

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO HANGAD, ALLAN ALULOD, RENE REYES, LEOPOLDO BALANGUE AND RODELIO VIDAL, ACCUSED-APPELLANTS.

G.R. No. 102954. October 14, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused appealed from the decision of Branch 50 of the Regional Trial Court of Palawan in Criminal Case No. 8816, promulgated on 8 August 1991,[1] finding all of them guilty of the murder of Decoroso Cajés in the evening of 14 November 1989 at Parola Beach in the city of Puerto Princesa, and sentencing each of them to suffer the penalty of reclusion perpetua and to pay, jointly and severally, the heirs of Decoroso Cajés the sums of P50,000.00 as indemnity for his death and P50,000.00 as moral damages.

The crime was allegedly committed on 14 November 1989 but the Information charging them of murder was filed only on 28 June 1990.[2] The basis of the filing of the Information were the sworn statements of witnesses Lloyd Mahinay and Ernesto Rosales taken by Police Sgt. Crisanto Pantollano on 26 February 1990[3] and the paraffin test results finding Lloyd Mahinay and the accused positive for nitrates.[4] The Information alleges the qualifying circumstances of treachery and evident premeditation.

A plea of guilty was entered by each of the accused during their arraignment on 25 September 1990.[5] Thereafter, trial on the merits ensued.

To establish its case, the prosecution presented Lloyd Mahinay and Ramon Pangilinan whose testimonies disclosed the following facts:

At 10:00 o'clock in the evening of 14 November 1989 while Lloyd Mahinay, a resident of Parola Beach, Barangay Bagong Silang, Puerto Princesa City, was on his way home, he met a group of five persons. One of them poked a gun at him and asked him his name while the other four surrounded him. He did not know the name of the gunwielder but he could see his face and estimate his height as the place was "not so dark because there was also moonlight." Then another person arrived and when he was about five meters away from Lloyd, three members of the group met this other person. Two of these three men held the newcomer while the third poked a gun at him. He tried to struggle and one of the five persons shouted "Paputukan mo." Another person from the group raised his hand and struck the man and the latter fell to the ground. The man was then shot. At this juncture, Lloyd tried to wrestle with the person who was pointing a gun at him but the gun fired towards the ground and the five panicked and ran away. Lloyd also panicked and ran towards the water and then to the place where his companions were. He told them that he was waylaid by a group of five men. He and his companions then returned to the place where he was waylaid to find out what happened to the other person. When Lloyd and his companions reached that place, they found the other person lying on the ground. He turned out to be his co-worker, Decoroso Cajés, whose voice Lloyd earlier recognized when Decoroso was held by the two men and he purportedly asked those who escorted him, "Ano ba ito, wala naman akong kasalanan sa inyo?" They then

brought Decoroso to the hospital and laid him down on a bed, but the doctor who examined him told them that he was already dead.[6]

Per the Post-Mortem Findings[7] of Dr. Manuel R. Bilog, Assistant Head Health Officer of the City of Puerto Princesa, Decoroso Cajés sustained the following injuries:

"= Abrasion with peripheral hematoma, upper lid (left) about 1" long, penetrated the whole thickness of the muscular tissues

= Gun Shot wound -- mid occiput, with powder burns, circular, with penetration to the Cranium (skull) producing worn-out brain tissues. Bullet slug lodged & recovered about 2" below the wound of entrance underneath the skin."

The cause of death was "shock; hemorrhage, massive, intra and extra-cerebral; gunshot wound."

Lloyd did not know the names of the five persons until 9 October 1990 when he testified; but since he stated that he can recognize their faces, he was asked to identify them in court. So, he went down from the witness box and approached and tapped the shoulder of a person in the courtroom who gave his name as Leopoldo Balangue. Lloyd identified Balangue as the person who poked a gun at him.[8] He also pointed to four other persons in the courtroom as the companions of Balangue. They gave their names as Rene Reyes, Rodelio Vidal, Alfredo Hangad and Allan Alulod. When told to point to the person who allegedly shot Decoroso Cajés, Lloyd touched the shoulder of Rodelio Vidal.[9]

