

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL SANTOS Y NARCISO, MARIO MORALES Y BACANI, PETER DOE AND RICHARD DOE, ACCUSED, RAUL SANTOS Y NARCISO, ACCUSED-APPELLANT.

G.R. Nos. 100225-26. May 11, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Raul N. Santos appeals from a judgment of the trial court convicting him of murder and frustrated murder.

On 26 October 1989, appellant Santos was charged with the crimes of murder with the use of unlicensed firearms and frustrated murder, under the following informations:

"In Crim. Case No. 8517-MN:[1]

That on or about the 26th day of May, 1989 in Navotas, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping with one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot GLICERIO CUPCUPIN y REYES with the use of unlicensed firearms of unknown caliber, thereby inflicting upon the latter serious physical injuries which caused his death at the Tondo Medical Center, Manila.

Contrary to Law."

"In Crim. Case No. 8518-MN:[2]

That on or about the 26th of May, 1989 in Navotas, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation did, then and there, willfully, unlawfully and feloniously shoot ALBERTO BAUTISTA Y CAYETANO, with the use of firearms of unknown caliber, thereby inflicting upon the latter serious physical injuries, thus performing all the acts of execution which would have produced the crime of MURDER as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the herein accused, that is due to the timely, able and efficient medical attendance rendered to the victim at the Tondo Medical Center, Manila.

Contrary to Law."

Three (3) other persons were charged in the same informations. Upon request of the City Prosecutor who had conducted a re-investigation of the cases, the trial court ordered the amendment of the informations on 4 April 1990 so as to insert the name of one Mario Morales, in lieu of John Doe, as a co-accused. Morales for whom a warrant of arrest was issued, is, however, still at large. The identities of the two (2) other accused remain unknown.

At arraignment, Raul Santos entered a plea of not guilty. A joint trial of the two (2) criminal cases ensued, culminating in a judgment of conviction. The dispositive portion of this judgment reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Raul Santos guilty beyond reasonable doubt of the offenses charged against him in these cases. He is accordingly sentenced to two (2) prison terms as follows:

- 1) In Crim. Case No. 8517-MN for Murder, to life imprisonment, the death penalty which should have been imposed in this case having been abolished under the present Constitution;
- 2) In Crim. Case No. 8518-MN for Frustrated Murder, to a prison term ranging from SIX (6) YEARS of prison correccional, as minimum to TWELVE (12) YEARS of prison mayor as maximum.

Accused Santos is also ordered to proportionately pay the heirs of Glicerio Cupcupin the sum of P30,000.00 for the loss of the latter's life and to pay said heirs, proportionately also, P100,000.00 by way of indemnification for the expenses incurred in connection with Cupcupin's death.

Costs against accused in both cases.

SO ORDERED."[3]

The relevant facts as found by the trial court are the following:

"Glicerio Cupcupin and Alberto Bautista were riding on a jeep driven by the former on May 26, 1989. At around 11:45 o'clock in the morning of said date, the jeep was at a stop at the corner of Estrella and Yangco Streets in Navotas, Metro Manila and was about to make a right turn when two (2) persons armed with short guns approached the jeep and fired at Cupcupin and Bautista. Cupcupin was hit several times in different parts of his body and he died as a result of the multiple gunshot wounds he sustained (Exh. V). Bautista sustained gunshot wounds, one at the left thigh, one in the lower abdomen, one at the back of the right foot and another at the back of the body. Bautista was able to run away even as he was being fired upon. He took cover in a store. The one firing the gun at him was a man he later identified to be accused Raul Santos. The other one which he saw similarly firing his gun was aiming at Cupcupin. He identified the man to be one Mario Morales. He added that he saw Cupcupin hit by gunshots at the left side of the body near the waist which made Cupcupin fall-off the steering wheel. After running away, Bautista could not remember anymore what else happened. He could not say if there were other persons who shot at him and Cupcupin. After hearing a shout that the ambushers were no longer around, he learned that a woman bystander was hit and was boarded on a jeep to be brought to the hospital. He was boarded on said jeep too but later transferred to a tricycle somewhere at Bayanbayanan. Bautista was brought to the Martinez General Hospital and to the Mary Johnston Hostipal where he was treated. Bautista was operated on (Exhs. B, B-1, C, D and E). Upon the apprehension of accused Santos, Bautista went to the police headquarters where he picked out from a line-up accused Raul Santos. In another line-up, he also picked out accused Morales. Bautista also gave a sworn statement narrating the shooting incident (Exh. F).

