

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO MILAN Y ABON AND VIRGILIO MILAN Y ABON, ACCUSED-APPELLANTS.

G.R. No. 125086. July 28, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

A deafening blast abruptly stilled the chattering guests gathered in the yard of Regino Bugtong. They were shocked and astounded. As the tremor subsided, the sound faded away and the assembly scampered to safety, three (3) persons were found dead and nine (9) seriously injured. For the carnage, the brothers Rogelio Milan y Abon and Virgilio Milan y Abon were charged with multiple murder and multiple frustrated murder qualified by treachery and evident premeditation.[1]

The antecedents: On 21 July 1993 Regino Bugtong invited several friends to celebrate his daughter's birthday. Among those invited were Rogelio Milan and Domingo Reyes. During that occasion a heated discussion developed between Rogelio Milan and Domingo Reyes over the cutting of a mango tree which Domingo had planted at the boundary between their properties. Enraged by the accusation, Rogelio Milan left the party in a huff. Thereafter another argument ensued, this time between Rogelio Milan's brother Virgilio Milan and Domingo Reyes. The two (2) would have come to blows were it not for the timely intervention of Regino Bugtong who tried to pacify them.

Meanwhile, Rogelio Milan rejoined the party, and upon seeing the commotion, hurled an empty bottle of gin at Domingo Reyes which unfortunately landed on Regino Bugtong's head. Irrked by the incident, Domingo and his young nephew Leonardo Reyes went after the Milan brothers who fled home. Then halted by a burst of gunfire from the direction of the Milans, the Reyeses retreated to Bugtong's house and joined the remaining guests now seated around a table under a mango tree illumined by two (2) kerosene lamps.

The guests were just talking about the startling occurrence when suddenly there was a rustle of leaves, followed by a thud, then a thunderous bang. In the aftermath, three (3) were found dead - Maria Concepcion Bugtong, Domingo Reyes and Maryjane Bugtong. Seriously injured were Regino Bugtong, Rodolfo Bugtong Sr., Lilia Bugtong, Rodolfo Bugtong Jr., Conchita Bugtong, Leonardo Reyes, Margot Bugtong, Virgilio Reyes and Mylene Bugtong.

At least three (3) witnesses pointed to the Milan brothers as the perpetrators. Regino Bugtong testified that with the aid of a flashlight he saw Rogelio and Virgilio Milan beyond the banana grove running towards their house seconds before the explosive, presumably a grenade, hit the ground.[2] In corroboration, Rodolfo Bugtong Sr. and Leonardo Reyes attested that they saw Rogelio Milan in the act of throwing something while his brother Virgilio was crouched somewhere between the fringes of the banana grove and the rice fields.[3]

As expected in view of their plea of not guilty, accused-appellants came out with a different version. According to them, they were both invited by Regino Bugtong to his daughter's birthday party. Virgilio was specifically

