

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR MATUBIS ALIAS KA SHERMA, EMILIO DELGACO ALIAS KA BOY AND JOHN DOE, DEFENDANTS. EMILIO DELGACO, DEFENDANT-APPELLANT.

G.R. No. 109774. March 27, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Once again, the Court is called upon to resolve a case arising from the senseless killing of an innocent countryside civilian by misguided elements hiding under the protective wings of the New People's Army (NPA). For the crime, Nestor Matubis alias Ka Sherma, Emilio Delgaco alias Ka Boy and an unidentified cohort were charged with murder under the following information:

“That on or about the 24[th] day of March, 1988, at Barangay La Purisima, Municipality of Nabua, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who are still at large, conspiring, confederating and mutually helping one another, armed with 38 Caliber Revolver and 45 Caliber pistol, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one Alfonso Sales, Jr., on the different parts of his body, thereby causing direct and immediate death of the victim to the damage and prejudice of his heirs in the amount of no less than Fifty Thousand Pesos (P50,000.00), Philippine Currency.

ACTS CONTRARY TO LAW.”

Alfonso Sales, Jr., a 23-year-old bachelor who took the two-year course for auto mechanic at the University of Northeastern Philippines in Iriga City, helped his parents manage the operation of four jeepneys. From time to time, he would drive one of the jeepneys for which he would receive an average commission of P100 a day out of the fares paid by passengers. He set aside a certain amount of his earnings for his personal needs and used the balance to buy food for his family in La Purisima, Nabua, Camarines Sur.[1]

At about 7:00 o'clock in the evening of March 24, 1988, Sales was playing chess with Walter Lompero in front of the Breboneria Store in La Purisima. Watching the game were Teodoro Baldoza, Edgar Breboneria, Roberto Agonos, Edwin Dante and a fifth person. About thirty minutes later, four persons, who appeared to be new to the place, passed by and proceeded towards the direction of the La Purisima Elementary School. Informed by Lompero and Baldoza of the presence of these persons, Sales advised the two not to mind them.

After about two minutes, Nestor Matubis approached Sales by passing by Lompero's left side. From a distance of one arm's length from Baldoza and three meters from Lompero, they saw Matubis shoot Sales on the temple twice. Matubis was armed with a .45 caliber pistol. Around ten meters away, Emilio Delgaco blocked the road. Lompero saw that Matubis was wearing a pair of maong pants and white T-shirt. After recovering from shock, Lompero ran towards a coconut plantation some fifteen meters away. From there, he saw Delgaco shoot Sales with a .38 caliber revolver. He clearly saw all these despite the distance, as a street light illuminated the place very

well.[2]

Baldoza saw Delgaco holding a .38 caliber gun, but because he ran towards the Breboneria Store to seek cover under the bed, he did not see Delgaco shoot Sales. While lying on the floor, however, he heard three more gunshots.[3]

The postmortem examination conducted by Dr. Audie Margate, municipal health officer of Nabua, Camarines Sur, revealed that Sales sustained the following wounds:

1. Gunshot wound, semi-circular, at the temporal region behind the base of the left ear directed upward to the right with inverted tissues with contusion collar at the point of entry and with no point of exit.
2. Gunshot wound, semi-circular with contusion collar and inverted tissues around the point of entry at the later aspect, right eyebrow, directed downward to the left, also with no point of exit.
3. Gunshot wound, semi-circular, with contusion collar with inverted tissue at the 8[th] intercostal space, left posterior axillary line, likewise with no point of exit.
4. Gunshot wound with contusion collar and inverted tissue at the 4[th] intercostal space, right posterior axillary line, directed upward to the right. This wound was superficial and not penetrating.
5. Gunshot wound, semi-circular with inverted tissue and contusion collar, at the right posterior lumbar area, midscapular line, directed upward and with no point of exit.

