

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JIMMEL SANIDAD, PONCE MANUEL ALIAS PAMBONG, JOHN DOE (AT LARGE) AND PETER DOE (AT LARGE), ACCUSED.

G.R. No. 146099. April 30, 2003

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PER CURIAM:

CONDEMNED TO DEATH by the trial court on 26 July 2000[1] for the complex crime of murder and multiple attempted murder, accused-appellants JIMMEL SANIDAD and PONCE MANUEL alias PAMBONG now seek the reversal of their conviction as we review automatically the judgment pursuant to Sec. 22, Rep. Act No. 7659, amending Art. 47 of The Revised Penal Code.

On 16 January 1999 at around five o'clock in the afternoon Marlon Tugadi, Jun Quipay, Raymund Fontanilla, Rolando Tugadi, Pepito Tugadi, Delfin Tadeo, Ricardo Tadeo, Edwin Tumulip, Bobby Velasquez and Dennis Balueg left Budac, Tagum, Abra, on board a passenger jeepney driven by Delfin Tadeo to attend a barangay fiesta in the neighboring town of Langangilang, Abra. When they arrived they joined the residents in a drinking spree that lasted up to the wee hours the following morning. In the course of their conviviality, accused-appellants Jimmel Sanidad, Ponce Manuel alias Pambong and several other residents of Lagangilang joined them in drinking.[2] Marlon Tugadi and accused Jimmel Sanidad were drinking buddies and members of the CAFGU before then.[3]

On 17 January 1999 at about four o'clock in the morning Jimmel Sanidad and his companions finished drinking and left.[4] Shortly after, the group of Marlon Tugadi also stopped drinking and headed home for Budac, Tagum, Abra, boarding the same jeepney driven by Delfin Tadeo. Seated next to Delfin in front were Ricardo Tadeo and Rolando Tugadi, while on the left rear seat were Marlon Tugadi, Jun Quipay and Raymund Fontanilla. Seated on the right rear seat were Bobby Velasquez, Dennis Balueg, Edwin Tumulip and Pepito Tugadi.[5]

With Delfin Tadeo on the wheels the jeepney cruised the rough and gravelly dirt road of Abra-Cervantes with its passengers completely unaware that danger lurked ahead in the dark and dreary stretch of the road. The jeepney's headlights sharply ablaze and glaring illuminated the path and radiated towards the lush vegetation of the surrounding landscape. As the jeepney approached a plantation, its headlights beamed at accused-appellants Jimmel Sanidad, Ponce Manuel and two (2) other unidentified companions who were positioned next to a mango tree at the left side of the road approximately fifteen (15) meters away. Accused-appellants were armed with an armalite, a .45 caliber pistol and shotguns with buckshots.

As the jeepney moved closer, the accused in a classic case of ambush suddenly and without warning unleashed a volley of shots at the jeepney.[6] Delfin stepped on the gas in a vain effort to elude their assailants, but they continued firing at the hapless victims. Bullets plowed the side of the vehicle and all the passengers sitting at the back instinctively ducked on the floor to avoid being hit. The accused pursued the vehicle on foot and fired at it incessantly until it finally stalled a few meters away.[7]

The jeepney was left in shambles. Its tires, headlights and taillights were shattered; its windshield broken to

pieces, and the front and left sides of the vehicle riddled with bullets.[8] Miraculously, almost all of its passengers, with the exception of Rolando Tugadi, survived the ambush and suffered only minor injuries. Marlon Tugadi tried to pull his brother Rolando Tugadi from the vehicle to safety only to realize that he was not only too heavy, he was already dead. As the pursuing gunmen drew near, Marlon decided to abandon Rolando and scampered away with the other victims until they reached a bushy area about fifteen (15) meters away from the vehicle.[9]

Meanwhile, the accused caught up with the crippled jeepney. Moments later, fire engulfed it. The radiant flames of the burning vehicle illuminated the malefactors who stood nearby and watched the blaze. It could not be determined whether the accused purposely set the vehicle on fire or the fuel tank was hit during the shooting that ignited the fire. Marlon Tugadi and Pepito Tugadi later heard one of the unidentified companions of accused-appellant Sanidad say to him: “My gosh, we were not able to kill all of them.”[10] Thereafter, the accused left the scene, firing their guns indiscriminately into the air as they walked away.[11]

Apparently shaken and dazed by their terrifying ordeal, the victims hid in a culvert on the side of the road and did not come out until the police arrived at the scene. The police doused the burning vehicle with water and found the charred remains of Rolando Tugadi.[12] Likewise retrieved at the crime scene were eighty-five (85) empty shells from an armalite rifle, two (2) empty shells from a .45 caliber pistol, and a slug from another .45 caliber Pistol.[13]

