

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEON LUMILAN, ANTONIO GARCIA AND FRED ORBISO, ACCUSED-APPELLANTS.

G.R. No. 102706. January 25, 2000

Ponente: DE LEON, J.

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DE LEON, J.:

Before us is an appeal from the Decision[1] dated September 20, 1990 of the Regional Trial Court (RTC) of Ilagan, Isabela, Branch 16, in Criminal Case No. 955, finding accused-appellants Leon Lumilan and Antonio Garcia guilty beyond reasonable doubt of three (3) counts of murder, two (2) counts of frustrated murder, and three (3) counts of attempted murder, under an Information charging them and accused Fred Orbiso[2] with the crime of Qualified Illegal Possession of Firearms Used in Murder, in violation of Presidential Decree (P.D.) No. 1866.

The Information[3] reads as follows:

"The undersigned Provincial Fiscal accuses FRED ORBISO, LEON LUMILAN and ANTONIO GARCIA of the crime of QUALIFIED ILLEGAL POSSESSION OF FIREARMS USED IN MURDER, in violation of Presidential Decree No. 1866, committed as follows:

That on or about the 12th day of October 1987, in the municipality of Ilagan, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized or allowed by the law to keep, possess and carry firearms, did then and there wilfully, unlawfully and feloniously have in their possession and under their control and custody, firearms without first having obtained the necessary permit and/or license to possess the same, and that on the occasion of such possession, the herein accused with treachery did then and there wilfully, unlawfully and feloniously with intent to kill suddenly and unexpectedly and without giving them chance to defend themselves, fired [sic] at and shoot Meliton Asuncion, Modesto Roque, and Eliong dela Cruz inflicting upon them gunshot wounds which directly caused their deaths; and further inflicting on the same occasion gunshot wounds upon Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano, which injuries would ordinarily cause the death of the said Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano, thus performing all the acts of execution which should have produced the crime of murder with respect to the last named victims as a consequence, but nevertheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to the said Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano which prevented their deaths.

CONTRARY TO LAW."[4]

Upon being arraigned, appellants Leon Lumilan and Antonio Garcia entered the plea of "not guilty."

The evidence of the prosecution reveals that in the early evening of October 12, 1987, Meliton Asuncion, Modesto Roque, Eliong dela Cruz, Jerry Palomo, Simeon Pacano, Benito Alonzo, Nolasco Estrada, Mario Palomo and Romeo Pacho were drinking liquor inside the house of Policarpio Palomo when it was sprayed with bullets.

The successive gunshots emanated from the fence about six (6) meters away from where they were drinking, killing Meliton Asuncion, Modesto Roque, and Eliong dela Cruz and seriously wounding Jerry Palomo, Simeon Pacano, Nolasco Estrada, Mario Palomo and Romeo Pacho. Prosecution eyewitness Simeon Pacano was hit in the left leg causing him to fall on his face. When the firing ceased, he remained in the said position pretending to be dead, as he recognized accused Fred Orbiso who entered the house and checked the bodies of the victims for survivors. Pacano also claims to have also recognized appellants Leon Lumilan and Antonio Garcia who joined Orbiso inside the house. They were purportedly after a certain Ben Estrada who was the barangay captain of Gayong-Gayong Sur, Ilagan, Isabela.[5]

Prosecution eyewitness Benito Alonzo corroborated the eyewitness account of Simeon Pacano on the shooting incident. Benito Alonzo recalled that they were drinking at the house of Policarpio Palomo when successive gunshots were fired by three persons outside the fence of Palomo's house. He identified appellants Leon Lumilan and Antonio Garcia as two of the alleged assailants.[6]

Both Lumilan and Garcia interposed the defense of alibi. Appellant Garcia testified that he was in the company of Atty. Benjamin Olalia who stood as sponsor in the wedding of the daughter of a certain Hilario Laguna in Gayong-Gayong Sur, Ilagan, Isabela. They had late lunch at the house of Hilario Laguna and stayed there until 4:00 o'clock in the afternoon. Thereafter, Garcia and Atty. Olalia returned to the latter's house in Osmenia, Ilagan, Isabela, together with Martin Laguna, Juan Lorenzo, Felix Aguda, Romeo Callo, Rodrigo Junio, a driver, and two other individuals. They spent the rest of the day at the house of Atty. Olalia who corroborated Garcia's testimony.[7] On the other hand, appellant Lumilan testified that he was in Alibagu, Ilagan, Isabela the whole day of October 12, 1987.[8]

