

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JACINTO NARVAEZ, FERNANDO CUTON, AND EFREN NARVAEZ, ACCUSED-APPELLANTS.

G.R. No. 140759. January 24, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is the appeal filed by the appellants Jacinto Narvaez, Fernando Cuton and Efren Narvaez assailing the Decision[1] dated March 12, 1999 in Criminal Case No. 2576-93 of the Regional Trial Court of Imus, Cavite, Branch 22, finding them guilty of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua.

The Charge

An Information[2] was filed by Asst. Provincial Prosecutor Jose M. Velasco, Jr. on February 23, 1993 charging appellants with the crime of murder, committed as follows:

“That on or about 9:00 o’clock in the evening of June 24, 1992, at Barangay Langcaan, in the Municipality of Dasmariñas, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery, evident premeditation and taking advantage of nighttime, while being armed with firearms, did, there and then, willfully, unlawfully and feloniously, attack and fire at Wilfredo Mantillas hitting the latter on different parts of the body and inflicting upon him mortal injuries which directly caused his death to the damage and prejudice of the legal heirs of said Wilfredo Mantillas.”

Arraignment and Plea

Upon arraignment, appellants, assisted by counsel, all pleaded not guilty to the crime charged. Thereafter, trial ensued.

The Trial

The prosecution presented witnesses Arnel Mendoza (“Mendoza” for brevity), Constancio Pejero, SPO1 Isagani Simera, SPO3 Apolinar Reyes, Elenita Mantillas, and Virgilio Pejero. The defense presented Antonio Delima, Fernando Cuton, Jacinto Narvaez, and Aida Magsipoc.

Version of the Prosecution

The version of the prosecution as summarized in the Solicitor General’s Brief[3] is as follows:

“Prior to the fatal night of June 24, 1992, appellant Fernando Cuton and the victim Wilfredo Mantillas had a fist fight. In the course thereof, Virgilio Pejero heard Cuton utter the words “Hindi kita titigilan”.

At around 9:00 p.m. of June 24, 1992, Arnel Mendoza, on his way home to Sitio Bodega, Barangay Langkaan, Dasmariñas, Cavite, coming from Silang, Cavite, dropped by the shanty of Domingo Anarna, located at Sitio Humalia, Barangay Langkaan, in order to see and convince the victim Mantillas who was then staying thereat, to sleep in the house of his (Mendoza's) cousin at Sitio Bodega. Mendoza was then fearing for the safety of Mantillas, who however refused and insisted on staying behind (TSN, April 8, 1997, pp. 3-5).

After staying in the said shanty for about half an hour, Mendoza left. While he was about seventy (70) meters away, he heard several gunshots (TSN, Ibid, pp. 5-7).

Thus, Mendoza looked back and saw five (5) men. He was able to identify appellants Jacinto Narvaez, Fernando Cuton and Efren Narvaez, and their co-accused Justiniano Pillena, but was unable to identify the other malefactor who was then holding a flashlight (TSN, Id., pp. 7-8).

Mendoza was able to recognize the said malefactor[s] because of the fact that the aforementioned individuals likewise reside in the same barangay and had been known to him since his childhood days, plus the light provided by a small improvised kerosene lamp known as "perok-perok" as well as by the flashlight (TSN, Id., pp. 10-12)

Besides, Mendoza distinctly heard the familiar voice of appellant Fernando Cuton who shouted "Mokong lumabas ka diyan!" (referring to the victim Mantillas). Thereafter, several gunshots followed (TSN, Id., pp. 14-15).

Afraid that he might be seen and harmed by the above-mentioned malefactors, Mendoza moved farther, approximately one hundred fifty meters away from the shanty. After the said assailants had left, some three (3) minutes from their arrival, he went back to the shanty and saw the bloodied body of Mantillas at the door of the hut, sprawled on the ground (TSN, Id., pp. 16-17).

Mendoza immediately left and went to the house of his cousin Constancio Pejero and related what he witnessed to the latter. But because it was very late and there were no vehicles available to bring them to the Barangay Captain of Barangay Langkaan or to any barangay official to whom they could report the incident, they decided to wait until the following morning (TSN, April 8, 1997, pp. 17-18; TSN, July 8, 1997, pp. 27-28).

On June 25, 1992, SPO1 Isagani Simera, the police investigator on duty at the PNP Dasmariñas, Cavite Police Station, received a report from Barangay Captain Lorenzo Laudato of Barangay Langkaan regarding the incident. When said investigator arrived at the reported scene of the crime, he saw the dead body of Mantillas already being carried by several persons outside the shanty. However, he was able to recover fifteen (15) empty shells of carbine (Exhs. "H" to "H-14", inclusive) 5 to 7 meters away from the hut (TSN, July 8, 1997, pp. 4-10).

Based on the death certificate (Exh. "D") presented by the victim's mother, Mantillas died of multiple gunshot wounds."