Dr. Maria L. Dickenson, Medico-Legal Officer of Lagangilang, Abra, conducted an autopsy on Rolando Tugadi immediately after the incident. Her postmortem findings were: (a) carbonization of the body, (b) long bones of lower extremities still burning, (c) presence of lower half portion of charred skull, (d) presence of left charred thigh, (e) presence of right charred thigh, and (e) presence of upper third of charred right leg. Cause of death: burns, generalized, 6th degree.[14]

An Information for murder with multiple attempted murder and malicious mischief was filed against Jimmel Sanidad, Ponce Manuel alias Pambong, John Doe and Peter Doe. The defense of the accused rested on bare denial and alibi. They disclaimed liability for the ambush insisting that at about 4:00 to 4:30 in the morning of 17 January 1999 they were already at home sleeping when they heard the clatter of gunfire and an explosion nearby. But the trial court disregarded the defense interposed by the accused and forthwith convicted them of the complex crime of murder and multiple attempted murder, and sentenced them to death.

In this mandatory review, the legal questions raised essentially centered on: first, the credibility of witnesses; and, second, the sufficiency of the prosecution evidence.

We affirm the conviction. We find that the prosecution succeeded overwhelmingly in meeting the quantum of proof required to overturn the constitutional presumption of innocence. The trial court properly convicted accused-appellants on the basis of the credible and uncontroverted testimonies of the victims and other prosecution witnesses.

It is axiomatic that the assessment on the credibility of witnesses is a function best discharged by the trial court which is in a better position to determine conflicting testimonies after having heard the witnesses, and observed their deportment and manner of testifying. This Court will not interfere with the trial court’s findings on the credibility of witnesses unless those findings are arbitrary, or facts and circumstances of weight and influence have been overlooked, misunderstood or misapplied by the judge which, if considered, would have affected the outcome of the case.[15] None of the exceptions have been shown to exist in the instant case.

Accused-appellants pointed out supposed inconsistencies and inaccuracies in the testimonies of prosecution

witnesses Marlon Tugadi, Jun Quipay, Pepito Tugadi and Raymund Fontanilla, thus -

x x x x ordinary human conduct is very predictable. When confronted with danger, the first reaction is to avoid it. But not Jun Quipay, Marion Tugadi, Pepito Tugadi and Raymund Fontanilla. While all claimed they have jumped out of the jeep, they did not run away. Instead they still lingered at about 7-50 meters away from the jeep. So that they saw the attackers when the jeep exploded. How remarkable is their depiction of the accused as unafraid of an exploding jeep! The testimonies of Jun Quipay and Marlon Tugadi cancel each other out. Marlon said he saw the ambushers come out with guns blazing. Jun said Marlon was lying down with eyes closed when that moment happened. Again, back to human nature, Marlon Tugadi and Pepito Tugadi saw with the morning light that their brother Rolando Tugadi is (sic) no more. A carbonized cadaver he became. And yet they did not tell the police who did the dastardly acts! How unnatural. And yet they claimed in court that they positively identified the accused at the time of the ambush.[16]

After a cursory reading of the transcripts, however, we find that the supposed inconsistent and inaccurate details are relatively trivial and do not affect the veracity of the testimonies of Marlon Tugadi, Jun Quipay, Pepito Tugadi and Raymund Fontanilla. Indeed, inconsistencies and inaccuracies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. Such minor inconsistencies and inaccuracies even manifest truthfulness and candor, and erase any suspicion of a rehearsed testimony.[17]

At any rate, the ineludible fact remains that Marion Tugadi, Jun Quipay, Pepito Tugadi and Raymund Fontanilla were all at the scene of the crime and almost got killed during the ambush. They were eyewitnesses to the gruesome death of a family member in the hands of accused-appellants. What is important is that they conveyed to the trial court what they actually perceived, including those seeming improbabilities, on that fateful day; and they categorically supplied all the facts necessary for accused-appellants' conviction. Verily, victims of crimes cannot be expected to recall with exact precision the minutiae of the incident. Human memory is not as unerring as a photograph.[18] Different persons having different reflexes produce varying reactions, impressions, perceptions and recollections. Their physical, mental and emotional conditions may have also affected the recall of the details of the incident.

Significantly, the victims positively identified accused-appellants Jimmel Sanidad and Ponce Manuel in open court as among those who ambushed them in the early morning of 17 January 1999 at the Abra-Cervantes Road, which led to the death of Rolando Tugadi. Quoted hereunder is an excerpt from Marlon Tugadi's testimony -

Q:

Mr. Witness, do you know one by the name of Jimmel Sanidad?

A:

Yes sir.

Q:

Will you please focus your eyes around and point to that person Jimmel Sanidad?

