

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CESAR GALVEZ, APPELLANT.

G.R. NO. 157221. March 30, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

For review before this Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 18255 dated March 30, 2001, which affirmed the Decision[2] of the Regional Trial Court (RTC) Isabela, Basilan finding the accused-appellant Cesar Galvez (Galvez), guilty of Murder, but modifying the penalty of the RTC from a sentence of "seventeen (17) years, four (4) months and one (1) day as minimum to twenty (20) years as maximum" to reclusion perpetua.

The facts are as follows:

At around 11 o'clock in the evening of July 27, 1991, Danilo Perez, Rosalio Enojarda, Noel Cugal, Ricardo Francisco and Wilfredo Rellios, took a break from making copra to eat leftover dinner inside the copra kiln in the farm of Perez in Matarling, Lantawan, Basilan. When Enojarda stood up from the circle where they were eating to drink water, shots rang out and Enojarda fell to the ground shouting "Dan ya tupa comigo" (Dan, I am hit). The rest of the group took cover, crawling to different directions. After the attack, Rellios reported the incident to the barangay captain and they brought Enojarda's dead body to his family.[3]

On May 28, 1992, an Information was filed against Cesar Galvez (Galvez), a member of the Philippine National Police (PNP) for Murder, which reads:

That on or about the 27th day of July, 1991, and within the jurisdiction of this Honorable Court, viz. at Matarling, Municipality of Lantawan, Province of Basilan, Philippines, the above named accused, armed with an M16 armalite rifle, with treachery and evident premeditation, and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot one Rosalio Enojarda with the said M16 armalite rifle, thereby inflicting gunshot wound on the body of the latter which caused his death.[4]

The prosecution presented evidence showing that: after Enojarda fell, the rest of the group took cover and Rellios while in a crawling position, saw Galvez about 5 meters away holding an armalite rifle and firing at their direction; Rellios also saw that Galvez had companions but did not recognize them as well as the firearms they carried because they were approximately nine meters away;[5] Perez, also crawled and hid in the bushes about 5 meters away; when the firing stopped, one of the attackers passed by about two meters from where Perez was hiding and because the moon was bright, he recognized Galvez, his cousin, who was wearing a fatigue uniform and armed with an armalite rifle; he also saw that Galvez had three armed companions but did not recognize them nor the firearms they were carrying because they were about nine meters from Galvez.[6]

Galvez put up denial and alibi as his defenses. He testified that he was staying at his father-in-law's house on July 27, 1991 and drank tuba at around 10:30 p.m. at a nearby store. He went home and slept with his wife soon after.[7] To corroborate his testimony, he presented SPO2 Danilo Ramillano, a visitor at his father-in-law's house

and Wilhelmina Espinosa, a sari-sari store owner. [8] He also presented Athena Elisa Anderson, Document Examiner and Forensic Analyst of the PNP Crime Laboratory of Region 9, Zamboanga City, who testified that the paraffin test conducted on both his hands showed that there was no nitrate present;[9] and Police Inspector Lemuel Caser, Ballistic Examiner, who testified that the shells found at the scene of the crime were not fired from the firearm issued to Galvez.[10]

After trial, the RTC rendered its Decision dated February 27, 1995 with the following findings:

From the foregoing facts as well as from the records of this case, this Court finds the following facts to be undisputable, to wit:

1) That at the late night of July 27, 1991, Rosalio Enojarda, while making copra in the coconut land of Danilo Perez at Matarling, Lantawan, Basilan, was shot to death by one of the four (4) men. How many gunshot wounds he suffered and what part of his body was hit by the gunfire, the evidence is found wanting.

2) That a day before the incident and on the date of the incident which was July 27, 1991, the accused Cesar Galvez has not fired any firearms.

x x x

3) That the five (5) empty shells of armalite rifle...allegedly found by Barangay Captain Inocente Manicap from the scene of the crime and later turned over to PFC Samuel Omoso, the Police Investigator of this case, did not come from the M16 armalite rifle with Serial No. 117460, the gun issued to the accused Cesar Galvez. (citations omitted).[11]

Further, the trial court found that the testimonies of the prosecution witnesses, Rellios and Perez, were credible and trustworthy as there was no motive to perjure themselves; that the testimony of defense witness SPO2 Ramillano was full of loopholes; and that the testimony of the store owner was insufficient to disprove the presence of the accused at the scene of the crime.[12]

The RTC concluded:

xxx since this accused, Cesar Galvez, has not fired his M16 armalite rifle on that night of July 27, 1991, and those five (5) empty shells were not fired from his armalite, then xxx the bullet that hit and instantly killed Rosalio Enojarda on that night of July 27, 1991 at the copra kiln of Danilo Perez came from the gun fired by any of the three (3) unidentified persons who were the companions of the accused, Cesar Galvez at the night of the incident xxx.[13] (emphasis supplied)

Despite the fact that the Information failed to allege conspiracy and the aggravating circumstances of nocturnity and armed band, the RTC still convicted Galvez of murder based on conspiracy since Galvez was seen by two witnesses at the scene of the crime carrying a firearm together with his unidentified armed companions.[14] The trial court also held that the offer of Galvez to have the case settled out of court is an indication of his guilt.[15]

The RTC then disposed of the case as follows:

WHEREFORE, all factual and circumstantial matters surrounding the commission of the crime, being carefully and meticulously examined and studied, this Court finds the accused SPO2 Cesar Galvez, a member of the Philippine National Police GUILTY beyond reasonable doubt as principal in committing the crime of Murder as alleged in the Information and which crime is defined and penalized under Art. 248 of the Revised Penal Code, but considering his good military records after the commission of the crime, hereby sentences him to suffer an imprisonment of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY as minimum, to TWENTY (20) YEARS as maximum, which is the minimum period of Reclusion Temporal in its maximum period to death. And to indemnify the heirs of the late Rosalio Enojarda, the amount of P50,000.00

as moral damages and to pay the Court the amount of P500.00 as judicial costs and other accessory penalties attached to the penalty of Reclusion Temporal.

And further this accused is hereby stripped of all the military ranks he now hold [sic] in the Armed Forces of the Philippines.

And upon the promulgation of this decision, the accused shall immediately be committed to the Provincial Jail where the Provincial Warden is directed to immediately transfer him to the National Penitentiary at San Ramon Penal Colony at Zamboanga City for commitment thereat.

And the property bail bond he has posted for his provisional liberty is hereby ordered cancelled and its pertinent papers returned, upon receipt to the bondsman.[16]

Galvez appealed the case to the CA, docketed as CA-G.R. CR No. 18255, which rendered its Decision on March 30, 2001 affirming his guilt but modifying the penalty to be imposed, thus:

WHEREFORE, with the MODIFICATION that appellant CESAR GALVEZ is hereby sentenced to reclusion perpetua, the decision appealed from is hereby AFFIRMED in all other respects.[17]

The CA held that the RTC erred in holding Galvez criminally liable based on conspiracy when such fact was not alleged in the Information. However, it still found Galvez guilty of Murder.[18] The CA reasoned that: the negative results of the paraffin and ballistic tests do not negate the possibility that Galvez used another gun in shooting the victim; the eyewitnesses of the prosecution identified Galvez as the perpetrator if not one of the perpetrators of the crime; alibi, which was offered by Galvez, is the weakest of all defenses and cannot prevail over positive identification; the offer of Galvez to the wife of the victim to have the case settled is also a strong indication of Galvez's culpability; and treachery was adequately established as the attack was sudden, unexpected and did not accord the victim an opportunity to defend himself.[19] The CA further held that since there was no mitigating circumstance, the proper penalty should be reclusion perpetua.[20]

Galvez filed a Motion for Reconsideration[21] which the CA denied in its Resolution dated August 21, 2001, stating that it was a mere rehash of the arguments already addressed in the decision.[22]

The entire records of the case were forwarded to this Court pursuant to Section 13, Rule 124 of the Rules of Criminal Procedure. On April 8, 2003, the Court issued a Resolution[23] accepting the case; committing the accused to the Davao Prison and Penal Farm; and informing the accused and the Solicitor General that they may file additional briefs with this Court.[24]

In his Appellant's Brief, Galvez argued that the trial court erred:

I

... IN HOLDING THAT (HE) THE ACCUSED-APPELLANT IS LIABLE FOR MURDER FOR THE DEATH OF ROSALIO ENOJARDA ON JULY 27, 1991 DESPITE ITS EXPRESS FINDINGS THAT THE ACCUSED-APPELLANT DID NOT FIRE HIS RIFLE ON THAT FATAL NIGHT AND THAT THE BULLET THAT HIT AND KILLED ROSALIO ENOJARDA COULD HAVE BEEN FIRED FROM ANY OF THE GUNS OR RIFLES BELONGING TO ANY OF THE THREE UNIDENTIFIED PERSONS WHO WERE NOT CHARGED NOR INDICTED TOGETHER WITH THE ACCUSED IN THE SAME CRIMINAL INFORMATION IN QUESTION.