After an assessment of the evidence, the trial court declared that no proof beyond reasonable doubt was adduced by the prosecution to justify the conviction of appellants for Qualified Illegal Possession of Firearms Used in Murder. However, the trial court convicted the appellants for Murder, Frustrated Murder and Attempted Murder as it ruled that:

"x x x The eyewitness account of Simeon Pacano which was corroborated by Benito Alonzo can not be discounted. Both testified in a straitforward and candid manner, leaving no doubt as to their veracity.

"x x x

"From the evidence adduced, it is clear that the accused moved in concert, driven by a pre-conceived design that made each of them is (sic) liable in equal degree with the others for each of the three killings and for wounding five others. x x x

"As heretofore alluded to, the killing and wounding of the victims constituted the crime of Murder, Frustrated Murder and Attempted Murder, qualified by treachery. x x x

"In view of the eyewitness account of Pacano and Alonzo, the defense of alibi interposed by the (sic) both accused can not hold water.

"What crime or crimes were committed?

"1. There is no sufficient evidence to prove Illegal Possession of Firearms.

2. Relative to the death of Meliton Asuncion, Modesto Roque and Eliong dela Cruz, the crime committed was Murder.

3. Relative to the injuries sustained by Jerry Palomo and Simeon Pacano, the crime committed was Frustrated Murder while as to Romeo Pacho, Nolasco Estrada, and Mario Palomo, the crime committed is Attempted

Murder.

[4] As to the charge of Illegal Possession of Firearms, no evidence has been adduced to prove the charge. The guns were never presented.

x x x."[9]

Accordingly, appellants were meted out the following penalties:

"WHEREOF, in view of all the foregoing, the Court finds the accused Antonio Garcia and Leon Lumilan guilty beyond reasonable doubt of the crime of 1) MURDER as defined and penalized under Article 248 of the Revised Penal Code in conjunction with Article 6 of the Revised Penal Code and in view of the absence of any mitigating or aggravating circumstances attending the commission of the crime, hereby sentences Antonio Garcia and Leon Lumilan to suffer the penalty of RECLUSION PERPETUA on three counts each for the killing of Meliton Asuncion, Modesto Roque and Eliong dela Cruz; 2) FRUSTRATED MURDER and are sentenced to a prison term of 8 years and 20 days as minimum to 14 years, 10 months, and 21 days as maximum on two counts each for the wounding of Jerry Palomo and Simeon Pacano and; 3) ATTEMPTED MURDER and are sentenced to a prison term of 5 years as minimum to 8 years and 21 days as maximum on three counts each for the wounding of Nolasco Estrada, Mario Palomo and Romeo Pacho, and to indemnify the heirs of the deceased MELITON ASUNCION damages in the amount of P30,000.00, moral damages of P10,000.00 each, actual damages of P4,150.00 and lost earning of P27,000.00 for one year as farmer; the deceased MODESTO ROQUE damages of P30,000.00, moral damages of P10,000.00 each actual damages of P8,00.00 and lost earning of P10,000.00 for one year as farmer; and the deceased ELIONG DELA CRUZ, damages of P30,000.00 and moral damages of P10,000.00 each; for the wounding of SIMEON PACANO and JERRY PALOMO, moral damages of P10,000.00 each and actual damages of P11,550.00 for JERRY PALOMO; and for an attempt on the life of NOLASCO ESTRADA and MARIO PALOMO, an actual damages of P100.00 for NOLASCO ESTRADA and actual damages of P200.00 and lost earning of P 10,500.00 for one year as farmer for MARIO PALOMO, with costs.

SO ORDERED"[10]

Appellants file a motion for reconsideration which was, however, denied by the trial court in its Resolution[11] dated October 24, 1991. Hence, the instant appeal.

