

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE BALLESTEROS, CESAR GALO AND ALVIN BULUSAN,
ACCUSED-APPELLANTS.**

G.R. No. 120921. January 29, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the decision of the Regional Trial Court of Bangui, Ilocos Norte, Branch 19, finding the accused guilty beyond reasonable doubt of murder, qualified by treachery, as charged under Article 248 of the Revised Penal Code, as amended, to wit:

“WHEREFORE, the Court finds the three accused guilty beyond reasonable doubt of murder, qualified by treachery, as charged, defined and penalized under Article 248 of the Revised Penal Code, as amended, and applying Article 248 of the Revised Penal Code hereby sentences them to reclusion perpetua, with all the accessory penalties provided by law, and further sentencing them to pay jointly and solidarily -

- The heirs of Jerry Agliam compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00), moral damages in the amount of TWENTY THOUSAND PESOS (P20,000.00), and actual damages in the amount of THIRTY-FIVE THOUSAND SEVEN HUNDRED FIFTY-FIVE PESOS (P35,755.00), with interest;

- The heirs of the late Eduardo Tolentino, Sr., compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00), moral damages in the amount of TWENTY THOUSAND PESOS (P20,000.00), and actual damages in the total amount of SIXTY-ONE THOUSAND SEVEN HUNDRED EIGHTY-FIVE PESOS (P61,785.00), with interest;

- Carmelo Agliam, actual damages in the amount of TWO THOUSAND AND THREE PESOS AND FORTY CENTAVOS (P2,003.40), and moral damages in the amount of TEN THOUSAND PESOS (P10,000.00), with interest;

- Vidal Agliam Jr., Robert Cacal and Ronnel Tolentino, moral damages in the amount of FIVE THOUSAND PESOS (P5,000.00) each, with interest.

- The costs.

The accused shall be credited in the service of their sentence the full time during which they had undergone preventive imprisonment, if they agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited in the service thereof with only four-fifths of the time during which they had undergone preventive imprisonment.”[1]

In the warm summer evening of May 28, 1991, Carmelo Agliam, his half-brother Eduardo Tolentino, Ronnel Tolentino, Vidal Agliam, his brother Jerry Agliam, Robert Cacal, Raymundo Bangi and Marcial Barid converged at a carinderia owned by Ronnel Tolentino at Ganayao, Pasuquin, Ilocos Norte. They proceeded to the barangay

hall at Carusipan to attend a dance. The group did not tarry for long at the dance because they sensed some hostility from Cesar Galo and his companions who were giving them dagger looks. In order to avoid trouble, especially during the festivity, they decided to head for home instead of reacting to the perceived provocation of Galo and his companions.

The group had barely left when, within fifty meters from the dance hall, their owner jeep was fired upon from the rear. Vidal Agliam was able to jump out from the eastern side of the “topdown” jeep and landed just beside it. He scurried to the side of the road and hid in the ricefield. His younger brother Jerry also managed to jump out, but was shot in the stomach and died.[2] Carmelo Agliam, Robert Cacal and Ronnel Tolentino sustained injuries in the right foot, back of the right thigh, and legs and thighs, respectively.[3] The stunned Eduardo Tolentino was not even able to move from his seat and was hit with a bullet which punctured his right kidney.[4] He did not survive. The precipitate attack upon the jeep left two people dead and four others injured.

Based upon the affidavits of Carmelo and Vidal Agliam, warrants for the arrest of Ballesteros, Galo and Bulusan were issued. Charged with the crime of double murder with multiple frustrated murder, an information was filed as follows:

“That on or about (sic) May 28, 1991, in the Municipality of Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of the Honorable Court, the abovenamed accused, nighttime purposely sought, with evident premeditation and treachery, confederating and mutually helping one another, did then and there, with intent to kill, willfully, unlawfully and feloniously attack and shot Eduardo Tolentino Sr., Jerry Agliam, Vidal Agliam, Carmelo Agliam, Robert Cacal and Ronnel Tolentino, with the use of firearms which caused the death of Eduardo Tolentino Sr. and Jerry Agliam and thereby inflicting gunshot wounds to Vidal Agliam, Carmelo Agliam, Robert Cacal and Ronnel Tolentino having performed all the acts which would have produced the crime of Murder, but which did not by reason of causes independent of the will of the defendant, namely the able and timely medical assistance given to said Vidal Agliam, Carmelo Agliam, Robert Cacal and Ronnel Tolentino which prevented their death.”

