

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MONDA, JR. Y SAMPER AND NESTOR BALBALOSA Y RIVERA, ACCUSED-APPELLANT.

G.R. Nos. 105000-01. November 22, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

For the killing of eight government personnel and a civilian in an ambush on April 9, 1987 at Sitio Tastas, Bgy. Labawon, Buhi, Camarines Sur, accused-appellants Jose Monda, Jr. and Nestor Balbalosa, supposedly in conspiracy with one Avelino Carusa and sixty others who were identified with fictitious names under the surname of "Doe," allegedly armed with high-powered firearms and acting with treachery and evident premeditation, were charged with multiple murder in an information dated August 4, 1987 and filed in the Regional Trial Court, Branch 36, at Iriga City.[1]

The victims in said case were P/Sgt. Victor W. Haber, Pfc. Francisco D. Llano, Pfc. Mariano A. Noblefranca, Pfc. Jose A. Temperante, Pfc. Stephen Facistol, Pat. Oscar D. Benedicto, Firemen Federico P. Mendoza and Marvin Marchan, all members of the Integrated National Police (INP) at Buhi, Camarines Sur, and Bonifacio Fabillar, a civilian.

Seriously wounded in the same incident were Patrolmen Gil Eusebio and Pelagio Oatemar, Jr.. As a consequence, accused-appellants were further charged with frustrated murder in another information, under the same circumstances aforementioned but with the exception of treachery and evident premeditation.[2]

Duly assisted by counsel de oficio, appellants pleaded not guilty at the arraignment.[3] A joint trial was thereafter conducted for the two cases of multiple murder and frustrated murder, docketed as Criminal Cases Nos. IR-2306 and IR-2307, respectively.[4] Accused Avelino Carusa, however, was dropped from the information,[5] while all the other accused have not yet been sufficiently identified and are still at large.[6]

Ultimately, the lower court acquitted appellants of the charge of frustrated murder for insufficiency of evidence,[7] but convicted them of multiple murder, sentencing them to suffer the penalty of reclusion perpetua for each of the deaths of the victims and to pay the heirs of each of the latter P30,000.00 as compensatory damages, and for the heirs of Pfc. Stephen Facistol, P27,000.00 as consequential damages and P50,000.00 as moral damages, and to pay the costs.[8]

In a bid to obtain the reversal of the trial court's judgment, appellants interposed the present appeal, alleging that the court a quo erred in (1) giving weight to their identification by the prosecution witnesses despite the inherent improbability thereof; (2) not giving exculpatory weight to their defense of alibi; and (3) not acquitting them on the ground of reasonable doubt.[9]

It is beyond cavil that the victims died of gunshot wounds inflicted on different parts of their bodies as a consequence of the ambush-slashing by approximately sixty heavily armed men at Sitio Tastas, Barangay

Labawon, Buhi, Camarines Sur.[10] Patrolmen Jose M. Merilles, Gil Eusebio and Pelagic Oatemar, Jr. survived the carnage and, as eyewitnesses, related the chronology of events which culminated in the conviction of herein appellants.

Pat. Merilles of the INP, Buhi, Camarines Sur, testified that at about 9:50 A.M. on April 9, 1987, he was assigned as desk officer under Pfc. Mariano Noblefranca, when Avelino Carusa, Bgy. Captain of Macaangay, Buhi, Camarines Sur, reported to the station that a shooting incident had transpired at his barangay. Merilles then referred the matter to the station commander, Pfc. Stephen Facistol, who, without losing time and in order to retrieve the cadavers at Bgy. Macaangay, formed a team composed of P/Sgt. Haber, Pfc. Francisco D. Lleno, Pfc. Mariano Noblefranca, Pfc. Jose Temperante, Pat. Eusebio, Pat. Oatemar, Firemen Marvin Marchan and Federico Mendoza, a civilian photographer named Bonifacio Fabillar, and Merilles himself.[11]

As earlier narrated, at around 11:30 A.M. while the team was on its way to Bgy. Macaangay, they were ambushed by around sixty heavily armed men at Sitio Tastas, Bgy. Labawon, Buhi, Camarines Sur, resulting in the death of some of its members. Patrolmen Eusebio and Oatemar were wounded, while Merilles escaped unhurt. After less than five minutes of the assault, Merilles, who had taken cover in a canal, ran away from the ambush scene. About twenty-five minutes later, he met the first group of reinforcements from the San Vicente Assistance Center composed of around ten soldiers who, upon arriving at the area, realized that they were insufficient in number, whereupon five of them withdrew to seek more assistance.