Police Aide Victorino Bohol was on duty and directing traffic at the corner of Plaza Rizal and Estrella Streets when he heard gunshots. When he looked around he saw two (2) persons who were holding Cal. 45 pistols firing at persons on board a stainless steel owner jeep. Bohol was not able to approach the men firing their guns because he was not provided with a gun. What he did was to run to headquarters to call for policemen and when he returned to the scene of the shooting he learned that one of the passengers of the jeep was killed. He learned also that the slain man was Glicerio Cupcupin and that his companion was Alberto Bautista alias "Tiwa". Bohol also added that there were two (2) other persons who were also firing at the passengers of the jeep although he did not recognize these two (2) other persons. After the arrest of accused Santos, Bohol was called to the police station and through a one-way mirror he was able to identify accused Santos as one of the persons who shot Cupcupin and Bautista. Bohol also gave a sworn statement to the police (Exh. A).

On cross-examination, Bohol admitted that at the time of the shooting he was at the Jim Bread Store talking to someone. When he heard gunshots he stood up at once and saw four (4) men firing their guns at the same time at the jeep. He added that the accused was arrested some months later in connection with another shooting incident wherein Santos was suspected of involvement. He confirmed that Bautista was being shot at while running away from the place.

Cpl. Sabino Patood of the Navotas Police declared that he was investigating a shooting incident which resulted in the death of one Abdul Rosas wherein the suspect was accused Santos when he was tipped by police intelligence operatives that Santos was involved in the ambush of Cupcupin. This made him conduct further investigation by calling for Bautista and Bohol. Patood also interviewed Santos who admitted his participation in the ambush to him. He did not take any written statement from accused Santos because there was no counsel available at that time and because Santos was not willing to give any written statement.

Dr. Maximo Reyes of the NBI Medico Legal Division performed an autopsy on the cadaver of victim Cupcupin and found out that the latter sustained nineteen (19) gunshot wounds in different parts of his body. The cause of death was severe hemorrhage secondary to multiple gunshot wounds. Dr. Reyes added that the assailants were probably at the left side of the victim as they were shooting at the latter with the victim possibly seated at the time he was shot and hit.

The victim's wife Lucia Cupcupin declared that P100,000.00 was spent in connection with the death of her husband who was earning P5,000.00 a month as a businessman dealing in junk materials and marble.[4]

The trial court found that the accused Raul Santos had been identified positively by the surviving victim of the shooting incident -- Alberto Bautista, and by the Traffic Aide who had witnessed the execution of the crime -- Victorino Bohol. The defense of alibi offered by the accused and supported by the testimonies of a friend and a sister, was rejected as weak and unavailing. As noted, a judgment of conviction followed.

In his appeal, Raul Santos assigns the following as errors committed by the trial court:

"i the lower court erred in holding that accused's identification by prosecution's witnesses was 'positive' and, therefore it erred when it rejected accused's defense of alibi.

"ii the lower court erred in considering one of the two cases (not the instant ones) filed against the accused in holding also for his guilt.

"iii the lower court erred in convicting the accused." [5]

In respect of the first assigned error, appellant Santos contends that the testimonies of the principal prosecution witnesses do not conform with the "knowledge and common experience of mankind." Appellant argues that the two (2) prosecution witnesses, the victim Bautista and Police Aide Bohol, testified that they saw the accused for the first time in their lives when the crime was committed and yet identified him as one of the gunmen five (5) months later in the Police Headquarters in Navotas. The ambush and the slaying of Glicerio Cupcupin happened on 26 May 1989; appellant Santos was identified at the police station on 25 October 1989. Appellant argues that this lapse of time was unreasonable, which, when coupled with the brief, limited and obstructed view which the prosecution witnesses had of the gunmen at the time of the shooting, casts serious doubt on the accuracy and reliability of the identification by the witnesses.

Appellant's argument does not persuade.

Police Aide Bohol was only about twelve (12) arm-lengths away from the ambush vehicle. The ambush slaying occurred under conditions of high visibility: the victim Cupcupin was shot to death at 11:45 o'clock in the morning, in good weather, when the sun was almost at its zenith. On cross-examination, Bohol stated that there were no passing vehicles that blocked his view of the slaying of the victim as the vehicles stopped some distance

away from the jeep when the shooting began. In addition, Bohol testified that he saw one of the gunmen take a wrist watch and a gun from Cupcupin's lifeless body. Clearly, Bohol had the opportunity to observe the extraordinary and startling events which unfolded on the corner of two (2) busy streets almost at high noon, events which may be expected to leave a strong impression upon the minds of an eye-witness who, like Police Aide Bohol, had a duty to maintain law and order. Alberto Bautista who had been riding on a jeep and who escaped death (but not gunshot wounds) by reason of his quick reflexes, had every reason to remember the faces of those whom he saw firing at the jeep and at himself. This has been recognized a number of times in our case law. In *People v. Jacolo, et al.*,^[6] the Court said:

"[W]hile evidence as to the identity of the accused as the person who committed the crime should be carefully analyzed, x x x 'where the conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should normally be accepted. And this is more so where the witness is the victim or his near-relative, as in this case, because these (people) usually strive to remember the faces of the assailants.'" ^[7] (Underscoring supplied).

