

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOLI PAGAL Y LAMQUI AND ADOLFO LAMQUI Y NATIVIDAD, ACCUSED-APPELLANTS.

G.R. Nos. 112620-21. May 14, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Before this Court comes a case replete with all the elements of a blockbuster action movie: Violence, motives and alibis. The law in dispensing justice is, however, constrained to detach itself from sensationalism and, instead, look at the facts dispassionately as presented and proven in a court of law.

This is an appeal from the decision dated September 23, 1993, of the Regional Trial Court (RTC) of Tayug, Pangasinan, Branch 51, convicting accused Noli Pagal and Adolfo "Boy" Lamqui of the crimes of murder and attempted murder and sentencing them to reclusion perpetua and imprisonment of two years, ten months and twenty days of prision correccional, as minimum, to eight years and twenty days of prision mayor, as maximum, respectively.

The two cases were initially filed before the RTC of Lingayen as Criminal Case No. L-4253, for murder, and Criminal Case No. L-4252 for frustrated murder. Upon motion of the prosecution, the cases were later transferred to the Tayug RTC and respectively re-docketed as Criminal Case Nos. T-1086 and 1061.

The relevant facts gathered from the records follow:

Paquito Medrano and Jose Rebusio were partners in the business of buying and selling cattle. On March 23, 1990, between the hours of nine and ten in the morning, they decided to go to Cabuaan, Natividad, Pangasinan to look at a cow that was up for sale. Medrano drove a motorcycle with Rebusio riding tandem. They, however, never reached their destination as they were ambushed along the way. Somewhere between Barangay San Miguel and Sitio Tulin of said town, they noticed two bamboo poles obstructing the road some three (3) meters ahead of them. As they were slowing down, they both noticed, crouched in the canal on the left side of the road, two men who stood up silently, one after the other, and without a word started firing at them with an armalite rifle and a short firearm. They later identified the malefactors as Noli Pagal and Adolfo "Boy" Lamqui. Despite the injuries sustained from the firing, Medrano was able to drive faster and proceed to the hospital while his companion hung on.

As evidenced by two medical certificates both dated March 27, 1990, and reiterated on the witness stand by the attending physician, Dr. Cesar Bulosan, Medrano and Rebusio were confined and treated at the Eastern Pangasinan District Hospital. Dr. Bulosan treated Medrano for gunshot wounds on the left upper abdomen, right upper abdomen, left chest below the nipple and on the right arm near the wrist and Rebusio for a through-and-through gunshot wound at the left thigh, and gunshot wounds at the right buttock below the waistline, right forearm and back of the upper right forearm. After considering the nature and the appearance of the wounds at the time of the examination, he opined that an automatic rifle could have been used and such must

have been fired at close range because of the presence of multiple powder burns.[1]

Rebujio was subsequently transferred to the Armed Forces of the Philippines Medical Center (AFPMC) where he died on March 25, 1990. The cause of his death was cardiorespiratory arrest due to massive internal hemorrhage resulting from the through-and-through gunshot wound at the left thigh, as stated in the medico-legal report[2] issued by Dr. Perfecto Tebangan, the Municipal Health Officer of Natividad, Pangasinan.

Upon learning of the incident at around 10:30 in the morning of the fateful day, prosecution witness Patrolman Orlando Arciaga immediately proceeded to the Eastern Pangasinan District Hospital and was able to interview the victims who divulged the identities of their assailants, namely, Noli Pagal and Boy Lamqui.[3] Said investigation was taken down in writing and was presented in evidence as the ante-mortem statement of Rebujio.

Medrano took the stand and positively identified the assailants, corroborating the statement of the late Rebujio.[4] He knew the assailants well because Pagal is his nephew, and he, Rebujio and the Pagals have been partners in the business of buying and selling cattle since their childhood.[5] Their cordial relationship deteriorated after a slaying incident in 1988 involving the members of the Medrano and Pagal families.[6] Although, the matter was amicably settled within the same year, the relationship between the Medrano and Pagal family has since been strained.