With this group, Merilles went back to the place of the ambush where they engaged the ambushers in a gunfight. Shortly after the arrival of the second batch of reinforcement, the ambushers withdrew and escaped. A government helicopter then arrived and the area was cordoned off and cleared. Upon the arrival of the second reinforcements, the dead were collected and, with the assistance of civilians, the wounded were brought to the hospital.[12]

C2C Job Oaferina, a member of the Philippine Constabulary (PC), testified that on April 9, 1987, he was assigned at the San Vicente Assistance Center at Buraburan, Buhi, Camarines Sur under the 247th PC Company when at about 9:15 A.M., Bgy. Capt. Avelino Carusa informed them of a tragedy that befell two persons in his barangay. Oaferina immediately informed his detachment commander, Sgt. Mamerto Castroverde, and an eight-man team, including himself, was organized. The team proceeded to Bgy. Macaangay on foot and reached the place an hour thereafter.[13] At around 11:00 A.M., after conducting a partial investigation of the killing incident thereat and while resting at the house of Carusa, they heard successive gunshots. They then went to the place where the shots came from. Upon reaching Buhi, Oaferina saw several persons who were already dead and two others wounded. After his team identified themselves as members of the 247th PC Company, the ambushers fired at them and an exchange of gunfire ensued before the assailants withdrew.

Three days later, while Oaferina, C1C Juan P. Iglopas and Sgt. Castroverde were manning a checkpoint at the San Vicente Assistance Center, they arrested two persons whom they suspected to be two of the ambushers and they brought them to the Buhi Police Station for investigation.[14] These were the herein appellants.

Pat. Gil Eusebio, on his part, attested that on that fateful day of April 9, 1987, at around 9:00 A.M., he was summoned by P/Sgt. Haber to the Buhi Police Station in order to recover two dead persons at Macaangay. On their way to said barangay, a group of heavily armed men opened fire at them and a firefight followed. He was hit on the left shoulder and fell unconscious for approximately five minutes. A reinforcing group then arrived and, with the assistance of civilians, he and Pat. Oatemar were brought to the Regional Hospital of Naga City.[15]

Appellants, on the other hand, rely heavily on their defense of alibi, claiming that on the day in question, Monda was constructing a fence at the dancing hall located at Bgy. Amoguis, Polangui, Albay together with Bgy. Capt.

Rogelio Casococ from 9:00 to 11:30 A.M., then again from 1:00 to 3:00 P.M., for purposes of a dance to be held therein at 9:00 o'clock that evening. Balbalosa was just in the vicinity, sitting in front of their house, unable to help them because he was then very sick.[16] Segunda Casais, appellants' neighbor, unequivocally corroborated this defense, she being an eyewitness herself of the fact that Monda and Balbalosa did not leave that place the whole morning.[17] This was further supported by the testimony of Casococ himself[18] and Balbalosa's mother, Rosita, who stayed in her house the whole day with her son.[19]

The instant appeal hinges on the positive identification of appellants herein as two of the ambushers, which issue boils down to an appraisal and determination of the credibility of witnesses, especially of the three prosecution witnesses who pinpointed appellants as two of the felons who participated in the ambush-slayings.

While it is a judicial dictum that the Court will accord great respect, if not finality, to the trial court's appreciation of the credibility of witnesses, the same holds true only if there had been no misapprehension of facts and only if the court a quo did not overlook certain points of substance which, if considered, could alter the result arrived at.[20] The Court will not hesitate, on justifiable grounds, to take exception to the rule on finality of the trial court's factual findings in order to keep faith with the immutable principle that every criminal conviction must be supported by proof beyond reasonable doubt.[21]

After a meticulous review and scrupulous evaluation of the entire records of this case, the mind and conscience of the Court cannot rest easy on the identification of appellants as among the slayers of the victims of the ambush. A searching scrutiny of the testimonies of the prosecution witnesses will expose the badges of unreliability therein which correspondingly create the element of reasonable doubt that, in turn, dictates a verdict of acquittal.