Appellants Leon Lumilan and Antonio Garcia raise the following errors:

I

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN FINDING THAT THE GUILT OF APPELLANTS WAS PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN NOT GIVING CREDENCE TO THE EVIDENCE OF APPELLANTS.

The important first question We must answer is whether or not appellants may be properly convicted of murder, frustrated murder and attempted murder under an Information that charges them with qualified illegal possession of firearms used in murder in violation of Section 1 of Presidential Decree (P.D.) No. 1866, as amended[12]

At the time the trial court promulgated its judgment of conviction in September 1990, it had already been six (6) months since We held in *People v. Tac-an*[13] that the unlawful possession of an unlicensed firearm or ammunition, whether or not homicide or murder resulted from its use, on one hand, and murder or homicide, on the other, are offenses different and separate from and independent of, each other[14]. While the former is

punished under a special law, the latter is penalized under the Revised Penal Code. Consequently, the prosecution for one will not bar prosecution for the other, and double jeopardy will not lie[15]

Tac-an was reiterated in *People v. Tiozon*[16], *People v. Caling*[17], *People v. Jumamoy*[18], *People v. Deunida*[19], *People v. De Gracia*[20], *People v. Tiongco*[21], *People v. Fernandez*[22], *People v. Somooc*[23] and *People v. Quijada*[24].

Under Sec. 7 of Rule 117 of the Revised Rules of Court, double jeopardy lies when after the accused has pleaded to the first offense charged in a valid complaint or information and he is subsequently convicted or acquitted or the case against him is dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, he is prosecuted for a second offense or any attempt to commit the same or frustration thereof or any other offense, which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

It cannot be said that murder or homicide necessarily includes or is necessarily included in qualified illegal possession of firearms used in murder or homicide. To state otherwise is to contradict Tac-an and its progeny of cases where We categorically ruled out the application of double jeopardy in the simultaneous prosecution for murder or homicide and qualified illegal possession of firearms used in murder or homicide against same accused involving the same fatal act.

Sec. 4, Rule 120 of the Revised Rules of Court provides that an accused may not be convicted of an offense other than that with which he is charged in the Information, unless such other offense was both established by evidence and is included in the offense charged in the Information. Since murder or homicide neither includes or is necessarily included in qualified illegal possession of firearms used in murder or homicide, the trial court may not validly convict an accused for the former crime under an Information charging the latter offense. Conversely, an accused charged in the Information with homicide or murder may not be convicted of qualified illegal possession of firearms used in murder or homicide, for the latter is not included in the former. As We have amplified in *Quijada*:

"The unequivocal intent of the second paragraph of Section 1 of P.D. 1866 is to respect and to preserve homicide or murder as a distinct offense penalized under the Revised Penal Code and to increase the penalty for illegal possession of firearm where such firearm is used in killing a person. Its clear language yields no intention of the lawmaker to repeal or modify, pro tanto, Articles 248 and 249 of the Revised Penal Code, in such a way that if an unlicensed firearm is used in the commission of homicide or murder, either of these crimes, as the case may be, would only serve to aggravate the offense of illegal possession of firearm and would not anymore be separately punished. Indeed, the words of the subject provision are palpably clear to exclude any suggestion that either of the crimes of homicide and murder, as crimes mala in se under the Revised Penal Code, is obliterated as such and reduced as a mere aggravating circumstance in illegal possession of firearm whenever the unlicensed firearm is used in killing a person. The only purpose of the provision is to increase the penalty prescribed in the first paragraph of Section 1—reclusion temporal in its maximum period to reclusion perpetua—to death, seemingly because of the accused's manifest arrogant defiance and contempt of law in using an unlicensed weapon to kill another, but never, at the same time, to absolve the accused from any criminal liability for the death of the victim.