Dr. Margate recovered a slug embedded underneath the skin at the level of the 4[th] intercostal space, right anterior axillary line.[4]

According to Dr. Margate, wounds 1, 2, 3 and 5 were fatal while wound 4 was not because it was only superficial and did not penetrate the body. Death was due to hypovolemic shock, secondary to hemorrhage brought about by the multiple gunshot wounds.[5] Dr. Margate turned over the slug he recovered from the body to the Nabua police.

P/Cpl. Josefino O. Rebolado admitted having custody of the slug recovered from the body of the victim. He presented before the trial court said slug as well as the empty shells of bullets from the different kinds of firearms that were recovered from the crime scene.[6]

According to the victim's father, Alfonso Sales, Sr., his family spent P25,000.00 for funeral parlor services[7] as a result of the death of his son. The family spent P30,000.00 for food during the wake but there were no receipts for the latter expenses.[8]

Matubis and Delgaco denied the accusation against them. Matubis admitted that he was a member of the NPA, charged with the job of lecturing to the masses. He was not issued a firearm. Instead, although he reached only first year high school, he was given a book called Pangkalahatang Kursong Masa and he lectured in Balatan from 1983 to 1986.[9] It was only in the latter year that he went to La Purisima to visit Eva Pilapil Occiano who later became his wife. In that year, he moved to Manila where he cohabited with Eva. The following year, her parents encouraged him to avail of the amnesty program of the government. Thus, when the crime transpired, he was in Manila applying for the balik-loob project for members of the NPA under the amnesty program. He was arrested on January 5, 1989 inside a jeepney in a parking area in Sta. Mesa, Manila while following up his petition for amnesty, but no warrant of arrest was shown to him. He was brought to the CAPCOM office where he was detained for three days. On January 9, 1989, he was brought to the Nabua Police Station. He claimed that he did not know any of the prosecution witnesses, as well as the victim.[10]

Emilio Delgaco, 45 years of age, admitted that he had been a member of the NPA since 1986. He was given the

assignment of collecting money and palay from farmers in Patag and Salvacion, Bato, Camarines Sur but since birth, he had always resided in San Vicente, Ogbon, Nabua, Camarines Sur. He knew that Madahon is adjacent to Ogbon as it could be seen from a distance and that Sto. Domingo separates Madahon from La Purisima. He learned of the latter fact only in 1989 when he passed by Sto. Domingo while he was on the way to La Purisima with Roger Acompañado. In June, 1988, he surrendered to Cpl. Melchor Chuchi Prades in his home in San Miguel, Nabua, Camarines Sur after his brother, Elpidio, had been shot in the knee by members of the NPA. To begin a new life, he availed of the balik-loob project of the government. He denied knowing any of the prosecution witnesses nor the victim and alleged that the first time he met his co-accused, Nestor Matubis, was in the police station in Bicol. He claimed that Walter Lompero implicated him in the case after he had refused to testify against Nestor Matubis.[11]

On May 24, 1990, the trial court found both accused guilty beyond reasonable doubt of the crime of murder and rendered the decision[12] with the following decretal portion:

“WHEREFORE, premises considered, the Court finds the accused, guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Art. 248, par. 1 of the Revised Penal Code. Accordingly, after applying the indeterminate sentence law, the accused, NESTOR MATUBIS and EMILIO DELGACO, are each sentenced to suffer imprisonment for a period of 12 years and 1 day to 17 years, 4 months of prison mayor maximum to reclusion temporal medium in its medium period and for both accused to jointly and severally indemnify the heirs of Alfonso Sales, Jr. the sum of P55,000.00, Philippine Currency and to pay the costs.

SO ORDERED.”

Both accused interposed an appeal to the Court of Appeals.[13] On July 19, 1990, the trial court ordered that the entire record of the case be forwarded to said appellate court.[14] On July 24, 1990, appellant Delgaco filed a motion to post bailbond pending appeal.[15] The trial court, having granted the motion on July 30, 1990, appellant Delgaco posted a P40,000.00 bailbond,[16] after which he was released on bail on September 8, 1990. Nestor Matubis, who likewise posted a bailbond, was also released on September 13, 1990.[17]

On December 29, 1992, the Court of Appeals rendered the Decision[18] affirming the trial court’s decision insofar as it found the appellants guilty beyond reasonable doubt of the crime of murder qualified by treachery but decreeing as follows:

“PREMISES CONSIDERED, the decision appealed from is hereby MODIFIED by finding accused-appellants Nestor Matubis “Alias” Ka Sherma and Emilio Delgaco “Alias” Ka Boy guilty beyond reasonable doubt of the crime of Murder without any mitigating or aggravating circumstance and, as a consequence, this Court hereby imposes upon each of them the penalty of Reclusion Perpetua.