requested to help prepare the ducks for cooking.[4] At the party, the men drank Ginebra San Miguel as they engaged themselves in animated conversation. Domingo Reyes then teasingly prodded Rogelio Milan to buy beer; and he acquiesced.[5] He handed over P100.00 to Regino Bugtong who asked someone to buy the beer.[6] In the meantime, the lighthearted banter between Domingo Reyes and Rogelio Milan turned ugly when Domingo once again needled Rogelio for cutting the former's mango tree. Rogelio angrily denied the accusation and left. Domingo Reyes also left, followed by his nephew Leonardo. When Domingo returned, he was already wearing, quite ominously, a black jacket.[7] He approached Virgilio Milan who was then operating the karaoke, and without a word, boxed him.[8] Not content, Domingo collared Virgilio and raised him up. As Virgilio held on to the sides of Domingo, he (Virgilio) felt a hard and round object at Domingo's side. At this juncture, Rogelio Milan hurled an empty bottle of gin at Domingo Reyes which landed on the head of Regino Bugtong.[9] Upon seeing that Domingo Bugtong was about to attack him, Rogelio ran towards their house to save himself.[10] Virgilio Milan also ran only to find himself pursued by Leonardo Reyes, Domingo Reyes, Domingo Bugtong and Rodolfo Bugtong.[11] As Rogelio Milan and Virgilio Milan dashed home for safety, Domingo Reyes, Leonardo Reyes, Domingo Bugtong and Rodolfo Bugtong followed them until their front yard while challenging them to a fight.[12] Peeping through their window, the Milan brothers saw Domingo Bugtong holding an airgun, Rodolfo Bugtong wielding a bolo, while Domingo Reyes and Leonardo Reyes were each holding a round object which they could not clearly discern.[13] To support this contention, Rogelio and Virgilio Milan produced the air pump which was dislodged from the airgun after Leonardo Reyes had clubbed their dog to quiet it down.[14] Fortunately, the wives of Domingo Bugtong and Rodolfo Bugtong arrived and pacified the group.[15] Maria Concepcion, the wife of Domingo Bugtong and Rogelio Milan's aunt by marriage, apologized to Rogelio Milan for Domingo Bugtong's behavior and returned the P100.00 which Rogelio Milan had given for the beer.[16] Thereafter, the group led by their wives returned to the party. Rogelio and Virgilio Milan finally relaxed and went to sleep.[17] At ten in the evening they were suddenly awakened by their father who told them that they were wanted by the police.[18]

Charged accordingly for the death and physical injuries of those at the party, the Milan brothers interposed alibi and disclaimed any participation in the explosion. The trial court however did not believe them and declared them guilty of multiple murder and multiple frustrated murder. Both Rogelio Milan and Virgilio Milan were sentenced each to a penalty of reclusion perpetua and to pay civil as well as actual damages to the victims.[19]

Both accused-appellants come to us insisting that the prosecution failed to prove their guilt beyond reasonable doubt. They primarily raise the issue of the court a quo's erroneous appreciation of facts and its failure to consider the evidence they presented in their behalf.

Findings of fact of the trial court, especially its assessment on the credibility of witnesses, are not to be disturbed on appeal. The trial court is in a better position than the appellate court to properly evaluate testimonial evidence because of their unique opportunity to directly observe the witness' demeanor, conduct, deportment and manner of testifying.[20] But this is not without exception. When there appears on record that the trial court has overlooked, ignored or disregarded some fact or circumstance of weight or significance that if considered would alter the result, this Court may disregard the findings of the trial court and make its own conclusions.[21] Hence, we shall proceed to consider accused-appellants' arguments.

Accused-appellants assail the testimonies of the prosecution witnesses. They contend that the failure of Rodolfo Bugtong Sr. to give an affidavit immediately after the incident and Leonardo Reyes' omission to reveal the identity of the culprits prior to his testimony before the lower court gravely diminished the integrity of their statements.[22]

The lapse of a considerable length of time before a witness comes forward to reveal the identity of the assailant

does not taint the credibility of the witness and his testimony, especially when there are valid reasons for the delay.[23] The natural reticence of most people to get involved as witnesses in criminal cases, either due to their fear of reprisal[24] or when they are related to the victim who has just undergone a traumatic experience,[25] is of judicial notice. For this reason, the Court finds no justification to discredit Rodolfo Bugtong, Sr. His failure to prepare an affidavit immediately after the tragedy has been satisfactorily explained by the fact that he had to attend first to his wife who was then in the hospital.[26] His deigning to prioritize his wife's well-being over his need to be vindicated for an offense certainly does not denote ambivalence, hesitation, nay, vacillation. However, we are not inclined to take the same view with regard to the testimony of Leonardo Reyes. As admitted by him, his appearance before the trial court was prompted by the request of Regino Bugtong only the day before he took his oath to testify.[27] Considering that by his own admission he did not previously narrate to anyone what he supposedly saw that fateful evening, nor did he name Rogelio and Virgilio Milan as the authors of the crime, we cannot help viewing his testimony before the trial court as precipitous, hence, suspect.