Version of the Defense

The version of the defense, culled from the testimonies of appellants and their witnesses, is summarized by the trial court in its decision, to wit:

"The defense, on the other hand, presented Antonio Delima who testified on the alleged whereabouts of the accused on the date and time when Mantillas was killed. Said witness swore that when he arrived in his house at around 9:00 o'clock in the evening of June 24, 1992, accused Jacinto Narvaez and Efren Narvaez were there to see him. Jacinto was there to ask for his assistance in seeking a job at Hydro Company, Cavite. It appears that Delima had been able to recommend more or less five persons already to work in said company as masons, plumbers and carpenters. Efren Narvaez, who was hired by Delima to work on his corn plantation, was also

there to collect his wage. Jacinto testified that at around 10:00 o'clock in the evening, he and Efren Narvaez left Delima's house. He then went home and slept.

When on the witness stand, accused Fernando Cuton testified that at around 8:00 o'clock in the evening of June 24, 1992 he was in the yard of a neighbor named Victor Reyes. He was there to relax his tired body and to chat with Reyes. At around 9:30 in the evening, he left and went home to sleep.

On October 30, 1997, an Order was issued by the Court denying the petition for bail filed by the accused. After the prosecution manifested that it was adopting the evidence it presented during the hearing on the petition for bail as its evidence in chief, the defense recalled Jacinto Narvaez to the witness stand. Jacinto Narvaez testified that prosecution witness Arnel Mendoza had falsely testified against him because of a personal rift between them. He averred that Arnel Mendoza is the president of Samahan ng "Agaw Saka" in Sitio Bodega. Before Mendoza became the president, he was a member of said association himself but separated after two (2) months for according to him it was not his practice to grab lands which the Samahan Ng "Agaw Saka" did. According to Jacinto, Mendoza initially asked him to give two (2) hectares out of the five (5) hectares of the land of Emerito Ramos which he was tilling. Though he agreed the first time, he already refused when Mendoza asked him to give up two (2) more hectares. This according to accused Jacinto Narvaez infuriated Mendoza. On cross-examination, Jacinto said that this took place more or less ten (10) years ago. He likewise admitted that when he gave up two (2) hectares to Mendoza, this was without the knowledge and consent of the owner Emerito Ramos. When asked whether he filed a complaint against Mendoza, accused answered in the negative.

To rebut the testimony of accused Jacinto Narvaez, the prosecution recalled Arnel Mendoza to take the witness stand. Mendoza denied that he is the president of Samahan ng "Agaw Saka". He is, however, a member of the Buklod Ng Magbubukid Sa Lupang Ramos, Inc., a corporation whose Articles of Incorporation and By-Laws were duly registered with the Securities and Exchange Commission (Exhibit "I"). He is also trustee and incorporator of said corporation (Exhibit "1-2"). He also denied that he was given by accused Jacinto Narvaez a portion of the land tenanted by the latter. He knew though that accused Jacinto Narvaez sold his right as a tenant to a portion of the land he was tilling to another person. He is also in the Hacienda Ng Lupaing Ramos.

The defense also presented Aida R. Magsipoc, Forensic Chemist from the National Bureau of Investigation. She testified that on June 27, 1992, accused Jacinto Narvaez and Fernando Cuton were subjected [to] paraffin examination as per request of Senior Inspector Leonardo Notario, OCI, PNP Dasmariñas Police Station, Dasmariñas, Cavite. According to her and as indicated in her Chemistry Report No. C-92-435 (Exhibit "1"), the diphenylamine-paraffin test for nitrates conducted on the dorsal aspects of the left and right hands from the wrist joint to the fingertips of accused Jacinto Narvaez gave negative results (Exhibit "1-d"). Likewise, the paraffin test for nitrates conducted on the dorsal aspects of the left and right hands from the wrist joint to the fingertips of accused Fernando Cuton gave negative results (Exhibit "2-d") as shown in her Chemistry Report No. C-92-436 (Exhibit "2"). When asked to interpret the results of the examination in layman's terms, Forensic Chemist Magsipoc categorically stated that the accused could not have fired a firearm (tsn, March 16, 1998, p. 26). Though the examination was conducted on June 27, 1992 at 11:25 in the morning while the shooting incident took place on June 24, 1992 at 9:00 o'clock in the evening, Magsipoc said that traces of nitrate would stay or remain on the skin of a living subject who has fired a firearm for 72 hours or 3 days (ibid, pp. 34-35). According to her, acids, like vinegar, would only lessen but not wash off nitrates. Washing ones hands with boiling water could be resorted to wash off nitrates. The water must be steaming hot in order to open the pores of the skin thus removing the nitrates. In the case of accused Jacinto Narvaez and Fernando Cuton, Magsipoc believes that they have not resorted to this process; because if they did, it would have been detected."

