

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGUSTIN SOTTO, RADEL MONTECILLO AND ALEX MONTECILLO, ACCUSED. AGUSTIN SOTTO, ACCUSED-APPELLANT.

G.R. No. 106099. July 08, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Agustin Sotto, together with accused Radel Montecillo and Alex Montecillo, were charged with the so-called crime of highway robbery with homicide before Branch 15 of the Regional Trial Court of Cebu City in Criminal Case No. CBU-15792, in an indictment which alleges --

That on or about the 2nd day of May, 1989, at around 6:30 o'clock in the morning, more or less, along the road at Sitio Suwangan, Barangay Ibabao, Municipality of Sogod, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent to gain, by means of violence against and intimidation upon persons, with abuse of superior strength, and armed with a paltik .38 caliber revolver and a knife, did then and there willfully, unlawfully and feloniously take, steal and carry away cash in the amount of ONE THOUSAND NINE HUNDRED PESOS (P1,900.00), Philippine Currency, and one (1) "Cornavin" Wristwatch worth TWO HUNDRED PESOS (P200.00), Philippine Currency, belonging to NIDA M. SULTONES, to the damage and prejudice of the owner in the amount aforesated; that by reason or on occasion of said robbery and for the apparent purpose of enabling the said accused to take, steal and carry away the above-mentioned amount and article, herein accused, in pursuance of their intention to rob and to gain, using said home-made paltik revolver, caliber .38, with intent to kill, did then and there treacherously attack, assault and shoot Maximo Monilar, Jr., a 12 year old brother and companion of Nida M. Sultones, thereby inflicting upon him mortal wounds on the vital part of his body which caused his death shortly thereafter.[1]

The three accused, duly assisted by their counsel, all entered pleas of not guilty during their arraignment on August 3, 1989.[2] After trial, the court a quo[3] found appellant and the Montecillo brothers guilty beyond reasonable doubt of the felony of robbery with homicide defined under paragraph 1, Article 294 of the Revised Penal Code. They were sentenced to suffer the penalty of reclusion perpetua and to solidarily indemnify the heirs of Maximo Monilar, Jr. in the amount of P50,000.00, in addition to paying Nida Sultones P700.00 representing the value of the unrecovered cash forcibly taken from her.

Radel and Alex Montecillo accepted their fate under the verdict of the lower court, while herein appellant refused to acknowledge his guilt and filed a notice of appeal with the trial court,[4] eventuating in the appellate proceeding now before us.

In the court below, the prosecution presented the surviving victim of the special complex crime, Nida Sultones,[5] to testify on the facts surrounding the taking of her personal properties and the killing of Maximo Monilar, Jr. According to Nida, she and her said eleven year-old brother, Maximo, were walking towards the poblacion of Sogod, Cebu at around 5:30 A.M. on May 2, 1989. They planned to buy goods in the town for Nida's store in

Pansoy, Sogod, Cebu.

While at still some distance from the town proper, they saw Radel Montecillo exercising and jumping along the road of Sitio Magtakop, Ibabao, Sogod. Upon seeing the siblings, Radel followed them and asked if they were going to the market. When they reached Sitio Suwangan of Ibabao, Radel suddenly grabbed Nida and proceeded to strangle her. While Nida was struggling on the ground against her attacker, Radel took her wristwatch and the money in her pocket in the sum of P1,900.00.

Meanwhile, Alex Montecillo came out from behind a pile of firewood lying along the road and tried to help his brother, Radel, in subduing Nida. On the other hand, the youthful Maximo gallantly came to the aid of his elder sister by hitting Radel with the plastic container he was carrying.

Thereafter, a man with a piece of black cloth over his face and holding a handgun appeared from nowhere. Maximo ran away but was shot by this masked man whom Nida recognized as appellant through the similarity in the assailant's and herein appellant's physique, height, general appearance and other physical features. Maximo was hit on the head and died as a consequence of his wound.[6]

After Maximo fell, the Montecillo brothers dragged Nida to a nearby creek. With Radel poking a knife on her neck, Alex pointed a gun at the helpless victim. Despite the promptings of Radel, Alex did not shoot Nida after she promised to them that she would not tell the police. Before the two assailants left Nida, they threatened to kill her and her family if she would not keep her promise. At the trial, Nida clarified that the guns used by the masked man and Alex were of the same color.

