

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO PALEN, ALIAS "LUCY",
DEFENDANT-APPELLANT.**

G.R. No. 69271. February 17, 1987

Ponente: YAP, J.

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YAP, J.:

The conviction of Reynaldo Palen for the crime of Double Murder and Frustrated Murder is before us for review. The case arose from an ambush which took place in North Cotabato, wherein two people were killed and one was wounded.

At about 11:30 o'clock in the morning of June 5, 1982, Sangguniang Panlalawigan member Deogracias Genota, his bodyguard Gaspar Mora and another companion, Agustin Epil, were on their way to the Poblacion of Makilala, North Cotabato, on board a Toyota Tamaraw jeep when they were ambushed by armed men at Barangay Upper Malasila, Makilala, North Cotabato. Deogracias Genota, who was driving the vehicle, and Agustin Epil, who was seated beside him, were fatally hit upon the initial burst of gunfire and died almost instantaneously. Gaspar Mora, who was seated on the right side of Agustin Epil, was not fatally wounded, and he immediately lay flat, face down, on the floor of the vehicle. He was able to get his armalite rifle and to return the fire. He managed later to get out of the vehicle and tried to seek cover behind it, but he was hit by a bullet on the shoulder, as a result of which he dropped his armalite. He then jumped to a lower portion of the ground and was able to get away, crawling and at times walking, to a distance of around 400 meters from the ambush site. He sustained seven gunshot wounds and was brought to St. Joseph Hospital where he was confined and treated for more than two months.[1]

On June 11, 1982, at about 3:00 p.m., acting on the information given by Salvador Revelle, a group of PC soldiers and CHDF men headed by Lt. Winston Ebersole, riding in the jeep of Ining Genota, brother of the deceased, Deogracias Genota, went to Barangay Malasila, Makilala, and arrested the accused Reynaldo Palen together with his father, Fernando Palen, Angel Maglangit, Alfredo Maglangit and Bernabe Ali, all of whom were at the store of said Fernando Palen at that time. They were hogtied, except for the father of Reynaldo Palen, and brought to the old PC Barracks at Kidapawan, North Cotabato. The apprehension was done without the benefit of a warrant of arrest. Subsequently, all were released, except Reynaldo Palen.[2]

The sworn statement of Salvador Revelle was taken by Sgt. Renato Torralba on that day, June 11, 1982, at 2:00 p.m. at the PC Barracks at Kidapawan, in the course of which the declarant was shown the person of Reynaldo Palen and was asked to identify him.[3]

Earlier, on June 10, 1982, Sgt. Torralba investigated and took down the written statement of Zosimo Pre, a farmer residing in Barangay Upper Malasila, who declared that on June 5, 1982, a group of armed men headed by a woman by the name of alias "Lucy" passed by his farm; they were coming down the trail from Barangay Buena Vida and heading in the direction of the Makilala river towards Barangay Tubon, and he believed they were the

persons who ambushed Deo Genota.[4]

A complaint was filed against the accused Reynaldo Palen, alias "Lucy", and several John Does for Double Murder and Frustrated Murder by Lt. Winston Ebersole on June 11, 1982 and sworn to before Municipal Judge Elena B. de Leon.[5]

On June 17, 1982, the Municipal Mayor of Makilala, North Cotabato, examined and took down in writing the statements of Salvador Revelle[6] and Zosimo Pre.[7] On the same day, he issued a warrant of arrest against Reynaldo Palen and Alias Lucy; no bail was recommended.[8] The return of the warrant, dated June 23, 1982, and signed by Sgt. Renato Torralba, stated that only Reynaldo Palen was arrested. A commitment order was issued by Municipal Judge Elena de Leon on June 23, 1982, committing Reynaldo Palen to the custody of the PC Provincial Commander at Kidapawan, North Cotabato.[9]

On November 25, 1982, an Information was filed by the Provincial Fiscal of North Cotabato against Reynaldo Palen, alias "Lucy", and several unidentified persons named therein as Henry Doe, Peter Doe and Charlie Doe, for "Double Murder and Frustrated Murder", committed as follows:

"That on or about June 5, 1982, at Barangay Upper Malasila, Municipality of Makilala, Province of North Cotabato, Philippines and within the jurisdiction of this Honorable Court, accused Reynaldo Palen alias Lucy, Henry Doe, Peter Doe, Charlie Doe and several others whose real identities are not yet known, armed with high powered firearms of different calibers, with intent to kill, conspiring, confederating together and mutually helping one another, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously, attack, assault and fire at the service jeep of Provincial Board Member Deogracias Genota, Agustin Epil and Gaspar Mora, thereby hitting and inflicting on Board Member Deogracias Genota and Agustin Epil mortal gun shot wounds on the vital parts of their bodies which caused their death; and on the same occasion, thereby hitting Gaspar Mora serious gunshot wounds on the vital parts of the body which would have produced the crime of Murder, as a consequence, but nevertheless, did not produce it by reason or causes independent of the will of the perpetrators, that is, by the timely and able medical assistance rendered to said victim which prevented his death."

