

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AM WILSON MANIJAS Y LIM, ACCUSED-APPELLANT.

G.R. No. 148699. November 15, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 16, Zamboanga City, finding accused-appellant AM Wilson Manijas y Lim guilty beyond reasonable doubt of the crime of murder for the killing of M/Sgt. Emerme S. Malit and sentencing him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim P50,000.00 as indemnity, P30,000.00 as moral damages, P20,000.00 as exemplary damages and to pay the costs.

The information against accused-appellant alleged—

That on or about May 28, 1999, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, AM WILSON MANIJAS y LIM, being then a member of the Philippine Air Force, 3rd Air Wing Base, this City, and as such armed with a Baby Armalite, conspiring and confederating together, mutually aiding and assisting with his unidentified companion, by means of treachery and with intent to kill, did then and there wilfully and feloniously, suddenly attack and shoot, with the use of such weapon that they were then armed with, at the person of M/SGT. EMERME S. MALIT, thereby inflicting mortal gunshot wounds on the fatal parts of the latter's body, which directly caused his death, to the damage and prejudice of the heirs of the said victim.

CONTRARY TO LAW.[2]

Upon arraignment, accused-appellant Manijas entered a plea of not guilty, whereupon he was tried.

Nine witnesses were presented by the prosecution, namely: (1) Dr. Owen Jaen Lebaquin, M.D.; (2) T/Sgt. Henry Bona; (3) M/Sgt. Armando Agadier; (4) SPO2 Jesus Ortega; (5) M/Sgt. Myrna A. Malit; (6) Sr. Ins. Mercedes Delfin Diestro; (7) Ma. Lilia L. Urmanita; (8) Capt. Jose Torres, Jr. (Ret.); and (9) SPO1 Elmer Acuña.

T/Sgt. Henry Almogera Bona testified that he was a member of the Philippine Air Force (PAF) assigned with the Composite Tactical Group 9 at Jolo, Sulu. Upon receiving a telegram that his father was very ill in Sorsogon, he went to Zamboanga City from Jolo in the afternoon of May 27, 1999 with the intention of boarding a C-130 plane of the Philippine Air Force bound for Manila and from there go home to Sorsogon. At about 5 o'clock in the afternoon of the same day, he met the victim M/Sgt. Emerme Malit, who was escorting his daughter to the C-130 so that the latter could go to Manila to study. Malit arrived in Zamboanga City from Jolo one day ahead of T/Sgt. Bona. T/Sgt. Bona had known M/Sgt. Malit for nineteen (19) years since they had both been assigned to Jolo since 1979.[3]

That same day, T/Sgt. Bona and M/Sgt. Malit drank liquor with M/Sgt. Armando Agadier in the barracks. They consumed two bottles of Tanduay (lapad) until 10 o'clock in the evening. At about 11 o'clock in the evening,

they went out of the barracks and proceeded to the “Real Meeting Place,” a karaoke bar near Edwin Andrews Air Base, where they sang and drank beer. T/Sgt. Bona and M/Sgt. Malit drank four (4) bottles of beer each, while M/Sgt. Agadier finished only one bottle as he was not fond of drinking. They left the karaoke bar at around 2:40 o’clock in the morning of May 28, 1999. M/Sgt. Malit was then wearing a white T-shirt, short maong pants and Topsider leather shoes. He had a service firearm since he was on a mission in Zamboanga City, but the same was hidden by his shirt. T/Sgt. Bona and M/Sgt. Agadier were not armed.[4]

From the karaoke bar, the group proceeded to the “Roadside Snack House” for tapsilog. The snack house was made of wooden slabs attached to the cemented wall of the fence of the air base fronting Gov. Camins Road, which led to the Zamboanga International Airport. The walls on the left and right sides were made of wooden slabs placed side by side. The snack house had only one (1) door about one meter wide. On the lower portion of the walls, the slabs were placed close to each other while at the upper portion there were slits between the slabs.[5] The door of the snack house was about one meter from the shoulder of Gov. Camins Road. At the side of the snack house were bougainvillea plants. The place was well-lighted by two fluorescent lamps.

