

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL MAGUING Y SALIGUMBA, APPELLANT.

G.R. No. 144090. June 26, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When the identity of the appellant is not established beyond reasonable doubt, acquittal necessarily follows. Conviction for a crime rests on the strength of the prosecution's evidence, never on the weakness of that of the defense.

The Case

Michael Maguing y Saligumba appeals the December 1, 1997 Decision[1] of the Regional Trial Court (RTC) of Antipolo, Rizal (Branch 74) in Criminal Case No. 93-9911. The RTC found him guilty beyond reasonable doubt of murder, as follows:

"WHEREFORE, this Court finds the accused Michael Maguing GUILTY beyond reasonable doubt of the offense of Murder charged in the Information, as qualified by the aggravating circumstance of abuse of superior strength and hereby sentences the accused to suffer the indivisible penalty of Reclusion Perpetua, to indemnify the heirs of Crisanto Saul for the death of the latter the amounts of P50,000.00 x x x; actual damages of P41,000.00 for burial expenses; and moral damages of P100,000.00; and to pay the costs." [2]

The Information[3] dated August 18, 1993, charged appellant in these words:

"That on or about the 12[th] day of August, 1993, in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with a certain John Doe whose true [name] and whereabouts[s] is unknown and mutually helping and aiding one another, both of them armed with guns, with intent to kill and by means of treachery did then and there wil[l]fully, unlawfully, feloniously shoot one Crisanto Saul thereby inflicting upon him gunshot wound which directly caused his death." [4]

During his arraignment on February 8, 1994, appellant, with the assistance of his counsel de oficio,[5] pleaded not guilty to the charge.[6] After a trial on the merits, appellant was found guilty of murder.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts in this manner:

"On August 12, 1993, around 11:30 p.m., spouses Crisanto and Evelyn Saul were in the house of the Jamias couple (Aniceto and Angelita) located at Block 29, Lot 28, Kabisig Floodway, Cainta, Rizal. With them were Honoria Ontanillas and Nestor Jamias. The group was talking animatedly concerning the deployment abroad of Honorio Ontanillas as well as Crisanto's deployment on the last week of that month of August. In the course of

their conversation, two (2) masked intruders suddenly appeared from the door. One of the intruders pointed a gun at the temple of Crisanto — then a shot rang out. Crisanto slumped on the floor. Evelyn was shoved inside a room by Aniceto Jamias and a scuffle ensued between the second intruder and the rest of the group of the Jamiases. The second intruder was subdued. Evelyn vividly recalled that the gunman who shot her husband had the letter 'M' tattooed between his thumb and forefinger.

"Post mortem examination conducted on the corpse of Crisanto Saul showed that the cause of his death was penetrating gunshot wound, left eye."[7] (Citations omitted)

Version of the Defense

Appellant, on the other hand, relates his version of the facts simply as follows:

"Accused Michael Maguing interposed the defense of alibi. He testified that on August 12, 1993, he together with a certain Alex, Tetet and Dante were in the house of his uncle, Reynaldo Tanco, doing some repair works. They started working at 8:00 o'clock in the morning and finished their job at 5:30 o'clock in the afternoon. Thereafter, they engaged in a drinking session until 7:30 in the evening. They then took their dinner and watched television. After his companions left, he stayed in the house of his uncle.

"The foregoing testimony of the accused was corroborated by Reynaldo Tanco and Alex Agustin."[8]

The Trial Court's Ruling

The trial court found the evidence for the prosecution sufficient to establish appellant's criminal liability for murder. It gave full credence to the testimonies of the prosecution witnesses — especially the wife of the victim. She was allegedly able to see the actual shooting and to identify the assailant through the tattoo mark on his right hand.

Hence, this appeal.[9]

The Issues

In his Brief, appellant raises the following alleged errors for our consideration:

"I

The trial court erred in rendering a verdict of conviction despite the fact that the identification of the accused-appellant as the alleged perpetrator of the offense charged was not clear, positive and convincing.