CONTRARY TO LAW."[10]

Reynaldo Palen, the only accused who was arrested, was arraigned on December 13, 1982 and pleaded not guilty.

After trial, the Regional Trial Court, 12th Judicial Region, Branch XVII, rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, and in view of all the foregoing considerations, the Court find the accused, Reynaldo Palen, alias Lucy, guilty beyond reasonable doubt of the offense of double murder with frustrated murder and with the application of the Indeterminate Sentence Law with respect to frustrated murder only, hereby sentences the accused to reclusion perpetua for each of the offenses of double murder and an indeterminate penalty of eight (8) years and twenty (20) days of prision mayor, as minimum, fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal, as maximum, to be served successively in accordance with the provisions of Art. 70 of the Revised Penal Code, as amended, and to indemnify the heirs of the deceased victim, Deogracias V. Genota, in the amount of P12,000.00, and the heirs of the other deceased victim, Agustin Epil, the amount of P12,000.00, to indemnify Gaspar Mora the amount of P192.00 as actual expenses incurred as a result of the injuries he sustained; and to pay the costs.

SO ORDERED."

Appealing the decision to this Court, Reynaldo Palen seeks the reversal of his conviction, assigning several errors committed by the court a quo, which in brief, may be summed up as follows: (1) that the trial court erred in giving credence to the testimony of the prosecution witness Salvador Revelle; and (2) the Court erred in not giving credence to appellant's alibi.

The testimony of Salvador Revelle in this case is vital. He is the only witness whose testimony links the accused Reynaldo Palen to the crime. The sole survivor of the ambush, Gaspar Mora, who before he escaped to safety fired at the ambushers, could not identify any of them; he said he could not clearly see the ambushers because of the "cover crops" and the rubber trees. According to Mora, the ambushers occupied an elevated place, planted with cover crops; they were on the side of a bank and were concealed behind the cover crops.[11] Gaspar Mora knew Reynaldo Palen personally,[12] hence, he could have easily identified him had he seen him among the ambushers.

Since the whole case for the prosecution turns on the sole, uncorroborated testimony of Revelle, it is important that his testimony should be subjected to a careful and close scrutiny.

The trial court, in its decision, summarized the testimony of Revelle, as follows:

"The first witness of the prosecution is Salvador Revelle, (sic). He testified that he is residing at Upper Malasila, Makilala, North Cotabato, working on the land of Francisco Bago which is situated at Upper Malasila going to Nueva (sic) Vida, Makilala, North Cotabato. On June 5, 1982 at 11:30 in the morning, he was in his house at Upper Malasila, Makilala, North Cotabato cooking rice. His companions were Dodong and Ronald. He could not recall the name of the third companion. Those persons were residents of the National Highway but they ate their lunch there on June 5, 1982. They were weeding on the rubber plantation of Kibod which is near his house.. At that time and date, there was an unusual incident in his place. There were many firings on the upper direction of his house. He jumped to the ground and took cover behind a mango tree which is 15 meters away from his house. His companions also jumped from his house. While hiding, he saw Reynaldo Palen who was carrying a long gun which was estimated to be about 3 and ½ feet in length. He said he knows the accused Reynaldo Palen for more than a year ago. He resides on the upper portion of the place he was staying. He had no misunderstanding with Palen. Witness identified Palen in the courtroom. Palen was standing while firing his long gun to the air when witness saw him from a distance of about 50 meters. Then he turned his back and went away ... He knows that Deogracias Genota died on June 5, 1982. He saw the dead man who was killed during the ambush by Reynaldo Palen. He saw the dead body of Deogracias Genota on the upper direction of his house in the place where the incident happened.