Merilles could not have accurately ascertained the identity of the assailants since he himself admitted that, after the first barrage of gunshots, some of his companions were instantly killed and he immediately hid himself by taking cover in a nearby canal. Not long thereafter, he ran away from the scene of the ambush until he met the first group of reinforcements. Together with this batch, he went back and a continuous exchange of gunfire transpired until, one by one, the ambushers fled and made it difficult for the reinforcers to overtake them.

Merilles was so preoccupied in scampering for his safety while they were being sprayed with bullets from high-powered firearms that it was virtually impossible for him to be really spending his time scrutinizing and trying to recognize his attackers. He claimed that he was able to identify appellants because, in the exchange of gunfire, these two were facing them.[22] A punctilious review of his testimony reveals, however, that assuming arguendo that two of the ambushers were indeed facing him, they were then firing at him from a distance of thirty meters.[23] As he was busy evading their shots and seeking cover therefrom, he could not have had the opportunity to view and perceive his attackers with exactitude, free from any error or inaccuracy, more so at a distance of thirty meters. Furthermore, the attackers were then on an elevated place overlooking the witness and his companions,[24] which made it all the more difficult for him to have a reasonably reliable view of them.

We likewise have to reject his supposed identification of appellants at the time of the latter's arrest, despite his claim that he could easily identify them because of their distinguishing marks, that is, Monda's one big eyeball and Balbalosa's small arms.[25] We consider these individual bases of recognition grossly insufficient to prove that appellants were indeed the very same persons he allegedly saw at a distance during the incident. The danger of error of identification is highly probable, especially when we consider the admission of the witness that he only saw the appellants twice, the first time allegedly during the ambush and then at the time of their arrest.[26]

On the other hand, C2C Job Oaferina was a member of the first reinforcement who, upon reaching the ambush scene, saw some of his comrades already killed, with two others wounded. Several factors render it doubtful as to

whether Oaferina was able to correctly identify herein appellants, to wit: he only had the opportunity of having a glance at the ambushers when the latter fired at them at a distance of twenty to twenty-five yards before he fled;^[27] the killing zone was surrounded by grass, coconut trees and corn plants;^[28] some of the attackers were either standing, crawling^[29] or squatting;^[30] and these ambushers were positioned at an elevated place,^[31] dressed in fatigue clothes^[32] similar to those worn by the government forces. In fact, it was by reason of these circumstances that the latter committed the error of identifying themselves as members of the 247th PC Company when they met the former whom they thought to be some of their companions.^[33]

He likewise could not have identified appellants at the time of the ambush since the latter were then taking cover under the shadow of trees and hiding behind the coconut trunks, exerting every effort to show as little of their bodies as possible, so as not to expose themselves and their identities to their opponents.^[34] These are protective human reactions normally resorted to and which ordinary experience will confirm.

It bears stressing that when the ambush was just a few minutes old, Pat. Eusebio was hit on the left hand and left shoulder and he fell unconscious.^[35] When he came to, it was not shown whether he had the opportunity to have a second look at his assailants. What was clear, though, was that the ambushers fled when the reinforcements came.^[36] Moreover, the attackers were on a higher part of the terrain, six to seven feet above the government forces, and were thereafter able to position themselves around the hapless victims.^[37] These events took place in rapid succession and, just like Merilles, Eusebio was too absorbed in taking cover and running for his safety to be able to carefully observe and scrutinize their adversaries, much less the individual members thereof.

Moreover, it is a matter of judicial cognizance that in ambuscades, not even a man with the quickest reflexes will tarry and bother to know who and where the sources of the danger were, except to respond to the instinct of self-preservation in the fastest manner possible, to secure one's life by seeking cover or running for safety.^[38]

Without the positive identification of appellants as among the perpetrators of the crimes charged, the constitutional presumption of innocence in their favor stands un rebutted.^[39] Moreover, with the failure and absence of their positive identification by the prosecution, appellants' motive, if any, to commit the crimes assumes significant importance. Motive becomes essential when there is doubt as to the identity of the assailants.^[40] In the case now before us, the People miserably failed to adduce evidence as to appellants' possible evil motives against the victims which could provide the reason for their slaying of the latter. In fact, not even the prosecution's claim that appellants were members of the New People's Army^[41] was proven during the trial.