II

... IN HOLDING THAT DANILO PEREZ AND WILFREDO RELLOS, WHILE IN CRAWLING POSITION WHOSE CHESTS WERE ALMOST TOUCHING THE GROUND AND UNDER CONDITIONS DESCRIBED BY THEM, HAD SEEN THE ACCUSED-APPELLANT ARMED WITH M16 ARMALITE

RIFLE IN THE NIGHTTIME, OF 27 JULY 1991 DESPITE DANILO PEREZ' [sic] POSITIVE ASSERTION THAT IT WAS IMPOSSIBLE OF HIS (SIC) TO IDENTIFY THE ACCUSED WHEN ASKED TO DEMONSTRATE IN OPEN COURT IN THE MANNER AND CIRCUMSTANCE NARRATED BY HIM.[25]

In his Supplemental Appellant's Brief, Galvez further claims that it was seriously erroneous:

I.

...TO CONCLUDE THAT THERE WAS CONSPIRACY BETWEEN ACCUSED-APPELLANT AND THE OTHER MALEFACTORS NOT INCLUDED IN THE PRESENT CASE.

II.

...TO BE SELECTIVE IN APPRECIATING MATTERS NOT INCLUDED IN THE INFORMATION, MORE SO THE THEORY OF CONSPIRACY AGAINST ACCUSED-APPELLANT, THERE BEING NO OTHER PERSONS CHARGED IN THE PRESENT CASE.

III.

...TO FIND THE ACCUSED-APPELLANT GUILTY OF MURDER UNDER CIRCUMSTANCES FAR DIFFERENT FROM THE INFORMATION, IN EFFECT DENYING ACCUSED-APPELLANT [THE] RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.

IV.

...TO GIVE CREDENCE TO THE TESTIMONIES OF THE TWO ALLEGED EYE WITNESSES WHOSE DECLARATIONS WERE CLEARLY BELIED DURING THEIR CROSS EXAMINATION.

V.

...NOT TO CONSIDER THE DEFENSE OF ALIBI OF ACCUSED-APPELLANT.

VI.

...TO MAKE UNSUBSTANTIATED, BASELESS PRESUMPTIONS AND CONCLUSIONS IN A CRIMINAL CASE WHERE THE INNOCENCE OF THE ACCUSED IS PRESUMED.[26]

Galvez also filed an Addendum to Supplemental Appellant's Brief adding that:

VII

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING THE RESULTS OF THE PARAFFIN AND BALLISTIC TESTS AND IN ASSUMING THAT THE ACCUSED-APPELLANT SHOT THE DECEASED USING AN M16 RIFLE OTHER THAN THE ONE ISSUED TO HIM.[27]

Galvez contends that: the degree of proof required in criminal cases is proof beyond reasonable doubt because an accused is always presumed to be innocent unless proven otherwise;[28] when circumstances yield two or more inferences, one of which is consistent with the presumption of innocence and the other compatible with the finding of guilt, the court must side with that which will acquit the accused; in this case, the RTC found undisputed the fact that he did not shoot the victim on the night of July 27, 1991 and the firearm that was used in killing the victim was owned and possessed by another man, as shown by the negative results of the paraffin and ballistic tests; the statement of Danilo Perez that he saw the accused on the night of July 27, 1991 is not credible since Perez was in a crawling position with his chest almost touching the ground at the time he allegedly saw the accused; Judge Memoracion, who penned the decision could not have assessed the demeanor of the prosecution

witnesses while testifying as it was another judge who heard and received their testimonies;[29] the two defense witnesses, who corroborated his (Galvez's) alibi are unbiased and unrelated to him; while alibi is the weakest defense, it is the only defense if it is the truth and it assumes importance where the prosecution evidence is weak; the statement of the trial court that the offer of the accused to have the case extra-judicially settled is a tacit admission of guilt is also unsubstantiated as there is nothing in the records that shows that the accused made an offer to settle the case out of court.[30]

For the plaintiff-appellee, the Solicitor General argued that: the paraffin test and the ballistic examination are not conclusive proof that Galvez did not fire a gun during the incident; in this case, the paraffin test was conducted on Galvez two days from the date of the incident; Galvez was also positively identified by the prosecution witnesses as one of four armed men who attacked them during the incident; Perez clarified that while he was in a crawling position, he was looking upward, thus, he was able to identify Galvez; between Galvez's alibi and the positive declarations of witnesses whose testimonies have not been assailed nor discredited by improper motive, the latter deserves greater credence; the trial court correctly convicted Galvez of murder as there was treachery since the victim was not in a position to defend himself from the attack of the accused; the proper penalty should be reclusion perpetua under Art. 248 of the Revised Penal Code as there was no mitigating circumstance;[31] Galvez is also liable for temperate damages of P25,000.00 since pecuniary loss has been suffered although its exact amount could not be determined, and exemplary damages of P25,000.00 due to the presence of the qualifying circumstance of treachery; the amount of P50,000.00 as civil indemnity should also be awarded to the heirs of the victim together with the P50,000.00 awarded by the trial court for moral damages.[32]

After reviewing the entire records of the case, the Court resolves to acquit Galvez.

Conspiracy must be alleged in the information in order that an accused may be held liable for the acts of his co-accused. In the absence of any averment of conspiracy in the information, an accused can only be made liable for the acts committed by him alone and such criminal responsibility is individual and not collective.[33]

As explained in *People v. Tampis*,[34]

The rule is that conspiracy must be alleged, not merely inferred, in the information. Absence of a particular statement in the accusatory portion of the charge sheet concerning any definitive act constituting conspiracy renders the indictment insufficient to hold one accused liable for the individual acts of his co-accused. Thus, each of them would be held accountable only for their respective participation in the commission of the offense.[35]

The rationale for this rule has long been settled. In *People v. Quitlong*, the Court explained:

Overwhelming, such as it may have been thought of by the trial court, evidence of conspiracy is not enough for an accused to bear and respond to all its grave legal consequences; it is equally essential that such accused has been apprised when the charge is made conformably with prevailing substantive and procedural requirements. Article III, Section 14, of the 1987 Constitution, in particular, mandates that no person shall be held answerable for a criminal offense without due process of law and that in all criminal prosecutions the accused shall first be informed of the nature and cause of the accusation against him. The right to be informed of any such indictment is likewise explicit in procedural rules. x x x

x x x

x x x Quite unlike the omission of an ordinary recital of fact which, if not excepted from or objected to during trial, may be corrected or supplied by competent proof, an allegation, however, of conspiracy, or one that would impute criminal liability to an accused for the act of another or others, is indispensable in order to hold such person, regardless of the nature and extent of his own participation, equally guilty with the other or others

in the commission of the crime. Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others. Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.[36]

Since conspiracy was not alleged in the Information in this case, it is imperative that the prosecution prove Galvez's direct participation in the killing of the victim. This, the prosecution failed to do.

The CA, in holding Galvez guilty of Murder, gave weight to the testimonies of the prosecution witnesses Rellos and Perez that they saw Galvez fire an armalite rifle in their direction on the night in question. The positive identification of these witnesses, the CA ruled, has more weight than the negative results of the paraffin and ballistic tests.[37]

We disagree.

The prosecution witnesses never actually saw Galvez shoot the victim. While this Court does not ordinarily interfere with the findings of the lower courts on the trustworthiness of witnesses, when there appears on the records, however, facts and circumstances of real weight which might have been overlooked or misapprehended, this Court cannot shirk from its duty to render the law and apply justice.[38]

During his direct examination, Perez testified as follows:

Q: While you were eating your merienda at about 11:00 o'clock in the evening on July 27, 1991 what happened?

A: Suddenly we heard shots and we could not determine where it came from and one of our companion was hit.

Q: Do you know who was that companion of yours who was hit?

A: Yes, Rosalio Enojarda.

x x x

Q: After you heard the gun fire which hit your companion Rosalio Enojarda, what did you do?

A: I dropped and crawled, sir.

x x x

Q: And then did the gunfire stop after you hid yourself among the grasses?

A: Yes sir.

Q: What happened after the firings stopped, when you were already hiding among the grasses?

A: I recognized the culprit sir because he passed by where I was hiding about two meters from me.