The Trial Court's Ruling

The trial court accorded full faith and credence to the testimony of prosecution witness Mendoza and disregarded

appellants' defense of alibi. It held that the inconsistencies between Mendoza's testimony in court and his sworn statement to the police strengthened rather than weakened his credibility. On the other hand, the trial court found the defense of alibi weak being unreliable and susceptible to fabrication. It further ruled that the fact that the warrants of arrest were returned unserved, since appellants could not be found in their given address, is indicative of flight and bolsters the finding of guilt against appellants. Lastly, the trial court disregarded the paraffin test for nitrates conducted on appellants Jacinto Narvaez and Fernando Cuton saying that the same is not conclusive proof that one has not fired a gun.

The trial court pronounced judgment thus:

"WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding accused Jacinto Narvaez, Fernando Cuton and Efren Narvaez guilty of the crime of murder, the killing of Wilfredo Mantillas qualified by treachery. As the crime was committed on June 24, 1992 when the death penalty was not yet in effect, the said accused are hereby sentenced to suffer the penalty of reclusion perpetua because of the presence of the aggravating circumstance of nocturnity.

The said accused are likewise ordered to pay the heirs of Wilfredo Mantillas the following amounts:

- 1) P50,000.00 – as indemnity for the death of Wilfredo Mantillas;
- 2) P50,000.00 – as moral damages;
- 3) P30,000.00 – as exemplary damages;
- 4) P 7,000.00 – expenses during the wake of Wilfredo Mantillas; and
- 5) P40,000.00 – funeral expenses.

xxx xxx xxx

SO ORDERED."[4]

Hence, the instant appeal.

The Issues

Appellants now come to this Court seeking reversal of the conviction and assigning the following errors:

"I

DID THE TRIAL COURT ERRED (SIC) WHEN IT GAVE DUE CREDENCE ON THE ASSERTION OF THE INCREDIBLE AND LIAR WITNESS ARNEL MENDOZA?

II

DID THE TRIAL COURT ERRED (SIC) BY CONCLUDING THAT THERE IS FLIGHT WHEN THE ACCUSED WERE NOT APPREHENDED BY WARRANT OFFICER (POLICEMAN) DESPITE ISSUANCE OF WARRANTS OF ARREST AGAINST THEM?

III

DID THE TRIAL COURT ERRED (SIC) WHEN IT DID NOT CONSIDER THE FORENSIC REPORT OF NBI CHEMIST AIDA MAGSINOC THAT YIELDED NEGATIVE RESULT."

The Court's Ruling

We find the appeal meritorious.

In convicting the appellants, the trial court relied exclusively on the testimony of Arnel Mendoza, the principal witness presented by the prosecution as an eyewitness to the crime.

The time-honored rule is that when the issue is one of credibility of witnesses, appellate courts will not disturb the findings of the trial court unless it has plainly overlooked certain facts of substance.[5] This Court accords, as a general rule, conclusiveness to a lower court's findings of fact unless it is shown, inter alia, that: (1) the conclusion is a finding grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is a grave abuse of discretion in the appreciation of facts; (4) the judgment is based on a misapprehension of facts; and (5) the findings of fact are conflicting.[6]

This case falls within the exception as the trial court misappreciated vital facts and made manifestly mistaken and absurd inferences on important matters.

In the first assignment of error, the appellants contend that the trial court erred in giving weight and credence to the inconsistent testimonies of prosecution witness Mendoza. The appellants argue that contrary to the finding of the trial court, the inconsistencies in the testimony of Mendoza do not strengthen but rather cast grave doubt on his credibility. The appellants point out that there are circumstances that lead to the conclusion that it was impossible for witness Mendoza to have positively identified them as the perpetrators of the crime.

First, prosecution witness Mendoza had already walked a distance of about 70 meters from the shanty where the victim was staying when Mendoza first heard the burst of gunfire. When Mendoza looked back, there was still gunfire. He then laid flat on the ground to observe what was happening. While lying down, he saw and recognized the appellants in the yard outside the shanty.[7] This can be gleaned from the following testimony of Mendoza:

“Q.

After 30 minutes, you left the shanty of Domingo Anarna. And while you were walking on your way home, do you recall of any unusual incident?

A.

From the time I talked with Wilfredo Mantillas, and I was not very far from the shanty, I already heard gunshots.

Q.

When you heard the burst of gunshots, from where is that?

A.

When I look back, there was firing.

Q.

What did you do after you heard the burst of gunshots?

A.

I lay on the ground and observe what's happening.

Q.

What happened while you were lying on the ground?

A.

From the place where I was lying, I saw Jacinto Narvaez, Fernando Cuton, Efren Narvaez and Justiniano Pillena while one of their companions were flashlighting them.”[8]

At the second burst of gunfire, witness Mendoza hid himself by moving farther, more than double the distance, to about 150 meters away.[9]

Mendoza also described the shanty as remotely situated and the nearest hut was 150 meters away. Mendoza testified that:

“Q:

It is obvious that no nipa hut near to the hut of Domingo Anarna?