Appellant Santos also contended that Police Aide Bohol could not have had a clear view of the ambushade and the shooting of Cupcupin since he (Bohol) was situated on the left side of the gunmen. As observed by the Solicitor General, however, the trial court had pointed out that "if he [Bohol] was to the front right of the jeep" then he must [have been] a little by the left side of the persons firing at the jeep x x x."^[8] "Bohol's view, therefore," the Solicitor General continued, "was not limited to the left side of the assailants, especially since he was able to see them [the gunmen] move around the site of the ambush after the [had] stopped firing; specifically when one of them stripped victim Cupcupin of his gun and jewelry and they all walked away from that place."^[9] The trial court obviously concluded that Bohol had ample opportunity actually to observe the events on which he testified, and we find no basis for overturning this conclusion of the trial court.

In respect of the identification by Bautista, accused also suggests that Bautista had no real opportunity to see and impress upon his memory the faces of the assailants. In his testimony, Bautista stated that two (2) men armed with handguns suddenly approached the jeep in which he and Cupcupin were riding. He agreed that his attention had been "focused" (defense counsel's own language) on vehicle's passing along Estrella Street as Cupcupin maneuvered the jeep to turn right at the corner and to head towards Navotas. When the assailants started shooting, Bautista jumped from the jeep, was hit on the left thigh and other parts of the body, but managed to run for cover from repeated shots or bursts of gunfire. Bautista testified further that he was shot by appellant Raul Santos while Morales pumped bullets into Cupcupin; that the gunmen fired at Cupcupin and Bautista from close range, Morales being a mere half an arm-length to the left of Cupcupin while appellant Santos was about two (2) arm-lengths away from the ambushed jeep; and that Bautista saw his companion, Cupcupin, slump on the steering wheel as the bullets crashed into him. Once more, the trial court was led by the above circumstances to conclude that Bautista had adequate opportunity to see appellant Santos and to retain his face in his memory. We find no basis for rejecting this factual conclusion of the trial court.

Appellant Santos makes two (2) additional arguments. Firstly, he complains that he was not afforded his right to counsel in the course of the police line-up, at the police station where he was identified by the prosecution witnesses. This argument, of course, assumes that during the police line-up, accused was under custodial investigation, a stage which, per the appellant, began the instant the police suspected him of involvement in the ambushade. Since appellant Santos then had no lawyer present nor was one provided, his counsel argues, Santos's identification was "tainted" and inadmissible. The argument is creative, but has no legal basis. In *Gamboa v. Cruz*,^[10] the Court said that there is "no real need to afford a suspect the service of counsel at police line-up,"^[11] a declaration reiterated in *People v. Loveria*.^[12] The customary practice is, of course, that it is the witness who is investigated or interrogated in the course of a police line-up and who gives a statement to the police, rather than

the accused who is not questioned at all at that stage. The Court is aware of the caveat in Gamboa.[13] But there is nothing in the record of this case which shows that in the course of the line-up, the police investigators sought to extract any admission or confession from appellant Santos. The investigators did not in fact interrogate appellant Santos during the line-up and he remained silent after he had been identified by Bautista and Bohol.

Appellant Santos's second contention is that there had been "improper suggestiveness" in the course of the police line-up amounting to an uncounselled confession. In effect, defense counsel claims that Bautista and Bohol were induced by the police investigators to point to appellant Santos as one of the gunmen. The record does not show that the police investigators had coached Bautista. Appellant Santos's counsel directed the attention of this Court to a portion of Bohol's testimony during cross-examination, to wit:

"Atty. Valmonte:

Alright, that somebody who told you to go to the office of Capt. Puzon you were informed that on the other side of the office of Capt. Puzon there was already the person whom they would like to identify?

Victorino Bohol:

Yes, sir.

Atty. Valmonte:

And was there somebody who asked you who among those in the investigation room the person whom you saw?