Q: You said you recognized the culprit when he passed by where you were hiding, who was that culprit?

A: Cesar Galvez, sir.

x x x

COURT:

After you heard the shots how long after you saw him passed by?

x x x

Q: Was it 30 minutes after?

x x x

A: In my own estimate about 20 to 25 minutes.

Q: In other words more or less you saw him (accused) passed by together with his companions around 20 to 25 minutes after you heard the shots, is that what you want to impress this Court?

A: Yes, Your Honor.

x x x

Q: Did you see him really shoot?A: No, Your Honor.[39] (Emphasis supplied)

During his cross-examination, Perez further testified:

Q: So, when you said the explosions came from different directions, was not true?

A: We heard shots but we do not know where it came from, what we did was to drop and crawl.

COURT: (To the witness)

You did not see the one firing?Yes, your Honor, because I crawled.

Q: And how many minutes after you heard firings you saw this accused and companions pass by?

A: I am not sure Your Honor about the exact time but I think it has about 20 to 25 minutes.[40]

x x x

Q: Mr. Perez, you did not see the accused shot at Mr. Enojarda?A: No sir.[41] (Emphasis supplied).

Rellios also admitted during his cross-examination the following:

Q: You did not actually see Mr. Galvez shoot at Mr. Enojarda?A: No sir.

COURT: (To the witness)

In other words you were only presuming that it was him.

A: No, Your Honor, I saw him.

ATTY. MARTIN: (Continuing)

Did you understand the question when you were asked by the Court. Since you did not actually see Mr. Galvez shoot at the victim, and reportedly you saw him only five minutes thereafter, you only presume Mr. Galvez to have shoot Mr. Enojarda?

A: Yes sir.[42] (Emphasis supplied)

Based on the above testimonies, the following circumstances appear to have been established: (1) at around 11 p.m., Enojarda, Rellios, Perez, and their two companions were eating merienda near the copra kiln when they were sprayed with gunfire; (2) Enojarda was fatally hit and fell on the ground; (3) Rellios, Perez and their two companions ducked and crawled to seek cover; (4) about five minutes after the first burst of gunfire, Galvez, armed with an M16 armalite rifle, was seen firing at Rellios, Perez and their two companions as well as in the direction of the copra kiln; and (5) about 20 to 25 minutes after the first burst of gunfire, Galvez was again seen clad in fatigue uniform and carrying an M16 armalite rifle along with three armed companions, after which, their group left the scene of the crime.

However, these circumstances are not sufficient to establish the guilt of Galvez beyond reasonable doubt.

It is well to emphasize the four basic guidelines that must be observed in assaying the probative value of circumstantial evidence:

x x x (a) It should be acted upon with caution; (b) All the essential facts must be consistent with the hypothesis of guilt; (c) The facts must exclude every other theory but that of guilt of the accused; and, (d) The facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense. The peculiarity of circumstantial evidence is that the series of events pointing to the

commission of a felony is appreciated not singly but collectively. The guilt of the accused cannot be deduced from scrutinizing just one (1) particular piece of evidence. It is more like a puzzle which when put together reveals a convincing picture pointing to the conclusion that the accused is the author of the crime.[43]

as well as the doctrines enunciated by the Court that the prosecution must establish beyond reasonable doubt every circumstance essential to the guilt of the accused;[44] and that every circumstance or doubt favoring the innocence of the accused must be duly taken into account.[45]

The "incriminating circumstances" enumerated above are mainly based on the testimonies of prosecution witnesses Perez and Rellios. A perusal of said testimonies reveals, however, other circumstances that should be appreciated in favor of Galvez, to wit:

(a) Both Perez and Rellios testified that they saw Galvez with three other armed companions minutes after Enojarda was shot but they did not testify that they saw him in the vicinity before the shooting of Enojarda.[46]

(b) Perez testified that only one shot hit Enojarda.[47]

(c) Perez testified that he did not see Galvez shoot at Enojarda and that he merely assumed that Galvez was the one who shot the victim when the latter passed by him.[48] Rellios testified that he only presumed that Galvez shot at Enojarda.[49]

(d) Perez testified that he had no misunderstanding with Galvez[50] and that he does not know any motive why Enojarda was killed.[51]

In considering both favorable and "incriminating" circumstances for or against Galvez, the following must always be borne in mind: that the Information charged Galvez as the sole perpetrator of the crime of Murder; that the three other armed men were not included as John Does; and that there was no allegation of conspiracy in the Information.

Consequently, it was incumbent upon the prosecution to prove that Galvez was the sole author of the shot that killed Enojarda. The "incriminating circumstances" do not point to Galvez as the sole perpetrator of the crime. The presence of the three armed men raises the probability that any one of those men inflicted the fatal shot. It must be stressed that the prosecution witnesses merely presumed that it was Galvez who shot Enojarda.

Moreover, the fact that Galvez was seen minutes after Enojarda was shot does not sufficiently establish that Galvez was the one who shot Enojarda. There is no evidence that Galvez was seen or was together with the three other armed men when Enojarda was hit. There is a missing link that precludes the Court from concluding that it was Galvez who shot Enojarda.[52] It cannot be said therefore that there was positive identification of Galvez through circumstantial evidence.

In *People v. Comendador*,[53] the Court held:

While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. The circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others as the guilty person.[54] (Emphasis supplied)

And in *Dela Cruz v. People*,[55] the Court stressed, thus:

To emphasize, the foundation of the ruling of acquittal is reasonable doubt, which simply means that the prosecution's evidence was not sufficient to sustain the guilt of the accused-petitioner beyond the point of

moral certainty - certainty that convinces and satisfies the reason and the conscience of those who are to act upon it. It is such proof to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support it. An acquittal based on reasonable doubt will prosper even though the accused's innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense. And, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction, and, thus, that which is favorable to the accused should be considered.[56] (Emphasis supplied).

And when the evidence on the commission of the crime is purely circumstantial or inconclusive, motive is vital. As held in *Crisostomo v. Sandiganbayan*,[57]

Motive is generally held to be immaterial because it is not an element of the crime. However, motive becomes important when the evidence on the commission of the crime is purely circumstantial or inconclusive. Motive is thus vital in this case.[58]

In this case, prosecution witness Perez testified that he did not know of any motive on the part of Galvez to kill Enojarda.[59] This is a circumstance that should be taken in favor of Galvez.

In line with the ruling of the Court in *Torralba v. People*,[60] to wit:

Time and again, this Court has faithfully observed and given effect to the constitutional presumption of innocence which can only be overcome by contrary proof beyond reasonable doubt - one which requires moral certainty, a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. As we have so stated in the past -

Accusation is not, according to the fundamental law, synonymous with guilt, the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. To meet this standard, there is need for the most careful scrutiny of the testimony of the State, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment.[61] (Emphasis supplied)

There could not be any doubt that the facts, as established by the circumstantial evidence, failed to exclude the possibility that another person shot Enojarda. There were three other armed men, any one of whom could be the culprit.

When a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established.[62] Indeed, the State, aside from showing the existence of a crime, has the burden of correctly identifying the author of such crime.[63] Both facts must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense.[64]

Galvez correctly pointed out in his supplemental brief before this Court that it was erroneous for the CA to have affirmed the RTC ruling that Galvez's offer to the victim's wife to settle the case is a tacit admission of guilt.[65]

While the Court agrees that in criminal cases, an offer of compromise by the accused may be received in evidence as an implied admission of guilt,[66] such principle is not applicable in this case.

The only basis of the RTC in concluding that Galvez made an offer of compromise,[67] is the March 3, 1993

Order of the RTC which reads as follows:

Considering that the accused as well as his Counsel, Atty. Bienvenido G. Martin appeared in Court together with Rosaflor Enojarda, the wife of the victim, and manifested that there is a possibility of understanding and settlement between the parties, the above-entitled case is hereby reset for new assignment.[68]

Galvez's supposed offer of compromise was not formally offered and admitted as evidence during the trial. The victim's widow or any prosecution witness did not testify on any offer of compromise made by Galvez. We have held that when the evidence on the alleged offer of compromise is amorphous, the same shall not benefit the prosecution in its case against the accused.[69]

The Court also recognizes that there may be instances when an offer of compromise will not amount to an admission of guilt. Thus, in *People v. Godoy*,[70] the Court pronounced that:

...In criminal cases, an offer of compromise is generally admissible as evidence against the party making it. It is a legal maxim, which assuredly constitutes one of the bases of the right to penalize, that in the matter of public crimes which directly affect the public interest, no compromise whatever may be entered into as regards the penal action. It has long been held, however, that in such cases the accused is permitted to show that the offer was not made under a consciousness of guilt, but merely to avoid the inconvenience of imprisonment or for some other reason which would justify a claim by the accused that the offer to compromise was not in truth an admission of guilt or an attempt to avoid the legal consequences which would ordinarily ensue therefrom.[71] (Emphasis supplied).