Neither is the second paragraph of Section 1 meant to punish homicide or murder with death if either crime is committed with the use of an unlicensed firearm, i.e., to consider such use merely as a qualifying circumstance and not as an offense. That could not have been the intention of the lawmaker because the term 'penalty' in the subject provision is obviously meant to be the penalty for illegal possession of firearm and not the penalty for homicide or murder. x x x

x x x

Evidently, the majority did not x x x create two offenses by dividing a single offense into two. Neither did it resort to the 'unprecedented and invalid act of treating the original offense as a single integrated crime and then creating another offense by using a component crime which is also an element of the former.' The majority has always maintained that the killing of a person with the use of an illegally possessed firearm gives rise to two separate offenses of (a) homicide or murder under the Revised Penal Code, and (b) illegal possession of firearm in its aggravated form." [25]

Since Quijada, however, many changes have been introduced to Sec. 1 of P.D. No. 1866 by Republic Act (R.A.) No. 8294 [26]. Said section now reads:

"Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.—The penalty of prision correccional in its maximum period and a fine of not less than Fifteen Thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition; Provided, that no other crime was committed.

The penalty of prision mayor in its minimum period and a fine of Thirty Thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'état, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition or attempted coup d'état.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

The penalty of arresto mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor." [27]

Without doubt, the foregoing amendments blur the distinctions between murder and homicide, on one hand, and qualified illegal possession of firearms used in murder or homicide, which we have enunciated beginning in Tac-an and culminating in Quijada.

In *People v. Molina* [28], We already declared that the intent of Congress to treat as a single offense the illegal possession of firearms and the commission of murder or homicide with the use of an unlicensed firearm, is clear from the unequivocal wording of the third paragraph of Sec. 1 of P.D. No. 1866, as amended by R.A. No. 8294, which reads:

"If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance."

Where an accused uses an unlicensed firearm in committing homicide or murder, he may no longer be charged with what used to be the two separate offenses of homicide or murder under the Revised Penal Code and qualified illegal possession of firearms used in homicide or murder under P.D. No. 1866. As amended by R.A. No. 8294, P.D. No. 1866 now mandates that the accused will be prosecuted only for the crime of homicide or murder with the fact of illegal possession of firearms being relegated to a mere special aggravating circumstance. To obviate any doubt, R.A. No. 8294 expressly restricts the filing of an information for illegal possession of firearms to cases where no other crime is committed. Thus, illegal possession of firearms may now be said to have taken a dual personality: in its simple form, it is an offense in itself, but when any killing attends it, illegal possession of firearms is reduced to a mere aggravating circumstance that must be alleged in the information in order to be appreciated in the determination of the criminal liability of the accused.

Now We observe that the Information charging appellants with Qualified Illegal Possession of Firearms Used in Murder, violates Sec. 1 of P.D. No. 1866, as amended by R.A. No. 8294, which obliterated the now obsolete concept of qualified illegal possession of firearms or illegal possession of firearms in its aggravated form, i.e., where the penalty for illegal possession is increased to reclusion perpetua or death by the attendance of homicide or murder. In fact, qualified illegal possession of firearms, which used to be a distinct offense, no longer exists in our statute books.

We come to the conclusion, thus, that whether considered in the light of our ruling in Tac-an and its progeny of cases or in the context of the amendments introduced by R.A. No. 8294 to P.D. No. 1866, the Information charging appellants with Qualified Illegal Possession of Firearms Used in Murder, is defective, and their conviction for Murder, Frustrated Murder and Attempted Murder, is irregular.

The decisive question, however, is: do such defect in the Information and the irregular conviction of appellants, invalidate the criminal proceedings had in the trial court?

No. Appellants waived their right to quash the Information, and they effectively defended themselves against the charges for murder, frustrated murder and attempted murder.

The Information in the instant case reads:

"The undersigned Provincial Fiscal accuses FRED ORBISO, LEON LUMILAN and ANTONIO GARCIA of the crime of QUALIFIED ILLEGAL POSSESSION OF FIREARMS USED IN MURDER, in violation of Presidential Decree No. 1866, committed as follows:

"That on or about the 12th day of October 1987, in the municipality of Ilagan, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized or allowed by the law to keep, possess and carry firearms, did then and there wilfully, unlawfully and feloniously have in their possession and under their control and custody, firearms without first having obtained the necessary permit and/or license to possess the same, and that on the occasion of such possession, the herein accused with treachery did then and there wilfully, unlawfully and feloniously with intent to kill suddenly and unexpectedly and without giving them a chance to defend themselves, fired [sic] at and shoot Meliton Asuncion, Modesto Roque, and Eliong de la Cruz inflicting upon them gunshot wounds which directly caused their deaths; and further inflicting on the same occasion gunshot wounds upon Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano which injuries would ordinarily cause the death of the said Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano, thus performing all the acts of execution which should have produced the crime of murder with respect to the last named victims as a consequence, but nevertheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to the said Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano which prevented their deaths.