A:

There is a shanty nearby, sir.

Q:

Who owns that shanty?

A:

The shanty of Constancio Pejoro.

Q:

How far is his shanty of Constancio Pejoro from the hut of Domingo Anarna?

A:

Almost 150 meters.”[10] (Emphasis supplied).

The shanty where the victim was killed was practically an isolated place. A person at the nearest hut could not recognize another standing at the yard of the shanty where the killing took place. Prosecution witness SPO1 Simera testified as follows:

“Q:

When you went to the crime scene, did you try to look into the vicinity of the scene?

A:

Yes, sir.

Q:

And did you notice any nearest hut, if any, to the hut where the cadaver of Mr. Mantillas was found?

A:

There was a hut but it is very far, sir.

Q:

In your estimate from that nipa hut which according to you is very far, it is very impossible for a person to recognize a person stationed near the hut of Mr. Mantillas?

A:

‘Lalo na kung gabi mahirap makilala.’

Q:

You probably saw one very far nipa hut?

A:

Yes, sir.”[11] (Emphasis supplied).

It is highly doubtful if a person can recognize the faces of the assailants 70 meters away at around 9:00 p.m. without sufficient illumination directly hitting the faces of the assailants. It was held that the distance of 40[12] to 50[13] meters from the scene of the crime, taken by itself, may lead the court to entertain doubt on the accuracy of what a witness had observed. Here, such doubt is magnified by the fact that the distance is about 70 to 150 meters with the surroundings quite dark. Prosecution witness SPO1 Simera confirmed that at 70 meters and even 150 meters, it would be difficult to recognize a person at nighttime. Simera testified that:

“Q:

In your experience as investigator at a distance of 70 meters away from an alleged human being during nighttime, can you identify a person?

A:

It is hard to recognize a person even there was moonlight.

Q:

Much more if that alleged human being was 150 meters away?

A:

Yes, sir. It is far.”[14]

Mendoza himself admitted categorically that at a distance of 150 meters, he could no longer see or distinguish a person. Mendoza testified that:

“Q:

And as a matter of fact, that distance of 150 meters away where you lay flat, you can hardly see the hut of Domingo Anarna because it was very dark?

A:

I can still see, sir (aninag pa).

Q:

But the person at that far, you cannot distinguish anymore from the place where you lay flat?

A:

Yes, sir because of the dark you cannot see.”[15] (Emphasis supplied).

There is even greater difficulty in recognizing what lies ahead when the witness is lying flat on the ground, aided only by the light coming from a flashlight some 70 meters away. Mendoza’s testimony in court that he laid flat on the ground at a distance of 70 meters from the shanty contradicts his sworn statement to the police that he laid flat on the ground at a distance of 150 meters. Mendoza’s statement to the police states:

“T:

Matapos mong lumayo, ano ang sumunod na ginawa mo?

S:

Lumayo po ako pero dumapa sa may distansiyang Isangdaan at Limampung metros, at doon ay nakiramdam. Nang makita kong nag-alisan na sila sa kubong iyon ay saka ako lumapit at nakita kong nakabuwal sa tabi ng pinto si Wilfredo Mantillas kaya agad akong umalis ulit at nagpunta sa kubo ni Constancio Pejoro at sinabi sa kanya ang nakita kong pangyayari”[16]

What is undisputed from Mendoza’s testimony and sworn statement is that he was lying flat on the ground when he saw and recognized the assailants. In this position, his view of the shanty was obstructed by the sloping contour of the land. On cross-examination, Mendoza stated that:

“Q:

And likewise, you will admit that because you said you are very familiar with the said place. The area or the direction you walked into is a slopy (sic) area descending little by little?

A:

From the hut going to the road is a plain road.

Q:

Actually, it was not very plain, it was slopy?

A:

Yes, but not so slopy.

x x x

Q:

From that trunk of the mango tree, the land is descending a little? To clarify, from the mango tree up to the trunk of the mango tree going East?

A:

Yes, sir, it is descending a little.

COURT:

This Court would like to be clarified. The trunk of mango tree from the hut, how far is that, from where the incident happened

A:

More or less 150 meters, sir.

Q:

And also, I supposed that you are very familiar with the place because the portion of the land from where the mango tree used to be erected before which was descending, when you lay flat on the said trunk, you could hardly see the hut of Domingo Anarna?

A:

I could hardly see at the place I lay down flat.”[17] (Emphasis supplied).

Moreover, while lying flat on the ground, Mendoza’s view of the shanty was also obstructed by the bamboo fence around the shanty, the mango trees along the path taken by Mendoza, as well as the fully-grown sugar cane which surrounded the shanty. The shanty was not elevated, and its flooring was level with the ground. Prosecution witness SPO1 Isagani Simera who inspected the crime scene the morning after the killing revealed these facts. Simera testified on direct examination as follows:

“Q:

Do you recall whether there was a visible fence in the premises where the nipa hut was erected?