Subsequently, Nida nevertheless reported the incident to the police of Sogod. The authorities wasted no time and on that very same day, they arrested the Montecillo brothers in their residence at around nine o'clock in the morning.[7] After a search was conducted on the persons of Radel and Alex, a policeman discovered and retrieved the amount of more than P600.00[8] each from the underwear of the Montecillo brothers.[9]

The records[10] show that during his investigation by the law enforcers of Sogod, Radel inculpated appellant in the perpetration of the composite crime. With this information, Station Commander Salustiano Comaingking of the Sogod Police Station, immediately organized a team to search the house of appellant for the instruments of the crime on a tip-off by Radel. Before proceeding to appellant's house, Comaingking ordered two of his men to invite Obdulio Bregente, Barangay Captain of Ibabao, to stand as a witness to the impending search.

Comaingking, Bregente and several policemen arrived at the house of appellant at around 4:00 A.M. on May 3, 1989 and found appellant walking around in front of his house. After the policemen explained their purpose to appellant, he acceded to their request and offered to have his house searched by them. Appellant went with them around the house, bared his personal belongings and opened every drawer and cabinet for the policemen to see. While the search was going on, Pat. Gualberto Arnado talked to one of the children of appellant. The child pointed to a partition in the double walling of appellant's bedroom and there, inserted between the sawali walls of the room, a .38 caliber revolver[11] was discovered by Pat. Arnado.

Bregente corroborated this narration of Comaingking during his own testimony in court,[12] with the additional revelation that he heard appellant explaining to the policemen that the gun was in his house for repair.

Appellant was immediately brought thereafter to the police station and placed in a cell intended for female detainees, separate from the cell occupied by the Montecillo brothers. Later, while Comaingking was outside the station attending to his personal needs, he saw a watch being thrown out of the window of the cell where appellant was detained alone. Nida Sultones would later identify this watch[13] in court as her Cornovin wristwatch forcefully taken from her by the robbers on May 2, 1989.

The gun found in appellant's house turned out positive for gunpowder residues after chemical analysis conducted by Myrna Areola, a forensic analyst of the Philippine Constabulary Crime Laboratory.[14] Paraffin tests made upon the persons of appellant and the Montecillo brothers yielded positive findings of gunpowder residues on appellant's left hand,[15] with negative results on both hands of the Montecillo brothers and the right hand of appellant.[16] When the gun was presented in court for identification, Nida declared that it was the same gun that the masked man used in shooting her brother.[17]

In his testimony,[18] appellant's co-accused, Radel Montecillo, placed appellant at the locus criminis in a peculiar manner. In trying to exculpate himself, Radel said that he was merely jogging along the road when he saw Nida and her brother walking towards the poblacion.

He followed the duo allegedly at a distance of about one meter behind them. Without any warning, he heard gunfire and saw Maximo fall to the ground. When he turned around, he saw appellant walking towards him. Appellant fired at him but missed because he stumbled to the ground at the precise time that appellant took the shot at him.

The first bullet that hit Maximo was also meant for Radel. He surmised that appellant was angry at him for refusing to help in a case appellant filed against a relative of Comaingking. Radel declared that appellant was not wearing a mask or cover on his face when he fired at him and the boy.

In his turn on the witness stand,[19] appellant denied any involvement in the crime, claiming that he was at his house tending his store when the crime was committed.

His wife, Felicitas Sotto, attempted to support his defense of alibi by declaring that appellant and their children went with her to the jeepney stop and waited until six o'clock in the morning when she was able to get a ride to the school where she was teaching. However, on cross-examination, she admitted that her husband and children were left behind in their house when she took a ride to the school.[20]

Appellant likewise denied that he threw Nida's wristwatch from his cell. He asserted that the discovery and recovery of the watch from him was a mere fabrication by the police, just like the finding of the revolver in his house. That gun, according to appellant, was only planted by Pat. Arnado in his room.