Considering that the penalty of Reclusion Perpetua has been imposed in the instant case, the same is now certified to the Honorable Supreme Court for review (sic).

SO ORDERED.”

This Court accepted the appeal on May 19, 1993. On even date, we ordered the commitment of appellants to the New Bilibid Prison.[19] As it was only appellant Delgaco who appeared and voluntarily surrendered to the Court,[20] we ordered the cancellation of the bond posted by appellant Matubis and directed the issuance of a warrant of arrest against him.[21] On February 21, 1995, Alfredo G. Memije, Chief of the PNP Criminal Investigation Command, Department of Interior and Local Government, informed this Court that the warrant of arrest against appellant Matubis could not be served as he was nowhere to be found in La Purisima, Nabua, Camarines Sur.[22] Hence, on March 13, 1995, this Court ordered the dismissal of the appeal of Matubis and the

corresponding forfeiture of the bond he had posted.[23]

In compliance with the Court's directive, counsel for appellant Delgado filed a manifestation on August 22, 1995 that he was adopting the appellant's brief he had filed with the Court of Appeals to avoid repetition of arguments.[24] The Court granted appellant Delgado's prayer on September 6, 1995.[25] In his brief, appellant Delgado alleges that the trial court erred in: (a) finding that prosecution witnesses Lompero and Baldoza positively identified him; (b) relying on the "uncorroborated, inconsistent and unreliable statement of prosecution witnesses," and (c) convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.

The pivotal issue in this appeal is one of credibility of witnesses and their testimonies. Time and again, this Court has held that it will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appear on record some facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted by the same trial court. The reason behind this dictum is that the trial judge enjoys the peculiar advantage of observing directly and at first hand the witnesses' deportment and manner of testifying. He is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.[26] The trial court's conclusions on the issue of credibility are in fact buttressed by the failure of the defense to attribute any false or evil motive on the part of the prosecution witnesses that could have impelled them to perjure themselves against appellant. Hence, their testimonies are entitled to full faith and credit.[27]

We are convinced that appellant Delgado had been positively identified as one of the persons who shot Sales. While it was only Lompero who saw appellant shoot the victim, his positive and credible testimony stands unaffected. Unless expressly required by law, the testimony of a single witness, if found credible and positive, is sufficient to convict.[28] Truth is established not by the number of witnesses but by the quality of their testimonies.[29]

The Court disagrees with appellant's contention that Lompero's reaction upon seeing the incident is contrary to the human instinct of self-preservation. The general or common rule is that witnesses to a crime react in different ways.[30] As this Court has held in a number of cases, witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. Witnesses to a surprising event see differently some details thereof due in large part to the excitement and confusion that it usually brings[31] and the fact that what may be rational for one may be strange to another.[32]

Witness Lompero's having seen appellant Delgado shoot Sales as he looked back after taking refuge in the coconut plantation some fifteen meters away[33] is not necessarily contrary to the human instinct of self-preservation. It should be observed that he first secured his safety by running towards the coconut plantation before looking back. Moreover, appellant's argument that the same witness could not have identified him from a distance of fifteen meters considering that the incident happened at night is not tenable. In the first place, an electric street lamp lighted the place.[34] Secondly, Lompero had known appellant even before the incident because, for a period of two years, appellant and Matubis were known in the place as members of the NPA.[35] Notably, in *People v. Castillo*,[36] the Court held that once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance. It is, therefore, not implausible that from a distance of fifteen meters, Lompero could have recognized and identified appellant.

