the other, the exit wound. But it is not at all improbable for Ferdinand to have turned to his left as he sought to escape his assailant thereby exposing his right side. It is also possible that the assailant was not frontally facing Ferdinand, but could have been positioned somewhat to the right of Ferdinand. The Court notes also that Dr. Alzate himself testified that he could not pinpoint the position of the attacker from an examination of the bullet wounds of Ferdinand.[18]

Appellant Hubilo also complains that Ferdinand had described the gun used by appellant, as a 22-caliber long firearm, while the shells recovered by the police from the scene of the crime indicated that a Garand rifle and an M-30 U.S. Army Carbine had been used.[19] Again, this inconsistency is not a substantial one, if only because Ferdinand (unlike appellant Hubilo) was not a military man and was not familiar with firearms.[20] We consider, therefore, that this inconsistency, if that is what it was, did not impair the value and weight ascribed by the trial court to the testimony of Ferdinand Gamiz. As frequently pointed out by this Court, minor inconsistencies in the declarations of witnesses do not destroy the witnesses' credibility, but even enhance their worth as they preclude suspicion that the testimony had been coached or rehearsed.[21]

Appellant set up the defense of alibi. He alleged that he had spent most of 18 August 1988 with his relatives in Sinimbaan, a locality that was a 30-minute walk away from Nagcuralan, and had left Sinimbaan only at around 5:30 p.m.[22] Appellant's relatives testified in support of his alibi. As has been emphasized time and again by this Court, however, alibi by itself is a weak defense, especially if it is sought to be established by the testimony of the accused himself and that of his relatives, and not by independent witnesses.[23] An accused asserting alibi must not only show that he was at some other place at the time the crime had occurred, but also that it is physically impossible for him to have been at the scene of the crime.[24] In the case at bar, it certainly was not impossible for appellant to have been at Nagcuralan at the time of the shooting, since between Sinimbaan and Nagcuralan, it was only a 30-minute walk, and an even shorter ride by bicycle or by a tricycle.

The weakness of appellant's alibi is heavily underscored by the fact that appellant was positively identified by Ferdinand Gamiz as his assailant.[25] In his brief, appellant insists that Ferdinand had at first declined to identify his assailant when questioned by Patrolman Eddie Damaso. Appellant apparently seeks to suggest that Ferdinand had not really recognized who his assailant had been. If there was any reluctance on the part of Ferdinand, in

immediately identifying to Patrolman Eddie Damaso who his assailant had been, while he lay wounded inside the ambulance which had stopped by the municipal hall, we must note that it is not uncommon for a witness or the victim of a crime to show some reluctance about getting involved in a criminal case.[26] The initial reluctance of witnesses to volunteer information about a criminal case is common and has been recognized as not affecting the intrinsic credibility of a witness.[27] What is properly stressed is that Ferdinand did identify appellant Hubilo as his assailant several times. Ferdinand had pointed to Hubilo twice even before Patrolman Eddie Damaso questioned him: he revealed the identity of his assailant to barangay tanod Lolito Balbas and to his father, Roberto Gamiz, shortly after the shooting and before the ambulance had taken him to the municipal hall where Patrolman Damaso questioned him. Moreover, Ferdinand reiterated his identification a fourth time before the trial court where he stated that he had personally known Hubilo "since reaching the age of reason." both of them being residents of Nagcuralan. Thus, the denial of appellant Hubilo must be weighed against this positive repeated identification by the victim himself. The trial court gave full credence to this identification and, after careful examination of the record, we find no reason for reversing the trial court on this point.

The crime was correctly characterized by the trial court as murder, appellant having employed treachery in staging the ambush. Appellant selected a secluded and uninhabited area, where thick cogon grass grew on the side of the road, and suddenly fired as the tricycle with its three (3) passengers and driver approached. Appellant, in other words, chose a particular mode of execution of the felony which tended to ensure its commission without risk to himself arising from any defense which the victim might make.[28]

The trial court held appellant Hubilo guilty of "multiple (triple) murder, with frustrated murder:"

"WHEREFORE, and in view of all the foregoing, Judgment is hereby rendered, finding the accused Adly Hubilo guilty beyond reasonable doubt of the crime of Multiple (Triple) Murder with Frustrated Murder as charged, and hereby sentences him to suffer LIFE IMPRISONMENT.