When T/Sgt. Bona and his companions arrived, no other persons were in the vicinity of the snack house. After eating, Malit, Bona and Agadier stood up to leave. M/Sgt. Malit stepped out first, intending to call a tricycle. T/Sgt. Bona followed about a meter behind him. Suddenly, T/Sgt. Bona heard a burst of gunfire coming from the right side of the door of the snack house. He saw M/Sgt. Malit fall down on the shoulder of the road. Instinctively, he dropped to the ground and crawled inside the snack house for cover. He peeped through the slits to see who had shot M/Sgt. Malit and saw accused-appellant Manijas holding a Baby Armalite rifle. It appears that accused-appellant Manijas came from the right side of the snack house where there were bougainvillea plants, about three meters away from the spot where M/Sgt. Malit fell. Accused-appellant Manijas got the .45-caliber pistol tucked on M/Sgt. Malit’s waist and walked towards his companion who was waiting for him. T/Sgt. Bona recognized accused-appellant Manijas because of the street lamp in front of the snack house across the road. He testified that accused-appellant was wearing a white T-shirt with the words “United States of America” printed on it, light blue maong pants and rubber shoes. T/Sgt. Bona knew accused-appellant Manijas because the latter was his cadet at Mindanao State University in Jolo, Sulu, where T/Sgt. Bona was in charge of the ROTC in 1996 and 1997. Accused-appellant Manijas enlisted in the Philippine Air Force in 1998. T/Sgt. Bona did not recognize accused-appellant’s companion because the latter’s back was towards him (T/Sgt. Bona). According to T/Sgt. Bona, accused-appellant’s companion was taller than he (accused-appellant) and had short hair. Accused-appellant and his companion boarded a blue tricycle which then sped towards the Zamboanga International Airport. The tricycle, with plate number JU-2068, was only seven meters away from T/Sgt. Bona.[6]

After accused-appellant Manijas and his companion had left, T/Sgt. Bona told M/Sgt. Agadier to guard the body of M/Sgt. Malit as he (Bona) took a tricycle to the base to ask for help. T/Sgt. Bona reported to Captain Jose Torres, Jr., the duty officer on that day, that M/Sgt. Malit had been shot and killed at the “Roadside Snack House” by accused-appellant Wilson Manijas.

A team of seven soldiers proceeded to the crime scene. When they arrived, they found M/Sgt. Malit’s body sprawled on the edge of the road with its head blown off. There was an ambulance and several policemen at the scene. The policemen took T/Sgt. Bona’s testimony at the police station but he did not reveal the identity of the one who shot M/Sgt. Malit because he feared for his own life. He testified: “What I did [at the Central Police Station], I did not give the name of the one who killed my companion [M/Sgt. Malit] because I am afraid I might die. I know that the incident was planned and if I will go home, I might be killed and the case will be no more.”[7] T/Sgt. Bona found himself alone as his companion, M/Sgt. Agadier, suffered hypertension and had to be taken home. After T/Sgt. Bona’s statement[8] was taken at the Central Police Station, he was allowed to go

home to the air base on board a tricycle in the early morning of May 28, 1999.[9]

That same day, at the investigation section of the air base, T/Sgt. Bona revealed to M/Sgt. Nonilo Aquino that M/Sgt. Malit had been shot by accused-appellant Wilson Manijas. Based on his information, accused-appellant Manijas was picked up for paraffin examination. M/Sgt. Aquino took T/Sgt. Henry A. Bona's statement at the Wing Intelligence Office on or about 1425-H (2:25 p.m.) of May 28, 1999. The statement was sworn to before Major Vera T. Vergara, (JAGS), Wing Legal Officer.[10]

In the afternoon of May 29, 1999, T/Sgt. Bona boarded a C-130 plane for Manila. He returned to Zamboanga City on June 15, 1999. He reported to the investigation section of the air base and, on June 16, 1999, signed an Affidavit,[11] which was sworn to before 3rd Asst. City Prosecutor Juan G. Florendo of Zamboanga City, in which he again pointed to accused-appellant Wilson Manijas as the assailant.[12]

The next witness for the prosecution, M/Sgt. Armando Agadier, is a member of the Philippine Air Force assigned at the Composite Tactical Group 9, Jolo, Sulu. Agadier corroborated the testimony of T/Sgt. Bona.[13] He testified that from the karaoke bar, they proceeded to the "Roadside Snack House" to eat. It was then about 3 o'clock in the morning of May 28, 1999. M/Sgt. Malit paid their bill and then went out, followed by T/Sgt. Bona. M/Sgt. Agadier was still inside the snack house when he heard a burst of gunfire. He recognized the sound as that coming from an M16 Armalite rifle. He was surprised (nabigla) and was not able to seek cover. He just covered his face with both arms. Then, M/Sgt. Agadier said, he peeped through an opening near the door of the snack house and saw M/ Sgt. Malit sprawled on the ground face up. The top of his head had been blown off. M/Sgt. Agadier saw accused-appellant Manijas leaving the place holding a Baby Armalite rifle. M/Sgt. Agadier knew accused-appellant Manijas because the latter had been his neighbor at the Airman's Village at Satag, Jolo, Sulu since the 1990's. As he was walking away, accused-appellant Manijas turned around and M/Sgt. Agadier clearly saw his face. The place was illuminated by two streetlights, one near the dead body of the victim and the other, farther away. There were no other armed persons near the crime scene except accused-appellant and another one standing near a tricycle, who was taller than accused-appellant Manijas. Accused-appellant Manijas and the other man then boarded the tricycle and left. T/Sgt. Bona told Agadier to keep watch over the body of M/Sgt. Malit while Bona reported the incident to their headquarters at the air base. Minutes later, air force enlisted personnel, headed by Captain Jose Torres, Jr., arrived. M/Sgt. Agadier had to be taken to the barracks for medical attention because he was suffering from hypertension. On June 17, 1999, M/Sgt. Agadier executed an Affidavit[14] which was sworn to before State Prosecutor II Peter C. Medalle. In his affidavit, M/Sgt. Agadier identified the assailant of M/Sgt. Malit as accused-appellant Wilson Manijas.[15]