Appellant insisted that he never agreed to the search of his house. After he objected to the search for failure of the searching party to exhibit a search warrant, a policeman brandished a rifle and forced him to allow them to enter and search the house.

He revealed in court that Radel was his former employee in his store whom he dismissed for misappropriating money from him. When they were able to talk in the police station, Radel allegedly told him that he was beaten and forced by the police to implicate appellant in the commission of the crime.

Based on the results of the paraffin test, appellant contended that a mistake was made in involving him in the crime. It was impossible for him to shoot the boy as the gunpowder residues were found on his left hand while he is actually right-handed. He theorized on the possibility of an interchange of his paraffin casts with those of the Montecillo brothers who were subjected to the same tests simultaneously with him.

He blamed Comaingking for his misfortunes at the hands of the police. Allegedly, Comaingking caused all the false charges to be made against appellant in order to get even with him for suing one of the relatives of said station commander.

Appellant attributed three errors to the lower court in convicting him of the special complex crime.[21] In sum, appellant faults the court a quo for concluding that he participated in the commission of the crime based on

unreliable, unacceptable and incredible evidence presented before it.

He posits that the lower court should not have believed Nida and Radel in view of their conflicting testimonies as to whether or not his face was covered during the shooting. Additionally, his having dismissed Radel from his employment and the fact that Radel was coerced by the police to testify against him should have made the lower court doubt the veracity of Radel's testimony.

Appellant reiterates in his brief that the results of the paraffin test were interchanged, hence no reliance can be placed on such evidence. He maintains in his brief, as he did during the trial, that he never allowed the policemen to search his house without a warrant. The revolver then should not have been accepted in evidence by the lower court as mandated by the Constitution.

We find appellant's asseverations to be flawed in fact. En contra, we are persuaded that the People's case merits acceptance in law.

When the issue is one of credibility of witnesses, as in the present case, the consistent rule is that appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case.[22]

After a meticulous scrutiny and conscientious evaluation of the records of this case for those substantial and valuable facts, we find no oversight or omission on the part of the court below in concluding that appellant is truly guilty of the crime imputed to him. Direct and circumstantial evidence presented by the prosecution, together with the testimony of appellant's own co-accused, point and lead to appellant's complicity in the commission of the crime.

Nida was able to positively identify appellant as the member of the group of robbers who shot her brother, since only his face was covered by a piece of cloth. It was no longer dark when the crime was committed at around six o'clock in the morning. There can be no mistake in her identification as she knew appellant very well. She often passed by his house to buy goods from his store. Appellant's wife is a relative of Nida.[23] Given these circumstances, Nida had become familiar with the other physical features of appellant so as to be able to identify him even from the configuration of his body alone, aside from his hair or his gait and other distinctive bodily movements.

This eyewitness for the prosecution testified in a categorical, forthright and sincere manner. She was not fazed or rattled by the extensive cross-examination of two lawyers for the accused since all she had to do was to recall and relate the true facts. Her court declaration was consistent with the testimonies of the forensic analyst and the physician who attended to the medical needs of her brother.

Appellant was not able to show any improper motive on the part of Nida to falsely incriminate him in such a serious offense. On the contrary, he and Nida were on cordial speaking terms before the commission of the robbery.[24] The fact that prosecution witnesses have no possible motive to make false imputations against the accused shows that their identification of the latter is credible.[25] Nida's identification of appellant as the killer of her brother can only be explained by an offended party's honest desire to have the real culprit, and not just anybody, apprehended and punished[26] to give justice to the victim.

Then there is the testimony of Radel who apparently turned against his co-conspirator to secure his own exoneration. This desire to free himself at the expense of appellant yields light on his statement that appellant was not wearing a mask or cover on his face at the time of the commission of the felony. Obviously thinking that the

People would no longer be interested in his prosecution if the identity of the assailant is revealed, Radel lied in order to convince the court of the killer's identity. Thus, we have the resultant inconsistency on this aspect in the testimonies of Nida and Radel, but both of which nonetheless conjoin in the identification of appellant as the malefactor.