Ramon Pangilinan, a security guard, testified that at about 10:00 o'clock in the evening of 14 November 1989, while he was at his store near the Parola Beach, he heard "some voices in the cottage at the beach." At 10:30 o'clock, he saw a group of about four persons going out of the Parola Beach toward the poblacion. Not so long thereafter, the group of Decoroso Cajés followed the first group. Then he heard "a burst of a firearm," but he did not mind it. Later, a commotion occurred and he learned that Decoroso had been shot. That same evening he was interrogated by the police regarding the incident and he told the police that he "saw them (the first group) going out the parola beach"[10] but he could not identify any of them.[11]

The defense presented a totally different account of what occurred on the night of the incident. The trial court summarized the version of the defense as culled from its witnesses as follows:

"x x x the accused who are all students of PNAC-RIFT denied the accusation against them and maintained that at the time of the incident in question, they were all sleeping at the cottage of a certain Mrs. Abian whose son Eugene was their classmate at PNAC-RIFT, Puerto Princesa City.

Thus, at around three o'clock in the afternoon on November 14, 1989, Rene Reyes and some of his classmates, including all the accused, went to the house of Eugene Abian at the Parola Beach to help the latter and his mother in cooking since it was the birthday of Eugene. Two hours later, some more guests arrived and the birthday party started. After partaking of the food, the guests were served beer and the drinking spree started at around 7:00 p.m. Beer flowed that night up to about 9:00 p.m. when Rene and his classmates decided to rest already as they were very tired. Upon the suggestion of Mrs. Abian, they all slept and spent the night at the latter's cottage at the Parola Beach.

At around 12:00 midnight, Rene was awakened by one of his classmates so that they could bring Eugene to the hospital as the latter's mouth was frothing. Together with Allan Ramos, Ramon Aballa and the driver of the tricycle, Rene brought Eugene to the hospital. On their way to the hospital from the Parola Beach, they noticed a person sprawled on the ground along the road. But since they were in a hurry to bring Eugene to the hospital, they just evaded the said person. After having Eugene treated at the hospital, Rene and company proceeded home. (Testimony of Rene Reyes, Tsn: pp. 3-8, Oct. 22, 1990).

Lito Montero, a neighbor of Eugene Abian was the one who drove the tricycle that brought the latter to the hospital. He said they indeed noticed the person sprawled on the ground in the middle of the road about 90 to 100 meters away from the Parola Beach, but they just evaded him. (Testimony of Rene Reyes, Tsn: pp. 2-7, Oct. 23, 1990). He added that he did not hear any sound of a gunfire on the night of November 14, 1989 as he was then sleeping and was only awakened in order to drive the tricycle.

Accused Rodelio Vidal, Allan Alulod and Leopoldo Balangue likewise testified in Court and corroborated substantially the testimony of accused Rene Reyes. (Testimony of Rodelio Vidal, Allan Alulod and Leopoldo Balangue, Tsn: pp. 4-23, October 26, 1990) Accused Alfredo Hangad likewise corroborated substantially the testimonies of all his co'accused in the instant case. He further testified that during the said party, he and his companions exploded firecrackers. Moreover, in the afternoon of November 14, 1989 before going to Eugene's place at Parola Beach, he and his classmates were made to scatter fertilizer in the fishpond by the use of their hands. (Testimony of Alfredo Hangad, Tsn: pp. 4-14, November 7, 1990).

Dr. Manuel Bilog who conducted the autopsy on the deceased Decoroso Cajes, also testified on his autopsy report and as to the trajectory of the bullet. (Testimony of Dr. Manuel Bilog, Tsn: pp. 26-28, Nov. 7, 1990).

