

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HADJI BASSER MAONGCO Y JAIYAIRY, AND ZALDY SAKILAN Y HATAIE, ACCUSED-APPELLANTS.

G.R. Nos. 108963-65. March 01, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

In three informations which initiated Criminal Cases Nos. 92-108125, 92-108126 and 92-108127 on July 10, 1992 before the Regional Trial Court of Manila, Branch 47, herein accused-appellants Hadji Basser Maongco y Jaiyairy and ZalDY Sakilan y Hataie were both charged with double murder for the killing of the brothers Magsaysay and Mohammad Uddin, and with illegal possession of firearms punished under Presidential Decree No. 1866, which were allegedly committed as follows:

(1) Criminal Case No. 92-108125

“That on or about May 19, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon one MAGSAYSAY UDDIN by then and there shooting him on the different parts of his body, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.”

(2) Criminal Case No. 92-108126

“That on or about May 19, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon one MOHAMMAD UDDIN by then and there shooting him on the different parts of his body with a gun, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.”

(3) Criminal Case No. 92-108127

“That on or about June 21, 1992, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and knowingly have in their possession and under their custody and control One (1) pc. M16 Colt SN 4880830, One (1) pc. M16 Baby Elisco SN 163410, One (1) pc. Cal. .38, Squire(s) Bingham, Assorted Magazines, ammunitions of different calibers, without first having secured the necessary license or permit therefor from the corresponding authorities.”[1]

After joint trial of the three cases, the lower court concluded that proof of guilt beyond reasonable doubt had been established by the prosecution against herein appellants for the murder of the Uddin brothers. It, however, absolved appellants from the charge of illegal possession of firearms in Criminal Case No. 92-108127 on the ground of insufficiency of evidence.[2]

This appellate review is consequently only with regard to the conviction of appellants for double murder, for purposes of which we summarize hereunder the pertinent evidence presented by the prosecution and the defense. Preliminarily, however, we have to interject some observations on the decision of the court below.

In its decision of twenty-seven pages, textually single-spaced, the trial court devotes the first ten pages to the antecedent and preliminary proceedings taken in these cases, principally with regard to the issuance of a search warrant and its resolution of the objections thereto. In the next fifteen pages, there is first a narration of the several sworn statements and other documentary evidence presented by the prosecution, from Exhibits A to P-2, including the “Sinumpaang Salaysay” of alleged eyewitness Alvino D. Bagayo (Exhibits D and D-1) who, however, was never presented at the trial. These are followed by an enumeration of the documentary evidence for the defense (Exhibits 1 to 5-A); a reproduction of the postmortem examination report on the cadaver of the victims, and the full text of the investigation report submitted to the Criminal Investigation Service Command of the Philippine National Police on July 17, 1992; and, finally, a list of the firearms and ammunition seized pursuant to the search warrant.

Curiously, on such skeletal underpinning, the lower court forthwith held as follows:

“After a thorough review of the evidence adduced in these cases, the Court finds and so holds that the guilt of both accused for the killing of Magsaysay & Mohammad Uddin on May 18, 1992 along R. Hidalgo Street in Quiapo, Manila, had been proven beyond reasonable doubt. Both accused had been positively identified by prosecution witness Rex Magallanes, who testified that after going out of Bulaklak Restaurant in R. Hidalgo, Quiapo, Manila, in the evening of May 18, 1992, upon hearing multiple shots, he sought a place to hide (in) and he saw two persons dead near the yellow owner type jeep and two persons carrying armalite - firearms - who passed by him at a distance of about 1 1/2 meters away from the place (where) he was hiding, whom he identified in Court to be the two accused in this case. The positive identification of the accused by prosecution witness Rex Magallanes was corroborated by (H)udjaima Uddin, widow of the late Mohammad Uddin, who testified that she saw accused Hadji Bassar Maongco sho(o)t her husband.