CONTRARY TO LAW."

While the Information specifically states that appellants are being accused of the crime of Qualified Illegal Possession of Firearms Used in Murder in violation of P.D. No. 1866, its text is so worded that it describes at least three (3) crimes:

Illegal Possession of Firearms –

"the herein accused, not being authorized or allowed by the law to keep, possess and carry firearms, did then and there wilfully, unlawfully and feloniously have in their possession and under their control and custody, firearms without first having obtained the necessary permit and/or license to possess the same, and"

Murder –

"that on the occasion of such possession, the herein accused with treachery did then and there wilfully, unlawfully and feloniously with intent to kill suddenly and unexpectedly and without giving them a chance to defend themselves, fired [sic] at and shoot Meliton Asuncion, Modesto Roque, and Eliong de la Cruz inflicting upon them gunshot wounds which directly caused their deaths; and"

Frustrated/Attempted Murder –

"further inflicting on the same occasion gunshot wounds upon Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano which injuries would ordinarily cause the death of the said Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano, thus performing all the acts of execution which should have produced the crime of murder with respect to the last named victims as a consequence, but nevertheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to the said Jerry Palomo, Romeo Pacho, Nolasco Estrada, Mario Palomo and Simeon Pacano which prevented their deaths."

The Information is undeniably duplicitous. Sec. 13, Rule 110 of the Revised Rules of Court provides that a complaint or information must charge but one offense, except only in cases where the law prescribes a single punishment for various offenses. Duplicity or multiplicity of charges is a ground for a motion to quash under Sec. 2 (e), Rule 117 of the Revised Rules of Court. The accused, however, may choose not to file a motion to quash and be convicted of as many distinct charges as are alleged in the information and proved during the trial.[29] In the same vein, failure to interpose any objection to the defect in the information constitutes waiver.[30]

In the instant case, appellants did not file any motion to quash the Information. More significantly, the bulk of the evidence that they presented during the trial was intended to disprove their complicity in the murder, frustrated murder and attempted murder of the victims. Appellants were undeniably defending themselves, not so much with the charge of qualified illegal possession in mind, as it was common knowledge even in the beginning of the trial that no weapon was retrieved from the crime scene and it was evident that the prosecution was never going to present any weapon in evidence against them, but with the full awareness that they were as well and more vigorously being prosecuted for murder, frustrated murder and attempted murder.

As such, appellants cannot pretend that the Information did not fully apprise them of the charges against them as to cause them surprise in the event of conviction. The appellation of the crime charged as determined by the provincial fiscal may not exactly correspond to the actual crimes constituted by the criminal acts described in the Information to have been committed by the accused, but what controls is the description of the said criminal acts and not the technical name of the crime supplied by the provincial fiscal[31]. Since appellants defended themselves not only against the offense of Qualified Illegal Possession of Firearms Used in Murder as specified in the Information, but also, and more seriously against the crimes of Murder, Frustrated Murder and Attempted Murder as described in the body of the Information, it cannot be said that their conviction for the latter crimes is

infirm and invalid.

This now leads us to the main business of every criminal appeal: the determination of the liability of appellants for the crimes they have been convicted of.

The appeal is meritorious. Appellants must be acquitted on the ground of reasonable doubt.

The trial court found appellants guilty of three (3) counts of murder, two (2) counts of frustrated murder, and three (3) counts of attempted murder on the strength of the direct testimonies of prosecution eyewitnesses Simeon Pacano and Benito Alonzo.

Simeon Pacano testified, thus:

"Q And while you and the persons you mentioned were drinking, do you recall if there was anything unusual which happened?