We find nothing irregular on the part of the lower court when it disregarded Radel's profession of innocence while giving credence to his statement that it was appellant who shot the boy. Even where a witness has been found to have deliberately falsified the truth in some particulars, it is not required that the whole of his testimony be rejected.[27]

As we have held, the maxim *falsus in uno, falsus in omnibus* is not a positive rule of law, is not an inflexible one of universal application,[28] and no longer warrants a rigid application in our legal setting. Under modern jurisprudence, the testimony of a witness may be believed in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case.[29] It was thus within the sound and judicious discretion of the trial court to accept portions of the testimony of a witness as it may deem credible and reject those which it believes to be false.

There is nothing in the records to show that Radel Montecillo was holding a grudge against appellant for his dismissal. The presence of personal motives on the part of witnesses to testify in favor of the victim or against the accused should be supported by satisfactory proof in order that the credibility of said witnesses will be impeached.[30] Lacking in this necessary proof, it can be presumed that Radel was not maliciously actuated at least when he identified appellant, and his testimony as to the identity of the boy's assassin can be given weight and credit.

The empty and uncorroborated denials of appellant are not sufficient to overcome the evidence proving him guilty. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[31] Between the self-serving testimony of appellant and the positive identification by the eyewitness, the latter deserves greater credence.[32]

The defense utterly failed to show that the paraffin results were interchanged. Even appellant himself is not sure if there was indeed any error in the paraffin test results involving him and his confederates. During his testimony, he stated that he did not complain about the switching because he thought it was still part of the test.[33] This is a contrived and specious explanation.

Withal, SPO3 Rodito Comeras[34] was able to rebut this improbable pretension of appellant. As the officer responsible for the actual conduct of the diphenylamine test, Comeras assigned to the three accused a definite seating arrangement. When he started taking casts, the accused were sitting on their respective assigned seats. And to be doubly sure, he asked each of the accused to sign a paper acknowledging the identity of the casts respectively taken from them. Forensic analyst Areola explained that it is impossible that the casts could be interchanged because each cast bears the name of the respective subject or specimen.

The fact that only the left hand of appellant was found positive for nitrates is of minor significance. He may have fired the gun while holding it with both hands and its recoil or the wind direction may have prevented any residue from attaching to his right hand, or he may have removed the same during the interval between the firing and the paraffin testing. Besides, the investigative result of the diphenylamine test is only one of the number of circumstances establishing the positive identification of appellant as the culprit.

We cannot, therefore, reject the testimonies of Comeras, Areola and Comaingk in order to indulge appellant in

his unsupported disclaimer. Courts accord credence and full faith to the testimonies of police authorities as they are presumed to be in the regular performance of their duties, in the absence of convincing proof to the contrary.[35]

We also cannot give credence to the claim of appellant that Radel was compelled by the police, particularly Comainging, to testify against him. A perusal of the testimony of Radel on October 30, 1990 reveals that he himself did not state that he was forced by the law enforcers to implicate appellant and he even denied having involved appellant as a perpetrator of the crime during his investigation. Instead, he figuratively passed the buck to Nida Sultones by claiming that it was she who informed the police about appellant's participation in the robbery with homicide.[36]

The discovery by Comainging of the watch when appellant tried to get rid of it definitely clinched appellant's association with the crime. Without any sufficient or plausible explanation as to how he had come into the possession of the Cornovin wristwatch, appellant cannot escape the operation of the presumption of his culpability in the offense pursuant to Section 3, Rule 131 of the Rules of Court.[37]

In the absence of proof of any intent on the part of the police authorities to falsely impute a serious crime against appellant, the presumption of regularity in the performance of official duty, as well as the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the self-serving and uncorroborated claim of appellant that he had been "framed".[38] We have ruled that like alibi, a frame-up should be established by clear and convincing evidence for it is easy to concoct but hard to prove.[39]

Finally, it is accepted dictum that when the accused himself waives his right against unreasonable searches and seizure, the exclusionary rule provided in the Bill of Rights of our Constitution[40] finds no application. When one voluntarily submits to a search or consents to have it made on his person or premises, he is precluded from later complaining thereof. The right to be secure from unreasonable search may be waived either expressly or impliedly.[41]

Since appellant acquiesced to the search, the .38 caliber revolver is admissible in evidence against him. Appellant's bare assertion that he objected to the warrantless search is a feeble afterthought to exculpate himself after realizing the damaging consequence of his approval. Furthermore, the testimony of Barangay Captain Bregente reinforces the presumption of regularity enjoyed by law enforcers with regard to the consented search, a presumption which appellant dismally failed to overcome.