As the alleged offer of compromise was not presented in court, it was not shown that Galvez indeed made such an offer under the consciousness of guilt. Galvez was not given the opportunity to explain that it was given for some other reason that would justify a claim that it was not an admission of guilt or an attempt to avoid its legal consequences.

In this case, the presumption of innocence of Galvez prevails over the alleged implied admission of guilt. In *Godoy*, the Court, in acquitting the accused, explained that:

It frequently happens that in a particular case two or more presumptions are involved. Sometimes the presumptions conflict, one tending to demonstrate the guilt of the accused and the other his innocence. In such case, it is necessary to examine the basis for each presumption and determine what logical or social basis exists for each presumption, and then determine which should be regarded as the more important and entitled to prevail over the other. It must, however, be remembered that the existence of a presumption indicating his guilt does not in itself destroy the presumption against innocence unless the inculcating presumption, together with all the evidence, or the lack of any evidence or explanation, is sufficient to overcome the presumption of innocence by proving the defendant's guilt beyond a reasonable doubt. Until the defendant's guilt is shown in this manner, the presumption of innocence continues.[72]

x x x

The presumption of innocence, x x x is founded upon the first principles of justice, and is not a mere form but a substantial part of the law. It is not overcome by mere suspicion or conjecture; a probability that the defendant committed the crime; nor by the fact that he had the opportunity to do so. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt. This is in consonance with the rule that conflicts in evidence must be resolved upon the theory of innocence rather than upon a theory of guilt when it is possible to do so.[73]

Thus, taking into account all the circumstances in favor of Galvez, there could not be a moral certainty as to the

guilt of Galvez. The prosecution has not proven the guilt of Galvez beyond reasonable doubt.

It may be pointed out that the following circumstances support the conviction of Galvez as charged:

- (a) the negative findings of the paraffin and ballistic tests do not prove that Galvez did not fire a gun;
- (b) Galvez was a police officer who could have justified his presence at the scene of the crime with a lawful purpose, yet he put up alibi which is inherently weak;
- (c) Galvez did not present his wife and father-in-law as witnesses to corroborate his story that he was at their house on the night in question; and
- (d) Galvez refused three times to give a statement to the investigating police officer.

These circumstances do not help the prosecution in the discharge of its duty to prove the guilt of Galvez beyond reasonable doubt.

It is true that a negative finding in a paraffin test is not a conclusive proof that one has not fired a gun, as held by this Court in *People v. Pagal*[74] and *People v. Teehankee*[75] which were cited by the CA in its Decision, since it is possible for a person to fire a gun and yet bear no traces of nitrate or gunpowder as when the hands are bathed in perspiration or washed afterwards.[76] Such principle, however, has no bearing in the present case. In the *Pagal* and *Teehankee* cases, the Court concluded that a negative finding does not prove that the accused therein had not fired a gun because the accused were positively identified by witnesses as having shot their victims, unlike in the case at hand where Galvez is not positively identified by direct or circumstantial evidence that he shot Enojarda. If the principle should be given any weight at all, it should be in favor of Galvez, that is, considering that he is not positively identified, then, the negative results of the paraffin test bolster his claim that he did not shoot Enojarda, and not the other way around.

The argument that the negative result of the ballistic examination does not prove that Galvez did not fire a gun during the incident as it was possible that he used another gun, should also be struck down. It is the prosecution which has the burden of showing that Galvez used a firearm other than the one issued to him and that such firearm, which Galvez used, was the one that killed the victim. It is not for Galvez to prove the opposite of the possibility adverted to by the prosecution as it is the prosecution which must prove his guilt beyond reasonable doubt and not for him to prove his innocence.

Thus, while it is true that the negative results of the paraffin and ballistic tests do not conclusively prove that Galvez did not shoot the victim, the same negative results cannot be used as circumstantial evidence against Galvez to prove that he shot Enojarda. To do otherwise would violate the basic precepts of criminal law which presumes the innocence of the accused. Every circumstance favoring an accused's innocence must be duly taken into account, the proof against him must survive the test of reason, and the strongest suspicion must not be permitted to sway judgment.[77]

That Galvez was a police officer who could have justified his presence at the scene of the crime with a lawful purpose, yet he put up an alibi which is inherently weak; and that Galvez did not present his wife and father-in-law as witnesses to corroborate his story that he was at their house on the night in question, pertain to the weakness of Galvez's alibi which may cast doubt on his innocence. However, these circumstances do not prove beyond reasonable doubt Galvez's guilt. Although an accused must satisfactorily prove his alibi, the burden in criminal cases still rests on the prosecution to prove the accused's guilt. The prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense. Unless the prosecution overturns the constitutional presumption of innocence of an accused by competent and credible evidence proving his guilt beyond reasonable doubt, the presumption remains.[78] Courts must judge the guilt or innocence of the

accused based on facts and not on mere conjectures, presumptions, or suspicions.[79]

That Galvez refused three times to give a statement to the investigating police officer is a prerogative given to the accused and should not be given evidentiary value to establish his guilt. In *People v. Saavedra*,^[80] the Court held that an accused has the right to remain silent and his silence should not be construed as an admission of guilt.

Even if the defense of the appellant may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of his identity and culpability.^[81] Conviction must be based on the strength of the prosecution and not on the weakness of the defense, i.e., the obligation is upon the shoulders of the prosecution to prove the guilt of the accused and not the accused to prove his innocence.^[82] The prosecution's job is to prove that the accused is guilty beyond reasonable doubt.^[83] Thus, when the evidence for the prosecution is insufficient to sustain a conviction, it must be rejected and the accused absolved and released at once.^[84]

Time and again, the Court has pronounced that the great goal of our criminal law and procedure is not to send people to jail but to render justice.^[85] Under our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains reasonable doubt as to his guilt.^[86]

It is indeed lamentable that because of the lapses of the Prosecution, justice could not be rendered in this case for the untimely death of Enojarda. Justice, however, would also not be served with the conviction of the herein accused. It is well to quote Justice Josue N. Bellosillo:

In fine, we are not unmindful of the gravity of the crime charged; but justice must be dispensed with an even hand. Regardless of how much we want to punish the perpetrators of this ghastly crime and give justice to the victim and her family, the protection provided by the Bill of Rights is bestowed upon all individuals, without exception, regardless of race, color, creed, gender or political persuasion - whether privileged or less privileged - to be invoked without fear or favor. Hence, the accused deserves no less than an acquittal; ergo, he is not called upon to disprove what the prosecution has not proved.^[87] (Emphasis supplied)

As the prosecution in this case failed to discharge its burden of proving Galvez's guilt beyond reasonable doubt, the Court has no choice but to acquit him.

WHEREFORE, the Decision of the Regional Trial Court, Isabela, Basilan, Branch 1 in Criminal Case No. 1816 dated February 2, 1995 and the Decision of the Court of Appeals in CA-G.R. CR No. 18255 dated March 30, 2001 are REVERSED and SET ASIDE. The accused-appellant Cesar Galvez is hereby ACQUITTED on the ground that his guilt was not proven beyond reasonable doubt. The Director of the Bureau of Corrections is ordered to cause the immediate release of Cesar Galvez unless he is being lawfully held for another crime and to inform this Court accordingly within ten (10) days from notice.

SO ORDERED.

Ynares-Santiago, J., please see dissenting opinion.

Callejo, Sr., and Nachura, JJ., concur.

Chico-Nazario, J., join dissenting opinion of Justice J. Ynares-Santiago.

[1] Penned by then CA Associate Justice, now Supreme Court Associate Justice, Cancio C. Garcia and concurred in by CA Associate Justices Oswaldo D. Agcaoili and Elvi John S. Asuncion, CA rollo, pp. 179-194.

[2] Penned by Judge Salvador A. Memoracion, CA rollo, pp. 13-25.