The forensic chemist of the National Bureau of Investigation Aida Vilorio-Magsipoc was the one who conducted the paraffin examination on all the accused and witness Lloyd Mahinay. The former presented in Court copies of her Chemistry Reports finding all the accused and prosecution witness Lloyd Mahinay positive for gunpowder nitrates. (Testimony of Aida Vilorio-Magsipoc, Tsn: pp. 2-21, Feb. 5, 1991)."[12]

The trial court believed that the prosecution's lone eyewitness, Lloyd Mahinay, had positively identified those who attacked him and assaulted and killed Decoroso Cajes. It also found that the findings of the National Bureau of Investigation (NBI) not only sufficiently corroborated Mahinay's identification of the accused, they also "furnished concrete evidence that all the 5 accused were together at the time the victim was shot and killed in the evening of November 14, 1989 at Barangay Bagong Silang, Puerto Princesa City." [13] Treachery, the trial court further ruled, attended the killing because the victim was "unarmed" and was "suddenly and unexpectedly attacked." In addition, it found that conspiracy existed among the accused who "were animated by a joint purpose or design, concerted act and community of interest," and at the same time it noted that they "were boisterous and most likely under the influence of liquor having come from a birthday party with 2 of them armed with handguns [and] were disposed to commit trouble on that particular evening in question. x x x [T]hey accosted for no apparent reason any person they first met on the way." [14] The generic aggravating circumstances of abuse of superior strength and nighttime were considered against the accused but they were credited with the alternative circumstance of intoxication which was deemed not habitual. [15]

On the other hand, the trial court rejected the accused's version of the incident because having been positively identified, their defense of alibi fails. Moreover, they were unable to give a plausible explanation for the presence of gunpowder nitrates on their hands. Considering the testimony of the NBI chemist that nitrates from gunpowder are different from nitrates produced by firecrackers and fertilizers, [16] their claim that they handled fertilizers before the party and lighted firecrackers in the evening of the incident cannot be given any weight.

In their Notice of Appeal [17] filed on 3 September 1991, after their motion for reconsideration was denied by the trial court in its Order of 30 August 1991, [18] the accused informed the court that they were appealing the decision to the Court of Appeals. The records of the case were, however, forwarded to this Court in view of the penalty imposed. We accepted the appeal in the Resolution of 3 February 1992.

In their Appellants' Brief filed on 20 November 1992, the accused contend that the trial court erred in: (a) convicting them despite the failure of the prosecution to present the quantum of evidence required by the Constitution to secure a conviction beyond reasonable doubt; (b) interpreting the testimony of the NBI chemist

regarding the presence of nitrates as conclusive evidence; (c) giving credence to the lone testimony of the single prosecution witness which was self-serving, biased, and gutted by doubt-inducing inconsistencies; and (d) interpreting the true but legally considered weak defense of alibi as an absolute principle -- even in the absence of sufficient prosecution evidence.[19]

The accused maintain that the evidence of the prosecution was not sufficient to convict them. To them, the positive identification made by the prosecution's lone eyewitness is questionable for it followed the "almost ritualistic procedure where the prosecution witnesses are simply made to point out the accused on the basis of a simple 'if I see him I can identify him declaration,' and which accused are required to sit on an area conspicuously reserved for them where they can be easily tagged." They likened this procedure to a mock police line-up. Moreover, they characterize the testimony of Lloyd Mahinay as self-serving and biased. His error in positively identifying in court the person who allegedly poked a gun at him and his initial failure to recognize his co-worker, Decoroso Cajés, even while he was able to identify the accused with certainty exemplify the doubt surrounding Lloyd's ability to positively identify the real killer or killers.

They further contend that "while the NBI chemist was presented as an expert in her field of expertise, she is by no means an expert of renown whose probity is beyond question." Her testimony concerning specks and smudges of nitrates on their hands was ambiguous. They argue that if Rodelio Vidal was indeed the gunman who shot and killed Decoroso Cajés, he should have had more smudges on his hands than Lloyd Mahinay, which was not the case. The official reports themselves do not make a categorical finding that the nitrates came from gunpowder but only state that the subjects were positive of nitrates.

Finally, they stress that the weakness of the defense of alibi does not relieve the prosecution of its burden of proving their guilt beyond reasonable doubt. Where the prosecution's evidence is weak, the alibi of the defendant assumes importance.

The determination of the accused's guilt or innocence in this case hinges on the credibility of the prosecution's lone eyewitness, Lloyd Mahinay.