Captain Jose C. Torres, Jr., PAF (Ret.), testified that on May 28, 1999, he was officer of the day at the Edwin Andrews Air Base. At past 3 o'clock in the morning, T/Sgt. Henry Bona, an air force enlisted personnel assigned in Jolo, Sulu, reported to him that his companion, M/Sgt. Emerme Malit, had been shot to death at a roadside eatery along Gov. Camins Road and that the assailant was accused-appellant Wilson Manijas. Upon receipt of the report, Captain Torres said he formed a team of Air Police personnel headed by M/Sgt. Orio which proceeded to the crime scene. They saw the dead body of M/Sgt. Emerme Malit. Several policemen and people were already at the crime scene. Captain Torres saw M/Sgt. Agadier, who was trembling and speechless, and took the latter to the air force hospital where he was confined. Captain Torres relayed to Maj. Eugenio Ornido, Wing Action Officer, the information given by T/Sgt. Bona that it was accused-appellant Wilson Manijas who shot and killed M/Sgt. Malit. He later reported this information to Captain Edwin Ganitnit, the Director for Intelligence, who was to investigate the matter.[16]

SPO1 Acuña testified that the shooting incident was reported to the Zamboanga City Police Office at 3:05 o'clock in the morning through a telephone call by a concerned citizen. The report was recorded in a

complaint/assignment sheet.[17] Upon receipt of the report, SPO1 Acuña proceeded to the crime scene with PO3 Montenegro. When he arrived, SPO1 Acuña saw the victim lying on the roadside in a pool of blood. SPO1 Acuña recovered six (6) empty shells 5.56 M16 rifle[18] at the crime scene. M/Sgt. Malit's companion, T/Sgt. Henry Bona, was invited to the police station. During the investigation at the police station, T/Sgt. Bona did not identify the assailant. The sworn affidavits of T/Sgt. Henry Bona and M/Sgt. Armando Agadier were turned over to the police by elements of the Philippine Air Force on June 22, 1999.[19]

P/Sr. Insp. Mercedes Delfin-Diestro, a Forensic Chemist, testified that on May 28, 1999, at the request of Captain Edgardo Lorenzo, Director for Intelligence of the Philippine Air Force, a paraffin test was conducted on accused-appellant Wilson Manijas. SPO1 Godofredo Grafia conducted paraffin casting on both hands of accused-appellant Wilson Manijas. Sr. Insp. Diestro examined the paraffin cast on May 31, 1999. The examination showed accused-appellant's right hand positive for gunpowder nitrates.[20] Diestro testified that the positive result of the presence of gunpowder nitrates on the right hand of accused-appellant indicated the possibility that he may have fired a gun.[21]

On the other hand, Mrs. Myrna Anuddin Malit, widow of the late M/Sgt. Emerme Malit, testified that she knew accused-appellant Wilson Manijas because they were neighbors in Jolo, Sulu. She testified that she spent P50,000.00 for her husband's coffin and around P30,000.00 for the funeral services. She also spent P100,000.00 for the nine-day prayer. Her husband was earning almost P14,000.00 at the time of his death.[22]

Mrs. Ma. Lilia Urmanita y Lubaton, Supply Accountable Officer of the Airborne 530th Airbase Wing of the Philippine Air Force at Edwin Andrews Air Base, testified that accused-appellant Wilson Manijas had not been issued a government firearm. She issued a Certification[23] to this effect.[24]

Her testimony was corroborated by SPO4 Jesus Guray Ortega, officer in charge of processing applications for firearm licenses of the PNP Regional Office 9 in Zamboanga City.[25]

A postmortem examination conducted by Dr. Owen Jaen Lebaquin, Police Chief Inspector, Regional Chief and Medico-Legal Officer, PNP Regional Crime Laboratory Office 9, Zamboanga City showed the following:[26]

FINDINGS:

Fairly nourished, fairly developed, male cadaver, in rigor mortis with postmortem lividity at the dependent portions of the body. Lips are pale.