“The Court also finds sufficiently established that conspiracy attended the commission of the crime as shown by the concerted actions of the accused during and after the incident, as well as by the nature and extent of the gunshot wounds inflicted upon the victims. The fragments (Exh. ‘X’) recovered from the victims which are of cal. .22 further strengthens the conclusion that the victims were killed by armalite rifles described by prosecution witness Rex Magallanes to be the firearm held by the accused when he saw them near the dead bodies of the victims.

“The Court finds to be without merit the defense of alibi set up by the accused. It is fundamental that positive identification of the accused cannot be overturned by the defense of alibi, especially so, in this case, that there is no physical impossibility for the accused to be at the scene of the crime.

“It appears undisputed that the family of Magsaysay Uddin spent a total of P53,998.00 while the family of victim Mohammad Uddin spent a total of P108,218.00, for funeral and burial expenses.”[3]

Evidently, there is here, not only a compelling need, but an exigent judicial duty to review and analyze the testimonial evidence presented at the trial of Criminal Cases Nos. 92-108125 and 92-108126 for the murder of the victims, which the court below regrettably failed to do and which we will now undertake.

As recounted by Rex Magallanes, a tricycle driver who was the principal witness for the prosecution, he was walking along R. Hidalgo Street in Quiapo, Manila at around 11:30 P.M. on May 19, 1992 on his way to get a ride at Quezon Boulevard for San Francisco del Monte, where he resides, when a burst of automatic gunfire suddenly erupted nearby. He instinctively sought cover at a concrete wall from which he saw, at a distance of only a few feet, two armed men in civilian clothes who were furiously firing a hail of bullets at the occupants of a

stalled owner-type jeep.[4]

After the fusillade of gunfire ceased, a passenger of the jeep lay dead on the road pavement, while the driver sat slumped at the steering wheel. The gunmen then fled towards an alley and disappeared from sight. Shaken by the horrible event, Magallanes forthwith went home. The following morning, he came to know of the identities of the slain men through newspaper reports. The victims, it turned out, were the brothers Magsaysay and Mohammad Uddin, both of whom were in the active service as integral members of the Philippine National Police at the time of their demise.

Allegedly bothered by his conscience, Magallanes claims that he voluntarily went to Camp Crame that very same day to shed light on the ambush at R. Hidalgo Street, and, in an office there, he executed an affidavit for that purpose.[5] In fact, he claims to have gone back to the camp many times thereafter, of his own accord, to verify the status of the case and “to give justice to the victims.”[6]

Hudjaima Uddin, spouse of the slain Mohammad Uddin, testified that she was then in the house of a relative at Gunaw Street, also in Quiapo and about three blocks away from the scene of the crime, when she heard the staccato sound of gunfire. She had a feeling that her husband was somehow involved in the firefight, prompting her to immediately run to the area where the gun reports came from. When she reached the place, she found her husband slumped dead on the steering wheel of their patrol jeep. Hudjaima went on to narrate before the trial court that she saw appellant Hadji Bassar Maongco running away from the scene of the ambush carrying a rifle.[7]

On the other hand, appellants insisted, as they are now relying, on their claim of innocence on both counts. Hadji Bassar Maongco asserted before the trial court that on the day of the ambush, specifically at three o'clock in the afternoon thereof, he left for Lemery, Batangas where he had to attend to some business transactions. He stayed there for almost a week and it was only on May 25, 1992, or six days after the slayings, that he went back to Manila.[8] Zaldy Sakilan, who worked as a cashier in a restaurant, likewise interposed the defense of alibi. He testified that he was working all throughout the day of the incident in a restaurant located at 819 Globo de Oro Street in Quiapo.[9]

On June 21, 1992, a number of high-powered firearms and rounds of ammunition were seized at the residence of Maongco's mother by elements of the PNP Criminal Investigation Service (CIS) on the strength of a search warrant issued by the Regional Trial Court of Manila, in the course of which appellant Maongco was arrested. Zaldy Sakilan, the other appellant, was likewise arrested on the same day at Aurelio's Restaurant in Quiapo while having a drinking bout with some friends.[10]