"II

The trial court erred in giving credence to the incredible testimonies of the prosecution witnesses and in disregarding the evidence adduced by the accused-appellant which was corroborated on material points.

"III

The trial court erred in convicting the accused-appellant of the crime charged notwithstanding the fact that his guilt was not proven beyond reasonable doubt.

"IV

On the assumption that the accused-appellant is guilty, the trial court erred in convicting him of murder instead of homicide."[10]

Simply stated, the main issue is the sufficiency of the prosecution evidence.

The Court's Ruling

The appeal is meritorious.

Main Issue:Sufficiency of Prosecution Evidence

Positive Identification Required to Sustain a Conviction

In every criminal prosecution, the prosecution must prove two things: (1) the commission of the crime and (2) the identification of the accused as the perpetrator of the crime.[11] Cursory identification does not suffice to convict the accused. What is needed is positive identification made with moral certainty as to the person of the offender.[12] Verily, the critical consideration in this appeal is whether the identity of the assailant was sufficiently established by the prosecution.

At the outset it must be noted that the assailants wore masks, which completely covered their faces during the entire course of the shooting. The prosecution never denied this vital piece of information at any stage of the proceedings. Further, even the trial court took cognizance of this fact. Given this factual premise, the prosecution had the task of showing that one of the masked assailants and appellant were one and the same person. Regrettably, it failed to discharge this task.

Masked Man Unrecognized by Witnesses

First, not having had any chance at all to see the face of the masked gunman, none of the eyewitnesses was able to recognize or give a definite description of him later on. Thus, their act of positively pointing to the accused as the assailant during the police lineup and the trial was the result of pure speculation and was contrary to human knowledge and common experience.

In recent cases, this Court has upheld the validity of the identification of masked assailants by prosecution witnesses, but only because of peculiar circumstances that served as reliable bases for pointing to the accused as the culprits.

In *People v. Mante*,^[13] the accused was convicted because the yellow sando (undershirt), which he had used to mask his face, was the same apparel he was wearing when he was seen by witnesses in the vicinity of the crime scene prior to the killing. In *People v. Nang*,^[14] appellants were deemed to have been positively identified, because the mask worn by one of them accidentally dropped from his face in the course of a struggle with the victim. In the same vein, we ruled in *People v. Sotto*^[15] that the prosecution witness had positively identified the masked assailant, because the two of them were previously known to each other. The witness was therefore familiar with the body contour and movements of the accused. Moreover, the gun used in the shooting belonged to the latter. He also tested positive for powder burns after undergoing a paraffin test.

Indubitably, the identification of the accused in the aforecited cases was based on significant facts and on circumstantial evidence other than the prosecution witnesses' self-serving declarations or statements.

In the present case, it was not established that the prosecution witnesses had previously known appellant or were familiar with his voice, gestures and mannerisms. Neither was it shown that the mask he was wearing was dislodged from his face, so as to allow thereby a reasonable view or even a slight glimpse of his facial features.

Unreliable Basis for Identification

Second, the prosecution's basis for identifying the assailant was belatedly established, unsubstantiated, uncorroborated and therefore unreliable.

From the testimony of Prosecution Witness Evelyn Saul, it is clear that in identifying the assailant, her only point of reference was the tattoo on his right hand. Nonetheless, she audaciously declared that she was able to recognize

the assailant, who was wearing a mask the whole time, as herein appellant. She testified as follows:

"Q: So, there were 5 persons present [on] x x x August [12] 1993 at 11:30 P.M.?

A: Yes, [ma'am].

Q: What were you and your husband doing at the residence of Mrs. Angelita Jamias?

A: We were talking because her cousin has just had a medical examination and he was about to leave on that coming Saturday while my husband [was] going to leave on the last week of August.

Q: So, what this group, you and your husband and Mrs. Jamias and a brother of Mrs. Jamias and who else?