HEAD TRUNK AND EXTREMITIES:

(1) Avulsion frontal area of the head extending to the occipital area of the head, measuring 18 x 13 cm. bisected by its anterior midline.

(2) Gunshot wound, thru and thru, point of entry, right supraorbital area, measuring 0.4 x 0.2 cm. 7 cm. from its anterior midline, with an abraded collar measuring 0.3 cm laterally, 0.1 cm medially, 0.2 cm superiorly and 0.1 cm inferiorly directed posteriorwards, downwards, lateralwards and making a point of exit at the right occipital area of the head measuring 5 x 2 cm, 5 cm from its posterior midline.

(3) Gunshot wound, point of entry, right deltoid area, measuring 0.4 cm x 0.3 cm, 5 cm to its anterior midline, with an abraded collar measuring 0.3 cm superiorly, 0.2 cm laterally, directed posteriorwards, downwards, medial-wards fracturing the 2nd and 3rd thoracic ribs lacerating the upper lobe of the right lung, thoracic aorta and nicking to 3rd, 4th and 5th thoracic vertebra with a metallic fragment recovered thereat.

(4) Gunshot wound, point of entry, upper 3rd of the right arm, measuring 0.4 cm x 0.2 cm, 9 cm lateral to its anterior midline with an abraded collar measuring 0.3 cm superiorly, 0.2 cm lateral and 0.1 cm inferiorly and medially directed posteriorwards, downwards, medialwards fracturing to 2nd and 3rd right thoracic ribs and

lacerating the upper and middle lobes of the right lung a metallic fragment recovered thereat.

(5) Gunshot wound, point of entry, right axillary area, measuring 0.4 cm x 0.3 cm, 24 cm from its anterior midline with an abraded collar measuring 0.2 cm superiorly and 0.1 cm inferiorly, medially and laterally directed posterior-wards, downwards, medialwards fracturing the 6, 7, 8[th] thoracic ribs lacerating the lower lobe of the right lung and the liver with a metallic fragment recovered thereat.

There are about 800 cc of blood and blood clots at the thoracic and abdominal cavities.

Stomach is empty.

CONCLUSION:

Cause of death is hemorrhage due to multiple gunshot wounds to the head and the body.

The defense then presented accused-appellant Wilson Manijas. He testified that he was a member of the Philippine Air Force since June 16, 1997. At 6 o'clock in the evening of May 27, 1999, he said, he was with his classmate Airman Allan Artazo at the air base. They went to Shoppers Square to meet with Artazo's girlfriend and from there they went to the house of the latter at Tugbungan. There, they consumed one and a half (1 1/2) cases of beer with the uncle of Artazo's girlfriend until past 11 o'clock in the evening. From there, accused-appellant Manijas and Artazo went to the "Daishita Karaoke Bar." Accused-appellant said he and Artazo drank half a case of beer. At 2:30 o'clock in the morning, Artazo excused himself and went back to the air base. Accused-appellant Manijas stayed behind to wait for his girlfriend, Allen Ampalaya, but she did not come. He left the place at 3:30 o'clock in the morning. He rode a tricycle to the house of his cousin Yasser Halil in Baliwasan Chico. He did not go home to his house in Guiwan because he knew the gate and the house would already be closed and their door bell was then out of order. He arrived at his cousin's house at Baliwasan Chico at a quarter to 4 o'clock in the morning. When he arrived, the occupants of the house were asleep. No one opened the door when he knocked, so he left and went home to Guiwan. On his way, he passed by Gov. Camins Road and saw several people on the road and a police vehicle that was parked on the side. He did not recognize anyone. He arrived at his house in Guiwan at about 5 o'clock in the morning.[27]