At their arraignment on August 3, 1992 with the assistance of counsel de parte, appellants entered pleas of not guilty.[11] The court a quo thereafter conducted a joint trial of said cases which culminated in judgments promulgated on January 29, 1993 with the following dispositions:

“In Criminal Case No. 92-108125

The Court hereby finds accused, Hadji Bassar Maongco y Jaiyairy and Zaldy Sakilan y Hataine, guilty beyond reasonable doubt of the crime of Murder of Magsaysay Uddin, and hereby sentences them to suffer the penalty of ‘reclusion perpetua’ and all the accessory penalties provided for by law. They are further ordered to indemnify the heirs of the victims in the amount of P50,000.00 plus the amount of P53,998.00 for the burial and funeral expenses.

In Criminal Case No. 92-108126

The Court hereby finds accused, Hadji Bassar Maongco y Jaiyairy and Zaldy Sakilan y Hataine, guilty beyond

reasonable doubt of the crime of Murder of Mohammad Uddin, and hereby sentences them to suffer the penalty of 'reclusion perpetua' and all the accessory penalties provided for by law. They are further ordered to indemnify the heirs of the victims in the amount of P50,000.00 plus the amount of P108,218.00 for the burial and funeral expenses.

In Criminal Case No. 92-108127

The Court hereby finds that the guilt of both accused, Hadji Bassar Maongco y Jaiyary and Zaldy Sakilan y Hataine for the crime of Illegal Possession of Firearms has not been established beyond reasonable doubt and both accused, Hadji Bassar Maongco y Jaiyairy and Zaldy Sakilan y Hataine, are hereby ACQUITTED of the crime charged in the information in this case.”[12]

As the instant appeal concerns only the verdicts handed down by the trial court in the two murder charges, we shall deal only with the assigned errors pertinent thereto. The six imputed errors can be consolidated into and subsumed under appellants' basic contention that the court below erred in not acquitting them inasmuch as their identification by and the testimonies of prosecution witnesses Rex Magallanes and Hudjaima Uddin are full of inconsistencies and are consequently incredible.[13]

The Court has, accordingly, undertaken a thorough review and calibration of the testimonial and documentary evidence adduced by the prosecution before the court a quo. After an assiduous evaluation, we are convinced that the prosecution has utterly failed in its avowed task of establishing the guilt of appellants beyond peradventure of a doubt.

It is a constitutionally consecrated rule that before an accused may be convicted of a crime, his guilt must be proved beyond reasonable doubt and until thus proven guilty, he is presumed innocent.[14] Corollary to this presumption of innocence is the cardinal doctrine that in all criminal convictions, the accused must have been pronounced guilty on the strength of the evidence for the prosecution and not by reason of the weakness of the evidence proffered by the defense.[15]

The instant cases present the familiar issue of whether or not the trial court justly relied on the version proposed by the prosecution. The resolution of these cases hinge, therefore, on the question of credibility. On this point, trial courts, pursuant to their unquestioned advantage of directly observing at the trial the demeanor of witnesses, are generally respected by appellate courts as regards their factual findings thereon.[16]

Only errors bordering on a gross misapprehension of facts, or those that are unfounded and speculative, would call for corrective appellate action on such erroneous findings.[17] In the cases at bar, not only did the trial court overlook significant contrarities in the testimony of prosecution witness Rex Magallanes, but it likewise erred in not taking into account the colliding versions of the incident by said witness in his testimony before the trial court and in his sworn statement executed prior thereto.

Of particular concern is this witness' rather assertive claim before the lower court that a day after the incident, he read newspaper accounts of the ambush of the previous night, from where he then learned of the identities of the victims. Claiming that he was thereby driven by an idealistic sense that justice must be applied in its full force against the assailants of the Uddin brothers, Magallanes at once hied himself to Camp Crame on that very same day where, according to him, he then executed an affidavit regarding the ambush.[18]

Were we to believe this account of Magallanes, his sworn statement should then have been dated May 20, 1992, it being the day following the ambush. On the face of the sworn statement, however, it clearly appears that this affidavit, which Magallanes categorically identified as the one which he made on May 20, 1992, was actually executed by said witness on June 8, 1992, or a full eighteen days after he supposedly went to and executed it at Camp Crame.[19] No plausible explanation whatsoever was presented by Magallanes, nor by the prosecution

panel, as to this mystifying circumstance of an indubitable discrepancy.