Accused-appellants interposed the defense of denial and alibi. They declared that from eight to eleven in the morning of March 23, 1990, they were in Barangay Calapugan, helping in the construction of a certain Hermenegildo Pate's house. They stressed that they never left said site until they were called by Pagal's brother at eleven o'clock a.m. because members of the Philippine Constabulary were looking for them.[7] To corroborate their story, they presented Jun de Guzman, one of the workers in the construction site, and Pagal's father Arturo.

After trial, Judge Ulysses R. Butuyan rendered a decision dated September 23, 1993, finding accused-appellants guilty of murder and attempted murder. The dispositive portion thereof states, thus:

"WHEREFORE, in Criminal Case No. T-1061, the Court finds the accused NOLI PAGAL y Lamqui and the accused ADOLFO LAMQUI y Natividad alias "Boy" guilty beyond reasonable doubt of the crime of Attempted Murder, defined and penalized under Article 248 of the Revised Penal Code in relation to the third paragraph of Article 6 of the same Code, as co-principals, and hereby sentences them to each suffer the penalty of imprisonment of Two (2) years, Ten (10) months and Twenty (20) days of prision correccional as minimum to Eight (8) years and Twenty (20) days of prision mayor as maximum, together with the accessory penalties provided by law, and to solidarily indemnify the private complainant Paquito Medrano or his heirs, in a proper case, for actual damages in the amount of P8,000.00 plus moral damages which the Court hereby fixes at P100,000.00 and to pay the costs.

In Criminal Case No. T-1086, the Court finds the aforementioned accused guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as co-principals, and hereby sentences them to each suffer the penalty of reclusion perpetua, together with the accessory penalties provided by law, and to solidarily indemnify the heirs of the late Jose Rebujio for actual damages of P61,200.00 plus moral damages which the Court hereby fixes at P300,000.00 and to pay the costs.

SO ORDERED."[8]

Aggrieved, accused-appellants come to this Court seeking the reversal of their conviction on the ground that the trial court erred in finding both of them guilty of murder and attempted murder.

We find the appeal bereft of merit.

Accused-appellants argue that at a distance beyond eighteen inches from the barrel of a firearm, it would be

impossible for powder burns to be present in the bodies of the victims.

Dr. Bulosan, however, testified that a high caliber firearm like an armalite can leave powder burns on the target although situated eighteen inches away.[9] It is specious reasoning for accused-appellants to conclude that it is impossible for powder burns to be present in the bodies of victims shot from a distance beyond eighteen inches considering the undisputed fact that it was an armalite rifle which was used in the commission of the crimes.

Next, they contend that the results of the paraffin test show that they are innocent of the crimes for which they were charged. This Court agrees with the court a quo in not giving much weight to the National Bureau of Investigation (NBI) Chemistry Report finding Lamqui negative for powder burns and Pagal positive for powder burns only on his palm.[10] Well-settled is the rule that a negative finding on paraffin test is not a conclusive proof that one has not fired a gun,[11] because it is possible for a person to fire a gun and yet bear no traces of nitrates or gunpowder, as when the hands are bathed in perspiration or washed afterwards.[12] The trial court also correctly rejected the results of said exam for having been taken eighteen days after the commission of the crime.[13]

Accused-appellants likewise fault the lower court for lending credence to the testimony of Medrano. They aver that his testimony that the gunmen were at the right side of the victims is belied by the gunshot wounds located in front of the bodies of the victims, indicating a face-to-face encounter.[14] Medrano, however, testified that accused-appellants were already firing at him and Rebujo from a distance of three meters while on board the moving motorcycle.[15] That they were moving targets would explain the different locations of the wounds in their bodies.

They further question the failure of the prosecution to present the result of the ballistic examination of Pagal's firearm, an omission which they perceive to be tantamount to suppression of adverse evidence.