It is a settled doctrine that when the issue of credibility of witnesses is involved, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question since it had heard the witnesses and observed their deportment and manner of testifying during trial, unless certain facts or circumstances of weight have been overlooked, misunderstood or misapplied which, if considered, might affect the result of the case.[20]

We have likewise consistently held that the testimony of a single witness, when credible and trustworthy, is sufficient to convict.[21]

Our painstaking examination of the records and evaluation of the evidence leads us to no other conclusion than that the trial court overlooked or failed to appreciate vital facts and circumstances which cast doubt on the identification by Lloyd Mahinay of the accused as the murderers of Decoroso Cajés.

Firstly, Lloyd admitted that the place was not well-lit and that, although there was light coming from the moon, he could not recognize his co-worker, Decoroso Cajés, the victim, whom he claimed was only five meters away. Thus:

"Q How far was the deceased from you when he was first accosted by the 3 other persons?

A More or less this distance. (Witness pointing to the place he is sitting to the post which the parties estimated to be about 5 meters away).

Q From 5 meters away you could not recognize the deceased who was working with you in the same place for one year that is why you recognized him only through his voice?

A Yes, sir.

Q Why could you not recognize a person you have known for one year because you have worked together in the distance of 5 meters?

ATTY. ROCAMORA:

May we make it of record that the question has been interpreted by the Honorable Court several times and witness has not answered the same.

A Because with that distance without the light you cannot readily recognize the person but if a person is near you can identify.

Q You mean to tell the Honorable Court that despite the fact that you said the moon was very bright you cannot recognize a person you have known for one year from 5 meters away, is that what you want the court to believe?

A I cannot, sir."^[22]

There is no evidence that Decoroso Cajés moved closer than five meters from Lloyd and vice-versa. If he could not identify his co-worker at a distance of five meters except through the latter's voice, then indeed the place was poorly lit, in which case Lloyd could not reasonably be expected to see a gun much smaller than Decoroso, being poked and then fired at the latter. Moreover, considering that Lloyd himself was attacked and assaulted with one person holding him and another poking a gun at him, his attention would be focused at that time on his two attackers and on his own safety and survival. What is more logical under the circumstances is that since, as he claimed, he heard the sound of a gunshot and he was aware that Decoroso died from a gunshot wound, he merely inferred that there was a gun and that it was fired at Decoroso.

Secondly, if indeed Lloyd was able to recognize the faces of the accused, it is highly unlikely that he would make a mistake in identifying the person who purportedly pointed a gun at him and from whom he tried to wrestle it. Yet, we note that on direct examination, he tapped the shoulder of the accused Leopoldo Balangue to confirm to the court that Balangue was the person in question, but on cross-examination, he pointed to accused Alfredo Hangad as the person who pointed the gun at him. Thus, on cross-examination:

"Q Who among the 5 accused you identified were the ones who held you?

A This is the one who held me, at the other side, (pointing to the person who gave his name as Allan Alulod) and this person is the one who was holding the gun (witness pointing to the person who gave his name as Alfredo Hanged when asked)."^[23]

No attempt was made by the prosecution to reconcile Lloyd's conflicting testimony on this very vital point. He did not say that he inadvertently tapped Leopoldo Balangue on the shoulder during the direct examination or that he erred in pointing at Vidal. It was the trial court which opined in its decision that Lloyd "later corrected himself and pointed to Alfredo Hangad."^[24] To us, it is not a simple case of correction. The tapping of Leopoldo Balangue expressed a thousand words of certainty, bordering on infallibility, that no one else except Leopoldo poked a gun at him. If subsequently, Lloyd knowingly changed his testimony without even giving the courtesy of an explanation, his alleged positive identification of the person who poked the gun at him is placed in serious doubt, nay, altogether discredited. The inevitable conclusion is that he was in fact unable to recognize the man either by face or by name and that his dramatic courtroom identification was contrived.

Thirdly, his testimony given in court on 9 October 1990 that he did not know the names of the accused until that day is inconsistent with his sworn statement taken on 26 February 1990,[25] where he solemnly admitted that he learned their names when they were taken to the NBI. Thus:

"06.-T: Nakilala mo ba kung sino-sino and mga taong nakaaway ninyo ng mga sandaling iyon?

S: Noong una po ay nakikilala ko lang sila sa kanilang taas at pangangatawan ngunit ng sila ay damputin ng mga Pulis at dalhin sa NBI ay nakilala ko sila na sina Allan Alulod, Alfredo Hangad, Rodelio Vidal, Rene Reyes at Leopoldo Balangue."