A There was, sir. That was the time when I heard a gun report.

Q And from what direction did the gun report emanate?

A Outside the fence, sir. On the road outside the fence or road leading to Salindangan.

x x x

Q And do you know what happened to you and your companions when as you stated you heard firings?

A I know, sir, because my companions died during that incident.

Q Who of your companions died?

A Meliton Asuncion, Modesto Roque, and Eliong dela Cruz. Three of them, sir.

Q About you, did you suffer any injuries or not?

A Yes, sir.

Q What part of your body was hit?

A My left leg, sir. (Witness pointed to his left leg which was already amputated).

Q Besides you and three others whose names you mentioned as having died, do you know if any of your other companions suffered any injury or innjuries?

A Romeo Pacho was injured, sir. Francisco Macugay and the two brothers of Policarpio Palomo, Mario Palomo and Oly Estrada.

x x x

Q And while you were in that position as you have stated face downwrđ on the ground, do you know what later happened?

A When I was in that position, sir, face downward, I heard no gun reports and that was the time that one of the gunmen went to the place where we were and that was the time that I was able to recognize him.

Q What did that gunman whom you recognized do, if he did anything?

A He turned us around, sir, to see if we were already dead.

Q And can you tell the Court who is the person you recognized?

A Fred Orbiso.

Q Will you look into the persons inside the courtroom who are seated there in the benches and tell the Court if that Fred Orbiso is here in Court or not?

A He is not in Court.

Q And after you recognized Fred Orbiso as you stated, what else happened?

A What I heard, sir, that other companion of the gunman said that they are looking for Boy Estrada.

x x x

Q And you said that persons entered including the person you earlier recognized. Did you come to know how many persons entered?

A I remember, sir.

Q How many of them?

A Three (3), sir.

Q Now, you recognized one of them as Fred Orbiso. About the other persons, were you able to recognize them or not?

A I also recognized them, sir.

Q Can you tell the Court the name or the persons whom you recognized other than Fred Orbiso?

A Manong Tony Garcia. (Witness pointed to a man seated at the third row of the benches of the Court, and when asked, he gave his name as Antonio Garcia).

Q About the third person?

A The man seated beside Antonio Garcia, sir.

Q What is his name?

A That I know is Leon Lumilan. (Witness pointed to a man seated beside Antonio Garcia, and when asked, he gave his name as Leon Lumilan.)^[32]

And Benito Alonzo corroborated him in this wise:

"Q

What was that unusual incident that happened?

A

While we were drinking inside the house, we heard gun reports firing at the door of the house of Poling.

x x x

Q

You stated that while you were inside the house of Poling Policarpio you heard gun reports. Are you in a position to tell the Court from what direction did these gun reports come or emanate?

A

It is possible, sir.

Q

Where did the firing emanate or originate?

A

Coming from the gate of the fence of Mang Poling and the other firings took place on the fence because there were three(3) persons who fired.

Q

How did you come to know that there were three (3) persons who fired?

A

I can see the flame of the firings coming from the firearms going toward us.

Q

Are you in a position to tell the Court if you were able to identify these three (3) persons?

A

Yes, sir.

Q

Please name the persons?

A

Leon Lumilan, Tony Garcia, and Fred Orbiso, sir.

Q

You have mentioned as one of the persons you saw that evening as Leon Lumilan. Please look around the courtroom and tell the Court if that person is here now in the courtroom?

A

Yes, sir.

Q

Please stand and point to the Court the persons of Leon Lumilan and that of Antonio Garcia.

A

That is Leon Lumilan, sir. (The witness pointing to a man in the courtroom and when asked, he gave his name as Hermenegildo Lumilan). And that is Tony Garcia. (The witness pointing to another man in the courtroom and when asked, he gave his name as Antonio Garcia)."[33]

This Court does not ordinarily interfere with the trial court's judgment on the trustworthiness of witnesses. However, when there appear on record, as in this case, facts or circumstances of real weight which might have been overlooked or misapprehended,[34] We can not shirk from our duty to apply the law and render justice.