A:

(Witness pointed to a man seated at the accused bench and when asked of his name he answered Jimmel Sanidad.)

Q:

Why do you know this accused Jimmel Sanidad Mr. Witness?

A:

We were in the same batch in the CAFGU sir.

Q:

Aside from being a CAFGU batch member, what else do you know of this accused Jimmel Sanidad?

A:

We sometimes drink together when I go to their place, sir.

Q:

How about the other accused Ponce Manuel alias Pambong, again I ask you to focus your eyes around and point at him and identify him?

A:

(Witness pointed to a man seated at the accused bench and when asked of his name he answered Ponce Manuel).[19]

Victims Jun Quipay, Pepito Tugadi and Raymund Fontanilla were likewise asked during the trial to identify the malefactors who staged the ambush, and they all pointed to Jimmel Sanidad and Ponce Manuel.

It must be stressed that the incidents prior to, during and after the attack provided the victims with more than sufficient opportunity to identify accused-appellants as the perpetrators of the dastardly acts. The victims had a drinking session with their assailants that lasted for many hours. During the ambush itself, the headlights of the victims' vehicle illuminated the assailants. Again, when the vehicle burst into flames after the ambush, the surroundings were bathed in light including the assailants who were standing nearby, thus enabling the victims to have a good look at their faces. These circumstances, coupled with the victims' familiarity with accused-appellants, rendered a mistaken identification very unlikely.

The general denial and alibi of the defense are too lame to be legally accepted as true, especially when measured up against the positive identification of accused-appellants. The doctrine is well-settled that denial and alibi are the weakest of all defenses as they are easy to concoct and fabricate but difficult to disprove. Denial and alibi should be rejected when the identities of accused-appellants are sufficiently and positively established by eyewitnesses to the crime.

For alibi to be credible, the accused must not only prove his presence at another place at the time of the commission of the offense but must also demonstrate that it would be physically impossible for him to be at the locus criminis at that time. In the case at bar, accused-appellants claimed that they were in their respective houses at the time of the ambush. But the record shows that the house of accused-appellant Jimmel Sanidad's sister where he was staying in Sitio Bio, San Isidro, Lagangilang, Abra, is but a mere six (6) to seven (7)-minute walk, or about 700 meters, from the crime scene.[20] While accused-appellant Ponce Manuel lived "in the same place, (in) the same community."[21]

Equally untenable is accused-appellants' assertion that the delay of the victims in identifying their ambushers for more than four (4) weeks points to the conclusion that "all the survivors of the ambush were really and timely

clueless as to who the perpetrators of the ambush (were).”[22]

Delay in reporting a crime to the authorities is not an uncommon phenomenon. The rule is, delay by a witness in divulging what he or she knows about a crime is not by itself a setback to the evidentiary value of such witness’ testimony, where the delay is sufficiently justified by any acceptable explanation. Thus, a well-founded fear of reprisal or the individual manner by which individuals react when confronted by a gruesome event as to place the viewer in a state of shock for sometime, is a valid excuse for the temporary silence of witnesses. As correctly observed by the Solicitor General in the present case -

x x x the victims in the instant case were survivors of an extremely violent incident which inflicts severe concomitant psychological stress on them. Considering also that the survivors were being investigated by the police from another municipality where the perpetrators not only reside but one of them was even a member of the CAFGU, it is a natural reaction for the victims not to reveal that they know the identities of the perpetrators and induce them to take action to prevent the victims from testifying x x x x Furthermore, Marlon Tugadi insisted to the police during the investigation that he knew who ambushed them but that he would talk only after his brother’s interment. This hardly qualifies as an unusual behavior.[23]

Conspiracy and treachery, as the trial court found, attended the commission of the crime. For collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime. Only rarely would such an agreement be demonstrable because criminal undertakings, in the nature of things, are rarely documented by written agreements. The concerted actions of accused-appellants, however, clearly evinced conspiracy. Their simultaneous acts of peppering the victims’ jeepney with bullets, and thereafter chasing the vehicle to prevent its escape, were undoubtedly in pursuance of a common felonious design. All these sufficiently prove beyond reasonable doubt that they conspired to consummate the killing of the victim.[24]

On treachery, the deadly successive shots of accused-appellants did not allow the victims any opportunity to put up a decent defense. The victims were like a flock of sheep waylaid and ferociously attacked by a pack of ravening wolves. While the victims might have realized a possible danger to their persons when they saw accused-appellants, all armed and positioned in a mango tree ahead of them, the attack was executed in such a vicious manner as to make the defense, not to say a counter-attack, virtually impossible.