All pleaded not guilty. Paraffin tests conducted on Galo and Ballesteros produced positive results. Bulusan was not tested for nitrates.

In his testimony, Galo claimed that he did not even talk to Bulusan or any of his companions at the basketball court, as alleged by the complainants. Having been found with gunpowder residue in his hands, Galo attempted to exculpate himself from the results by confessing that he had been a cigarette smoker for the past ten years and had, in fact, just consumed eight cigarette sticks prior to the test. He further asserted that paraffin tests are not infallible, and that his hand may have been contaminated by a nitrogenous compound, the source of which is urine. Lastly, he said that he was not even present at the crime scene when the firing incident took place; hence, he could not have been one of those who strafed the jeep.[5]

For his part, Ballesteros interposed the defense of alibi, narrating to the court that, on May 28, 1991, at around 7:00 o'clock in the evening, he went to a nearby store to purchase some cigarettes. He returned home within thirty minutes and cleaned his garlic bulbs before retiring at 9:00 o'clock. The next morning, he busied himself with some chores, which included fertilizing his pepper plants with sulfate. He handled the fertilizers without gloves. To counter the finding of traces of nitrates on his left hand, Ballesteros maintained that he uses his left hand in lighting cigarettes, as it was very painful for him to use his right hand. He likewise informed the trial court that he had no motive to kill the victims.[6]

Bulusan echoed the defense of alibi of Galo and Ballesteros, stating that he saw only Galo on the evening of the dance but did not talk to him. He denied joining the two later that night because after the dance, he went straight to the house of Michael Vilorio, where he spent the night until he went to work at 7:00 o'clock in the morning of

the following day.[7]

The trial court found the three accused guilty beyond reasonable doubt of murder, qualified by treachery, as charged, defined and penalized under Article 248 of the Revised Penal Code.

The accused now come to the High Court on appeal, praying that the decision of the trial court be reversed and that a new one be entered acquitting them of the charges.

The principal question to be resolved has to do with the merits of the decision of the lower court. Was it correct in finding accused-appellants guilty beyond reasonable doubt? We answer in the affirmative.

Accused-appellants insist that the trial court erred in finding that Carmelo and Vidal Agliam recognized them as the assailants. This claim is unmeritorious. In their testimonies, Carmelo and Vidal Agliam both described the area to be well illumined by the moon. The shooting took place on a small road in the mountainous terrains of Ilocos Norte, where the air is free from darkening elements and turbidity. It being a summer evening, there could not have been any fog to becloud the atmosphere and hamper the vision of the victims, which would have prevented them from clearly seeing their assailants. They pinpointed the location of the malefactors to be approximately three meters from where they stood.[8] Considering the luminescence of the moon and the proximity between them, the victims could distinctly identify their assailants. It must be noted that Carmelo was acquainted with Galo and his brother, a butcher, since he used to deal with them in his business of buying and selling cattle.[9] Bulusan was a classmate of Vidal at Cadaratan School. Generally, people in rural communities know each other both by face and name.[10] Bulusan and Agliam were, not only townmates, but former classmates as well. The constant interaction between them through the years would necessarily lead to familiarity with each other such that, at the very least, one would have been able to recognize the other easily.