We entertain serious doubt as to whether prosecution eyewitness Simeon Pacano did see the assailants. He testified that he was about to leave the house of Policarpio Palomo together with Romeo Pacho at around 7:00 o'clock in the evening when successive gunshots emanated from the fence which was more or less six (6) meters away from the doorway of the house. He was hit in the left leg and fell to the ground on his face as he felt terrible pain that almost immobilized him. After the firing had ceased and while he was in the said position pretending to be dead, the alleged assailants entered the premises. He recognized Fred Orbiso when the latter turned the bodies of the victims to ascertain if they were already dead. He also claimed to have seen appellants enter the premises[35] and noticed appellant Lumilan holding an armalite rifle.[36]

A nexus of logically related circumstances, however, render Pacano's testimony as doubtful. First, it was already 7:00 o'clock in the evening when the shooting incident occurred. It was dark outside the house of Policarpio Palomo where he was shot near the doorway. Inside the house, the only source of light was the illumination coming from the two improvised kerosene lamps made of bottle and wick. One was placed on the second floor while the other was placed at the groundfloor inside the house where they were drinking.[37]

Pacano admitted that he did not notice the presence of the assailants on the other side of the fence.[38] Likewise, no evidence was shown that he actually saw the assailants while they were in the act of firing their guns.

Second, the incident occurred so fast and he was admittedly very afraid. He pretended to be dead by closing his eyes and holding his breath, avoiding any sign of life, so to speak, to avoid detection by the assailants when they entered the premises and inspected the bodies for survivors.[39]

Third, after the shooting incident, Pacano was treated in the Isabela Provincial Hospital for six (6) days after which he was transferred to the National Orthopedic Hospital in Manila. Upon his discharge on December 8, 1987, he returned to Ilagan, Isabela and since then stayed in the house of Bonifacio Uy who was the OIC Mayor of Ilagan, Isabela. On March 21, 1988, more than five (5) months after the incident, Pacano executed his sworn statement[40] before the Ilagan, Isabela police authorities implicating appellants and Fred Orbiso.[41] It is true that initial reluctance to volunteer information regarding the crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility.[42] However, Pacano can not really claim to be afraid for his life inasmuch as he was under the custody of then OIC Mayor Bonifacio Uy after the shooting incident. During the political rally of Bonifacio Uy on January 16, 1988 in Centro Ilagan, Isabela, Pacano even delivered a speech implicating Fred Orbiso, Leon Lumilan, Antonio Garcia, Juan Lorenzo and Martin Laguna, who were identified with the camp of Uy's opponents as the authors of the shooting incident on October 12, 1987.[43]

We also can not subscribe reliability to the testimony of prosecution eyewitness Benito Lorenzo. First, he claims to have recognized appellants and Fred Orbiso with the help of the light of the flames coming out of their respective firearms when they were firing them.[44] This is patently unbelievable, considering that he was drinking liquor inside the house of Policarpio Palomo when the shooting occurred. It was already 7:00 o'clock in the evening and the only light there came from inside the house, not outside.

Second, Benito Alonzo went to the police authorities on October 13, 1987 to give his sworn statement regarding the shooting incident the day before. In said sworn statement[45], Alonzo categorically admitted that he did not see the assailants. However, he suspected Atty. Benjamin Olalia, whom he allegedly had a misunderstanding over the latter's cow, and his men as perpetrators of the crime considering that they were the only persons who went to their barangay in Gayong-Gayong Sur on October 12, 1987 armed with long firearms. He stated that he saw Atty. Olalia together with other persons including appellants Lumilan and Garcia at the house of Hilario Laguna at about 4:00 o'clock of the same date attending the wedding of Laguna's son. Upon seeing appellant Lumilan and two others whom he did not know carrying armalite rifles, he left the place and proceeded to the house of Policarpio

Palomo. This isolated circumstance is certainly not sufficient to hold appellants liable for the shooting incident.

In the light of all the foregoing, this Court is constrained to acquit the appellants on the ground of reasonable doubt. The constitutional presumption of innocence in favor of the appellants was not over-turned by the evidence adduced by the prosecution.