Furthermore, while Magallanes was quick to point out during the direct examination that he made the affidavit on May 20, 1992, he wavered when asked on cross-examination as to when he really read the newspaper account regarding the ambush which caused him to report to Camp Crame. Thus, when asked by the defense counsel as to the particular date when he went to Camp Crame, he irresolutely replied that he proceeded to said camp maybe a day or two after the incident since he was not aware of the date of the newspaper from where he learned of the identities of the victims. In short, Magallanes was not even sure as to when he really executed the affidavit in question.[20]

What further undermines the stand of the prosecution is the fact that Magallanes' account of the slayings as detailed in his aforesaid affidavit differs on material points with his testimony in court. It is true, and we have so held, that sworn statements executed before police officers are usually incomplete and contain data which are inconsistent with the facts narrated by the witnesses to said officers. For this reason, courts have generally brushed aside, as inconsequential, contradictions in the sworn statement of a witness and his testimony as long as these dwell only on minor and reconcilable matters.[21]

However, since every circumstance must be taken into consideration in passing upon the guilt or innocence of the accused, it becomes crucial for his eventual acquittal when such discrepancies touch on substantial and irreconcilable facts, as when the omission in the affidavit concerns an important detail which the affiant would not have failed to mention, and which omission could affect the credibility of the affiant.[22] Corollarily, 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.[23]

As narrated in the affidavit of Magallanes, he and his cousin, one Turku Nuñez, stayed outside the Bulaklak Restaurant after it had closed for the night and chatted there for a few minutes. They then parted ways shortly thereafter, having agreed to meet again on some other day. As Magallanes was on his way to Quezon Boulevard, he suddenly heard gunfire. Forced to seek cover at a nearby wall, he then saw herein appellants firing away at the occupants of a jeep. After the assassins were through with their ghastly deed, one of the assailants took the firearm of the other assassin and then fled from the gory site. According to Magallanes, the one left behind was beyond himself with glee.[24]

On the witness stand, Magallanes' version suffered a transmogrification and was altogether different. Contrary to his claim in the affidavit that he and his cousin had separated shortly after leaving the Bulaklak Restaurant, he testified that after he and his cousin, Turku Nuñez, had finished eating at said restaurant, they walked together along R. Hidalgo Street and it was then that they were startled by bursts of gunfire. Together, they sought cover on a wall where, from that vantage point and with his cousin beside him, Magallanes could clearly see appellants peppering the victims with bullets.[25] This amended version may have been intended to lay the basis for a corroborating witness, but it was all to no avail since, for unknown reasons, Nuñez was never presented at the trial.

Magallanes again contradicted himself when he narrated before the trial court that after the massacre, the two assailants immediately fled from the locus criminis. In the affidavit, however, he clearly and definitely stated that only one of the assassins immediately departed after the attack, and that one of them was left behind, apparently staying for a while to savor the grisly scene.[26]

For evidentiary weight, it is required that the evidence must conform to the knowledge and common experience of mankind.[27] We have repeatedly stressed that evidence, to be believed, must not only proceed from the mouth of

a credible witness, but it must be credible in itself.[28] Although no ill motive may have impelled an eyewitness to testify falsely against an accused as to make his account deserving of belief, his credibility will nonetheless be greatly affected by inexplicable contradictions in his narration of the facts before the trial court[29] or where, as is the situation in this case, his testimony definitely and materially contradicts his sworn statement.[30]