It was not only Lompero who established appellant's presence in the crime scene. Witness Teodoro Baldoza also testified that he saw appellant holding a gun although he failed to see if appellant used it as, after the second shot fired by Matubis, he fled to the Briboneria store.[37] The fact that appellant was carrying a gun at the crime scene

supports the testimony of Lompero that the former indeed conspiratorially participated in the killing of Sales. Thus, even assuming that Lompero failed to see appellant fire his gun at Sales, still, by his acts of carrying the gun and blocking the road,[38] a community of criminal design with Matubis to kill Sales was manifest. A person found in conspiracy with the actual perpetrator of the crime by performing specific acts with such closeness and coordination as the one who executed the criminal act is equally guilty as the latter.[39]

With regard to the failure of the witnesses to immediately report the incident to the proper authorities, we hold that the delay they incurred does not affect, much less impair their credibility, because such delay was satisfactorily explained.[40] It was due to the fact that the witnesses were cowed by the reputation of the two accused who were admittedly members of the NPA,[41] on top of the fact that appellant was a resident of a nearby barangay in the same town of Nabua. As this Court has held, it is equally understandable for a witness to fear for his safety especially when town mates are involved in the commission of the crime because an inculpatory statement can easily provoke retaliation.[42] The initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations due to fear of reprisal is common and has been judicially declared not to affect credibility.[43]

The Court finds no inconsistencies in the testimonies of the prosecution witnesses. While both Lompero and Baldoza called the attention of the victim to the presence of some four persons whom they referred to as “new faces,” such description of appellant may be explained by the circumstances under which it was used. It is of judicial notice that in places where the NPA operates, the local folks refer euphemistically to the members of that group as “new faces,” sometimes in fear and at other times to distinguish them from the residents of the area.

There was no inconsistency between the number of wounds sustained by the victim as found by the examining physician and the testimonies of Lompero and Baldoza. Dr. Margate found five gunshot wounds. Lompero saw Matubis shoot the victim twice and, after he had fled and looked back, he saw appellant shoot the victim once.[44] On the other hand, Baldoza saw how Matubis fired the two initial gunshots and heard three more shots as he laid on the floor of the Breboneria Store.[45] Even assuming that these are inconsistencies, they do not necessarily affect the fact that the victim sustained five gunshot wounds during the incident. By the swiftness of the occurrences, it is but natural that Lompero might not have counted accurately the gunshots. The same prosecution witnesses’ failure to declare the same number of shots fired during the incident does not signify at all that they prevaricated. On the contrary, the fact that the testimonies of Lompero and Baldoza are not exactly on all fours with each other obliterates the suspicion of a rehearsed testimony. Whatever “inconsistencies” may seem apparent to the appellant are actually badges of truth rather than of falsehood.[46] What is important is that Lompero positively identified appellant as one of the assailants.[47] The alleged inconsistency is trivial but understandable considering the suddenness of the attack, the dreadful scene unfolding before the witnesses’ eyes, as well as the imperfection of human memory.[48]

Appellant’s defenses of denial and alibi cannot prevail over their positive identification by the prosecution witnesses who had no motive to falsely testify against him.[49] Besides, appellant’s uncorroborated alibi failed to prove that it was physically impossible for him to have been at the crime scene during its commission.[50]

Clearly, appellant committed the crime of murder. The killing is qualified by the proven circumstance of treachery that was manifested by the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.[51]

The Court of Appeals correctly imposed the penalty of reclusion perpetua. The crime of murder is punishable by the penalty of reclusion temporal in its maximum period to death.[52] In the absence of mitigating or aggravating circumstances, the proper imposable penalty is the medium period of said penalty or reclusion perpetua.[53]

WHEREFORE, the Decision of the Court of Appeals, finding appellant Emilio Delgaco guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of reclusion perpetua that was certified to this Court for review, is hereby **AFFIRMED** subject to the **MODIFICATION** that appellant shall be civilly liable to the heirs of Alfonso Sales, Jr. in the amount of fifty thousand pesos (P50,000.00).

