

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE MAMALIAS Y FIEL, ACCUSED-APPELLANT.

G.R. No. 128073. March 27, 2000

Ponente: PUNO, J.

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PUNO, J.:

Accused RENE MAMALIAS Y FIEL was convicted of murder and frustrated murder by the Regional Trial Court of Manila (Branch 33). He seeks his acquittal on the ground that the trial court convicted him purely on the basis of hearsay evidence but he escaped pending decision of his appeal. The threshold issue is whether we should acquit the accused who is no longer in the custody of the law. We acquit to prevent failure of justice.

The records show that on January 31, 1993, accused Rene Mamalias and a John Doe were charged with the crimes of murder and frustrated murder, for the death of Francisco de Vera y Del Valle, and the gunshot wound inflicted on Alexander Bunag.[1] The crimes were allegedly committed as follows:

Criminal Case No. 93-115102

"That on or about August 9, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts (sic) are still unknown, and helping each other, with intent to kill, and by means of treachery and with evident premeditation did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one FRANCISCO DE VERA Y DEL VALLE, by then and there shooting the latter on the head thrice with an unknown caliber gun, thereby inflicting upon the said FRANCISCO DE VERA Y DEL VALLE gunshot wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW."

Criminal Case No. 93-115103

"That on or about August 9, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, real identity and present whereabouts (sic) are still unknown, and helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, and with treachery and evident premeditation, attack, assault and use personal violence upon one ALEXANDER BUNAG Y FIGUEROA, by then and there shooting the latter with unknown caliber gun on his face hitting his cheek, thereby inflicting upon the said Alexander Bunag Y Figueroa gunshot wound which was necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to the said ALEXANDER BUNAG Y FIGUEROA which save(d) his life.

CONTRARY TO LAW."

Accused pleaded not guilty.[2] His co-accused remained at large. Trial ensued.

The prosecution presented only two (2) witnesses, namely police investigator SPO3 Manuel Liberato of the Western Police District Command and Dr. Remigio Rivera of the Mary Johnston Hospital.

SPO3 LIBERATO testified that the accused was arrested on January 4, 1993. A few days later, a relative of the murder victim Francisco De Vera brought to the police headquarters Epifanio Raymundo, an alleged eyewitness to the shooting incident. The sworn statement of Raymundo was taken by SPO3 Liberato. In his sworn statement, Raymundo claimed that at about 5:00 a.m., on August 9, 1992, he saw De Vera standing in front of house no.1001 in Ilaya Street near Padre Capitan Street, Tondo, Manila. Two (2) unidentified men approached De Vera and, without any provocation, shot him in the head. Alexander Bunag, a fruit vendor, was caught in the line of fire and got hit on the cheek by a stray bullet that killed De Vera.[3] The assailants fled after shooting De Vera three (3) times.

SPO3 Liberato also prepared the Booking Sheet and Arrest Report and the Progress Report of the case at bar. In his Progress Report,[4] dated January 7, 1993, SPO3 Liberato stated:

"This pertains to the cases of Murder and Frustrated Murder wherein the victims were FRANCISCO DE VERA y DEL VALLE, 48 years old, married, jeepney barker, native of and last resided at Blk. 13, Lot 3, Phase 3-C, Kalayaan Village, Kalookan City (Deceased) (sic), and ALEXANDER BUNAG y FIGUEROA, 20 years old, single, residing at No. 246 Padre Rada Street, Tondo, Manila (Injured and treated at Mary Johnston Hospital). The suspects are two unidentified malepersons (sic). The incident happened at about 5:00 a.m., August 9, 1992 in front of house no. 1001 Ilaya Street near corner Capitan Street, Tondo, Manila.

Incessant follow-up and discreet inquiries were made for the early resolution of his case and the possible apprehension of the suspects.

On January 4, 1993, RENE MAMALIAS Y FIEL, 33 years old, married, jobless, native of Osamiz City and residing at 1267 Hagonoy Street, Tondo, Manila, JONATHAN DEQUITO Y VINLUAN, 27 years old, married, jobless, native of Pikit North Cotabato and presently residing at no. 2515 Radium Street, San Andres Bukid, Manila, and RODOLFO FEROL Y TUSING, 30 years old, married, jobless, native of Palapag, Samar and presently residing at no. 2929 Park Avenue Street, Pasay City (ALL UNDER ARREST) all members of the dreaded Robin Padilla gang and suspects in the series of Hold-up, Bank Robberies, Murder and other offenses were apprehended and brought in to this office, after a series of stake outs and raids, by elements of this office.

Witness in herein case, Epifanio Raymundo y Peralta, came to this office and positively pointed to and identified RENE MAMALIAS y FIEL, as one of the two men who fatally shot and killed Francisco De Vera y Del Valle and seriously injuring Alexander Bunag y Figueroa.