As a consequence thereof, said accused is hereby ordered to indemnify the heirs of the deceased Rogelio Antonio, Hermogenia Cacayurin and Cesario Gamiz in the sum of P30,000 each, and likewise to pay Ferdinand Gamiz the sum of P20,000, as moral and actual damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

IT IS SO ORDERED." (Underscoring supplied)

When the evidence presented by the prosecution did not show that a single shot had slain three (3) different persons, appellant is properly held liable for three (3) separate murders. In the case at bar, separate and distinct acts (or shots) were directed at each of the deceased victims. As earlier noted, Cesario had suffered eight (8) bullet wounds, Rogelio Antonio, three (3); and Hermogenia Cacayurin two (2). Moreover, the evidence showed that, after the wounded Ferdinand had escaped, appellant Hubilo went back to the stalled tricycle and fired multiple shots at the three (3) victims lying on the road, presumably to make sure all three (3) were dead.

WHEREFORE, for all the foregoing, the judgment of the trial court dated 14 June 1991 is hereby MODIFIED by holding appellant Adly Hubilo guilty of three (3) separate crimes of murder and one crime of frustrated murder. He is hereby sentenced to suffer three (3) penalties of reclusion perpetua; and for the frustrated murder, he is hereby sentenced to imprisonment for a period ranging from twelve (12) years and one (1) day as minimum to twenty (20) years as maximum. The indemnity due to the heirs of Cesario Gamiz, Rogelio Antonio and Hermogenia Cacayurin, is hereby INCREASED to P50,000.00 each, in line with recent jurisprudence of this Court. As so modified, the judgment of the trial court is hereby AFFIRMED.
SO ORDERED.

Bidin, Davide, Jr., Romero and Melo, JJ., concur.

- [1] Records, p. 29.
- [2] Brief for Accused-Appellant, pp. 7-8.
- [3] Go v. Court of Appeals, 206 SCRA 138 (1992).
- [4] People v. Arbois, 138 SCRA 24 (1985).
- [5] People v. La Caste, 37 SCRA 767 (1971); Palanca v. Querubin, 30 SCRA 738 (1969); People v. Selfaison, 110 Phil. 839 (1967); People v. Olandag, 92 Phil. 286 (1952).
- [6] Zacarias v. Cruz, 30 SCRA 728 (1969); People v. De la Cerna, 21 SCRA 569 (1967); People v. Casiano, 1 SCRA 478 (1961); Lozada v. Hernandez, 92 Phil. 1051 (1953).
- [7] Section 42, Rule 130 of the Rules of Court.
- [8] People v. Siscar, et al, 140 SCRA 316 (1985).
- [9] People v. Talingdan, 191 SCRA 333 (1990).
- [10] TSN, 31 March 1989, pp. 8-9.
- [11] G.R, Nos. 98152-53, October 26, 1992.
- [12] TSN, 28 September 1990, p. 2.
- [13] TSN, 10 October 1990, p. 5.
- [14] People v. Aguiluz, 207 SCRA 187 (1992); People v. Alcantara, 151 SCRA 326 (1987); People v. Alcantara, 126 SCRA 425 (1982).

[15] 207 SCRA 632 (1992).

- [16] People v. Pascual, 204 SCRA 618 (1991).
- [17] Brief for Accused-Appellant, p. 23; Rollo, p. 108.
- [18] TSN, 22 June 1990, p. 7.
- [19] TSN, 20 December 1989, p. 9.
- [20] People v. Pascual, 204 SCRA 618 (1991).
- [21] E.g., People v. Arcega, 207 SCRA 681 (1992).
- [22] Brief for Accused-Appellant, p. 31; TSN, 30 August 1990, p. 2.
- [23] E.g., People v. Sabellano, 198 SCRA 196 (1991); People v. Solis, 195 SCRA 405 (1991).
- [24] People v. Calixto, 193 SCRA 303 (1991); People v. Alfonso, 153 SCRA 487 (1987); People v. Ornoza, 151 SCRA 495 (1987); People v. Ramillo, 147 SCRA 102 (1987).
- [25] People v. Dela Cruz, 207 SCRA 632 (1992).
- [26] People v. Aguiluz, 207 SCRA 187 (1992).
- [27] People v. Punzalan, 153 SCRA 1 (1987).

[28] *People v. Cuyo*, 196 SCRA 447 (1991). See also *People v. Lacao, Sr.*, 201 SCRA 317 (1991); *People v. Tiozon*, 198 SCRA 368 (1991).

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