- [3] TSN, Danilo Perez, September 20, 1993, pp. 5,12-16; TSN, Wilfredo Rellios, October 1, 1993, pp. 79,85-92, 95-97.
- [4] Records, p. 1.
- [5] TSN, Wilfredo Rellios, October 1, 1993, pp. 89-94.
- [6] TSN, Danilo Perez, September 20, 1993, pp. 15-21.
- [7] TSN, Cesar Galvez, November 7, 1994, pp. 261-273.
- [8] TSN, Danilo Ramillano, October 10, 1994, pp. 225-240; TSN, Wilhelmina Espinosa, September 28, 1994, pp. 2-12.
- [9] TSN, Athena Elisa Anderson, February 10, 1994, pp. 184-193.
- [10] TSN, Lemuel Caser, May 12, 1994, pp. 202-224.
- [11] CA Rollo, pp. 82-83.
- [12] Id. at 83-85.
- [13] Id. at 85-86.
- [14] Id. at 88.
- [15] Id. at 88-89.
- [16] Id. at 24-25.
- [17] Id. at 193.
- [18] Id. at 189.
- [19] Id. at 189-193.
- [20] Id.
- [21] Id. at 195-200.
- [22] Id. at 206.
- [23] The case is now docketed as G.R. No. 157221.
- [24] Rollo, p. 5.
- [25] CA rollo, pp. 58-59.
- [26] Rollo, pp. 22-23.
- [27] Id. at 52.
- [28] Rollo, pp. 52-54.
- [29] CA rollo, pp. 60-63.
- [30] Rollo, pp. 23-37.
- [31] CA rollo, pp. 160-173.

- [32] Rollo, pp. 95-120.
- [33] *People v. Quitlong*, 354 Phil. 372, 390-391 (1998).
- [34] 455 Phil. 371 (2003).
- [35] *Id.* at 383-384. See also *Garcia v. Court of Appeals*, 420 Phil. 25 (2001).
- [36] *People v. Quitlong*, *supra* at 387-388.
- [37] CA rollo, pp. 190-191; CA Decision, pp. 12-13.
- [38] See *People v. Lumilan*, 380 Phil. 130, 153 (2000).
- [39] TSN, September 20, 1993, pp. 15-18.
- [40] TSN September 21, 1993, p. 69.
- [41] *Id.* at 74.
- [42] *Id.* October 1, 1993, pp. 153-154.
- [43] *People v. Monje*, 438 Phil. 716, 732-733 (2002).
- [44] *People v. Quidato, Jr.*, 357 Phil. 674, 683 (1998); *People v. Mendigurin*, 456 Phil. 328, 337 (2003).
- [45] *People v. Mendigurin*, *id.* at 344.
- [46] TSN, September 20, 1993, pp. 67-68; TSN, October 1, 1993, pp. 93 and 150.
- [47] *Id.* at 74.
- [48] TSN, September 20, 1993, p. 70.
- [49] TSN, October 1, 1993, pp. 153-154.
- [50] TSN, September 20, 1993, p. 21.
- [51] *Id.* at 22.
- [52] See *Baleros, Jr. v. People*, G.R. No. 138033, February 22, 2006, 483 SCRA 10.
- [53] No. L-38000, September 19, 1980, 100 SCRA 155.
- [54] *Id.* at 169-170.
- [55] G.R. No. 150439, July 29, 2005, 465 SCRA 190.
- [56] *Id.* at 215-216.
- [57] G.R. No. 152398, April 14, 2005, 456 SCRA 45.
- [58] *Id.* at 77.
- [59] TSN, September 20, 1993, p. 22.
- [60] G.R. No. 153699, August 22, 2005, 467 SCRA 552.
- [61] *Id.* at 567, citing *Dela Cruz v. People of the Philippines*, *supra* note 14, at 215; *People v. Dramayo*, 149 Phil. 107, 114-115 (1971).

- [62] *People v. Sinco*, G.R. No. 131836, March 30, 2001, 355 SCRA 713, 721.
- [63] *People v. Limpangog*, 444 Phil. 691, 709 (2003).
- [64] *Id.* at 709.
- [65] *Rollo*, Vol. II., pp. 21-23, 36-37; Vol. I, p. 192, (CA Decision, p. 14).
- [66] See Rules of Court, Rule 130, Sec. 27.
- [67] See RTC Decision, p. 12, Records, p. 166; see also CA Decision, p. 14, *rollo*, Vol. I, p. 192; Brief for the Appellee, pp. 21-22, *rollo* Vol. II, p. 109.
- [68] Records, p. 40.
- [69] See *People v. Pido*, G.R. No. 92427, August 2, 1991, 200 SCRA 45, 66.
- [70] G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.
- [71] *People v. Godoy*, *supra* note 70, at 723.
- [72] *Id.* at 726-272, citing Wharton's Criminal Evidence, Vol. 1
- [73] *People v. Godoy*, *supra* note 70, at 726-728.
- [74] 338 Phil. 946 (1997).
- [75] 319 Phil. 128 (1995).
- [76] *People v. Pagal*, *id.* at 951 and *People v. Teehankee*, *id.* at 163.
- [77] *Dela Cruz v. People*, *supra* note 14, at 215; *People v. Dramayo*, *supra* note 20, at 112.
- [78] *People v. Calumpang*, G.R. No. 158203, March 31, 2005, 454 SCRA 719, 736.
- [79] *Crisostomo v. Sandiganbayan*, G.R. No. 152398, April 14, 2005, 456 SCRA 45, 77.
- [80] No. L-48738, May 18, 1987, 149 SCRA 610, 633.
- [81] *People v. Sinco*, *supra* note 62, at 721.
- [82] *People v. Mamalias*, 385 Phil. 499, 514 (2000); *People v. Limpangog*, *supra* note 63, at 710; *People v. Sinco*, *supra* at 728; *People v. Enad*, 402 Phil. 1, 25 (2001); *People v. Garcia*, 390 Phil. 519, 526 (2000).
- [83] *People v. Mamalias*, *id.* at 514.
- [84] *Id.*
- [85] *People v. Mamalias*, *supra* note 82, at 513.
- [86] *People v. Garcia*, *supra* note 83, at 528.
- [87] *People v. Monje*, *supra* note 43, at 736.
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DISSENTING OPINION

YNARES-SANTIAGO, J.:

In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition where concealment is highly probable. If direct evidence is insisted under all circumstances, the prosecution of vicious felons who committed heinous crimes in secret or secluded places will be hard, if not well-nigh impossible, to prove.[1]

In acquitting appellant Cesar Galvez (Galvez) based on reasonable doubt, the ponencia reasoned that: (1) conspiracy was not alleged in the information, hence, Galvez could only be held accountable for his individual acts; (2) the prosecution witnesses never saw Galvez shoot the victim; and (3) the paraffin and ballistic tests yielded negative results.

After a review of the evidence on record, I submit that there is sufficient evidence to hold Galvez liable for attempted murder.

The ponencia relied on the testimonies of the principal prosecution witnesses, Wilfredo Rellios (Rellios) and Danilo Perez (Perez), that they did not actually see Galvez shoot Enojarda. The ponencia thus required no less than direct evidence to charge Galvez for the murder of Enojarda, and totally disregarded the circumstantial evidence.

It must be stressed, however, that direct evidence of the commission of the offense is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[2] Conviction can be had on the basis of circumstantial evidence provided that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[3] While no general rule can be laid down as to the quantity of circumstantial evidence which will suffice in a given case, all the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[4] The circumstances proved should constitute an unbroken chain which leads to only one fair and reasonable conclusion that the accused, to the exclusion of all others, is the guilty person.[5]

The case of *Baleros, Jr. v. People*[6] is instructive with respect to the positive identification of the culprit through circumstantial evidence, to wit:

Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused as the offender as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually witnessed the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition where concealment is highly probable. If direct evidence is insisted under all circumstances, the prosecution of vicious felons who committed heinous crimes in secret or secluded places will be hard, if not well-nigh impossible, to prove.[7] (Emphasis supplied)

In the instant case, Rellios and Perez testified that on July 27, 1991, at around 11 p.m., they along with Enojarda and two other companions were seated in a circle formation while eating merienda outside a copra kiln located in

Lantawan, Basilan. They had not brought a lamp in order not to draw attention to their group given the peace and order situation in the area. Nonetheless, they were able to see the food they were eating because the moon was bright. When Enojarda stood up to drink water from a container located near the copra kiln, they heard a burst of gunfire at which time Enojarda shouted that he was hit by a bullet and thereafter fell on the ground. They did not know where the gunshots were coming from but they were certain that the firing was directed at them. Upon hearing the burst of gunfire, Rellios, Perez and their two companions ducked to seek cover. Rellios crawled inside the copra kiln while Perez crawled towards the nearby bushes to hide. Their other companions scampered away but they could no longer tell in what direction. About five minutes after the first burst of gunfire, Rellios peeped from where he was hiding in the copra kiln and saw Galvez armed with an armalite rifle shooting at him and his companions and in the direction of the copra kiln:

Q: While you were taking your merienda a little bit outside from the copra kiln, what happened next?