When investigated after apprising him of his constitutional rights as person under custodial investigation, Rene Mamalias y Fiel verbally admitted that he only acted as look-out at the time and only gave support to one alias LANDONG WARAY whom he alleged to be the gun wielder. He further stated that he was given P2,400.00 for the job and that it was one alias BOBBY URAK, a muslim, who ordered the killing of the herein named victims.

In view of the foregoing, Rene Mamalias was booked for Murder and Frustrated Murder and the same will be referred to the inquest prosecutor for proper disposition and action."

DR. REMEGIO RIVERA, a resident physician at Mary Johnston Hospital in Tondo, Manila, testified that on August 9, 1992, he treated the gunshot wounds of Alexander Bunag. Bunag sustained gunshot wound at the right cheek, measuring about 1 cm., and possibly a penetrating wound in the cranial area, measuring about 5 cms. However, he did not determine the extent of Bunag's possible head injury as Bunag refused to undergo a skull x-ray. Thus, he just cleansed Bunag's wounds and gave him anti-tetanus medications. Bunag was released that

same day.

The prosecution tried to present Alexander Bunag, the heirs of Francisco De Vera and Epifanio Raymundo as additional witnesses but the authorities could not locate them.[5] For lack of other material witnesses, the prosecution rested its case.

The defense presented only one witness, accused Rene Mamalias.

Accused claimed that on the date and time of the shooting incident, he was in his house in Masinop, Wagas Street, Tondo, Manila. He fetched water and was unaware of any unusual incident. He denied any knowledge of the crimes imputed against him. On January 4, 1993, while he was counting the proceeds of his sales for watches and eyeglasses, he was arrested without warrant by the police and brought to the Western Police District. He was also not assisted by counsel during his custodial investigation.

On May 15, 1995, the trial court rendered its judgment, finding accused guilty as charged.[6] The trial court held:

"x x x. Finally, this court on September 27, 1993, ordered the Superintendent of the Western Police District, Col. Romeo Odi, to effect the arrest of the witnesses mentioned in these cases but again to no avail. The Court can only surmise that the other witnesses went into hiding for fear of their lives.

The question before this Court is, whether the non-appearance of these witnesses is fatal to the cause of the prosecution?

The Court finds the evidence adduced for the prosecution supportive of the allegations of the information in both offense for murder and for the crime of frustrated murder. Accused did not deny the fact of his apprehension. Accused did not also deny the confrontation between him and the witness for the prosecution Epifanio Raymundo at the police headquarters wherein Epifanio Raymundo pointed to him as the person who shot Francisco De Vera y Del Valle on August 9, 1992. He also did not dispute the claim of the police investigator Manuel Liberato that during his investigation for the death of Francisco De Vera y Del Valle and for the injury sustained by Alexander Bunag he admitted verbally having shot De Vera and that he was paid P2,400.00 by one Landong Waray. His bare denial did not overcome the presumption of guilt established by the evidence adduced by the prosecution.

x x x x x x x x

WHEREFORE, for all the foregoing, the Court finds the accused Rene Mamalias y Fiel guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code for the death of Francisco Del Valle (sic) and is hereby sentence to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of said Francisco De Vera y Del Valle the amount of P2,400.00.

For the injuries inflicted on Alexander Bunag, the accused Rene Mamalias y Fiel is found guilty beyond reasonable doubt of the crime of frustrated murder defined and punished under Article 248 in relation to Article 6 of the Revised Penal Code and because of Article 48, such penalty is absorbed by the more serious crime of murder. In the latter case, no pronouncement as to civil liability.

SO ORDERED."

Hence, the appeal.[7] Accused-appellant contends that:

"THE TRIAL COURT DECISION WAS BASED ON ALLEGATIONS OF FACTS NOT TESTIFIED TO BY THE WITNESSES IN THE COURT AND THEREFORE HEARSAY."

In a Resolution dated August 25, 1997, we inquired from the Director of the Bureau of Corrections whether the accused-appellant is confined in the New Bilibid Prisons or some other institutions under said Bureau.[8] In a 1st

Indorsement, dated October 7, 1997, the Bureau of Corrections notified this Court that it has no record of confinement of the accused-appellant.[9] Hence, on October 22, 1997, we issued another resolution, ordering the Regional Trial Court of Manila, Branch 33, to inform the Court of the whereabouts of the accused-appellant within ten (10) days from notice of our resolution. On September 13, 1999, we issued another resolution with the following directives:

"(1) Clifford S. Equila, Clerk of Court, Manila RTC, Branch 33, to inform the Court whether the Order of Commitment dated August 2, 1995 issued by then Judge Rodolfo G. Palattao has been satisfied;

(2) the Jail Warden of Manila City Jail to confirm whether or not accused-appellant has been committed to the New Bilibid Prison and to show proof of such commitment;

(3) the Director of the Bureau of Corrections to inform the Court whether accused-appellant is confined at the New Bilibid Prison or other national penal institution; and

(4) the Public Attorney's Office, counsel for accused-appellant, to inform the Court of accused-appellant's whereabouts, all within a non-extendible period of ten (10) days from notice."