We are, furthermore, unable to agree with the findings of the court below that Hudjaima Uddin positively identified herein appellant Hadji Bassar Maongco, for the very same reason that the identification of appellants by Magallanes was rendered extremely dubious by his demonstrated inconsistencies and contradictions. Testifying for the prosecution, Hudjaima told the trial court that when she heard gunfire, she instantly proceeded to where it came from as she somehow sensed that her husband, who had just left her at Gunaw Street, was involved in the firefight. It was then that, just as she reached the area where the shooting took place, she saw appellant Maongco running away clutching a rifle.[31]

Surprisingly, in her statement which she had likewise executed earlier before the police authorities in Camp Crame on June 8, 1992, this witness never stated therein that she had heard the crack of gunfire which caused her to immediately verify if her husband was a party thereto, nor did she ever mention having seen appellant Maongco running away from the scene of the crime. In truth, what she only averred in that affidavit, and which she confirmed during the trial, is the fact that she merely suspected herein appellants to be her husband's assassins because Maongco had earlier threatened the victim with bodily harm.[32]

It is disturbing to further note Hudjaima Uddin's admission before the trial court that she did not bother to go to the aid of her husband who was then either dead or dying in the jeep, although the assailants had already fled from the crime scene. As would have been natural under the circumstances, she should have rushed to her stricken husband in his hour of extreme need but, incredibly, she did not. Instead, she just went home and did nothing more. Additionally, this testimony of hers is again contrary to her sworn statement wherein she narrated that after the ambush, she proceeded to Camp Crame for her safety.[33]

The performance of these two witnesses impel us to draw a similitude. It is said that character, as the sum total of what a person really is, would inceptively appear to be unfathomable and undefinable. Yet, a psychological truth is that character is often gauged through the medium of individual acts, if unguardedly and spontaneously performed. In like manner, there is no standard litmus test to ascertain the truth of testimonial submissions, these being generally prefabricated with the legal architecture of an advocate. But, again, it is an evidential rule that the incredibility of a witness is often exposed by lapses on material details which were not expected to be assayed in the crucible of judicial review. The verities in both situations apply in the present cases to discredit the aforesaid prosecution witnesses.

As for the defense of alibi interposed by herein appellants, despite its reputed weakness, there is likewise the accepted doctrine that such defense should not readily be frowned upon as undeserving of credence by courts since definitely there are occasions when the same is the plain and simple truth.[34] Although alibi is inherently feeble by reason of its easy fabrication, it acquires commensurate strength when the case for the prosecution is equally infirm, as in this case where the identification of appellants as the malefactors was demonstrably unreliable and questionable.[35] Courts must not lose sight of the fact that in every criminal prosecution, the identity of the offender or offenders must be established by proof beyond reasonable doubt.[36]

The records are devoid of evidence that appellants were motivated by such malevolent intentions as to drive them to kill the victims. The bare suspicion of Mohammad Uddin's wife, Hudjaima Uddin, that appellants may have perpetrated the dastardly deed since they had a score to settle against the victims on account of the dismissal of the criminal cases filed by appellants against the Uddins, does not inspire belief in the theory espoused by the

prosecution. The fact that appellants preferred to go through the requirements for judicial redress when they initiated criminal complaints against the victims indicates prima facie that they respect the legal processes and, thus, are not the kind of persons who would instead take the law into their own hands. It certainly cannot be said that just because appellants bore a grudge against the Uddins, they would readily resort to an extrajudicial solution therefor. In any event, motive alone is not proof of crime.[37]

Finally, it is markworthy that the unfortunate victims in this case were police officers whose hazardous duties admittedly placed their lives in danger at the hands of just about everyone, be they avengers from the criminal underworld, drug-crazed killers, or just plain thrill-seekers. It is, in fact, of judicial knowledge that persons have been gunned down for no apparent reason at all. To eliminate these alternative possibilities, the identification of appellants as the perpetrators of the crimes charged should have been categorical and unassailable.

Fortunately for appellants, mere speculations and probabilities cannot substitute for the quantum of proof required by law to establish their guilt since conviction for a criminal offense must be based on clear and positive evidence.[38] Hence, the oft-invoked exhortation attributed to Alfonso El Sabio, “Mas vale que queden sin castigar diez reos presuntos, que se castigue uno inocente,”[39] this time calls for and finds favor and acceptance in the mind of the Court.