Continuing his testimony, accused-appellant said that in the morning of May 28, 1999, he took a bath, reported to the air base at 7 o'clock in the morning and attended the flag ceremony. There was already news in the air base that a member of the air force was shot. During the formation after the flag ceremony, the First Sergeant informed them that M/Sgt. Emerme Malit had been shot. While awaiting the arrival of M/Sgt. Malit's remains, accused-appellant Manijas cleaned the M16 Armalite rifle issued to him as an honor guard. He dismantled and cleaned it, wiping its barrel and bolt with a piece of cloth. Accused-appellant was not able to witness the arrival of M/Sgt. Malit's remains because, at 4 o'clock in the afternoon, he was picked up by members of the Intelligence Unit of the Air Force, headed by Captain Edgardo Lorenzo, PAF Director for Intelligence. Accused-appellant was taken to the PNP Regional Crime Laboratory Office 9 for paraffin examination of both his hands. At past 7 o'clock in the evening of May 28, 1999, accused-appellant received a message from his brother that their mother was seriously ill in Jolo. He wanted to ask permission from his superior to go to Jolo. Accused-appellant Manijas left for Jolo on board the boat Danica Joy at around 8 o'clock in the evening, without his superior's permission. When he arrived in Jolo in the morning of May 29, 1999, he immediately proceeded to the Sulu Provincial Hospital where his mother was confined. Accused-appellant Manijas stayed in Jolo until September 1999. As a result, he was declared to have been absent without leave (AWOL). In late September, accused-appellant said he received information from his aunt, Mutmaina Kamlon, that he was found positive for gunpowder nitrates and that a warrant for his arrest had been issued. Hence on October 3, 1999, he returned to Zamboanga City. On October 5, 1999, he was accompanied by Atty. Melchor Sadain to Edwin Andrews Air Base where a warrant of arrest was

served on him, after which he was committed to the City Jail.[28]

AM Allan Artazo was presented to corroborate the testimony of accused-appellant Manijas. AM Artazo said that he was a classmate of accused-appellant Wilson Manijas in the Philippine Air Force. In May 1999, he was assigned at the Edwin Andrews Air Base in Zamboanga City. AM Artazo said that he was with accused-appellant Manijas from 6 o'clock in the evening of May 27, 1999 to around 2:30 o'clock in the morning of May 28, 1999. After that time, he left accused-appellant at the "Daishita Karaoke Bar" in Canelar, Zamboanga City and returned to Edwin Andrews Air Base.[29]

Surina Manijas y Isahac, wife of accused-appellant Manijas, testified that in the morning of May 27, 1999, her husband reported for work at the Edwin Andrews Air Base. It was about 4:50 o'clock in the morning of May 28, 1999 when accused-appellant came home. At around 7 o'clock in the morning of said day, accused-appellant left for work at the Air Base and returned home at around 8 o'clock in the evening. At 8:30 o'clock that evening, he left for Jolo.[30]

Based on the parties' evidence, the trial court rendered a decision on February 1, 2001, finding accused-appellant Manijas guilty beyond reasonable doubt. In his appeal, accused-appellant assigned the following errors against the trial court:

I. THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO PROSECUTION'S EXHIBIT "I" (Physical Science Report # [C-026]-99) AND ITS SUB-MARKINGS. IT ALSO ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE ADDUCED BY THE DEFENSE.

First. Accused-appellant Airman Manijas argues that there are serious doubts concerning the truthfulness of the statements of T/Sgt. Henry Bona and M/Sgt. Armando Agadier and that it was error for the trial court to rely on their testimonies.

Accused-appellant points out the conflicting statements of T/Sgt. Bona. In his affidavit, T/Sgt. Bona stated that it was "quite dim" or "dark" and for this reason did not recognize the assailant, but in his testimony in court he claimed that the crime scene was sufficiently illuminated by two lamp posts and he recognized the assailant to be accused-appellant. Later, however, T/Sgt. Bona said that he said in his affidavit that it was dark and that he did not recognize the killer because he was afraid and he was concerned about his personal safety. Thus, he testified:[31]

PROSECUTOR DIABO:

Q: Here, you said it was "quite dim" or "dark". But yesterday during the direct examination before this Court, you said, the vicinity was "clear" because of the light coming from the street post. Which is now correct Mr. Witness?

A: The one that was correct is that one I said, that "it's clear"?

Q: And, why did you say this in the police station that, it was "dim" or "dark"?

A: Well, I said that in the police station that it was "dim" or "dark" considering that I told that, I do not know the assailant "para makatugma ang statement ko na, hindi ko kilala ang assailant".

INTERPRETER:

So that my statement will coincide with my statement that I did not recognize the assailant.

COURT:

Q: In plain words, you lied as to the identity of the assailant and as to the lighting condition?

A: Yes.

Q: And, to make your lies more believable you said, the lighting condition was quite “dim”?

A: Yes.

Proceed.

PROSECUTOR DIABO:

Q: Why did you say that to the Police? . . . Why did you lie to the Police?

ATTY. SADAIN:

Already answered Your Honor.

COURT:

Yes, already answered. He said, because he was alone, from the police station on his way, he will be returning alone so, he said that this crime was planned and he was afraid that, he might also be a victim.

Accused-appellant makes much of the fact that the incident reported by T/Sgt. Bona to Captain Torres was not recorded in the logbook of the Edwin Andrews Air Base. Captain Torres stated that T/Sgt. Bona reported the shooting incident to him and further told him who the assailant was. He testified:[32]

FISCAL CABARON:

Q: Now, Mr. Witness, about [pass] three o'clock in the early dawn on May 28, 1999 could you tell the Honorable Court if you received a report?