Under the circumstances, it is plain to us that accused-appellants had murder in their hearts when they waylaid their unwary victims. They must consequently be held liable for their acts. Insofar as victims Marlon Tugadi, Jun Quipay, Raymund Fontanilla, Pepito Tugadi, Delfin Tadeo, Ricardo Tadeo, Edwin Tumulip, Bobby Velasquez and Dennis Balueg are concerned, although they barely escaped the ambush with superficial injuries does not alter the nature of accused-appellants’ participation in the crime of murder except that not one of them having suffered fatal injuries which could have resulted in their death, accused-appellants should only be held guilty of attempted murder. Accused-appellants had commenced their criminal scheme to liquidate all the victims directly by overt acts, but were unable to perform all the acts of execution that would have brought about their death by reason of some cause other than their own spontaneous desistance, that is, the victims successfully dodged the hail of gunfire and escaped.

We fully agree with the lower court that the instant case comes within the purview of Art. 48 of The Revised Penal Code which, speaking of complex crimes, provides that when “a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed in its maximum period.” In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender.[25]

Although several independent acts were performed by the accused in firing separate shots from their individual firearms, it was not possible to determine who among them actually killed victim Rolando Tugadi. Moreover, there is no evidence that accused-appellants intended to fire at each and every one of the victims separately and distinctly from each other. On the contrary, the evidence clearly shows a single criminal impulse to kill Marlon Tugadi's group as a whole.[26] Thus, one of accused-appellants exclaimed in frustration after the ambush: "My gosh, we were not able to kill all of them." [27] Where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a single complex offense.[28]

The penalty for the most serious offense of murder under Art. 248 of The Revised Penal Code as amended by Rep. Act No. 7659 is reclusion perpetua to death. It therefore becomes our painful duty in the instant case to apply the maximum penalty in accordance with law, and sentence accused-appellants to death.

WHEREFORE, the Decision of the court a quo of 26 July 2000 finding accused-appellants JIMMEL SANIDAD and PONCE MANUEL alias PAMBONG guilty of the complex crime of murder and multiple attempted murder and imposing upon them the supreme penalty of DEATH is AFFIRMED.

Accused-appellants are likewise ordered jointly and severally to: (a) INDEMNIFY the heirs of the deceased victim Rolando Tugadi in the amount of P50,000.00 as civil indemnity as well as P50,000.00 as moral damages; and, (b) PAY victim Delfin Tadeo the sum of P50,000.00 for the loss of his jeepney.

In accordance with Art. 83 of The Revised Penal Code, as amended by Sec. 25 of Rep. Act No. 7659, upon the finality of this Decision, let the records of this case be forthwith forwarded to Her Excellency the President for the possible exercise of her pardoning power.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.
Quisumbing, J., on official leave.

[1] Decision penned by Judge Arturo B. Buenavista, RTC-Br. 2, Bangued, Abra, in Crim. Case No. 99-344, "People v. Sanidad."

[2] TSN, 22 March 2000, pp. 8-9.

[3] Id., pp. 3-4.

[4] Id., 5 April 2000, p. 46.

[5] Id., 22 March 2000, pp. 12-13.

[6] Id., 22 March 2000, pp. 10-13, 35-37.

[7] Id., pp. 40-41.

[8] See Exhs. "N-2" to "N-4," "N-10" to "N-11;" Records, pp. 184-187.

[9] TSN, 22 March 2000, p. 14.

[10] Id., pp. 15-16.

- [11] Id., pp. 16-17.
- [12] Exh. “N-1;” Records, p. 183.
- [13] Exh. “M;” Records, p. 182.
- [14] Medico-Legal Necropsy Report, Exh. “K;” Records, p. 19.
- [15] People v. Villonez, G.R. Nos. 122976-77, 16 November 1998, 298 SCRA 566.
- [16] Appellants’ Brief, p. 14; Rollo, p. 50.
- [17] People v. Gargar, G.R. No. 110029, 19 December 1998, 300 SCRA 542.
- [18] People v. Cañales, G.R. No. 126319, 12 October 1998, 297 SCRA 667, 675.
- [19] TSN, 22 March 2000, pp. 3-4.
- [20] Id., 5 April 2000, p. 48.
- [21] Id., p. 36.
- [22] Id., p. 13; Rollo, p. 49.
- [23] Appellee’s Brief, pp. 23-24; Rollo, pp. 111-112.
- [24] See People v. Palomar, G.R. Nos. 108183-85, 21 August 1997, 278 SCRA 114.
- [25] Reyes, The Revised Penal Code, Book I (1993), at 653.
- [26] People v. Lawas, 97 Phil. 975 (unreported).
- [27] TSN, 22 March 2000, pp. 15-16.
- [28] People v. Abella, No. L-32205, 31 August 1979, 93 SCRA 25.

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