Victorino Bohol:

No, sir. Somebody approached me and said, iyan po. But before answering, I made a very careful look at the person."[14]

We are not convinced, however, that the phrase "iyan po" constituted an "improper suggestion," certainly not in the context of a situation where, as here, appellant Santos was identified successively by Bautista and Bohol from a group of persons. We consider that the phrase "iyan po" is too cryptic. What this Court warned against in *People v. Acosta*,[15] i.e., against an identification process that was "pointedly suggestive, or generated confidence when there was none, activated visual imagination, and all told, subverted [a person's] reliability as [an] eye-witness[...]," has not been successfully shown in the case at bar.

Appellant Santos next seeks to assail the credibility of Bautista and Bohol by citing supposed inconsistencies between statements made in their affidavits before trial and their testimony given in the course of the trial. Appellant's counsel complains[16] that while witness Bohol could recall the gunmen's general appearance, he could not remember the kind of shoes that appellant Santos was wearing nor the color of their guns; that he had stated in his sworn statement that he had picked out appellant Santos from a line-up consisting of seven (7) persons, while he testified in open court that he had identified appellant when the latter was together with only one (1) detainee in the investigation room of the police station; that Bohol had initially stated that Bautista was driving the jeep but on direct examination, he stated that it was Cupcupin instead who had been driving the jeep; that in his sworn statement, Bohol had claimed that he was directing traffic when he first heard gunshots, but on cross-examination, stated that at that point he was engaged in taking his merienda.

Close examination of the record will, however, show that the supposed inconsistencies adduced by appellant Santos are either non-existent or clearly minor and inconsequential in character. The fact that witness Bohol might not have remembered the kind of shoes appellant Santos was wearing on that violent occasion nor the color of the gunmen's weapons, is clearly inconsequential. Close scrutiny of the sworn statement of Bohol (Exhibit "A") does

not reveal any statement that he (Bohol) had picked out appellant Santos from a seven (7)-person line-up nor does the transcript show that witness Bohol had identified appellant Santos when appellant was alone with only one detainee in the investigation room at the police station.[17] Appellant's counsel did not document his averments. Moreover, as pointed out by the Solicitor General,[18] whether a police line-up consisted of two (2) or seven (7) persons is actually immaterial since a police line-up is not essential to a proper and positive identification.[19] Whether it was Bautista or Cupcupin who had been driving the jeep and whether Bohol was directing traffic or enjoying his merienda when the first gun shots rang out, cannot be regarded as critical in nature; such questions do not detract from the basic facts that Bohol was in a position to see and did see the ambush and the shooting of Cupcupin and Bautista and saw both assailants and the victims. The entrenched principle is that minor inconsistencies in the testimony of a witness tend to strengthen rather than to weaken the credibility of the witness as they erase any suspicion of rehearsed testimony.[20]

In his second assignment of error, appellant Santos in effect questions the trial court for admitting a sworn statement by one Ronaldo Guerrero (Exhibit "EE"), a witness in another criminal case (Criminal Case No. 8117) where appellant Santos was also charged with the murder of one Daniel Nuguera which had taken place in the very same site where Bautista and Cupcupin were ambushed, i.e., at the corner of Yangco Street and Estrella Street, Malabon, Metro Manila. When the prosecution first presented the sworn statement of Guerrero in order to show criminal propensity on the part of appellant Santos, the defense objected to admission of such sworn statement; the trial court sustained the objection and rejected the evidence for the purpose it was initially offered. However, the trial court admitted the same as falling within one or more of the exceptions set out in Section 34, Rule 130 of the Rules of Court, which reads:

"Sec. 34. Similar Acts as Evidence. -- Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage and the like."
(Underscoring supplied).

Appellant Santos now complains that the affidavit of Ronaldo Guerrero was hearsay evidence, considering that the prosecution did not present Ronaldo Guerrero as a witness during the trial. We consider that the trial court did not commit reversible error in admitting the Guerrero affidavit for the limited purpose for proving knowledge or plan or scheme, and more specifically, that appellant knew that the particular corner of two (2) particular streets in Malabon was a good place to ambush a vehicle and its passengers. Appellant also had waived the hearsay character of this evidence by failure seasonably to object to the admission of the affidavit; it is too late in that day to raise the hearsay rule in the appellant's memorandum after prosecution and defense had presented their respective cases and had made their respective offers of evidence.[21] Finally, and in any case, as pointed out by the Solicitor General, the exclusion of the Guerrero affidavit would not result in any change in the result reached by the trial court. For that result is essentially and adequately based upon the positive identification of appellant Santos as one of the gunmen by Bautista and Bohol.