A: Henry Bona reported to me that a shooting incident [occurred] during that time.

Q: Who is this Henry Bona, Mr. Witness?

A: Philippine Air Force who is assigned in Jolo, Sulu.

Q: Do you know him personally?

A: Of course, I personally know him since we were then companion (sic) in Jolo, Sulu way back 1970 to 1983.

Q: Where did he give you this report, about the shooting incident?

A: Inside our office, Air Operation Center.

Q: And what exactly did he tell you about this shooting incident?

A: He came and told me that his companion, M/Sgt. Emerme Malit, was shot to [death].

Q: Where?

A: At [the roadside] eatery, at Gov. Camins [Road].

Q: And what else did he tell you?

A: And he told me that Airman Manijas was the perpetrator or the one who [shot] M/Sgt. Emerme Malit.

Accused-appellant likewise cites the following testimony of T/Sgt. Bona which he claims is doubtful:[33]

Q: So, if you were there squatting, facing the wall of the Snack House, how were you able to see thru the railings?

A: At first when I dived or dropped myself, I was in a squatting position and I was hiding. After a few seconds, that was the time that I peeped.

Q: You are only saying it now. Earlier you said that, all the while you were peeping while inside the Roadside Snack House, you were in a squatting position?

A: Well, what I did, I proceeded to the side and I was in a squatting position and at the same time hiding and later on I peeped that was the time I saw the assailant.

He tries to discredit the testimony of M/Sgt. Armando Agadier by referring to the latter's inability to describe what the assailant was wearing on the night of the incident.

The records show that T/Sgt. Bona and M/Sgt. Agadier were actually able to witness the incident and recognize accused-appellant. As T/Sgt. Bona explained, after ducking he tried to find out what was happening by looking through the slits in the wooden slabs on the walls.[34] On the other hand, M/Sgt. Agadier saw the incident before he suffered from hypertension.[35]

The trial court thus correctly relied on the testimonies of T/Sgt. Bona and M/Sgt. Agadier for its findings. Their narration of the events dovetailed on pertinent points. These witnesses were candid and remained steadfast under rigorous cross-examination. Moreover, no reason has been shown why these witnesses would testify falsely against accused-appellant. Their testimonies were worthy of the full faith and credit accorded to them by the trial court.[36]

Second. Accused-appellant assails the Report #C-026-99 on the result of the paraffin test which shows his right hand to be positive for gunpowder nitrates. Accused-appellant contends that the person who examined the paraffin cast was not present when the cast was taken and, therefore, was incompetent to testify on the findings or results. He also claims that the results of the examination were inconsistent with the allegation that an M16 Baby Armalite was used in the killing of the victim.

To begin with, it must be presumed that official duty was regularly performed.[37] Strong evidence is necessary to rebut this presumption.[38] In this case, accused-appellant has not presented any evidence to show that the paraffin testing done on his person was falsified. Nor can it be said that the persons who conducted the examination had any ill motive or intention to falsely implicate accused-appellant.

Accused-appellant contends that firing an M16 Baby Armalite requires the use of both hands. Since only his right hand was positive for gunpowder nitrates, he could not have been the assailant. The contention has no merit. There are several reasons which may explain why the paraffin results came out as such. Forensic Chemist and Police Senior Inspector Mercedes Diestro testified:[39]

Q: Normally madam witness as a soldier or PNP personnel, in firing an Armalite rifle, how many hands do they use, in firing an Armalite rifle?

COURT:

No longer as a Forensic Chemist but as PNP officer.

A: One hand is at the trigger, one in the barrel.

ATTY. SADAIN:

Q: So, both hands are used?

A: Yes.

Q: So that madam witness if these two hands of certain person are used in firing the Armalite and if you will conduct paraffin test on these two hands will it be positive of gun powder nitrates, both hands?

A: It could be.

COURT:

So, what is your explanation why there was no gun powder nitrates on the left hand?

A: On this particular case, maybe Manijas or what, there are so many factors why there is negative on the other side, the other side is positive, either he uses his both hands on that trigger wherein there is overlapping on one hands before the other.

ATTY. SADAIN:

So that in that particular case only one hand will be affected by the gun powder nitrates?

A: Yes.

Q: Despite the fact two hands are in the trigger?

A: Yes, because it is overlapping.

COURT:

One is covered by the other?

A: Yes, Your Honor.