Appellants' defense is alibi. Although this is considered the weakest of defenses, the Court cannot totally discard it in the face of the weakness of the evidence of the prosecution in this case. This is especially true where such defense of herein appellants does not appear to have been concocted but finds ample support in the testimony of disinterested witnesses. The defense of alibi does not relieve the prosecution of the required quantum of proof. The rule that alibi must be satisfactorily proven has never been intended to shift the burden of proof in criminal cases,^[42] otherwise we would have the absurd situation wherein the accused would be in a more difficult situation where the prosecution's evidence is vague and weak than where it is strong.^[43]

Of course, for alibi to prosper, appellants must prove physical impossibility, that is, that they could not have been physically present at the place of the crime or its vicinity at the time of its commission.^[44] In the instant case, the defense has established to the satisfaction of the Court that it was physically impossible or, at the very least, highly improbable for appellants to be at the scene of the incident at the time of the ambush. They likewise sufficiently demonstrated that the distance between Bgy. Amogis in Polangui, Albay, where appellants were, and Sitio Tastas in Bgy. Labawon, Buhi, Camarines Sur, where the ambush transpired, is about twenty-five kilometers, and the travel time between these places is three hours by foot,^[45] with no vehicle plying that

route,[46] making it impossible for appellants to be there at 11:30 A.M., the time of the surprise attack. The testimonies of Rogelio Casococ,* Segunda Casais, and Rosaita Balbalosa categorically established that appellant Monda was constructing a fence at the dancing hall located at Polangui, Albay from 9:00 to 11:30 A.M., then again from 1:00 to 3:00 P.M. on April 9, 1987, while appellant Balbalosa who was sick that day merely rested within the vicinity.

Besides, considering the nature of ambushes, to be able to participate therein appellants had necessarily to be at the scene of the incident several minutes before the attack so as to insure its success. There should be sufficient time for the attackers, even assuming that there had already been due prearrangement but on which not even a scintilla of evidence has been adduced, to position themselves and lie in wait for their prey. Given the factual backdrop mentioned earlier, it would be impossible for appellants to have prepared themselves in time for staging the ambush imputed to them.[47]

The fact that appellant Balbalosa stayed at home the whole day at Polangui, Albay was sufficiently established by his mother. It is of no moment that his mother was his main witness to his defense of alibi as, in fact, it would have been strange if she did not attend to him while he was ill. Relationship per se does not give rise to a presumption of ulterior motive and neither does it ipso facto impair the credibility or tarnish the testimony of a witness. Nor should we lose sight of the fact that where the accused puts up the defense of alibi, the court should not have a mental prejudice against him, for taken in light of all the evidence of record it may be sufficient to acquit him since every circumstance must be considered in favor of the presumption of innocence.[48] It is judicially recognized that there are situations where an accused can have no possible defense but alibi, as that could really be the truth as to his whereabouts at the time in question.[49]

Finally, it is interesting to note that appellants were arrested without a warrant[50] despite the fact that three days had elapsed, from the date of the ambush to their arrest.[51] Their apprehension may accordingly not be considered as justified by Section 5(b) of Rule 113 which allows warrantless arrests only "when an offense has in fact just been committed" and connotes an immediacy in point of time, thereby excluding situations under the old rule which only provided that an offense "has in fact been committed" no matter how long ago. If it were true that the prosecution witnesses were able to identify appellants during the ambush due to their distinguishing marks as they claimed,[52] it would have been easy for them to secure a John Doe warrant using appellants' alleged "distinguishing marks" as their descriptio personae which would enable the arresting officer to serve the same infallibly.[53]

It is true that appellants' warrantless arrest is not in issue in this case. Nevertheless, we deem it necessary to dwell on that fact to further show the unreliability and incredibility of the testimonies of the prosecution witnesses. Appellants' warrantless arrest only magnify the fact that the prosecution witnesses were not at all that certain as to the identities of the real assailants, and consequently lend credence to the postulate that appellants were summarily taken into custody on mere suspicion and without regard to their constitutionally guaranteed right against illegal arrest.