A:

There is a bamboo fence, sir.

x x x

Q:

Is this nipa hut with elevated flooring?

A:

No, sir, It is level.”[18]

Simera further testified on cross-examination that:

“Q:

You testified here that you saw a road which in your sketch was on the eastern portion of the hut. Did you notice mango trees?

A:

Yes, sir.

Q:

There are mango trees there?

A:

Yes, sir.

Q:

There are several mango trees lining that eastern portion of the road already?

A:

Yes, sir.

Q:

And I suppose you are very familiar as police investigator of the nature of locations. You will admit that the portion of land where there are these mango trees exactly on the eastern portion of the road at slope area?

A:

The road is plain but the mango trees is sloping down.

Q:

Whenever a person is situated on that sloped portion of the area it would be very difficult for that person who is “nakadapa” to see a person there in the nipa hut?

A:

If he is in a higher level it could be seen but if he is down in a sloping position he could not see.

Q:

Specially if it is nighttime when there was no moonlight?

A:

Yes, sir.

x x x

Q:

You said that the nipa hut was surrounded by bamboo fence?

A:

Yes, sir.

Q:

Is that bamboo fence all throughout?

A:

Not really surrounded, sir. It has “patlang”. “Dahil nasira na siguro.”

Q:

I suppose you also noticed the plants which actually surrounded the nipa hut where the victim was actually killed?

A:

I cannot remember. It seems there was.

Q:

At the time you went there, there are sugar cane still planted thereon?

A:

Yes, sir.

Q:

And the sugar cane plants surrounded the nipa hut?

A:

Yes, sir. The place where it is situated.

Q:

You will admit at the time that sugar cane plants were even more than human size in height?

A:

I was not able to give importance or attention to that but the sugar cane were fully grown, sir.

Q:

And you will notice that the sugar cane plants spread as far as the edge of the road?

A:

Not all parts, sir.”[19] (Emphasis supplied).

SPO1 Simera’s testimony contradicts Mendoza’s claim on the witness stand that there were no fully-grown sugar cane plants that obstructed his view. Mendoza testified that:

“Q:

The place is an open field with plants planted thereon?

A:

Yes, sir but there were no plants at the time.

Q:

You will agree with me that even the hut of Domingo Anarna was surrounded by plants like guyabano and kakawate trees?

A:

There were three (3) kakawate trees at the back and also plants but in front, there were no plants.

Q:

Are you not aware that banana plants were planted from the vicinity of the crime, almost surrounding the nipa hut?

A:

The banana plants were planted from the boundary.

Q:

As a matter of fact, these plants can easily defer your vision from the place of 150 meters away from the hut of Domingo Anarna?

A:

From the hut going to the road, nothing will obstruct my vision from the hut.”[20] (Emphasis supplied).

Moreover, Mendoza recognized the assailants only when they were already inside the bamboo fence of the shanty. Naturally, the bamboo fence stood between Mendoza and the assailants, thereby obstructing, partially or totally, his view of them. Mendoza testified that:

“Q:

When you were able to recognize these person or accused because of such flashlight, where were these accused? Were they staying at the yard or outside the yard?

A:

When I recognized them, they were exactly inside the yard, near the fence.”[21]

Second, the trial court erred in finding that the light coming from the “perok-perok” aided prosecution witness Mendoza in identifying the assailants. It is clear from the direct[22] and cross-examination[23] of Mendoza that the illumination outside the shanty and around the yard area came solely from the flashlight. The trial court made a finding that the light that aided Mendoza to identify the appellants came from the “perok-perok” inside the shanty, as well as from the flashlight held by the unidentified companion of the assailants. Such finding is erroneous since it is obvious from the account of Mendoza that it was only the flashlight, and not the “perok-perok”, that illuminated the darkness outside the shanty. Witness Mendoza testified on direct examination as follows:

“Q:

You stated that this shanty is located or you were in the shanty about June 24, 1992. Do you recall if there were lights outside? According to you, you saw these persons Jacinto Narvaez, Justiniano Pillena, Fernando Cuton and Efren Narvaez?

A:

Outside, there was no light but inside the shanty there is perok-perok which is very small.

Q:

How were you able to recognize this Efren Narvaez, Jacinto Narvaez, Fernando Cuton and Justiniano Pillena?

A:

Because they were lighted by the flashlight which is being carried by one of their companions.”[24] (Emphasis supplied).

On cross-examination, witness Mendoza further testified:

“Q:

It was very bare, the light at the time?

A:

Only the light from the perok-perok inside the hut and the flashlight.

Q:

And that light of perok-perok cannot even shed light outside the hut?

A:

No, sir.

Q:

That overall vicinity was very dark, you will admit that?

A:

Yes, sir, the surroundings are dark.

Q.

As a matter of fact, you can hardly identify persons at the distance of 150 meters away because of the dark?