We also wish to point out that in that same statement of Lloyd, the name Alfredo Hangad is written in ball pen in bold letters over the typewritten name Noel Hernandez, and the name Rene Reyes is written also in ball pen in bold letters over the typewritten name Renato Balangue. Since the sworn statement is supposed to be that of Lloyd Mahinay, they should have been initialed by him to show that he either made or authorized the superimpositions on those very substantive matters, viz., the names of two of the assailants. But both superimpositions are not initialed by any person. These unexplained superimpositions cast a heavy toll on the truthfulness of Lloyd Mahinay's testimony. They even strongly suggest that it was the investigator himself who provided the names of the alleged assailants and fed them to the mouth of Lloyd and thereafter "corrected" the two names on the statement to conform to the paraffin test results of Alfredo Hangad and Rene Reyes.

Furthermore, it is obvious to us that Lloyd Mahinay had a motive to point to any of the accused as the gunman. He himself was a primary suspect because he was found positive for nitrates. To him, it became a matter of survival. His answers on cross-examination on this point are revealing:

"Q And it took you 3 months to give your statement to the police regarding this alleged incident?

A Yes, sir.

Q And you gave your statement to the police because you wanted to explain why powder burns were found in your hands, is that correct, Mr. Witness?

A Yes, sir.

Q That is why in the statement you specifically explained why you got powder burns in your hands?

A Yes, sir.

Q But during the month of November you did not go to the police and have your statement taken, Mr. Witness?

A I did not, sir.

Q During the month of December you did not go to the police and have your statement taken?

A No, sir.

Q During the month of January you did not go to the police to have your statement taken?

A I did not, sir.

Q It was only in February after the report on the paraffin test showed that you have a lot of powder burns in both hands that you went to the police to have your statement taken?

A Yes, sir."[26]

According to the findings of defense witness Aida Vilorio--Magsipoc, Supervising Forensic Chemist in the

Forensic Chemistry Section of the NBI, the paraffin tests of the left and right hands of Lloyd Mahinay showed that he was also positive for nitrates with specks located as follows:

"LEFT HAND:

1. One (1) speck, proximal third, first metacarpal;
2. One (1) speck, middle third, third metacarpal;
3. One (1) speck, proximal third, third metacarpal.

RIGHT HAND:

1. One (1) speck, middle third, distal phalange, thumb;
2. One (1) speck, distal third, proximal phalange, thumb;
3. One (1) speck, middle third, proximal phalange, thumb;
4. One (1) speck, distal third, first metacarpal;
5. One (1) speck, distal third, second metacarpal;
6. One (1) speck, distal third, proximal phalange, index finger;
7. One (1) speck, distal third, third metacarpal."[27]

and that the nitrates so found are from gunpowder.[28] She further declared that based on the number of nitrates specks and their distribution on the hands of the subjects, Lloyd Mahinay had "the greater possibility of firing the firearm" than accused Rene Reyes,[29] Allan Alulod,[30] Leopoldo Balangue,[31] Rodelio Vidal[32] and Alfredo Hangad.[33] As testified by Lloyd Mahinay, he grappled for the possession of the gun pointed at him by one of the five persons who waylaid him, and that in the process a shot was fired therefrom toward the ground. It is not clear who pulled the trigger since there is neither an admission nor a denial from Lloyd that he did but definitely there was such a shot fired from the gun as admitted by Lloyd himself and confirmed by the result of the paraffin test on him.