A: When Rosalio Enojarda stood up to drink water we heard shots.

Q: x x x [W]hat happened to Rosalio Enojarda?

A: He was hit, sir.

Q: How do you know that he was hit?

A: Because he shouted "Dan ya tupa comigo," meaning "Dan [referring to the other prosecution witness Danilo Perez] I was hit."

Q: As a result of the shots that you heard and according to you your companion Rosalio Enojarda was hit, what did you do?

A: We dropped to the ground.

Q: x x x [W]hat did you do next?

A: I crawled, sir. x x x

Q: When you were in a crawling position what happened?

A: When I was on that position I saw Cesar Galvez holding his gun firing at us.

COURT: (To the witness) How far was he when you saw him shooting at you?

A: Around five (5) meters Your Honor.

Q: In other words he was pointing his gun at you?

A: Yes, to all of us.

Q: Were you together with your companions when crawling?

A: No, your Honor, we were separated.

Q: How do you know they were being fired upon?

A: Because I saw him shooting at us.

FISCAL GENERALAO: (Continuing) x x x How were you able to recognize him holding an armalite?

A: The moon was bright, sir. x x x

Q: Aside from the accused, Cesar Galvez, can you tell the Court whether he was alone that time?

A: He had companions, sir.

Q: Were you able to recognize the companions?

A: No sir.

COURT (To the witness): Did you see what kind of firearms they were bringing?

A: No Your Honor because they were far.

Q: How far?

A: (Witness pointed to the door of the courtroom which has a distance of approximately nine (9) meters)

Q: In other words you were able to identify Cesar Galvez bringing an armalite rifle?

A: Yes, Your Honor.

FISCAL GENERALAO: (Continuing) You stated there were several shots that you heard, is that correct?

A: Yes sir.

Q: How do you know there were several shots?

A: I heard many shots, sir.

Q: Aside from the shot that hit Rosalio Enojarda where else were (sic) hit, if you know? A: On the wall and the roof of the coconut kiln.

Q: After you recognize Cesar Galvez about five meters away from you, what else did Cesar Galvez do, if any?

A: They left the place.[8] x x x

COURT: (To the witness) You said earlier when you heard the shot you immediately dived and crawled?

A: Yes, Your Honor.

Q: And you saw the accused after you already crawled inside the copra kiln?

A: Yes.

Q: For how long have you seen the accused after the burst of [gun]fire?

A: More or less five minutes.[9] (Emphasis supplied)

Rellios positively saw Galvez but he could not identify the other three armed malefactors because they were farther away. About 20 to 25 minutes from the time he heard the first burst of gunfire and after the gunfire had already stopped, Perez also saw Galvez, armed with an M16 armalite rifle and wearing a fatigue uniform, along with three armed companions, pass by the bushes where he was hiding.[10]

The testimonies of Rellios and Perez sufficiently established the presence of Galvez at the scene of the crime. Both also categorically declared that Galvez was one of the four armed malefactors who attacked them and their companions that fateful night in the copra kiln resulting in the death of Enojarda. Indeed, Rellios and Perez did not see the persons who fired upon their group during the first burst of gunfire which fatally hit Enojarda; however, considering all the attendant circumstances, I find no other rational conclusion except that it was Galvez and his three armed companions who shot them.

There is no doubt that Galvez was present at the scene of the crime. Five minutes after the first burst of gunfire, he was seen armed with an armalite rifle and shooting in the direction of the copra kiln. He not only failed to explain and justify his presence at the crime scene and his act of shooting in the direction of the copra kiln, but raised the defense of alibi which was inherently weak and remained uncorroborated.[11] He also refused to give his statement despite being summoned three times by the police.[12] It is also worth noting that Perez, one of the prosecution witnesses who positively identified Galvez, was a cousin of the latter. The Court of Appeals found no ill-motive on the part of Perez, hence his positive identification of Galvez is all the more convincing and credible.[13]

The combination of the aforementioned circumstances leads to no other conclusion than that Galvez was among the four armed malefactors who fired upon Enojarda and company at the copra kiln resulting in the death of Enojarda. Lamentably, the prosecution charged Galvez in the information as the lone principal for the murder of Enojarda.[14] As noted by the ponencia, the failure to allege conspiracy in the information renders the indictment insufficient to hold one accused liable for the individual acts of his co-accused and that each of them would be

held accountable only for their respective participation in the commission of the offense in consonance with our rulings in *People v. Tampis*[15] and *People v. Quitlong*.[16] More so in the instant case where the three John Does were not indicted. Consequently, even if the evidence tends to show that Galvez acted in conspiracy with the three John Does during the shooting incident, he cannot be made liable for the acts of the three John Does.

I submit, however, that the prosecution's failure to allege conspiracy would not completely absolve Galvez from any liability. For sure, Galvez cannot be held liable for the acts committed by the three John Does, but he may definitely be made to answer for the consequences of his own act. On this point, the case of *People v. Narciso*[17] is instructive.

In *Narciso*, Rufino Peña along with Francisco Celso, Elias Gloria and Ramon Narciso were charged with murder for the death of Roberto Monreal. However, the prosecution failed to allege conspiracy in the information charging the four accused. During the course of the trial, the case was dismissed as against Celso while Gloria escaped prison and Narciso died. Thus, the case proceeded as against Peña only. The trial court convicted Peña for murder and sentenced him to death. On automatic review, this Court ruled -

All the foregoing considered, there is no room for doubt that accused Rufino Peña participated in the clubbing of Roberto Monreal inside Cell 2-A of the city Jail of Manila on the night of July 10, 1961. The writer is of the opinion, however, that said accused should not be convicted of consummated murder, as charged in the information. x x x The only evidence of his direct participation in the commission of the crime was his own extra-judicial confession, a scrutiny of which, on the other hand, would readily cast doubt as to whether the blow with the piece of wood he delivered upon the victim as revealed in the said confession could have been fatal. x x x

x x x The last wound was never described as fatal by the medico-legal officer, both in his necropsy report and in his testimony during the trial. And this wound, the way We look at it, could have been the one caused by the accused Rufino Peña when he delivered the first blow upon the victim, considering the evidence that at the time the victim was lying on his back (tihaya) and the face was then covered with the blanket. The fatal wounds at the back of the head may reasonably be attributed to the succeeding blows delivered by any of the other accused who, as seen by the eyewitness, struck at the victim while the man was laying on his belly (nakadapa) with the head already exposed. x x x [I]f this were so, then it would be safe to conclude that the superficial wound was the one that may alone be attributed to accused Rufino Peña, considering the circumstances that there was no allegation of conspiracy in the information, and the defense had seasonably made objections to the introduction of evidence tending to prove conspiracy, and which objections were all sustained by the trial court. Neither did the court below make any finding of conspiracy in the decision under review; for on the contrary it declared:

". . . It should be noted that in default of an allegation of conspiracy, the herein accused is not found responsible for the acts of his co-accused as his conspirators, but for his individual participation for the death of the victim."

Rufino Peña should, therefore, be held liable only for the consequences of his own act - that of inflicting upon the person of the victim the superficial wound above-mentioned.

Intent to kill is apparent on the face of Rufino Peña's own confession, but he failed to hit the victim mortally, either because of his poor aim or because he failed to apply the degree of force necessary. Whatever the real cause is, there is no doubt that the injury he inflicted upon the victim could not have produced the intended killing as a consequence; hence, the stage of execution insofar as accused Peña is concerned, was merely attempted.[18] (Emphasis supplied)

Preliminarily, it might be noted that in the *Narciso* case, all of the four accused were charged in a single information while in the instant case Galvez is charged as the lone principal in the information. This difference is,

however, immaterial considering that the Court in *Narciso* ruled that the failure to allege conspiracy in the information would only make each accused liable for his individual participation in the commission of the offense. Stated differently, the Court treated the four accused in *Narciso* as if they were individually charged in separate informations which is analogous to the instant case where Galvez is charged as the lone principal in the information.

Due to the failure of the prosecution to allege conspiracy and indict the three John Does in the information, the critical point of inquiry is Galvez' individual participation in the killing of Enojarda, i.e., whether the evidence prove beyond reasonable doubt that Galvez was the one who shot and fatally wounded Enojarda.

I submit that there is reasonable doubt as to whether Galvez inflicted the fatal gunshot wound.

The presence of Galvez' three armed companions creates reasonable doubt as to who among them fired the bullet which killed Enojarda. Any one of them could have inflicted the fatal gunshot wound during the first burst of gunfire. As a result, Galvez cannot be convicted of murder.