On cross-examination, Salvador Reville (sic) stated that he is presently residing in the old PC Barracks at the Provincial Commander's place, he said he was residing at the Old Barracks because he was taken to stay there pending this case. He was taken in his residence by Ballesteros to be brought to the Provincial Commander who told him that he would help him. He said that he was in the PC Barracks at 11:30 o'clock in the morning of June 11, 1982. Sgt. Torralba took his statement. He did not know Sgt. Torralba that time the latter investigated him but he introduced himself to him. He arrived at 9:00 o'clock in the morning and gave his statement at 11:30 o'clock and it was finished a long time later. They were four during the investigation, namely: himself, Torralba, Subalde and Galeon. He had his statement read to him before he signed it. Reville (sic) said he was in his house cooking on June 5, 1982. He was working in his house from 6:00 o'clock in the morning to 6:00 o'clock in the evening. He heard gun fires at 11:30 o'clock in the morning. He immediately jumped out of his house and hid behind a mango tree. Then he saw Reynaldo Palen for he turned his back. He saw the ambush of Deogracias Genota because it was near. The distance between him and the place of ambush was estimated by Atty. Aranas as 30 meters while the Court and the Fiscal estimated the distance as 50 meters. The mango tree where he hid was 15 meters from his house. When he heard the first gunfire, he was cooking

rice. On the second burst, he jumped and hid behind a mango tree. His house was five meters high. He was alone for his companions ran away. Gunfires still continued. He did not see where Deogracias Genota was because the ambush was below. He saw him later when there were already many soldiers in the place of ambush at 2:00 o'clock in the afternoon. From hiding, Reville (sic) went to the highway to look for his companions. The road between his house and the scene of the ambush was planted to rubber trees and bananas. He said he was scrubbing floor and cooking meals in the PC Barracks to survive and to eat. It was not a reward. He executed two sworn statements in connection with the case; one before the PC and another before the Municipal Mayor of Makilala. His companions during the preliminary investigation by the Mayor were Sgt. Torralba and Lt. Ebersole. He was already living in the PC Barracks that time. Witness did not recall how long did he make his statement before Sgt. Torralba."

It is clear from the evidence adduced in this case that the ambushers were concealed behind cover crops on the side of a bank overlooking a winding road — an ideal site for an ambush. The place of ambush is of higher elevation than the house where Salvador Revelle was at the time the incident happened.[13] Said house is about 10 meters off the road and the mango tree where Revelle took cover is about 15 meters away from the back of the house and is on a lower level. From the house to the ambush site, the configuration of the land is "rolling and surrounded with rubber trees"; the road towards the place where the firing took place is not straight but has two curves.[14] These circumstances must be taken into account in evaluating the testimony of Salvador Revelle. Indeed, they indicate that the place where Revelle sought cover could not have afforded him a clear and direct view of the ambushers, unlike the place where Gaspar Mora was when he was fired at by the ambushers.

Summing up Salvador Revelle's testimony, the trial court says:

"Prosecution witness, Salvador Reville (sic), stated that while he was seeking cover behind a mango tree, he saw Reynaldo Palen standing with a "long and big gun". Palen fired his gun towards the air, turned his back and went away (TSN, 4/28/83, pp. 11-13)."

In giving full credence to Revelle's testimony, the Court says:

"Salvador Reville's (sic) testimony is impeccable and rings true throughout. He said that he was preparing his lunch. When he heard the second burst of gunfire, he jumped from the kitchen alone, not knowing what his four visitors did, and sought cover behind a mango tree. Then he saw the accused Reynaldo Palen standing in the place where there were firings, fired his big, long gun to the air, turned his back and went away. Reville (sic) saw him in the latter part of the firings of the guns."

The finding that "Palen fired his gun towards the air, turned his back and went away" is not supported by the evidence. The decision gives the impression that when Palen fired his gun into the air, he was facing the direction where Revelle was, because after firing the gun, he supposedly "turned his back and went away". However, in his sworn statement (Exh. B) taken during the preliminary examination by the Municipal Mayor on June 17, 1982, Salvador Revelle stated categorically that he saw Palen "standing with a firearm firing towards the road, his back facing me". (Emphasis supplied). He further said that Palen "looked back" so that he was able to recognize him. These statements, given by Revelle shortly after the incident, does not jibe with the finding of the trial court based on his testimony given about a year later on the witness stand, as summarized by the court in its decision. The prior statement of Revelle clearly shows that he could only have a fleeting glimpse of the face of the accused, and considering the distance (about 50 meters) and the natural obstructions that obscured his view, such as the configuration of the terrain, the cover crops, the banana trees, the rubber trees, etc., we are not convinced with moral certainty that the identification of the accused by Revelle at that crucial moment can be relied upon, standing alone and uncorroborated, as the sole basis for the conviction of the accused.