A.

It is really very difficult to recognize person from that distance.

Q.

At the distance of 70 meters, because of darkness, in an open field, you have likewise difficulties to recognize a person?

A.

It is really very difficult to recognize.”[25] (Emphasis supplied).

Clearly, there was no other source of light outside of the shanty except for the one coming from the flashlight. Except for this light, Mendoza admitted that the surroundings of the shanty were “dark”. Although it has been held in a line of cases that illumination produced by a flashlight is sufficient to permit identification of a person,[26] the flashlight in such cases is held by the witness and not by the accused.[27] This difference is significant because in the cases where it is the witness carrying the flashlight, he is able to point the light at the assailants and focus the light on their faces, thus identifying them. In the present case, where the flashlight was held by a companion of the assailants, the stream of light from the flashlight was most probably focused not on the faces of the assailants but either on the ground to light the way of the assailants, or on the shanty, or alternately on both.

On cross-examination, Mendoza stated that at a distance of 70 meters he saw the person carrying the flashlight[28] enter the shanty, with all the assailants walking in front of him.[29] Mendoza testified as follows:

“Q:

You claimed that the person who was holding the flashlight and he is going to what direction?

A:

Going inside the shanty because he was outside.

Q:

Was he outside the shanty?

A:

Yes, sir.

Q:

In relation to the four (4) accused, where are they?

A:

They were in front of the one carrying the flashlight.”[30]

The illumination coming from the flashlight came from behind the assailants and was most probably pointed towards the ground to light the way of the assailants. The most that Mendoza could have seen in the surrounding darkness at a distance of 70 meters would be the silhouettes of the assailants. Visibility is a vital factor in the determination of whether or not an eyewitness could identify the perpetrators of a crime.[31]

Third, the distance of 70 meters, and then 150 meters, is admittedly too far for a person to ascertain, in dark surroundings, what another person may be carrying in his hands. This is evident from the testimony of Mendoza on cross-examination:

“Q:

It is even very difficult to recognize at a distance of 70 and 150 meters away, as you mentioned from where you were, to determine whether a person is carrying a gun or whatever he carries?

A:

Yes, sir, I cannot determine.”[32] (Emphasis supplied).

Mendoza’s admission that he could not see what the assailants were carrying contradicts his sworn statement to the police that from a distance of 150 meters he saw the four assailants each carrying a “carbine”. A “carbine” is defined as a “short light rifle”. [33] However, as generally understood in this country, a “carbine” refers to the U.S. carbine M1 .30 caliber rifle.[34] It is highly improbable that a person could identify a carbine at a distance of 150 or even 70 meters at 9:00 p.m. in dark surroundings with only a flashlight illuminating the pathway of the persons carrying the carbines. Even Mendoza admitted this, conceding categorically that he “cannot determine” what a person might be carrying at those distances.

The statements of Mendoza on the carbines allegedly carried by the assailants are quite conflicting. On direct examination, Mendoza failed to mention that he saw the assailants carrying the carbines. On cross-examination, he testified as follows:

“Q:

At a distance of 70 meters away, because of darkness, you can hardly distinguish any firearm or anything being carried by a person at that distance.

A:

It can hardly be seen.

Q:

More so, if this is 150 meters away?

A:

Yes, sir if it is dark.”[35] (Emphasis supplied).

On the other hand, the sworn statement of Mendoza given to the police the day after the killing stated he saw the assailants carrying carbines. Mendoza's statement to the police is as follows:

"T:

Noong ikaw ay dumapa at nakiramdam, gaanong katagal ang inilagi nina Jacinto Narvaez sa may kubong iyon?

S:

Humigit kumulang po sa tatlong minutos.

T:

Habang ikaw ay nakadapa, nakita mo ba ang ginawa nina Jacinto Narvaez doon sa may kubo?

S:

Nakita ko po lamang na sila ay pumasok sa kubo at pagkatapos ay lumabas din agad. Lahat sila ay may hawak na mahabang baril.

T:

Anong baril ang nakita mong dala nila?

S:

Mga karbin."

[36]

The weapons used in the killing of the victim were carbine rifles. The police recovered the day after the killing fifteen empty carbine shells at the scene of the crime.[37] However, Mendoza, an alleged eyewitness to the shooting who claimed to have recognized the faces of the assailants, inexplicably failed to mention in his testimony in court that the assailants carried carbines. Moreover, Mendoza admitted in his testimony that from where he was lying flat on the ground, he could not determine if the assailants were carrying anything in their hands because of the distance and the darkness. If the distance and darkness prevented Mendoza from seeing what the assailants carried, then the same distance and darkness also prevented Mendoza from recognizing the faces of the assailants. Mendoza's testimony in court is incredible as well as inconsistent on a very material matter with his sworn statement to the police.