WHEREFORE, the Decision of Branch 16 of the Regional Trial Court of Ilagan, Isabela in Criminal Case No. 995 is REVERSED and SET ASIDE. The accused-appellants, Leon Lumilan and Antonio Garcia, are hereby ACQUITTED on the ground that their alleged guilt was not proven beyond reasonable doubt. Costs de officio.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Teodoro L. Hernando. Rollo, pp. 27-40.

[2] Accused Fred Orbiso fled before arrest and remains at large to the present.

[3] Rollo, p. 4.

[4] Emphasis ours.

[5] TSN dated October 11, 1988, pp. 7-11.

[6] TSN dated February 15, 1989, pp. 363-367.

[7] TSN dated July 19, 1989, pp. 190-202.

[8] TSN dated February 8, 1990, p. 287.

[9] Decision dated September 20, 1990, pp. 9-12, Original Records, pp. 246-249.

[10] Decision of the Regional Trial Court, pp. 12-14, Rollo, pp. 27-40.

[11] Penned by Judge Teodulo E. Mirasol, Original Records, p. 279.

[12] "SEC. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms, Ammunition or Instruments Used or Intended to be used in the Manufacture of Firearms or Ammunition.—The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed."

[13] 182 SCRA 601 (1990).

[14] Id., pp. 615-617.

[15] Ibid.

[16] 198 SCRA 368 (1991).

[17] 208 SCRA 821 (1992).

[18] 221 SCRA 333 (1993).

[19] 231 SCRA 520 (1994).

[20] 233 SCRA 716 (1994).

[21] 236 SCRA 458 (1994).

[22] 239 SCRA 174 (1994).

[23] 244 SCRA 731 (1995).

[24] 259 SCRA 191 (1996).

[25] *People v. Quijada*, 259 SCRA 191, 232 (1996). Italics retained. Emphasis supplied.

[26] Approved on June 6, 1997.

[27] Emphasis ours.

[28] 292 SCRA 742, 779-782 (1998).

[29] Regalado, Florenz D., *Remedial Law Compendium*, 7th Rev. Ed., Vol. Two, p. 394, citing *People v. Mangampo*, 99 Phil. 967.

[30] *Id.*, p. 256, citing *People v. Barruga*, 61 Phil. 318; *Prov. Fiscal of Nueva Ecija v. CFI of Nueva Ecija*, 79 Phil. 165.

[31] *Buhat v. People*, 265 SCRA 701, 714-717 (1996), citing *U.S. v. Lim San*, 17 Phil. 273, 278-281 (1910); *U.S. v. Cabe*, 36 Phil. 728, 731 (1917); *U.S. v. Ondaro*, 39 Phil. 70, 75 (1918); *U.S. v. Burns*, 41 Phil. 418, 436 (1921); *People v. Perez*, 45 Phil. 600, 607 (1923); *People v. Oliveria*, 67 Phil. 427 (1939); *People v. Arnault*, 92 Phil. 252 (1952); *People v. Cosare*, 95 Phil. 656, 660 (1954); *Matilde, Jr. v. Jabson*, 68 SCRA 456, 462 (1975); *Reyes v. Camilon*, 192 SCRA 445, 453 (1990); *People v. Mayoral*, 203 SCRA 528, 538-539 (1991); *People v. Escosio*, 220 SCRA 475, 488 (1993).

[32] TSN dated October 11, 1988, pp. 363-367.

[33] TSN dated February 15, 1989, pp. 6-11.

[34] *People vs. Parazo*, 272 SCRA 512, 520-521 (1997).

[35] TSN dated October 11, 1988, pp. 7-11

[36] TSN dated November 10, 1988, p. 224

[37] TSN dated October 11, 1988, p. 69.

[38] *Id.*, p. 40.

[39] *Id.*, pp. 50-55.

[40] Exhibit "C".

[41] TSN dated December 6, 1988, pp. 272-275.

[42] People vs. Navales, 266 SCRA 569, 590 (1997).

[43] TSN dated December 6, 1988, pp. 280-282.

[44] TSN dated February 15, 1989, pp. 365-367.

[45] Exhibit "A"; also Exhibit "1" for the defense.

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