WHEREFORE, on the foregoing considerations, the assailed judgment of the court a quo is hereby **AFFIRMED** in toto, with costs in all instances against accused-appellant Agustin Sotto.

SO ORDERED.

Romero, and Mendoza, JJ., concur.

Puno, and Torres, Jr., JJ., on leave.

[1] Original Record, 1-2.

[2] Ibid., 25.

[3] Presided over by Judge German G. Lee, Jr.

[4] Original Record, 150.

[5] TSN, January 30, 1990, 2-21.

- [6] Exhibit G, Folder of Exhibits; TSN, December 7, 1989, 3.
- [7] TSN, October 30, 1990. 11.
- [8] Exhibit 1 (envelope), in the total sum of P1,270.25.
- [9] TSN, March 13, 1990. 5.
- [10] Ibid., id., 3-17.
- [11] Exhibit C.
- [12] TSN, January 29, 1990, 3-10.
- [13] Exhibit H.
- [14] TSN, September 14, 1989, 2-5.
- [15] Exhibit F, Folder of Exhibits.
- [16] Exhibit E, Folder of Exhibits.
- [17] TSN, January 30, 1990, 14.
- [18] Ibid., October 30, 1990, 3-12.
- [19] Ibid., April 17, 1991, 2-8; April 22, 1991, 2-15.
- [20] Ibid., September 26, 1991, 2-6.
- [21] Appellant's Brief, 1; Rollo, 140.
- [22] People vs. Chavez, G.R. No. 55830, April 28, 1983, 121 SCRA 806; People vs. Alison, et al., G.R. No. L-30612, May 3, 1983, 122 SCRA 9.
- [23] TSN, January 30, 1990, 8, 11 and 15.
- [24] Ibid., id., 15.
- [25] People vs. Maagad, G.R. No. L-32518, November 7, 1979, 94 SCRA 167.
- [26] See People vs. Francisquite, G.R. No. L-27980, April 30, 1974, 56 SCRA 764.
- [27] People vs. Gohol, et al., G.R. No. 55090, February 24, 1989, 170 SCRA 585.
- [28] People vs. Pacis, et al., G.R. Nos. L-32957-58, July 25, 1984, 130 SCRA 540.
- [29] People vs. Cura, G.R. No. 112529, January 18, 1995, 240 SCRA 234.
- [30] People vs. Renegado, G.R. No. L-27031, May 31, 1974, 57 SCRA 275.
- [31] People vs. Amaguin, et al., G.R. Nos. 54344-55, January 10, 1994, 229 SCRA 166; People vs. Morales, G.R. No. 104994, February 13, 1995, 241 SCRA 267.
- [32] People vs. Aurella, et al., G.R. No. 97565, March 23, 1994, 231 SCRA 394.
- [33] TSN, April 22, 1991, 13.
- [34] Ibid., December 9, 1991, 5-7.

[35] *People vs. Balisteros, et al.*, G.R. No. 110289, October 7, 1994, 237 SCRA 499; *People vs. Enrique, Jr.*, G.R. No. 90738, December 9, 1991, 204 SCRA 674.

[36] TSN, October 30, 1990, 11-12.

[37] Section 3(j) provides that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. See also *People vs. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627

[38] *People vs. Ponsica*, G.R. No. 108176, February 14, 1994, 230 SCRA 87.

[39] *People vs. Acuram*, G.R. Nos. 98423-24, May 22, 1992, 209 SCRA 281.

[40] Sections 2 and 3, Article III.

[41] *People vs. Ramos, et al.*, G.R. Nos. 101804-07, May 25, 1993, 222 SCRA 557, citing *People vs. Malasugui*, 63 Phil. 221 (1936).

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