Let a copy of this Decision be furnished the Philippine National Police and the Department of Justice which shall cause the arrest of Nestor Matubis whose appeal has been dismissed for his failure to submit to the authority of this Court. Costs de oficio.

SO ORDERED.

Narvasa, C.J. (Chairman), Kapunan, and Purisima, JJ., concur.

[1]TSN, July 4, 1989, pp. 3-9.

[2]TSN, June 1, 1989, pp. 3-5, 20-28, 24-29; November 3, 1989, pp. 2-7, 14-27.

[3] TSN, November 3, 1989, pp. 3-8.

[4] Exh. B.

[5] TSN, December 12, 1989, pp. 9-12.

[6] TSN, January 10, 1990, pp. 3-4.

[7] Exh. A.

[8]TSN, July 4, 1989, pp. 3-4.

[9] TSN, January 10, 1990, p. 28.

[10] Ibid., pp. 13-27.

[11]TSN, January 11, 1990, p. 3-18.

[12] Penned by Judge Esteban R. Abonal.

[13] Record, pp. 151 & 152.

[14] Ibid., pp. 151-152.

[15]Id., p. 153.

[16] Id., pp. 154-155.

[17]Rollo, p. 8.

[18]Penned by Associate Justice Serafin V.C. Guingona and concurred by Associate Justices Santiago M. Kapunan and Oscar M. Herrera.

[19] Rollo, p. 2.

[20] Ibid., p. 30.

[21] Id., pp. 32-34.

[22] Id., pp. 46-48.

- [23] Id., p. 59.
- [24] Id., pp. 71-72.
- [25] Id., p. 73.
- [26] People v. Luayon, G.R. No. 105672, August 22, 1996, 260 SCRA 739; People v. Malunes, 317 Phil. 378 (1995).
- [27] People v. Malazarte, G.R. No. 108179, September 6, 1996, 261 SCRA 482.
- [28] People v. Canuzo, 325 Phil. 840, 842 (1996).
- [29] People v. Ferrer, 325 Phil. 269, 285 (1996).
- [30] People v. Paynor, G.R. No. 116222, September 9, 1996, 261 SCRA 615, 626.
- [31] People v. Halili, 315 Phil. 351, 364 (1995).
- [32] People v. Yadao, G.R. Nos. 72991-92, November 26, 1992, 216 SCRA 1, 7.
- [33] TSN, June 1, 1989, p. 6.
- [34] Ibid., pp. 14 & 29.
- [35] Id., pp. 6-7.
- [36] G.R. No. 116122, September 6, 1996, 261 SCRA 493, 501.
- [37] TSN, November 3, 1989, p. 5.
- [38] TSN, June 1, 1989, p. 5.
- [39] People v. Azugue, G.R. No. 110098, February 26, 1997, 268 SCRA 711, 725.
- [40] De Leon v. People, G.R. No. 66020, June 22, 1992, 210 SCRA 151.
- [41] TSN, January 10, 1990, p. 13; January 11, 1990, p. 3.
- [42] People v. Castillo, supra; People v. Pugal, G.R. No. 90637, October 29, 1992, 215 SCRA 247.
- [43] People v. Martinez, G.R. No. 100813, January 31, 1992, 205 SCRA 666.
- [44] TSN, June 1, 1989, pp. 3 & 6.
- [45] TSN, November 3, 1989, pp. 5 & 8.
- [46] People v. Flores, 313 Phil. 227 (1995).
- [47] People v. Lagota, G.R. No. 85795, February 14, 1991, 194 SCRA 92.
- [48] Ibid.
- [49] People v. Sotes, G.R. No. 101337, August 7, 1996, 260 SCRA 353.
- [50] People v. Alshaika, G.R. No. 113224, September 11, 1996, 261 SCRA 637.
- [51] People v. Ombrog, G.R. No. 104666, February 12, 1997, 268 SCRA 93, 103.
- [52] Art. 248, Revised Penal Code.

[53] Art. 64 (1), Revised Penal Code.

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