It is inherently improbable that an ambusher would be standing up when firing at the ambushers. Gaspar Mora's

version is more credible when he said that the ambushers were concealed behind the cover crops, that is why, he could not identify any of them. In fact, since he knew Palen and was right at the ambush site, he could have easily identified the latter if he were standing while firing, as claimed by Revelle.

The trial court also made the finding that Revelle "jumped from the kitchen alone, not knowing what his four visitors did, and sought cover behind a mango tree". This point was the subject of conflicting evidence. In fact, Revelle himself contradicted this when he testified that "his companions also jumped from the house".^[15] Tomas Alismo, who was with Revelle at the time of the incident and who testified for the defense, stated that he and his other companions, Valentin Nunez and two other persons, jumped from the kitchen together with Revelle and hid behind the mango tree.^[16] Therefore, it cannot be said that Revelle was alone in jumping from the house and seeking cover behind the mango tree. He was with some companions hiding behind the mango tree, two of whom testified for the defense and said they did not see the accused at the ambush site.

The trial court did not attach any weight to the testimony of the two defense witnesses, Alismo and Nunez, saying that their story was incredible and exaggerated since "it is hardly consistent with truth to say that the two witnesses, their two companions and Salvador Reville ran together to the room, then to the kitchen and jumped to the ground and together sought cover behind a mango tree nearby." We see nothing "incredible" or "exaggerated" in the testimony. These witnesses were at the balcony of the house when they heard the sudden burst of gunfire. What is more natural than for them, upon hearing the gunfire, to run together inside the house towards the kitchen at the back and from there, jump down and run to the mango tree to seek cover?

We find the trial court's statement that the testimony of Revelle "is impeccable and rings true throughout" to be unjustified and rather too extravagant. Apart from what has already been discussed above, there are other indications in the record which throw doubt on the rather lavish assessment of Revelle's testimony by the court *quo*. On record are instances which show Revelle to be hesitating, watching for a cue from the prosecutor or refusing to answer questions, prompting defense counsel to object to the prosecutor making "body language to the witness" or to put on record the witness' refusal to answer questions.^[17] Revelle also showed lack of candor when he denied having seen the accused Palen at the PC Headquarters at Kidapawan, North Cotabato on June 11, 1982 at the time his statement (Exhibit A) was taken,^[18] when as a matter of fact, the statement itself shows that Palen was presented to him for identification.

The accused Reynaldo Palen is charged in the information with having an alias, "Lucy", but there is nothing in the evidence, whether testimonial or documentary, which show that he is known by such an alias. An attempt to tamper with the record by changing "Lucy" to "Reyne" was foiled when defense counsel discovered the change, and upon his motion, the trial court issued an order declaring the change unauthorized.^[19] Indeed, the name "alias Lucy" appears in the record, but it refers to a lady allegedly heading a group of armed men seen on the day of the ambush by a farmer, Zosimo Pre,^[20] who was never presented in court.

Upon careful review of the record, we cannot in conscience sustain the conviction of the accused which is based on the sole, uncorroborated testimony of prosecution witness, Salvador Revelle. We find the evidence insufficient to warrant finding Reynaldo Palen guilty beyond reasonable doubt of the crime charged. Having reached this conclusion, it is unnecessary to pass upon the defense of alibi put up by the accused.

WHEREFORE, the appealed decision is hereby reversed and the accused acquitted of the offenses charged. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

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- [1] TSN, June 2, 1983, pp. 4-7, 19-21.
- [2] TSN, July 14, 1983, pp. 10-20; TSN, November 10, 1983, pp. 2-7; Exhibit 7.
- [3] Exhibit A.
- [4] Records, Crim. Case No. 1741, p. 6.
- [5] Ibid., page 2.
- [6] Exhibit B.
- [7] Records, page 8.
- [8] Ibid., page 9.
- [9] Ibid., page 10.
- [10] Ibid., p. 24.
- [11] TSN, June 2, 1983, pp. 19, 21.
- [12] Ibid., p. 15.
- [13] TSN, August 9, 1983, p. 19
- [14] Ibid., pp. 19-20.
- [15] TSN, April 28, 1983, p. 8.
- [16] Ibid., pp. 26, 30, 31, 33, 34.
- [17] TSN, April 28, 1983, pp. 26, 30, 31, 33, 34.
- [18] Ibid., pp. 47-48.
- [19] Records, p. 139.
- [20] Ibid., p. 6.

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