As pointed out by the Solicitor General, the victim sustained gunshot wounds in his liver, second and third ribs and right lung, upper right arm, and on the head which severed his scalp. The fact that different parts of his body were hit shows that the assailant did not have control of the armalite when he pulled the trigger. This raises the possibility that only one hand was used when the trigger of the armalite was pulled. Moreover, the paraffin testing on accused-appellant was done more than twelve hours after the incident occurred. Hence, the partial or total absence of nitrates on his hands is possible.[40]

Indeed, there are several reasons why no nitrate powder may be found on the hands of a suspect. We recognized several factors which may account for such absence of gunpowder nitrates on the hands of the gunman, e.g., because the assailant had washed his hands after firing the gun or had worn gloves or the direction of a strong wind was against the gunman at the time of firing.[41] In these cases, the Court ruled that the absence of nitrates in a suspect's hand is not conclusive proof that he did not fire a gun.[42]

In any event, the paraffin test which in this case showed accused-appellant's right hand to be positive for nitrates, constitutes only corroborative evidence of his guilt.[43] Even without the paraffin test, the positive identification by prosecution witnesses T/Sgt. Bona and M/Sgt. Agadier of accused-appellant as the assailant is more than sufficient to convict him of the crime charged.

Third. Accused-appellant Manijas asks why Frank Anuddin, brother-in-law of victim M/Sgt. Malit, was not investigated, when the fact is that he was the initial suspect in this case and the results of paraffin testing showed both his hands to be positive for gunpowder nitrates. SPO1 Acuña explained that no case was filed against Frank Anuddin because there were no witnesses against him. On the other hand, as already stated, accused-appellant was positively identified as having been at the scene of the crime by two witnesses who have not been shown to be biased. Neither did the family of the victim believe that Anuddin had any participation in the incident.[44] In any event, the fact that Anuddin was involved in the shooting does not rule out the participation of accused-appellant. After all, as T/Sgt. Henry Bona and M/Sgt. Armando Agadier said, they saw another man beside accused-appellant although they did not recognize him. The man fled from the scene of the crime together with accused-appellant.

Fourth. Accused-appellant's defense is anchored on denial and alibi. He claims that, at the time of the shooting,

he was in the company of Airman Artazo at the “Daishita Karaoke Bar,” and that afterwards he went to his cousin’s house in Baliwasan Chico before finally going home to Edwin Andrews Air Base.

Alibi may be considered exculpatory when the guilt of the accused is not established beyond cavil.[45] In such a case, the accused must not only prove that he was elsewhere at the time of the commission of the crime but that it was physically impossible for him to have been at the scene when the crime took place.[46] Here, however, accused-appellant was positively identified as the assailant. In addition, his own witness, Airman Artazo, testified that he left accused-appellant Manijas at the karaoke bar at around 2:30 o’clock in the morning. Accused-appellant claimed that from the “Daishita Karaoke Bar” he went to his cousin’s house at Baliwasan Chico, but that when he got there he found the entire household already asleep. Accordingly, he went home to the air base. There was thus no witness where accused-appellant was between 2:30 o’clock to 3:30 o’clock in the morning of May 28, 2000 when the crime was committed as he was all by himself. However, no one could corroborate his story.

Nor was it shown that it was physically impossible for him to have been at the scene of the crime. It was entirely possible that he went directly to the vicinity of the snack house from the karaoke bar where Airman Artazo had left him. The places in which accused-appellant claimed he was were not far from the crime scene. In fact, according to accused-appellant himself, he passed by Gov. Camins Road where the crime was committed when he went home to the air base.

Fifth. We agree, however, that the prosecution failed to prove conspiracy. This must be shown as clearly and conclusively as the commission of the crime itself.[47] Mere suspicion, speculation, relationship, association, and companionship do not prove conspiracy.[48] T/Sgt. Bona testified that the crime was “planned,” but no proof was adduced to support this allegation or to explain how, why and when such connivance was contrived.

We find, however, that there was treachery in the commission of the crime. Treachery is a sudden and unexpected attack, without the slightest provocation on the part of the victim. It exists when any of the crimes against person is committed with the employment of means, methods or forms which tend directly and specially to insure its execution without risk to the offender arising from the defense which the offended party might make.[49] In the case at bar, the attack was so sudden that the victim M/Sgt. Malit was not even able to draw the gun tucked in his waistband. What is more, the weapon used, an M16 Baby Armalite, almost certainly made it impossible for the victim to defend himself with his 45-caliber pistol.

The crime committed by accused-appellant Wilson Manijas is murder qualified by treachery. Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. The aggravating circumstance of use of an unlicensed firearm, an M16 Baby Armalite rifle, attended the commission of the crime.

This circumstance is offset by the mitigating circumstance of voluntary surrender. As already noted, after learning that he had been found positive for gunpowder, accused-appellant lost no time in reporting to the authorities and surrendered. We agree, therefore, that the mitigating circumstance of voluntary surrender should be appreciated in accused-appellant’s favor.