Accused-appellants would cast doubt on the credibility of the witnesses for the prosecution by pointing out that the successful identification of the malefactors was not possible considering the circumstances then obtaining. The time and place of the incident and the means used to identify the alleged assailants minimized the possibility of their recognition.[28]

The evidence shows that it was around eight o'clock in the evening when the explosion occurred and darkness had already set in.[29] The guests were then seated around a small table below the mango tree, illumined by two (2) kerosene lamps, one placed on the table and the other on a bench at the north side of the table.[30] Regino Bugtong was among the group, being treated for his head injury, and was holding a flashlight.[31] Rodolfo Bugtong and Leonardo Reyes testified that they saw Rogelio Milan throw an object, which could be a grenade, seconds before the explosion, while Virgilio Milan was crouched somewhere between the fringes of the banana grove and the rice fields.[32]

However, evidence likewise reveals that the banana grove was some 5 to 15 meters to the south of the table situated under the mango tree; that the grove was densely planted with banana trees almost 10 to 20 feet in height; and, that it was 40 to a 100 meters in length from east to west and about 5 to 10 meters in width from north to south.[33] The lush banana grove stood on a ground about 1 meter and 6 inches higher than the rice fields where accused-appellants were allegedly seen to have hurled an object which could be a grenade.[34]

In the environmental milieu it would seem that identification of the assailants was nil or, at most, speculative. Firstly, the illumination from the two (2) kerosene lamps was not sufficient to have reached the vicinity of the rice fields where accused-appellants were allegedly spotted. The nature of the light used - pieces of cloth dipped in kerosene and inserted into gin bottles - prevented it from reaching the far recesses of the banana grove, much less the rice fields. As can be gathered from the testimonies of the witnesses, one (1) of the kerosene lamps had to be held near the head of Regino Bugtong for him to be treated properly for the injuries he received despite the presence of the other kerosene lamp on the table.[35] This only shows that the illumination was too inadequate even for those seated around the table, and was confined only to those near the kerosene lamps. It is therefore highly improbable, if not impossible, for the light to have reached the banana grove 5 to 15 meters away, much more, the rice fields beyond it.

Secondly, even assuming that the light coming from the kerosene lamps was adequate, the banana grove stood as an obstruction between the table where the witnesses were gathered and the rice fields where accused-appellants were reportedly seen. Pictures of the banana grove reveal that it was densely planted with banana trees 10 to 20 feet tall, making human passage difficult.[36] At daytime, one would not even be able to recognize another on the other side of the banana grove.[37] It was therefore very unlikely for light to have extended far beyond the banana

grove and spread towards the rice fields for the protagonists to see and identify each other. With such visual and physical obstruction it was impossible for witnesses to have recognized accused-appellants in the darkness with the aid only of the two (2) kerosene lamps.

We also doubt, very seriously, the veracity of Regino Bugtong's testimony. He said that upon hearing the rustle of leaves above him and seconds before a hard object landed on the ground, he beamed his flashlight towards the banana grove and saw accused-appellants running towards the rice fields.[38] The movements of Regino were contrary to natural reflexes. Ordinarily, upon hearing nature's unexpected sounds, e.g., the rustle of leaves, a person would direct his attention to the place where the sounds originated and not to the empty space beyond it. Regino Bugtong would have normally focused his flashlight in that direction and not on the banana grove. Even assuming that his reaction was out of the ordinary, the thick banana trees formed a curtain of formidable foliage for the light to permeate. In the split second that Regino Bugtong heard the rustle of leaves and the explosive hitting the ground, he could not have strayed the flashlight and instantaneously spotted accused-appellants.