The general rule has always been that discrepancies between the statements of the witness in his affidavit and those he makes on the witness stand do not necessarily discredit him[38] because it is a matter of judicial experience that an affidavit taken ex parte is almost always incomplete and often inaccurate[39]. The exceptions thereto, which impair the credibility of the witness, are: (1) when the narration in the sworn statement substantially contradicts the testimony in court, or (2) when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness cannot be expected to fail to mention.[40] The point of inquiry is whether the contradictions are important and substantial, and in this case we find the contradictions touching on important and substantial matters.

Fourth, even if witness Mendoza and the appellants reside in the same barrio, which should make identification an easy task,[41] the fact remains that what Mendoza could have seen, from a distance of 70 or 150 meters in dark surroundings, were mere shadows and silhouettes. The claim that witness Mendoza was able to identify one of the

assailants because he heard him shout[42] is likewise incredible considering his distance from the crime scene and considering that based on natural human experience, a person's voice range changes when he is shouting. It is highly unlikely that Mendoza was able to associate the voice he heard to be that of appellant Fernando Cuton.

In sum, Mendoza's identification of the appellants as the assailants of the victim Wilfredo Mantillas is improbable due to the factual situation described by Mendoza himself. This improbability is buttressed by the testimony of prosecution witness SPO1 Simera who described the barriers that obstructed the view of Mendoza. Moreover, Mendoza's testimony in court contradicts on vital facts his sworn statement to the police. We entertain grave and serious doubts on the credibility of Mendoza's testimony.

As to the second assignment of error, the prosecution relies heavily on the fact that the warrants of arrest issued against appellants were returned unserved, with the notation "subject persons cannot be found in their given address"[43]. The trial court considered this as flight and indicative of the guilt of the appellants. The prosecution, however, failed to rebut the testimony of Jacinto Narvaez that they did not leave their place of residence anytime before January 30, 1997.[44] Jacinto Narvaez testified on cross-examination that:

"Q:

Do you remember of any instance where any police officers went to your place looking for you in order to serve his warrant of arrest?

A:

Yes, sir.

Q:

In September, 1993?

A:

Yes, sir.

Q:

But they did not arrest you, is that what you mean?

A:

I was arrested, sir.

Q:

I want to inform you Mr. Witness that the date of your arrest is January, 1997. Now, my question is whether police officer (sic) went to your place sometime in September, 1993 in order to serve this warrant of arrest to you?

ATTY. PELEO: Witness already answered, your honor.

COURT:

That police officer went there but they were not arrested.

A:

I was not arrested in September 1993, sir.

Q:

Do you recall the police officer who went in your place during that time?

A:

Pol, sir.”[45]

There is a disparity among these circumstances: (1) that the warrants of arrest were returned unserved since the appellants could not be found in their given address; (2) that appellants did not leave their place of residence anytime prior to their arrest in January 1997; and (3) that a policeman went to appellants’ place in September 1993 without arresting any of them, which the evidence for the prosecution cannot and did not reconcile. The mere fact that the warrants of arrest were returned unserved does not automatically mean that appellants went into hiding. Neither can the presumption of regularity in the performance of official duties by the police officers be considered in this case. The presumption of innocence is not a mere procedural tool of the law; it is not overcome by the presumption of regularity.[46]

Lastly, as to the third assignment of error, appellants argue that the trial court erred in not giving weight to the testimony of NBI forensic chemist Aida Magsipoc who testified on the negative results of the paraffin tests. While a negative result on a paraffin test is not conclusive proof that an accused did not fire a gun, such fact if considered with the other circumstances of the case, may be taken as an indication of his innocence.[47] The prosecution’s evidence must stand or fall on its own merit, and cannot draw strength from the weakness of the evidence of the defense.[48]

The prosecution has the obligation of proving beyond reasonable doubt the identity of the malefactors and their participation in the commission of the crime charged.[49] A judgment of conviction may be rendered only when the conscience is satisfied that the crime was indeed committed by the persons on trial. The mind cannot rest easy if a case is resolved against the accused based on evidence replete with glaring inconsistencies, missing links and loose ends that refuse to tie up.[50] For only when there is proof beyond reasonable doubt can we be morally certain that only those responsible are held answerable.[51] When the prosecution fails to present such proof, the charge must be dismissed.

The participation of appellants in the killing of the victim Wilfredo Mantillas not having been proven beyond reasonable doubt, we hold that the appellants should be absolved.

WHEREFORE, the Decision dated March 12, 1999 of the Regional Trial Court of Imus, Cavite, Branch 22, in Criminal Case No. 2576-93 finding appellants Jacinto Narvaez, Fernando Cuton and Efren Narvaez guilty of the crime of murder, is hereby REVERSED and SET ASIDE. Appellants are ACQUITTED of the crime charged on the ground of reasonable doubt. They are ordered IMMEDIATELY RELEASED from confinement unless held for any other lawful cause. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Cesar A. Mangrobang.

[2] Rollo, p. 6.