A: Honorio.

Q:

Is he also with your group?

A: Yes, [ma'am].

Q: Cousin Honorio Ontanillas did anything unusual happen?

A: While we were talking then suddenly entered two armed men. And they entered the house and one of them poked a gun to my husband.

Q: How many person entered?

A: Two (2), [ma'am].

ATTY. OLEDAN

Q: Did they [enter] x x x to a door?

A: Yes, [ma'am].

Q:

And how did they enter, they just entered slowly or what?

A: They suddenly entered forcibly and then I just had transferred to the seat near my husband.

x x x x x x x x

Q: So, you said the two armed men forcibly entered and immediately one proceeded, what did the one do?

A: One of them entered through the other door because there were two doors.

Q: Now, what did the one who entered the place where you were did? What did the one who entered exactly where you and your husband and the others were seated [did]?

A: The man who entered through the door poked a gun to my husband's left temple while the other man entered to the other door.

Q: Now when this man who poked a gun on the left side temple and pointed near the eyelid of your late husband what happen[ed]?

A: I was pushed inside by Mr. Aniceto Jamias and when I was pushed inside there was already a shot.

Q: And did you know where did the shot come from?

A: Yes, [ma'am].

Q: Where?

A: When he entered there was already a shot.

Q: Was it the same man who poked the gun who shot your husband?

A: Yes, [ma'am].

Q:

Aside from you, you said that Mr. Jamias pushed you in the room, is that true?

A: Yes, [ma'am].

Q: What about the others, what happened to them?

A: They also went inside the room. Mr. Jamias, myself, my husband and the [gunmen] were the ones who were left.

Q: So, what else happened after that?

A: There was already a commotion while we were inside and I was trying to peep to see my husband if he was already dead and Mr. Jamias was able to wrestle from the other gunman the gun by self defense.

Q: What happened to the gunman who shot your husband?

A: There were shooting at the door, because they were trying to enter the room.

x x x x x x x x

Q: Did you see the gunman who shot your husband?

A : Yes, [ma'am].

Q

: If he is around the courtroom, will you be able to identify him?

A: Yes, [ma'am].

Q: Will you please point him out.

INTERPRETER:

Witness pointing to a man inside the courtroom who when asked gave the name Michael Maguing.

ATTY. OLEDAN:

Q: Was there any particular mark this gunman have that you specifically can recall?

A: He has a tattoo in his right hand with letter m.

ATTY. OLEDAN:

Your Honor, the accused has a tattoo on his right hand with letter m between his thumb and his forefinger."[16] (Italics supplied)

On cross-examination, she candidly admitted that the gunman indeed had a mask on.

"Q: After the crime took place you reported the matter to the police?

A: After the incident police arrived and we were brought to the police station.

Q: And you [told] the police about the incident that transpired on that day?

A: Yes, [ma'am].

Q: What was your description of the accused?

A: I stated that he has a mask on, he is a big man but I recall on the second time that he had [an] initial marked letter M in his hand." [17] (Italics supplied)

We note that Evelyn mentioned noticing the tattoo only during the "second time." By "second time" she meant August 16, 2002, when the followup investigation was conducted and her Sworn Testimony [18] executed. The initial investigation was conducted on August 13, 1993, or the day following the shooting incident. [19] During both investigations, particularly during a police lineup, she pointed to appellant as the killer. Surprisingly, she made no reference to any tattoo or identification mark on his person during either of these investigations. It was only in open court that she mentioned the tattoo for the first time.

We find it strange why in her Sworn Testimony taken only a few days after the killing, this witness did not even refer to any supposedly noticeable identification mark or tattoo on the gunman. Neither did she disclose the fact that the assailant was wearing a mask. It seems that she deliberately omitted this information to make it appear that she had a clear and positive view of the killer.