That accused-appellants had no motive in perpetrating the offense is irrelevant. A distinction is herein timely made between motive and intent. Motive is the moving power which impels one to action for a definite result. Intent, on the other hand, is the purpose to use a particular means to effect such result.[11] Motive alone is not proof of a crime.[12] In order to tip the scales in its favor, intent and not motive must be established by the prosecution. Motive is hardly ever an essential element of a crime. A man driven by extreme moral perversion may be led to commit a crime, without a real motive but just for the sake of committing it.[13] Along the same line, a man who commits a crime with an apparent motive may produce different results, for which he is punished. As held in a line of cases, the rule is well-settled that the prosecution need not prove motive on the part of the accused when the latter has been positively identified as the author of the crime.[14] Lack or absence of motive for committing the crime does not preclude conviction thereof where there were reliable witnesses who fully and satisfactorily identified the accused as the perpetrator of the felony.[15]

Accused-appellants' attempt to offer wild excuses regarding the source of the gunpowder traces found on their hands is futile. Experts confirm the possibility that cigarettes, fertilizers and urine may leave traces of nitrates, but these are minimal and, unlike those found in gunpowder, may be washed off with tap water.

The hackneyed defense of alibi interposed by accused-appellants must likewise fail. As consistently enunciated by this Court, the established doctrine is that, for the defense of alibi to prosper, the accused must prove, not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity.[16] This accused-appellants failed to satisfactorily prove. On the night of May 28, 1991, Galo and Bulusan attended the dance at the barangay hall. After the dance, they went their separate ways but remained within the barangay. Galo lingered in the premises. Bulusan slept over at the house of Michael Vilorio, which was within walking distance from the dance hall.

The defense of alibi must be established by positive, clear and satisfactory evidence, the reason being that it is easily manufactured and usually so unreliable that it can rarely be given credence.[17] This is especially true in case of positive identification of the culprit by reliable witnesses,[18] which renders their alibis worthless.[19] Positive identification prevails over denials and alibis.[20]

Accused-appellants are under the common misconception that proof beyond reasonable doubt requires total freedom from any quantum of doubt. This is not so. Under Section 2, Rule 133 of the Rules of Court,

“(p)roof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.”

Absolute certainty of guilt is not demanded by law to convict a person of a criminal charge. The doubt to the benefit of which an accused is entitled in a criminal trial is a reasonable doubt, not a whimsical or fanciful doubt based on imagined but wholly improbable possibilities and unsupported by evidence.[21] Reasonable doubt is that engendered by an investigation of the whole proof and inability, after such investigation, to let the mind rest easy upon the certainty of guilt.[22] A precise example would be the uncorroborated alibi of accused in the case at bar where accused-appellants individually interposed the wavering defense of alibi. Galo failed to elucidate on his whereabouts after the dance, whereas Bulusan claimed to have slept in the house of one Michael Vilorio. Ballesteros attested that he was not at the dance hall at all. None of them, however, attempted to corroborate their alibi through the testimony of witnesses. In fact, they never attempted to present as witnesses those who could have testified to having seen them elsewhere on the night in question. Had they done so, the presentation of corroborative testimony would have reenforced their defense of alibi. As held in *People vs. Ligotan*,[23] an alibi must be supported by credible corroboration from disinterested witnesses, and where such defense is not corroborated, it is fatal to the accused.

The Court correctly ruled in finding that the offense was qualified by treachery. Under Paragraph 16, Article 14 of the Revised Penal Code, “(t)here is treachery when the offender commits any of the crimes against the person employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.” The requisites of treachery are twofold: (1) (t)hat at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[24] As regards the second requisite, the accused must make some preparation to kill his victim in such a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate.[25] There must be evidence that such form of attack was purposely adopted by the accused.[26] Here, it is obvious that the accused-appellants had sufficient opportunity to reflect on their heinous plan. The facts show that the attack was well-planned and not merely a result of the impulsiveness of the offenders. Manifestations of their evil designs were already apparent as early as the time of the dance. They were well-armed and approached the homebound victims, totally unaware of their presence, from behind. There was no opportunity for the latter to defend themselves, the attack being so sudden that Eduardo Tolentino was shot right where he sat.