For evidence to be believed it must not only proceed from the mouth of a credible witness, it must also be credible in itself,[39] meaning, it must be such which common experience and observation of mankind can approve as probable under the circumstances.[40] In the instant case, the recognition of the assailants was highly improbable, if not impossible. The darkness and the abundance of the banana trees naturally impeded recognition despite the two (2) kerosene lamps and a flashlight. What they probably saw, at most, were simply silhouettes of the grenade throwers. Other than their forthright declaration that they saw accused-appellants, the prosecution witnesses never elaborated on how they were able to identify them even through some telltale signs which could have given the perpetrators away. But there was none of that sort.

In criminal cases, the prosecution has to prove the guilt of the accused beyond reasonable doubt.[41] By constitutional fiat, the burden of proof falls on the prosecution[42] not only to show clearly that a crime had been committed but, more importantly, to prove beyond reasonable doubt the identity of the person or persons who committed the crime.[43] Proof of the offense without sufficient proof of the identity of its author cannot result in a conviction.[44] When the identification of the accused does not measure up to the standard of moral certainty required in criminal cases, as in this case, there is no recourse but to acquit the accused.

True, ranged against the efforts of the prosecution to pin them down, accused-appellants merely sought refuge in alibi, admittedly a weak defense, claiming they were at home sleeping when the explosion was heard. Besides, the house of the Milans was only about a 150 meters from the house of Regino Bugtong, which distance would not preclude the physical presence of accused-appellants at the locus criminis or its immediate vicinity.[45] However, their alibi should not be outrightly dismissed as false, especially when viewed in the light of the inherent weakness of the prosecution's case.[46]

As a rule, alibis should be considered with suspicion and received with caution, not only because they are inherently weak and unreliable, but also because they can easily be fabricated.[47] But equally fundamental is the axiom that evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the defense.[48] A conviction in a criminal case must rest on nothing less than a moral certainty of guilt. The prosecution cannot use the weakness of the defense to enhance its cause. And, where the prosecution's evidence is weak or just as equally tenuous, alibi need not be inquired into.[49]

We are not saying here, lest we be misunderstood, that accused-appellants are guilt-free. There is some material evidence hinting at them as the possible perpetrators of the crime. But, in all conscience, we cannot brush aside the possibility that they could have been wrongly pointed to, given the peculiar physical setting of the locus criminis as stressed by the defense. Conclusion based on speculations cannot serve as a basis for conviction,[50]

especially for a crime that is of grave magnitude and consequence. There should be more proof than the mere outright declaration by the witnesses that Rogelio and Virgilio Milan were indeed behind the crime, particularly so when the testimonies appear to be faulty and dubious. When the circumstances admit two or more possible explanations, the one favoring the accused should be chosen. The slightest doubt should be resolved in his favor. Thus on reasonable doubt we are compelled to reverse the judgment of conviction and acquit accused-appellants instead.

WHEREFORE, the assailed decision of the trial court finding accused-appellants ROGELIO MILAN y ABON and VIRGILIO MILAN y ABON guilty of multiple murder and multiple frustrated murder is REVERSED and SET ASIDE.

Consequently, they are ACQUITTED of the crimes charged and ordered released immediately from confinement unless they are held for some other lawful cause. Costs de officio.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Information; Rollo, p. 1.

[2] TSN, 25 May 1994, p. 145; TSN, 13 July 1994, pp. 227-228; TSN, 14 July 1994, pp. 234-237.

[3] TSN, 5 January 1994, p. 14; TSN, 21 September 1994, pp. 279-281.

[4] TSN, 1 February 1995, p. 351.

[5] TSN, 7 June 1995, pp. 421-422.

[6] Ibid.

[7] TSN, 2 February 1995, p. 358.

[8] TSN, 1 February 1995, pp. 354 and 358.

[9] TSN, 15 June 1995, p. 433.

[10] Ibid.

[11] TSN, 2 February 1995, p. 357.

[12] TSN, 20 July 1995, pp. 441-442; TSN, 2 February 1995, p. 365.

[13] TSN, 2 February 1995, p. 362

[14] TSN, 25 July 1995, p. 444; TSN, 14 February 1995, p. 373.

[15] TSN, 25 July 1995, p. 444.

[16] TSN, id., pp. 444-446.