Verily, it is baffling why the information about the tattoo was completely disregarded in the Sworn Testimony, only to be used during trial as the sole determining factor to establish the identity of the killer. The material omissions therein gravely affect her credibility as to her identification of the accused. [20]

It is beyond comprehension how she could have failed to mention an important factual detail such as the tattoo, especially in the initial stages of the investigation, when she knew that it was the only means by which her identification of the assailant could be substantiated. We cannot repeat often enough that for evidence to be believed, it must not only proceed from the mouth of a credible witness, but must itself be credible. [21] Thus, it must also be reasonable and in accord with human experience; failing to be so, it must be rejected. [22]

Discrepancies and Inconsistencies in the Testimonies of Witnesses

Third, the eyewitness testimonies as to the identification of appellant are replete with irreconcilable inconsistencies and inherent improbabilities pertaining to material facts. When they contradict themselves on a vital question such as the identity of the offender, the element of reasonable doubt is injected and cannot be lightly disregarded. [23] Consequently, their credibility is seriously impaired, [24] the veracity of their claim is negated, [25] and their probative value greatly diminished — if not rendered useless altogether. On the whole, the impression they create is that they were feigned or fabricated.

While Evelyn spoke much of the supposedly ostentatious tattoo on the assailant's hand, nowhere in the testimony of the corroborating witnesses was there any mention of it. In fact, Prosecution Witness Angelita Jamias, who was also present during the shooting, denied having seen it, much less the person who had shot the victim.

This denial notwithstanding, Angelita conveniently and casually pointed to appellant as the killer, even as she admitted her inability to recognize him then. Moreover, contrary to Evelyn's narration, her claim was that she saw three killers instead of just two. She testified as follows:

"Q: And on the evening at 11:30, you said [that] there were persons who entered, who came in first? Were there [persons] who came first or they came in inside this [terrace] through that door?

A: They entered all at the same time at the side of the [terrace].

Q: You mean to say they entered all of the three?

A: There is a gate in this sketch so they entered to this gate, 3 persons.

x x x x x x x x

Q: What about the third person, where did he enter?

A: He entered to the portion [of the] marked door.

Q: Did you come to know who was this person who entered to this door?

A: I did not [notice] him.

Q:

Did you come to know who he was?

A: I cannot recognize him.

Q: Will you please look around the courtroom who is that person if he is around?

A: Yes, sir.

INTERPRETER:

Witness is pointing to a person inside the courtroom who when asked x x x gave the name Michael Maguing.

ATTY. OLEDAN:

Witness pointed to the accused.

Q: When the accused entered this door, what did he do?

A: I did not exactly notice.

Q: You mean to say he just entered, he did not do anything?

A: I saw him entered but I did not see what he did but he entered inside."[26] (Italics supplied)

Upon inquiry from the trial court, Angelita affirmed her statements and categorically denied having seen the person who had shot the victim. She further testified thus:

"COURT:

You did not see the victim from the very moment when he was shot?

A:

No, sir.

Q:

You did not know how the victim was shot?

A:

No, sir.

Q:

Neither do you know who shot him?

A:

No, sir.

Q:

Neither did you see who shot him?

A:

No, sir."^[27] (Italics supplied)

When the testimonies of key witnesses cannot cohere to form a positive depiction of the criminal act as well as its perpetrator, the inevitable conclusion is that one or more of them must be lying and merely concocting a story.^[28]

In *Madrid v. Court of Appeals*,^[29] this Court acquitted the accused because of the inconsistent testimonies and contradictory statements of the alleged eyewitnesses to the crime. The story of one of them was obviously fabricated to feign credibility, thus exposing even further her predilection to prevaricate. The Court ruled in this wise:

"Inconsistencies on negligible details do not destroy the truth of a witness' testimony, so long as they refer only to collateral or incidental matters. But by no means can the inconsistencies and contradictions in Merdelyn's testimony be characterized as trivial or insignificant. Her propensity to make contradictory statements reflects her own uncertainty as to the actual events leading to her father's death. It is clear that she speaks not from memory or experience. She cannot even give a definite chronology of the events that transpired before her father was killed. We are convinced that she was simply fashioning her story and making spur-of-the-moment improvisations in an attempt to render her testimony credible. Instead of so doing, she exhibited a disposition to fabricate that makes her testimony unworthy of belief and credence."^[30]

By and large, the only piece of evidence linking appellant to the crime is the tattoo, which one of the eyewitnesses claimed was identical to the one she had seen on the assailant's right hand. As explained above, such testimony hardly serves as reliable basis for identifying the assailant. Thus, the trial court's conviction based on the

uncorroborated claim of Evelyn Saul — that she recognized appellant as the assailant by the tattoo on his right hand — must be regarded as erroneous and set aside.

When the records are bereft of any indication that an eyewitness has given a description that will enable an anonymous person to point to the accused as the perpetrator of the crime, the court cannot judge whether a correct and proper identification has been made.[31]

To be sure, the identification of appellant as the assailant in this case cannot in any way be considered positive and credible.[32] It is a settled rule that when the identification is doubtful, inconclusive or unreliable, an acquittal is called for.[33] The doubtful identification of the accused herein, when taken with the absence of any other evidence showing his guilt, justifies his acquittal.[34]

When Positive Identification Does Not Prevail Over Alibi

In passing, we shall discuss the jurisprudential rule regarding the defense of alibi vis-à-vis the positive identification made by a credible witness. Although such defense is inherently weak, the prosecution is not released from its burden of establishing the guilt of the accused beyond reasonable doubt.[35] More important, before a court can apply the rule that positive identification prevails over alibi, it is necessary to first establish beyond question the credibility of the eyewitness as to the identification of the accused.[36] In the present case, such credibility was not established. Hence, there can be no positive identification to speak of, and no application of the aforementioned rule.

The defense of alibi becomes irrelevant when the prosecution fails to establish the guilt of the accused beyond reasonable doubt.[37] A conviction for the crime of murder cannot be based on the appellant's inherently weak defenses of denial and alibi.[38] Rather, guilt should be premised on the strength of the prosecution's evidence.

"While the defenses of denial and alibi are concededly weak, appellant's conviction cannot be based thereon. It is a well-settled doctrine that it is incumbent upon the prosecution to uphold the People's cause based on the strength of its own evidence on the guilt of the accused. The burden of proof is on the prosecution to show to the court to the point of moral certainty that the accused indeed committed the offense charged. In the case at hand, the prosecution, armed with evidence secured by police investigators, failed to discharge its appointed task of proving the guilt of the accused beyond reasonable doubt. Hence, by constitutional mandate, appellant deserves exoneration." [39]

In our criminal justice system, the overriding consideration is whether the court reasonably doubts, not the innocence, but the guilt of the accused.[40] Unless the identity of the culprit is established beyond reasonable doubt to the exclusion of all others, the charge must be dismissed on the ground that the constitutional presumption of innocence has not been overcome.[41] While proof beyond reasonable doubt does not mean absolute certainty, it connotes that degree of proof which, after an investigation of the whole record, produces in an unprejudiced mind the moral certainty that the accused is culpable.[42]

In this case, the quantum of proof required to justify a conviction for a criminal offense was not satisfied by the prosecution. Thus, the Court has no option but to uphold the constitutional presumption of innocence in favor of appellant.[43]

WHEREFORE, the appealed Decision of the RTC of Antipolo, Rizal (Branch 74) in Criminal Case No. 93-9911 is hereby REVERSED. Appellant is ACQUITTED on reasonable doubt and is ordered RELEASED from custody, unless he is being held for some other lawful cause.

The director of the Bureau of Corrections is ORDERED to implement this Decision forthwith and to INFORM

this Court, within ten (10) days from receipt hereof, of the date appellant was actually released from confinement, or of the reasons why he could not be freed therefrom. Costs de oficio.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 23-50. Penned by Judge Francisco A. Querubin.