[3] Brief for the Appellee, pp. 4-7, Rollo, pp. 79-82. The Brief was signed by Solicitor General Ricardo P. Galvez, Asst. Solicitor General Magdangal M. de Leon and Solicitor Bernard G. Hernandez.

[4] Rollo, p. 34.

[5] *People vs. Abacia*, G.R. No. 135552-53, June 21, 2001 citing *People vs. Mangat*, 310 SCRA 101 (1999); *People vs. Gatchalian*, 300 SCRA 1 (1998).

[6] *Diaz vs. Sandiganbayan*, G.R. No. 136505, December 15, 2001 citing *Cosep vs. People*, 290 SCRA 378 (1998) and *Tan vs. Sandiganbayan*, 225 SCRA 156 (1993); *Fule vs. Court of Appeals*, 286 SCRA 698 (1998) citing *Garcia vs. Court of Appeals*, 33 SCRA 622 (1970) and *Roque vs. Buan*, 21 SCRA 642 (1967).

[7] TSN, April 8, 1997, pp. 7 and 13.

[8] *Ibid*, pp. 6-8.

[9] *Ibid*, p. 29.

[10] *Ibid*, p. 23.

[11] TSN, July 8, 1997, pp. 20-21.

[12] *People vs. Castillo*, 261 SCRA 493 (1996).

[13] *People vs. Alagon*, 325 SCRA 297 (2000).

[14] TSN, July 8, 1997, p. 24.

[15] *Ibid*, pp. 48-49.

[16] Records of Criminal Case No. 2576-93, p. 7.

[17] TSN, April 8, 1997, pp. 36-39.

[18] TSN, July 8, 1997, p. 12.

[19] *Ibid*, pp. 21-24.

[20] TSN, April 8, 1997, pp. 30-32.

[21] *Ibid*, pp. 11-12.

[22] *Ibid*, pp. 10-11.

[23] *Ibid*, pp. 32-33.

[24] *Ibid*, pp. 10-11.

[25] *Ibid*, pp. 32-33.

- [26] *People vs. Ronas*, G.R. No. 128088 and 146639, January 31, 2001 citing *People vs. Adoviso* 309 SCRA 1 (1999).
- [27] *People vs. Fabrigas, Jr.*, 261 SCRA 436 (1996); *People vs. Loste*, 210 SCRA 614 (1992).
- [28] TSN, April 8, 1997, p. 45.
- [29] *Ibid*, p. 46.
- [30] *Ibid*, pp. 45-46.
- [31] *People vs. Ramirez*, G.R. No. 136094, April 20, 2001 citing *People vs. Adoviso*, 309 SCRA 1 (1999); *People vs. Mansueto*, 336 SCRA 715 (2000) citing *People vs. Binas*, 320 SCRA 22 (1999).
- [32] TSN, April 8, 1997, p. 33.
- [33] Webster's Encyclopedic Unabridged Dictionary, p. 221 (1989); The New Oxford Dictionary of English, p. 273 (1999).
- [34] *People vs. Gutierrez*, 315 SCRA 490 (1999).
- [35] *Ibid*, p. 50.
- [36] Rollo, p. 26.
- [37] *Ibid*, p. 27.
- [38] *People vs. Ortiz*, G.R. No. 133814, July 17, 2001 citing *People vs. Traverro*, 276 SCRA 301 (1997).
- [39] *Ibid*, citing *People vs. Abrera*, 238 SCRA 1 (1997).
- [40] *People vs. Castillo*, *supra*, see note 12, citing *People vs. Calegan*, 233 SCRA 537 (1994).
- [41] *People vs. Castillo*, *supra*, see note 12.
- [42] TSN, April 8, 1997, pp. 14-15.
- [43] Rollo, p. 24.
- [44] TSN, September 29, 1997, pp. 31-35.
- [45] *Ibid*, pp. 33-35.
- [46] *People vs. Tan*, G.R. No. 133001, December 14, 2000; *People vs. Sevilla*, 339 SCRA 625 (2000); *People vs. Lagmay*, 306 SCRA 157 (1999).
- [47] *People vs. Rugay*, 291 SCRA 692 (1998) citing *People vs. Magallanes*, 23 SCRA 1275 (1968).
- [48] *People vs. Buenaflor*, G.R. No. 140001, June 27, 2001 citing *People vs. Vidal*, 308 SCRA 1 (1998); *People vs. Preciados*, G.R. No. 122934, January 5, 2001; *People vs. Bariquit*, 341 SCRA 600 (2000).
- [49] *People vs. Leonardo*, 332 SCRA 717 (2000) citing *Santiago vs. Court of Appeals*, 295 SCRA 334 (1998).
- [50] *People vs. Guillermo*, 336 SCRA 247 (2000) citing *People vs. Gomez*, 270 SCRA 432 (1997); *People vs. Ladrillo*, 320 SCRA 61 (1999).
- [51] *Ibid*.

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