However, even if the circumstantial evidence does not prove beyond reasonable doubt that Galvez was the one who inflicted the fatal gunshot wound on Enojarda, there is sufficient circumstantial evidence to hold that he was one of the four armed malefactors who fired upon Enojarda during the first burst of gunfire. Thus, insofar as Galvez is concerned, he may be held liable for attempted murder similar to the penalty imposed on Peña in the *Narciso* case.

None of the prosecution witnesses actually saw Galvez shoot at Enojarda. However, "more or less five minutes" after the first burst of gunfire, Galvez was positively identified by Rellios as one of the assailants. He was armed with an armalite rifle and was firing in the direction of the copra kiln. This provides a sufficient link in the chain of events with respect to time and place necessary to implicate Galvez in the shooting of Enojarda.

The manner by which Galvez and his three armed companions carried out the attack shows their intent to harm not just Enojarda but all of the latter's companions as well. To ensure the success of their murderous assault, all members of Galvez' group would have to simultaneously fire upon the occupants of the copra kiln during the first burst of gunfire.

Galvez was identified by Rellios barely five minutes after the first burst of gunfire as the person nearest to the copra kiln. Because of his proximity,[19] Galvez was in the best position to see, fire upon and hit Enojarda.

The gunfire started when Enojarda stood up to drink water thereby exposing him to the attack. Given Galvez's proximity to the copra kiln vis-à-vis his companions, it would be illogical, unnatural and unreasonable for us to conclude that Galvez watched and stood idly by for the first five minutes while his three armed companions, who were farther away, shot at Enojarda. A more reasonable and logical interpretation of the circumstances in the instant case would lead us to the fair conclusion that Galvez actively participated throughout the shooting incident, i.e., (1) shooting, along with his three armed companions, at Enojarda during the first burst of gunfire when the latter was fatally hit; (2) shooting five minutes into the incident when he was identified in the act of shooting in the direction of the copra kiln; and, (3) shooting up until the gunfire died down.

Aside from the direct evidence which established that Galvez was shooting in the direction of the copra kiln about five minutes after the first burst of gunfire when Enojarda was fatally hit, the evidence also showed that Enojarda died of hemorrhage due to one gunshot wound;[20] that he was hit by a bullet at his left abdomen;[21] and that the bullet came from an M16 armalite rifle.[22] Thus, it may be reasonably inferred that at the time Galvez was seen shooting in the direction of the copra kiln, Enojarda was on the copra kiln's floor bleeding to his eventual death. This act of shooting when viewed as a continuation of Galvez' initial participation during the first round of

gunfire would, likewise, support a conviction for the attempted murder insofar as Galvez is concerned because it was still possible for Galvez to hit Enojarda in the head, heart or lungs while the latter lay bleeding on the copra kiln's floor.

Of course, it is always possible to hypothesize that Galvez did not fire upon Enojarda because all that the direct evidence show is that he was shooting in the direction of the copra kiln about five minutes after the first burst of gunfire in the company of three armed individuals. Yet, it must not be forgotten that in a conviction based on circumstantial evidence, absolute certainty is not required and that, in making reasonable inferences, we are always guided by logic, reason and the common experience of humankind.

Under American jurisprudence, various tests have been adopted to determine the amount of circumstantial evidence necessary to justify a conviction in a criminal case:

Although there are a variety of tests by which courts assess the sufficiency of circumstantial evidence, there appear to be factors in common among the tests, such as the trier of fact's ability to decide among reasonable interpretations of the evidence and the fact that the evidence need not be absolutely conclusive of guilt or demonstrate the impossibility of innocence. One such test for the sufficiency of circumstantial evidence is whether, viewing the evidence in the light most favorable to the people, and giving it the benefit of every reasonable inference, the facts from which the inference of defendant's guilt are drawn are inconsistent with innocence and exclude, to a moral certainty, every other reasonable hypothesis. Another test, frequently stated in conjunction with the first, is whether the evidence is strong enough to exclude every reasonable hypothesis of innocence. Stated differently, circumstantial evidence can provide the basis to support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion, or so strong and convincing as to exclude every reasonable hypothesis except the defendant's guilt and must exclude any reasonable hypothesis of defendant's innocence.[23] (Emphasis supplied)

In other words, a possible hypothesis of innocence cannot be the basis for acquittal but only some reasonable hypothesis thereof. This is but a logical consequence of the basic precept that in all criminal prosecutions, the prosecution must prove all the elements of the offense beyond reasonable doubt. As a corollary, acquittal will not lie based on a mere possible or imaginary doubt. Rather, any doubt as to the guilt of an accused must always satisfy the reasonable doubt standard.

Thus, I find that the circumstantial evidence in the instant case proves beyond reasonable doubt that Galvez was one of the four armed malefactors who fired upon Enojarda during first burst of gunfire. Further, his intent to kill may be deduced from the kind of weapon he used as well as the manner of shooting he employed. Treachery is, likewise, present due to the suddenness of the attack and the use of the cover of darkness in mounting the attack. Thus, there is sufficient evidence to hold him liable for attempted murder only because, as previously discussed, there is reasonable doubt as to whether he inflicted the fatal gunshot wound on Enojarda.

Before discussing the proper penalty to be imposed, I wish to address certain evidence interpreted by the ponencia as tending to establish the innocence of Galvez, to wit: (1) the negative finding of the paraffin test, (2) the negative finding of the ballistic test, and (3) the seeming lack of motive on the part of Galvez in killing Enojarda.

The ponencia gave weight to the negative results of the paraffin test to establish that Galvez was not involved in the shooting incident. It stated that the principle espoused by this Court in *People v. Pagal*[24] and *People v. Teehanke, Jr.*[25] to the effect that a negative finding on a paraffin test is not conclusive proof that one has not fired a gun is not applicable to the instant case because Galvez was not positively identified as the perpetrator of the crime. The ponencia seems to imply that the aforesaid principle is only applicable to cases where the accused was positively identified as the perpetrator of the crime, and considering that Galvez was not positively identified, the negative result of the paraffin test bolsters his claim that he did not shoot Enojarda.

Preliminarily, it must be pointed out that Galvez was positively identified through circumstantial evidence as one of the perpetrators of the crime. Be that as it may, the Court's rulings in the Pagal and Teehankee, Jr. cases on the inconclusiveness of the paraffin test are not contingent on the positive identification of the accused as the perpetrator of the crime. What this Court has long recognized is that the paraffin test, by itself, is inconclusive to establish whether a person did in fact fire a gun. Thus, it was held in Teehankee, Jr. that -

"[S]cientific experts concur in the view that the paraffin test has 'x x x proved extremely unreliable in use, and that the only thing it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm.' x x x In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, viz: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the direction of a strong wind is against the gunman at the time of firing." [26]

In short, the negative finding of the paraffin test cannot be used to prove either the guilt or innocence of an accused because of the unreliability of the test itself. Thus, it would be erroneous to use the results of this test to establish reasonable doubt as to the guilt of Galvez, as the ponencia did.

Neither can the negative ballistic tests prove that Galvez did not participate in the shooting incident. The conduct of the aforesaid test was unreliable and irregular. Defense witness Lemuel Caser, who conducted the ballistic examination, could not establish whether the four empty shells compared with the test bullets fired from the M16 armalite rifle issued to Galvez by the Philippine National Police (PNP) were recovered from crime scene or the cadaver of the victim. As to who collected the aforesaid empty shells as well as when and where they were collected, he could not say. [27] Consequently, the ballistic test cannot be given any probative weight.

Be that as it may, as correctly pointed out by the Court of Appeals, the negative results of the ballistic tests would not exculpate Galvez considering that he may have used a different firearm in the shooting incident. On this point, the ponencia argues that it is the prosecution which has the burden of proving that Galvez used a different firearm. I beg to disagree. The ponencia might have overlooked the fact that the prosecution, to begin with, never claimed that Galvez used his PNP-issued armalite rifle during the shooting incident. Thus, even assuming *arguendo* that the ballistic test is reliable, the same cannot exculpate Galvez because it does not absolutely foreclose the possibility that he used another M16 armalite rifle during the shooting incident.