[17] TSN, 2 February 1995, p. 367.

[18] TSN, id, pp. 368-370.

[19] Decision penned by Judge Jose B. Rosales, promulgated on 4 April 1996; Records, pp. 277-286.

- [20] *People v. Benito*, G.R. No. 128072, 19 February 1999, citing *People v. Victor*, G.R. No. 127903, 9 July 1998.
- [21] *People v. Pidia*, G.R. No. 112264, 10 November 1995, 249 SCRA 687, citing *People v. Florida*, G.R. No. 90254, 24 September 1992, 214 SCRA 227; *People v. Aguilar*, G.R. Nos. 98425-26, 21 May 1993, 222 SCRA 394; *People v. Sulte*, G.R. No. 109881, 18 May 1994, 232 SCRA 421; *People v. Constantino*, G.R. No. 109119, 16 August 1994, 235 SCRA 384.
- [22] Appellant's Brief; Rollo, pp. 117-121.
- [23] *People v. Batidor alias "TORA,"* G.R. No. 126027, 18 February 1999.
- [24] *People v. Dominguez*, G.R. No. 100199, 18 January 1993, 217 SCRA 170; *People v. Vinas Sr.*, G.R. Nos. 112070-71, 29 June 1995, 245 SCRA 448; *People v. Teehankee Jr.*, G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 59; *People v. Francisco*, G.R. No. 99058, 25 October 1995, 249 SCRA 526
- [25] *People v. Reoveros*, G.R. No. 115987, 23 August 1995, 247 SCRA 628; *People v. Pacapac*, G.R. No. 90623, 7 September 1995, 248 SCRA 77.
- [26] TSN, 23 March 1994, pp. 105-106.
- [27] TSN, 27 September 1994, pp. 296-299.
- [28] Accused-Appellants' Brief; Rollo, pp. 121-135.
- [29] TSN, 1 February 1994, p. 61.
- [30] Ibid.
- [31] TSN, 13 July 1994, pp. 227-228.
- [32] TSN, 5 January 1994, p. 14; TSN, 21 September 1994, pp. 279-281.
- [33] Rollo, pp. 132-133.
- [34] Ibid.
- [35] TSN, 1 February 1994, p. 63.
- [36] Exhs. "1" - "7;" Records, pp. 269-272.
- [37] TSN, 2 August 1995, pp. 455-457.
- [38] TSN, 13 July 1994, pp. 227-228.
- [39] *People v. Abellanos*, G.R. No. 121195, 27 November 1996, 264 SCRA 722, citing *People v. Escalante*, G.R. No. 106633, 1 December 1994, 238 SCRA 554.
- [40] Ibid.
- [41] *People v. Bato*, G.R. No. 113804, 16 January 1998.
- [42] Ibid.
- [43] *People v. Pidia*, G.R. No. 112264, 10 November 1995, 249 SCRA 687.
- [44] Ibid.

[45] People v. Batidor alias "TORA," G.R. No. 126027, 18 February 1999, citing People v. Tulop, G.R. No. 124829, 2 April 1998; People v. Balano., G.R. No. 116721, 29 May 1997; People v. Salvador, G.R. No. 113025, 16 September 1997, 279 SCRA 164.

[46] People v. Abellanos, G. R. No. 121195, 27 November 1996, 264 SCRA 722.

[47] People v. Batidor alias "TORA," G.R. No. 126027, 18 February 1999, citing People v. Tulop et al., G.R. No. 124829, 21 April 1998; People v. Balano, G.R. No. 116721, 29 May 1997; People v. Salvador, G.R. No. 113025, 16 September 1997, 279 SCRA 164.

[48] People v. Cartuano, G.R. Nos. 112457-58, 29 March 1996, 255 SCRA 403.

[49] People v. Raquel, G.R. No. 119005, 2 December 1996, 265 SCRA 248.

[50] People v. Gapasan, G.R. No. 110812, 29 March 1995, 243 SCRA 53.

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