ACCORDINGLY, the impugned judgments of conviction in Criminal Cases Nos. 92-108125 and 92-108126 of the court a quo are REVERSED and SET ASIDE, and accused-appellants Hadji Bassar Maongco y Jaiyairy and Zaldy Sakilan y Hataie are hereby ACQUITTED of the charges therein, with costs de oficio. Their immediate release from confinement is hereby ordered, unless there are other lawful causes for their continued detention.

SO ORDERED.

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

* The middle name of accused-appellant Zaldy Sakilan y Hataie is also written as “Hataine” and “Hatale” in some parts of the original record.

[1] Original Record, 1-3; 21-22; 25-26.

[2] Ibid., 296-298.

[3] Ibid., 296-297.

[4] TSN, August 17, 1992, 8-11.

[5] Ibid., id., 8-22.

[6] Ibid., id., 35, 44-46.

[7] Ibid., October 30, 1992, 7-10.

[8] Ibid., November 10, 1992, 7-9.

[9] Ibid., November 19, 1992, 7-8.

[10] Ibid., November 10, 1992, 10-13; November 19, 1992, 8-9.

[11] Original Record, 34.

[12] Ibid., 297-298; per Judge Lorenzo B. Veneracion.

- [13] Brief for the Accused-Appellants, 1-2; Rollo, 58-59.
- [14] *People vs. Deocariza*, G.R. No. 103396, March 3, 1993, 219 SCRA 488.
- [15] *People vs. Eslaban*, G.R. Nos. 101211-12, February 8, 1993, 218 SCRA 534.
- [16] *People vs. Salomon, et al.*, G.R. No. 96848, January 21, 1994.
- [17] *People vs. Sibug*, G.R. No. 108520, January 24, 1994.
- [18] TSN, August 17, 1992, 21-28.
- [19] Original Record, 164-166; Exhibit A.
- [20] TSN, August 17, 1992, 39-42.
- [21] *People vs. Ponferada, et al.*, G.R. No. 101004, March 17, 1993, 220 SCRA 46.
- [22] *Id.*, loc. cit.
- [23] *People vs. Pacana, et al.*, 47 Phil. 48 (1924); *People vs. Libag*, G.R. No. 68997, August 17, 1990, 184 SCRA 707.
- [24] Original Record, 164; Exhibit A.
- [25] TSN, August 17, 1992, 8-9; Original Record, 164; Exhibit A.
- [26] Original Record, 165; Exhibit A.
- [27] *People vs. Eslaban*, *supra*. Fn. 15.
- [28] *People vs. Uson*, G.R. No. 101313, July 5, 1993, and cases cited therein.
- [29] *People vs. Mapa*, G.R. No. 91014, March 31, 1993, 220 SCRA 670.
- [30] *People vs. Redulla, et al.*, G.R. No. 103395, November 22, 1993.
- [31] TSN, October 30, 1992, 5-9.
- [32] Original Record, 209-210; Exhibit P.
- [33] *Ibid.*, *id.*,; TSN, October 30, 1992, 13.
- [34] *People vs. Jalon*, G.R. No. 93729, November 13, 1992, 215 SCRA 680.
- [35] *People vs. Monda, Jr., et al.*, G.R. Nos. 105000-01, November 22, 1993.
- [36] *People vs. Gamboa*, G.R. No. 91374, February 25, 1991, 194 SCRA 372.
- [37] *People vs. Ramirez, et al.*, G. R. Nos. 65345-47, January 31, 1989, 169 SCRA 711.
- [38] *People vs. Ritter*, G.R. No. 88582, March 5, 1991, 194 SCRA 690.
- [39] *People vs. Cunanan*, G.R. No. L-17599, April 24, 1967, 19 SCRA 769, citing *Frases, Ideas y Pensamientos de Varios Autores recopilados por Pablo Buill*, 112.

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