That the evidence clearly indicate that the gun Lloyd grappled for was fired is crucial to us in the further assessment of the reliability of Lloyd's testimony. He testified that it was Rodelio Vidal who shot Decoroso Cajes and that two shots from two different guns, one which was poked at him and the other poked at Decoroso, were actually fired. As earlier adverted to, however, prosecution witness Ramon Pangilinan testified that two groups of persons passed by near his store at Parola Beach going toward the poblacion, and that not so long after he "heard a burst of a firearm." [34] From this testimony, it is apparent that only one burst of gunfire or one shot was fired from a gun. If we are to give credence to the testimony of Lloyd Mahinay, this shot could be the one fired from the gun poked at him when he allegedly grappled for its possession. And since we seriously doubt that Lloyd actually saw Vidal fire the gun at Decoroso Cajes, the only scenario that opens itself to us or which we could reasonably reconstruct is that Lloyd himself was with that group that Ramon Pangilinan referred to as the group of Decoroso Cajes and a confrontation took place between Decoroso's group and the other, unidentified group in this way -- someone from the latter confronted Lloyd with a gun; a rumble ensued thereafter between the two groups; there was a mad scramble for the possession of the firearm; Decoroso was hit by one from the other group and fell to the ground; and at that particular instance, any of the protagonists for the possession of the firearm must have accidentally pulled the trigger and off went one bullet which hit Decoroso; all panicked and ran away.

If there was murder in the hearts of any of the accused, assuming that they did compose the other group, we find it

hard to believe that Lloyd was not shot at but was just asked for his name when he was the first one to be waylaid, held by one and poked with a gun by another. The trial court did surmise or speculate on why the killing of Decoroso happened:

"As the Court appreciates the evidence, the Court can only surmised [sic] that the unfortunate incident happened by reason of youthful exuberance. The 5 accused mostly in their late teens and another in his early twenties were students and definitely do not belong to the bad elements in town. Their attendance in the birthday celebration of their co-student where food and drinks flowed freely and made some or all of them affected by alcohol. In their youthful zest for thrill and excitement and uninhibited by alcohol, they set out to try and prove their manly ego around as they were with 2 handguns."

Conviction, however, cannot lie on mere surmises or speculation.

All told, the guilt of the accused has not been proven beyond reasonable doubt. Our minds cannot rest easy upon a conviction of the accused on the basis of the doubtful testimony of the lone eyewitness, Lloyd Mahinay.

WHEREFORE, the appealed decision of Branch 50 of the Regional Trial Court of Palawan in Criminal Case No. 8816 is REVERSED and the accused-appellants ALFREDO HANGAD, ALLAN ALULOD, RENE REYES, LEOPOLDO BALANGUE and RODELIO VIDAL are ACQUITTED with costs de oficio.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quason, JJ., concur.
Griño-Aquino, J., on official leave.

[1] Original Records (OR), 167-175; Rollo, 16-24. Per Judge Angel R. Miclat.

[2] OR, 1.

[3] OR, 2-3.

[4] Id., 15-20-a.

[5] Id., 25.

[6] TSN, 9 October 1990, 6-8; 11-21.

[7] Exhibit "A"; OR, 46.

[8] TSN, 9 October 1990, 9-10.

[9] Id., 14.

[10] TSN, 15 October 1990, 5-6.

[11] Id., 10.

[12] OR, 168-169; Rollo, 17-18.

[13] Id., 172; Id., 21.

[14] OR, 170-171; Rollo, 20-21.

[15] Id., 175; Id., 24.

[16] Id., 173; Id., 22.

[17] OR, 225.

[18] Id., 223.

[19] Rollo, 65.

[20] See People vs. Pascual, 208 SCRA 393 [1992]; People vs. Simon, 209 SCRA 148 [1992]; People vs. Florida 214 SCRA 227 [1992]; People vs. Matrimonio, 215 SCRA 613 [1992].

[21] See People vs. Lee, 204 SCRA 900 [1991]; People vs. Dela Cruz, 207 SCRA 632 [1992]; People vs. Francisco, 213 SCRA 746 [1992].

[22] TSN, 9 October 1990, 31-32.

[23] TSN, 9 October 1990, 44-45.

[24] OR, 168.

[25] Marked as Exhibit "C" and also as Exhibit "2." This document is typewritten and was subscribed and sworn to on 26 February 1990 before Assistant City Prosecutor Nelia Yap-Fernandez of Puerto Princesa City; OR, 2.

[26] TSN, 9 October 1990, 28-29.

[27] Exhibit "3"-Hangad; Exhibit "6"-all accused; OR, 15.

[28] TSN, 5 February 1991, 9-10.

[29] Id., 15-16.

[30] Id., 17-18.

[31] Id., 19-20.

[32] Id., 21.

[33] Id., 24.

[34] TSN, 15 October 1990, 3-4.

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