On September 24, 1999, we received a communication from the Regional Trial Court of Manila, Branch 33, informing this Court that "the Order of Commitment dated August 2, 1995 issued by then Judge Rodolfo G. Palattao has long been satisfied. It was delivered by a certain M.O. Labata of the Manila Sheriff's Office and was received at the Manila City Jail by SJ 04 EA Elanda on August 11, 1995 x x x." It thus appears that the accused-appellant is no longer in the custody of the law and cannot be located.

In a Manifestation and Motion,[10] the solicitor General recommended the acquittal of the accused-appellant as his conviction was based on hearsay evidence.

The first issue is the jurisdiction of this Court to determine the guilt or innocence of the accused-appellant in view of the fact that his whereabouts is now unknown. Section 8, Rule 124 of the 1985 Rules on Criminal Procedure provides:

"Sec. 8. Dismissal of appeal for abandonment or failure to prosecute.- The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the appellant is represented by a counsel de oficio.

The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal."

The general rule is that "a party appealing who flees the jurisdiction, pending the appeal, is in contempt of the authority of the court and of the law and places himself in a position to speculate on the chances for a reversal, meanwhile keeping out of the reach of justice and preparing to render the judgment nugatory or not, at his option. Such conduct is intolerable and does not invite leniency on the part of the appellate court." [11] Moreover, the escapee loses his standing in court and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.[12]

Be that as it may, the escape of an accused-appellant during the pendency of his appeal will not necessarily prevent this Court from exercising its jurisdiction in exceptional cases. Thus, in *People vs. Araneta*, [13] we held:

"Since the accused-appellant has jumped bail, we shall determine whether the Court should proceed to exercise jurisdiction over his appeal. Section 8, Rule 124 of the 1985 Rules on Criminal Procedure provides:

`Sec. 8. Dismissal of appeal for abandonment or failure to prosecute.- The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his

brief within the time prescribed by this rule, except in case the appellant is represented by a counsel de oficio.

The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to foreign country during the pendency of the appeal.'

Under the second paragraph, the Court has the discretion to dismiss the appeal in case the appellant escapes from custody or jumps bail.

We hold that dismissal of accused-appellant's appeal at this stage will result in injustice. In Criminal Case No. 34642, the Decision of the trial court finding him guilty of homicide and sentencing him to a minimum of prison mayor to a maximum of reclusion temporal will become final. The findings of the Court of Appeals that he should instead be convicted for murder and meted the penalty of reclusion perpetua can no longer be acted upon by this Court. And in Criminal Case No. 34643, accused-appellant will be acquitted from the charge of frustrated homicide as found by the Court of Appeals. In fine, accused-appellant will be benefited by his act of jumping bail. To avoid this mockery of justice, we resolve to continue exercising jurisdiction over Criminal Case No. 34642. The acquittal of accused-appellant in criminal Case No. 34643, however, can no longer be reviewed in view of the rule on double jeopardy."

Similarly instructive is the case of *People vs. Francisco*,^[14] where the accused-appellant was convicted of murder and meted the penalty of reclusion perpetua. He escaped from confinement during the pendency of his appeal. Nevertheless, we reviewed his sentence and eventually acquitted him of the crime charged. We held:

"During the pendency of the appeal, the appellant escaped from prison or confinement. The appeal, therefore, could have been dismissed under Section 8, Rule 124 of the Rules of Court. In view, however, of the comment of the Solicitor General as counsel for the appellee, the People of the Philippines, that since the appellant had already filed his brief, the proceedings may continue despite the reported escape of appellant from prison, as well as his manifestation in lieu of appellee's brief, recommending the acquittal of the appellant on the ground that his culpability of the crime charged has not been shown beyond legal and moral certainty and finding such recommendation to be meritorious, We have taken the burden of deciding the case on the merits in order to avoid a miscarriage of justice."

In the case at bar, we hold that this Court should retain its jurisdiction to pass upon the guilt or innocence of the accused-appellant to prevent a miscarriage of justice. The ultimate task of this Court is to render justice and rules of procedure should be interpreted to serve this objective. No obeisance should be rendered to any technical rule when its result will be to frustrate the rendition of a just decision. Again, we reiterate our fealty to the rule of justice and not to the role of technicalities.