[2] Id., p. 50.

[3] Id., p. 7. The Information was signed by 4th Assistant Prosecutor Lucila A. Tiongson.

[4] Ibid.

[5] Atty. Bonifacia V. Garcia of the Public Attorney's Office (PAO).

[6] See Order dated February 8, 1994; records, Vol. I, p. 24.

[7] Appellee's Brief, pp. 2-3; rollo, pp. 139-140. Signed by Assistant Solicitors General Carlos N. Ortega and Amy C. Lazaro and Solicitor Romeo R. Ramolete.

[8] Appellant's Brief, pp. 3-4; id., pp. 95-96. Signed by Attorneys Amelia G. Garchitorena, Elpidio C. Bacuyag and Maximo B. Usita Jr. of PAO.

[9] This case was deemed submitted for decision on October 28, 2002, upon receipt by this Court of appellee's Brief. Appellant's Brief was received on June 18, 2002. No reply brief was filed within the reglementary period.

[10] Appellant's Brief, pp. 1-2; rollo, pp. 93-94. Original in upper case.

[11] *People v. Santos*, 333 SCRA 319, June 8, 2000.

[12] *People v. Gamer*, 326 SCRA 660, February 29, 2000.

[13] 312 SCRA 673, August 18, 1999.

[14] 289 SCRA 16, April 15, 1998.

[15] 341 Phil. 184, July 8, 1997.

[16] TSN, April 11, 1994, pp. 4-8.

[17] TSN, April 19, 1994, p. 10.

[18] Records, Vol. I, p. 6.

[19] Id., p. 5.

[20] *People v. Balinad*, 340 SCRA 27, September 7, 2000.

[21] *People v. Ramos*, 365 SCRA 477, September 20, 2001.

[22] *People v. Almazan*, 365 SCRA 373, September 17, 2001.

[23] *People v. Aranas*, 345 SCRA 377, November 22, 2000.

[24] *People v. Malacura*, 346 SCRA 781, December 4, 2000.

- [25] *People v. Decillo*, 341 SCRA 591, October 2, 2000.
- [26] TSN, June 27, 1994, pp. 4-5.
- [27] TSN, July 6, 1994, pp. 5-6.
- [28] *People v. Sevilla*, 339 SCRA 625, September 5, 2000; *People v. Roche*, 330 SCRA 91, April 6, 2000.
- [29] 332 SCRA 570, May 31, 2000.
- [30] *Id.*, pp. 592-593, per Mendoza, J.
- [31] *People v. Cañedo*, 335 SCRA 81, July 5, 2000.
- [32] *People v. Saturno*, 355 SCRA 578, March 28, 2001.
- [33] *People v. Cabiles*, 341 SCRA 721, October 3, 2000; *People v. Giganto Sr.*, 336 SCRA 294, July 20, 2000.
- [34] *People v. Ragay*, 342 Phil. 785, August 11, 1997.
- [35] *People v. Salazar*, 346 SCRA 735, December 4, 2000.
- [36] *People v. Mansueto*, 336 SCRA 715, July 31, 2000; *People v. Crispin*, 327 SCRA 167, March 2, 2000.
- [37] *People v. Gonzales*, 341 SCRA 688, October 3, 2000.
- [38] *People v. Sinco*, 355 SCRA 713, March 30, 2001.
- [39] *Id.*, p. 728, per Kapunan, J.
- [40] *Rueda Jr. v. Sandiganbayan*, 346 SCRA 341, November 29, 2000; *People v. Malbog*, 342 SCRA 620, October 12, 2000.
- [41] *People v. Malacura*, *supra*.
- [42] *People v. Mariano*, 345 SCRA 1, November 17, 2000.
- [43] *People v. Velarde*, GR No. 139333, July 18, 2002; *People v. Bravo*, 318 SCRA 812, November 22, 1999.

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