Finally, anent the seeming lack of motive on the part of Galvez to kill Enojarda, the record shows that Perez testified that he had no misunderstanding with Galvez and that he does not know any motive why Enojarda was killed. However, it must be pointed out that during the trial, the defense on the cross-examination of Perez tried to establish that the location of the copra kiln in Lantawan, Basilan was a "place of abductors." [28] Further, Perez admitted on cross-examination that he and his companions did not bring a lamp while they worked and ate that fateful night in the copra kiln in order not to attract attention to their group given the unstable peace and order situation in that area. [29] Considering that Galvez was then an active member of the police force and, in fact, he had just arrived from a military operation a day prior to the shooting incident, [30] and that he was seen clad in a fatigue uniform during the shooting incident, it is not far fetched to surmise that the shooting may have been precipitated by the erroneous assumption by Galvez and his three armed companions that Enojarda and company were rebels or terrorists because the latter were spotted in the copra kiln at so late at night and without a lamp. This is not to say, of course, that if the latter were indeed rebels or terrorists, Galvez and his companions would be justified in their attempt to massacre them. Instead, it is merely to recognize the sad reality that protracted armed conflicts bring out the worst in human beings and, more often than not, innocent civilians are the casualties thereof.

The more important point to be made is that motive is not as important in the instant case vis-à-vis other criminal cases decided by this Court based on circumstantial evidence because Galvez was seen firing in the direction of the copra kiln merely minutes after the first burst of gunfire when Enojarda was fatally hit and fell to ground. Galvez' motive in firing at Enojarda and company is not as vital because his intent to kill, as reasonably deduced from the circumstantial evidence, is readily apparent. Intent to kill and not motive is the essential element of the offense on which his conviction rests.

Going now to the proper penalty, attempted murder is punished by a penalty lower by two degrees than that prescribed by law for the consummated felony which, in this case, is prision mayor. Applying the Indeterminate Sentence Law and considering that no aggravating circumstances were alleged and proved,[31] nor can any mitigating circumstances be appreciated in favor of Galvez, the minimum of the indeterminate penalty should be anywhere within the range of prision correccional, while the maximum should be prision mayor medium. Galvez should further be required to pay the heirs of Enojarda P50,000.00 as civil indemnity and P50,000.00 as moral damages in accordance with prevailing jurisprudence.[32] In addition, he should be made to pay P25,000.00 as exemplary damage because the aggravating circumstance of armed band, although not alleged in the information was proved during the trial, and the offense was committed prior to the effectivity of the Revised Rules of Criminal Procedure on December 1, 2000 in line with our ruling in *People v. Catubig*.[33]

In closing, it is worth noting that the conclusions reached here are consistent with the constitutional right of the accused to be presumed innocent as well as the concomitant burden of the prosecution to prove the guilt of the accused beyond reasonable doubt - both of which are rooted on the fundamental principle of due process in the Constitution. However, like the accused, so too is the State and the offended party entitled to due process such that when the guilt of the accused is proved beyond reasonable doubt, his conviction must follow as a matter of course. Indeed, the great goal of our criminal law and procedure is not to send people to jail but to render justice. This justice is, however, always only for the deserving.

ACCORDINGLY, appellant Cesar Galvez is found guilty of Attempted Murder and sentenced to an indeterminate penalty the minimum of which is two (2) years and four (4) months of prision correccional minimum and the maximum of which is ten (10) years of prision mayor medium. He should, likewise, be ordered to pay the heirs of Enojarda P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

CONSUELO YNARES-SANTIAGO

Associate Justice

[1] *Baleros, Jr. v. People*, G.R. No. 138033, February 22, 2006, 483 SCRA 10, 24-25.

[2] *People v. Romua*, 339 Phil. 198, 206 (1997).

[3] Rules of Court, Rule 133, Sec. 4.

[4] *People v. Ludday*, 61 Phil. 216, 221-222 (1935).

[5] *U.S. v. Villos*, 6 Phil. 510, 512 (1906).

[6] *Supra* note 1.

[7] *Id.* at 24-25.

[8] TSN, October 31, 1993, pp. 88-95.

[9] *Id.* at 152-153.

[10] TSN, September 20, 1993, pp. 15-21.

[11] Galvez claimed that he was at his house, which is about two to three kilometers from the copra kiln, at the time of the shooting incident. However, as correctly found by the trial court, Galvez's alibi was inherently weak because his corroborating witnesses, Wilhema Espinosa and SPO2 Danilo Ramillano, were biased for being his neighbor and comrade-in-arms, respectively. Galvez also failed to present his wife and father-in-law as corroborating witnesses although he claimed that the latter were with him at his house while the shooting incident was taking place at the copra kiln. This further casts doubt as to the veracity of his alibi. Necessarily then, the positive identification of Galvez by the two principal prosecution witnesses must prevail over his self-serving alibi.

[12] Prosecution witness Pfc. Samuel Omoso, who was the investigator assigned to the instant case, testified that in the ensuing investigation of the shooting incident, he summoned Galvez three times but the latter refused to give his statement:

Q: x x x [D]id you summon the suspect [Galvez]?

A: Yes, about three times.

Q: What happened?

A: He refused to give his statement. (TSN, October 11, 1993, p. 161)

Galvez' repeated refusal to participate in the ensuing investigation tends to show that his defense of alibi was a mere afterthought and runs counter to this Court's observation that the first impulse of an innocent man, especially a police officer, when accused of wrongdoing is to express his innocence at the first opportune time. [Report on the Financial Audit Conducted at the Municipal Trial Courts of Bani, Alaminos, and Lingayen, in Pangasinan, A.M. No. 01-2-18-MTC, December 5, 2003, 417 SCRA 106, 112; *People v. Gallo*, 419 Phil. 937, 946 (2001); *People v. Castillo*, 389 Phil. 51, 62 (2000); *People v. Antonio*, 391 Phil. 245, 254 (2000).]

[13] As correctly observed by the Court of Appeals:

Witness Wilfredo Rellios saw [Galvez] firing an armalite rifle at their direction from the place where this witness was hiding, a distance of about five (5) meters x x x. Another witness, Danilo Perez, saw and was able to recognize [Galvez] by moonlight immediately after the firing has stopped, when [Galvez] passed by him, clad in fatigue and holding an armalite rifle, about two meters away from the bushes where this witness hid himself x x x.

Aside from corroborating each other's testimony, there can be no mistake as to Rellios' and Perez' identification of [Galvez]. Both of them know [Galvez] because all of them are residents of Matarling, Lantawan, Isabela, Basilan. For sure, prosecution witness Danilo Perez is even [Galvez'] cousin. In sum, these two principal prosecution witnesses "Perez and Rellios " could not have been mistaken in identifying [Galvez]. In the absence, as here, of any ill-motive on their part to falsely impute unto [Galvez] the commission of such a serious offense of MURDER, their identification becomes even more convincing. (Rollo, p. 191)

[14] Parenthetically, the prosecution compounded its grievous error by failing to charge Galvez in conspiracy with the three John Does for Attempted Multiple Murder insofar as Rellios, Perez, and their two companions were concerned.

[15] 455 Phil. 371 (2003).

[16] 354 Phil. 372 (1998).

[17] 132 Phil. 314 (1968).

[18] Id. at 334-336.

[19] Rellios testified thus:

Q: You stated that the accused was holding a gun, how far were you from him when you saw him?

A: More or less five meters. x x x

Q: Aside from the accused, Cesar Galvez, can you tell the Court whether he was alone that time?

A: He had companions, sir.

Q: Were you able to recognize the companions?

A: No.

COURT (To the witness): Did you see what kind of firearms they were bringing?

A: No Your Honor because they were far.

Q: How far?

A: (Witness pointed to the door of the courtroom which has a distance of approximately nine (9) meters)

Q: In other words you were able to identify Cesar Galvez bringing an armalite rifle?

A: Yes, Your Honor. (Emphasis supplied) [TSN, October 1, 1993, p. 94.]

[20] TSN, November 11, 1993, pp. 182-183.

[21] TSN, September 21, 1993, pp. 70-71.

[22] Id. at 72. Unfortunately, the records do not reveal what happened to the slug recovered from Enojarda's body.

[23] AMJUR EVIDENCE § 1467.

[24] 338 Phil. 946 (1997).

[25] 319 Phil. 128 (1995).

[26] Id. at 189-190.

[27] TSN, May 12, 1994, p. 220.

[28] TSN, September 20, 1993, p. 27.

[29] Id. at 31-32, 42.

[30] TSN, November 7, 1994, p. 262.

[31] Although the information alleged that the killing was committed with evident premeditation, the prosecution failed to prove the elements thereof. Further, as correctly found by the trial court, even if the prosecution was able to prove the aggravating circumstance of nocturnity and armed band, the same were not alleged in the information so that they cannot be appreciated in computing the penalty to be imposed on Galvez. Besides, nocturnity is absorbed in treachery.

[32] *People v. Amazan*, 402 Phil. 247, 270 (2001).

[33] 416 Phil. 102, 120-122 (2001); *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88-89.

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