We do not here, for lack of clear showing, wish to categorically impute bad faith on the part of the authorities involved for the evidential gaucherie in this case. It may well be possible that the prosecution witnesses were misled by physical resemblances or were emotionally inclined to draw improvident conclusions in their resentment over the loss of their comrades. We nonetheless take this opportunity to condemn the practice of law enforcers who, failing in their mission to identify and apprehend the real malefactors, are not beyond picking on innocent parties as helpless scapegoats for their inefficiency and incompetence. The annals of criminal prosecutions in this and foreign jurisdictions are replete with miscarriages of justice due to erroneous identification of suspected offenders. It is the nadir of injustice where such miscarriage was not a product of

honest error but of downright negligence or deliberate intent.

WHEREFORE, the appealed judgment is hereby REVERSED and SET ASIDE and another one is rendered ACQUITTING accused-appellants Jose Monda, Jr. and Nestor Balbalosa of the crime of multiple murder charged in Criminal Case No. IR-2306 of the Regional Trial Court of Iriga City, with costs de oficio. Their immediate release from confinement is hereby ordered, absent any lawful cause for their further detention.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Puno, JJ., concur.

- [1] Original Record, 6-7.
- [2] Ibid., 1-2.
- [3] Ibid., 72.
- [4] TSN, May 11, 1988, 26.
- [5] Original Record, 93.
- [6] Ibid., 268.
- [7] Ibid. , 278.
- [8] Ibid., 274; penned by Judge Ulysses V. Salvador.
- [9] Rollo, 44; Brief for the Appellants, 1.
- [10] Original Record, 180-189.
- [11] TSN, May 11, 1988, 3-6.
- [12] Ibid., id., 6-10, 13-16, 18-20.
- [13] Ibid., October 17, 1988, 2, 10-13.
- [14] Ibid., August 18, 1988, 2-10.
- [15] Ibid., July 11, 1989, 2-7.
- [16] Ibid., September 6, 1990, 16-18.
- [17] Ibid., February 27, 1990, 3-6.
- [18] Ibid., August 31, 1990, 2-6.
- [19] Ibid., September 6, 1990, 3-4.
- [20] People vs. Martinez, et al., 205 SCRA 666 (1992).
- [21] People vs. Viray, et al., 202 SCRA 320 (1991).
- [22] TSN, May 11, 1988, 10.
- [23] Ibid., id., 11.
- [24] Ibid., id., 12.

[25] Ibid., id., 25.

[26] Ibid., id., 24.

[27] Ibid., October 17, 1988, 18.

[28] Ibid., January 20, 1989, 8.

[29] Ibid., October 17, 1988, 19.

[30] Ibid., January 20, 1989, 11.

[31] Ibid., October 17, 1988, 20.

[32] Ibid., id., 18.

[33] Ibid., January 20, 1989, 8-9.

[34] Ibid., id., 11.

[35] Ibid., July 11, 1989, 4.

[36] Ibid., id., 6.

[37] Ibid., id., 13

[38] People vs. Somontao, 128 SCRA 415 (1984).

[39] People vs. de la Cruz, et al., 200 SCRA 379 (1991).

[40] People vs. Gadiana, 195 SCRA 211 (1991).

[41] TSN, August 18, 1988, 7; September 6, 1990, 19.

[42] People vs. Salguero, 198 SCRA 357 (1991).

[43] People vs. Fraga, et al., 109 Phil. 241 (1960); People vs. Dilao, et al., 100 SCRA 358 (1980).

[44] People vs. Cinco, et al., 194 SCRA 535 (1991).

[45] TSN, August 31, 1990, 6; September 6, 1990, 13.

[46] Ibid., id., 10.

* This witness is also referred to in other parts of the record under the surnames of "Casugoc," "Casuco" and "Casoco."

[47] People vs. Lagnas, et al., G.R. Nos.102949-51, May 28, 1993.

[48] People vs. Castelo, et al., 133 SCRA 667 (1984); People vs. Martinez, 144 SCRA 303 (1986).

[49] People vs. Gerones, et al., L-6595, October 29, (1954); Olandriz, Jr., et al. vs. People, et al., 152 SCRA 65 (1987).

[50] TSN, September 6, 1990, 20.

[51] Ibid., id., 19-20.

[52] Ibid., May 11, 1988, 25; January 20, 1989, 16.

[53] See *People vs. Veloso*, 48 Phil. 169 (1925).

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