That it took the police authorities five (5) months to locate and apprehend appellant Santos who, it turned out, resided close by the very locale of the ambush-slaying, did not in any way weaken the evidence of the prosecution or detract from the conclusions reached by the trial court. The length of that period of time shows only that police procedures are not always as efficient as they could be and that witnesses are frequently reluctant to volunteer information to the police authorities in criminal cases, a point noted so frequently as to have become a matter of judicial notice.[22]

Finally, we come to the defense of alibi which appellant Santos raised before the trial court and which was recounted by the trial court in the following manner:

"Accused Raul Santos, after denying the accusations against him, insisted that he was on the date and time that Cupcupin and Bautista were ambushed somewhere in Ibaan, Batangas to which place he went on May 20, 1989, because his sister Teresita received a subpoena in a case involving one Apolonio Nuguera and which subpoena was given to him by another sister named Isabel. Accused Santos claimed that he was surprised and confused by said subpoena (Exh. 2) and had to go to Batangas while his sisters are verifying the complaint against him. Accused Santos also maintained that from the time he left the place on June 12, 1989, he remained continuously in said place.

x x x x x x x x

The testimony of accused Santos regarding his stay in Batangas was corroborated by Melinda David in whose house he stayed and by his sister Isabel Santos.”[23]

In respect of the weight properly given to a defense of alibi, the Court has, times beyond numbering, ruled that such defense is weak most especially when established exclusively or mainly by the accused himself and his relatives and not by independent and credible persons,[24] and that such a defense will not prevail over the positive identification made by credible witnesses,[25] especially where the witness is the victim-complainant himself.

WHEREFORE, for all the foregoing, we hold that the judgment of conviction rendered by the trial court must be, and it is hereby, **AFFIRMED** with the following modifications: the civil indemnity payable to the heirs of Glicerio Cupcupin shall be **INCREASED** to P50,000.00; the penalty of life imprisonment in Criminal Case No. 8517-MN shall be **CHANGED** to reclusion perpetua, which is the proper imposable penalty under the Revised Penal Code. Costs against appellant.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

[1] Records, p. 73.

[2] Id. at 71.

[3] Id., p. 191; underscoring in the original.

[4] Id. at 192-94.

[5] Rollo, pp. 63-64; Appellant's Brief, pp. 6-7.

[6] G.R. No. 94470, 16 December 1992.

[7] *People v. Jacolo, et al.*, G.R. No. 94470, December 16, 1992; *People v. Alvarez*, 169 SCRA 731 (1989); *People v. Bernat*, 120 SCRA 918 (1983).

[8] TSN, 7 February 1990, p. 27

[9] Appellee's Brief, pp. 5-6; TSN, 10 January 1990, pp. 13-15.

[10] 162 SCRA 643 (1988).

[11] 162 SCRA at 651.

[12] 187 SCRA 47 (1990).

[13] " ... the moment there is a move or even an urge of said investigators to elicit admissions or confessions or even plain information which may appear innocent or innocuous at the time, from said suspect, he should there and then be assisted by counsel, unless he waives the right, but the waiver shall be made in writing and in the presence of counsel." (Gamboa, 162 SCRA at 651).

[14] TSN, 14 February 1990, at 27.

[15] See *People v. Acosta*, 187 SCRA 39, 45 (1990).

[16] Appellant's Brief, pp. 14-16; Rollo, pp. 71-73.

[17] See TSN, 10 January 1990, pp. 26-28.

[18] Appellee's Brief, p. 10.

[19] *People v. Salviero*, 198 SCRA 357 (1991); *People v. Espiritu*, 191 SCRA 503 (1990).

[20] *People v. Kalubiran*, 196 SCRA 447 (1991); *People v. Lagota*, 194 SCRA 92 (1991); *People v. Martinada*, 194 SCRA 36 (1991); *People v. Calixto*, 193 SCRA 303 (1991).

[21] TSN, 25 July 1990, pp. 24-25; TSN, 1 August 1990, pp. 13-18; Records, pp. 575-580. See *People v. Nebreja*, 203 SCRA 45 (1991); *People v. Garcia*, 89 SCRA 442 (1979).

[22] *People v. Caringal*, 176 SCRA 404 (1991); *People v. Sagun, Jr.*, 185 SCRA 405 (1990); *People v. Coronado*, 145 SCRA 250 (1986); *People v. Pacabes*, 137 SCRA 158 (1985).

[23] Records, p. 194; Joint Decision, p. 4.

[24] E.g., *People v. Mecias*, 199 SCRA 20 (1991); *People v. Solis*, 195 SCRA 405 (1991); *People v. Flores*, 195 SCRA 295 (1991).

[25] E.g., *Siton v. CA*, 204 SCRA 473 (1991); *People v. Arbolante*, 203 SCRA 85 (1991); *People v. Bugho*, 202 SCRA 164 (1991); *People v. Sabellano*, 198 SCRA 196 (1991).

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