WHEREFORE, the decision of the Regional Trial Court, Zamboanga City, Branch 16, is AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and Callejo, Sr., JJ., concur.
Austria-Martinez, J., on leave.

- [1] Per Judge Jesus C. Carbon, Jr.
- [2] Rollo, p. 8.
- [3] TSN (T/Sgt. Henry A. Bona), pp. 14-15, March 9, 2000.
- [4] Id., p. 17.
- [5] Id., pp. 18-19.
- [6] Id., pp. 19-21.
- [7] Id., p. 21.
- [8] Exhs. 7, 7-A to 7-D.
- [9] Id., pp. 21-26.
- [10] TSN (T/Sgt. Henry A. Bona), pp. 9-12, March 10, 2000.
- [11] Exh. D.
- [12] Id., pp. 13-15.
- [13] TSN (M/Sgt. Armando Q. Agadier), pp. 11-12, March 14, 2000.
- [14] Exh. E.
- [15] Id., pp. 13-20.
- [16] TSN (Captain Jose C. Torres, Jr.), pp. 5-9, May 22, 2000.
- [17] Exh. G.
- [18] Exhs. G-1 to G-5.
- [19] TSN (SPO1 Elmer Acuña), pp. 13-15, May 22, 2000; TSN, pp. 4-9, May 23, 2000.
- [20] Exh. I.
- [21] TSN (P/Sr. Ins. Mercedes Delfin- Diestro), pp. 33-36, March 17, 2000.
- [22] TSN (Mrs. Myrna Anuddin Malit), pp. 4-8, March 24, 2000.
- [23] Exh. P.
- [24] TSN (Mrs. Ma. Lilia L. Urmanita), pp. 15-17, March 24, 2000.
- [25] TSN (SPO4 Jesus G. Ortega), pp. 5-6, March 17, 2000.
- [26] TSN (Dr. Owen Jaen Lebaquin), pp. 2-10, March 8, 2000.
- [27] TSN (AM Wilson L. Manijas), pp. 4-20, May 25, 2000.
- [28] Id., pp. 21-28.
- [29] TSN (AM Allan Artazo), pp. 2-9, May 23, 1999.
- [30] TSN (Myrna I. Manijas), pp. 1-7, May 29, 2000.
- [31] TSN (T/Sgt. Henry Bona), pp. 6-7, March 10, 2000.

- [32] TSN (Captain Jose Torres), pp. 6-7, May 22, 2000.
- [33] TSN (T/Sgt. Henry Bona), pp. 39-40, March 10, 2000.
- [34] TSN (T/Sgt. Henry Bona), pp. 5-11, 13-14, March 9, 2000.
- [35] TSN (M/Sgt. Armando Agadier), pp. pp. 35-36, March 14, 2000.
- [36] *People v. Tumanon*, 351 SCRA 676 (2001); see also *People v. Francisco*, G.R. No. 138022, August 23, 2001; *People v. Johnson*, 348 SCRA 526 (2000); *People v. Dela Cruz*, 349 SCRA 124 (2001).
- [37] *People v. Bongalon*, G.R. No. 125025, January 23, 2002. See also *People v. Rodriguez*, G.R. No. 144399, March 20, 2002; *Artuz v. Court of Appeals*, G.R. No. 142444, September 13, 2001.
- [38] *People v. Hernani*, 346 SCRA 73 (2000).
- [39] TSN (Mercedes Diestro), pp. 62-63, March 17, 2000.
- [40] Rollo, pp. 150-151.
- [41] *People v. Teehankee, Jr.*, 249 SCRA 54 (1995).
- [42] *People vs. Pama*, 216 SCRA 385 (1992). See also *People v. Anivado*, 348 SCRA 74 (2000); *People v. Talingdam*, 191 SCRA 333 (1990); *People v. Roallos*, 113 SCRA 584 (1982).
- [43] *Maandal v. People*, G.R. No. 144113, June 28, 2001 citing *People v. Alolod*, 266 SCRA 154 (1997).
- [44] TSN (SPO1 Elmer Acuña), pp. 33-34, May 22, 2000.
- [45] *People v. Dela Tongga*, 336 SCRA 687 (2000).
- [46] *People v. Musa*, G.R. No. 143703, November 29, 2001.
- [47] *People v. Castillo*, G.R. No. 131200, February 15, 2002. See also *People v. Francisco*, G.R. No. 138022, August 23, 2001.
- [48] *People v. Noroña*, 329 SCRA 502.
- [49] *People v. Suyum*, G.R. No. 137518, March 6, 2002.

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