The second issue is whether the guilt of the accused-appellant was established beyond reasonable doubt. The Constitution^[15] mandates that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. This presumption of innocence is anchored on the basic principles of justice. It cannot be overcome by suspicion or conjecture, i.e., a probability that the accused committed the crime or that he had the opportunity to do so. To overcome the presumption of innocence, proof beyond reasonable doubt of every fact essential to constitute the offense with which the accused is charged must be clearly established by the prosecution.^[16]

In the case at bar, the trial court merely relied on hearsay evidence, particularly on the testimony of SPO3 Liberato and the sworn statement of Epifanio Raymundo who did not testify in the trial court. The records clearly show that prosecution witness SPO3 Liberato has no personal knowledge of the facts surrounding the shooting incident. The Progress Report and the Booking and Arrest Report he prepared were based on information related to him by Epifanio Raymundo almost five (5) months after the crimes were committed. In fact, contrary to the

factual finding of the trial court that SPO3 Liberato went to the locus criminis shortly after the shooting incident, the records show that it was PO3 Edgardo E. Ko who was dispatched by the WPD Command to investigate the case. For unknown reason, PO3 Ko was not called to the witness stand. The records also show that SPO3 Liberato was not even a member of the team of policemen that apprehend the accused-appellant on January 4, 1993. He testified that the accused-appellant was turned over to him only on January 6, 1993, and he did not know how the accused-appellant was apprehended. He was also not aware whether a warrant of arrest had been issued against the accused-appellant.[17] Clearly, his knowledge of the circumstances surrounding the shooting incident was limited to the matters relayed to him by his co-policemen and the alleged eyewitness, hence, hearsay.

In the same vein, the sworn statement of Epifanio Raymundo is merely hearsay evidence as he did not personally appear in court to affirm its content. Its probative value, if any, is little. We have held that in criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them.[18] A conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition. Such a judgment cannot be given any effect whatsoever especially on the liberty of an individual.

Apparently, the trial court was swayed to convict the accused-appellant because he was suspected by the police as a member of the dreaded "Robin Padilla gang", that was allegedly involved in a series of bank robberies, murders and other offenses in Manila. Be that as it may, suspicion is never synonymous to proof and notoriety without more is not evidence and cannot convict.

We emphasize that the great goal of our criminal law and procedure is not to send people to the gaol but to do justice.[19] The prosecution's job is to prove that the accused is guilty beyond reasonable doubt. Conviction must be based on the strength of the prosecution and not on the weakness of the defense-- the obligation is upon the shoulders of the prosecution to prove the guilt of the accused, not on the accused to prove his innocence. Thus, when the evidence for the prosecution is not enough to sustain a conviction, it must be rejected and the accused absolved and released at once.[20]

IN VIEW WHEREOF, the impugned decision of the Regional Trial Court of the City of Manila (Branch 33), in Criminal Case Nos. 93-115102-03, is REVERSED and SET ASIDE, and appellant RENE MAMALIAS Y FIEL is hereby ACQUITTED of the crimes charged due to reasonable doubt. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Docketed as Criminal Case Nos. 115102-03.

[2] Original Records, p. 11.

[3] Exhibit "A", Original Records, p. 1.

[4] Original Records, p. 7.

[5] Warrants of arrest were issued against the heirs of Francisco De Vera, Alexander Bunag and Epifanio Raymundo for their failure to appear in court and for giving fictitious addresses. See Original Records, pp. 30, 34-35.

[6] Penned by then Judge now Associate Justice of the Sandiganbayan, Rodolfo G. Palattao; Rollo, pp. 13-22.

[7] Counsel for the accused-appellant erroneously appealed the case to the Court of Appeals. The complete records of the case were transmitted by the Court of Appeals to this Court on February 24, 1997, considering that the penalty imposed was reclusion perpetua.

[8] Rollo, p. 28.

[9] Rollo, pp. 31-35.

[10] Dated August 10, 1998.

[11] *People vs. Wilson & Dolores*, 52 Phil. 907 (1929).

[12] *People vs. Agbulos*, 222 SCRA 196 (1993); *People vs. Mapalao*, 197 SCRA 79 (1991); *People vs. Ang Gioc*, 73 Phil. 366 (1941); *People vs. Quiritan*, 197 SCRA 32 (1991); *People vs. Acol*, 232 SCRA 406 (1994); *People vs. Codilla*, 224 SCRA 104 (1993).

[13] 300 SCRA 80 (1998), pp. 89-90.

[14] 74 SCRA 158 (1976).

[15] Section 14 (12), Article III, 1987 Constitution.

[16] *People vs. Isla*, 278 SCRA 47 (1997).

[17] TSN, April 27, 1993, p. 6.

[18] *People vs. Melosantos*, 245 SCRA 569 (1995).

[19] *People vs. De Guzman*, 250 SCRA 118 (1995).

[20] *People vs. Alcantara*, 240 SCRA 122 (1995).

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