The trial court was also correct in the award of damages to the heirs of the victims. Damages may be defined as the pecuniary compensation, recompense, or satisfaction for an injury sustained, or as otherwise expressed, the pecuniary consequences which the law imposes for the breach of some duty or the violation of some right.[27] Actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained,[28] whereas moral damages may be invoked when the complainant has experienced mental anguish, serious anxiety, physical suffering, moral shock and so forth, and had furthermore shown that these were the proximate result of the offender’s wrongful act or omission.[29] In granting actual or compensatory damages, the

party making a claim for such must present the best evidence available, viz., receipts, vouchers, and the like,[30] as corroborated by his testimony.[31] Here, the claim for actual damages by the heirs of the victims is not controverted, the same having been fully substantiated by receipts accumulated by them and presented to the court.[32] Therefore, the award of actual damages is proper. However, the order granting compensatory damages to the heirs of Jerry Agliam and Eduardo Tolentino Sr. must be amended. Consistent with the policy of this Court, the amount of fifty thousand pesos (P 50,000.00) is given to the heirs of the victims by way of indemnity, and not as compensatory damages.[33] As regards moral damages, the amount of psychological pain, damage and injury caused to the heirs of the victims, although inestimable,[34] may be determined by the trial court in its discretion. Hence, we see no reason to disturb its findings as to this matter.

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED WITH MODIFICATION**. No pronouncement as to costs.

SO ORDERED.

Narvasa C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Rollo, pp. 273-274.

[2] Ibid., pp. 255-256.

[3] Ibid., p. 253.

[4] TSN, March 10, 1992, p. 2.

[5] TSN, March 8, 1994, p. 236.

[6] TSN, July 12, 1993, pp. 179-181.

[7] TSN, November 9, 1993, pp. 195-197.

[8] TSN, July, 13, 1992, p. 65.

[9] TSN, March 10, 1992, p. 11.

[10] *People vs. Rosario*, 246 SCRA 658 (1995).

[11] Reyes, Revised Penal Code, Twelfth Edition (1981), p. 60.

[12] *People vs. Maongco*, 230 SCRA 562 (1994).

[13] Reyes, *supra.*, p. 60.

[14] *People vs. Canceran*, 229 SCRA 581 (1994).

[15] *People vs. Gamiao*, 240 SCRA 254 (1995).

[16] *People vs. De Roxas*, 241 SCRA 695 (1995); *People vs. Castaneda*, 252 SCRA 247 (1996).

[17] Moran, *Comments on the Rules of Court* (1980), p. 158.

[18] *People vs. Alonzo*, L-32163, October 19, 1976; *People vs. Roxas*, L-32912, October 29, 1976; *People vs. Daquipil*, 240 SCRA 314.

[19] *People vs. Mendoza*, 254 SCRA 61 (1996).

[20] People vs. Abrenica, 252 SCRA 54 (1996).

[21] Moran, supra., p. 136, citing US vs. Brobst, 14 Phil 310, People vs. Mahlom, Moro Saan and Moro. Muntasal, L-5198, April 7, 1953.

[22] Ibid., citing US vs. Lazada, 18 Phil 90.

[23] 262 SCRA 602 (1996).

[24] Reyes. The Revised Penal Code, p. 409-410.

[25] Ibid., p. 405, citing People vs. Tumaob, 83 Phil 742, People vs. Saez, 1 SCRA 937.

[26] Ibid.

[27] Tolentino, Civil Code of the Philippines (1992), Volume V, p. 632.

[28] Ibid., p. 633.

[29] Ibid., citing Ventanilla vs. Impil and Lina, 53 O.G. 8170.

[30] TSN, July 8, 1992, pp. 55-56; July 14, 1992, pp. 94-96; September 8, 1992, pp. 2-5; November 10, 1992, p. 143.

[31] Baliwag Transit Inc. vs. CA, 256 SCRA 746 (1996).

[32] Ibid.

[33] People vs. Dones, 254 SCRA 696 (1996).

[34] Valenzuela vs. Court of Appeals, 253 SCRA 303 (1996).

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