We disagree.

To begin with, the adverse presumption arising from suppression of evidence is not applicable when the evidence is merely corroborative or cumulative and/or likewise available to the defense, as in the case at bar.[16] Furthermore, there is no suppression of evidence to speak of insofar as the ballistic examination of Pagal's firearm is concerned. The prosecution has established, and Pagal has admitted, that he is a member of the CAGU and was issued an armalite rifle with serial number 629161. Exhibit "E" for the prosecution is the original of the memorandum receipt dated March 21, 1989, showing the issuance to Noli Pagal of one U.S. rifle 7.62 MN M14 with serial number 629161. Exhibit "F" is NBI Forensic Chemistry Report No. C-90-388 in regard to a specimen known as one M14 armalite rifle with serial number 629161 submitted on April 10, 1990, and indicating the following findings: "Chemical and microscopic examinations conducted on the above-mentioned firearm showed the presence of soot, black particles and nitrates. Test firing showed that the firearm could have been fired more than two (2) weeks prior to the date of examination on April 11, 1990." [17]

Lastly, accused-appellants assail the admission by the court of Rebujo's statement as his dying declaration when such was not given under the consciousness of an impending death.

This argument is off-tangent and without basis.

The record does not show that the trial court considered the statement of Rebujo as a dying declaration. In fact, it was expressly disqualified as such and was instead admitted as part of the *res gestae*, as sanctioned by Section 36 (now Section 42), Rule 130 of the Rules of Court.[18] This Court has held that although an ante-mortem statement may not be considered as a dying declaration because it was not given under the consciousness of an impending death, it is admissible as part of the *res gestae* if such declaration was made at the time of, or

immediately after, the commission of the crime, or at a time when the exciting influence of the startling occurrence still continued in the declarant's mind, as in the case at bar.[19]

Having ruled on accused-appellants' assignment of errors, we now resolve the main issue of whether they were convicted by the trial court based on the evidence presented at the trial.

The Court finds that, not only was the evidence of the defense weak, but that of the prosecution was sufficient to support the charges against accused-appellants.

The defense of alibi and denial is unavailing in view of the positive identification of accused-appellants and there being no physical impossibility for them to commit the crimes charged.[20] It is well-settled that alibi is a defense which is inherently weak and difficult to begin with, and it cannot stand against the positive identification of accused-appellants as the perpetrators of the crimes by victims Medrano and Rebujo through the latter's ante-mortem statement.[21] Moreover, there is no dispute that it was not physically impossible for accused-appellants to be present at the time and place of the incident. Defense witness Jun de Guzman testified on the proximity of Barangay Calapugan, where accused-appellants supposedly were, to Barangay San Miguel, where the ambush took place. According to him, at the time of the incident, the distance between the two barangays is less than a kilometer and it takes less than five minutes to walk from one barangay to the other. He also stated that a road connects these adjoining barangays.[22] Pagal's father Arturo, for his part, said that the distance is more or less three kilometers which could be traversed in fifteen minutes. The discrepancy does little to alter the finding of the court a quo that the two barangays are so close to each other as not to preclude the possibility of the accused being present at the place where the ambush was committed. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise physically impossible for him to be at the locus criminis at the time of the alleged crime.[23]

The evidence for the prosecution, on the other hand, is solid and convincing. Medrano was not only an eyewitness to the incident but was a victim himself. He has categorically identified accused-appellants as those who staged the ambush because he saw their faces clearly when he slowed down to avoid a road obstruction which, in all probability, was deliberately placed by the latter who were crouching in the canal on the left side of the road before splattering their victims with a volley of gunfire.[24] At a distance of approximately three meters only, it is not impossible for a man of clear eyesight to positively identify persons at such range especially in broad daylight, persons who are not casual acquaintances but kinfolk and former business partners of the victims.

The testimony of Medrano is supported by the physical evidence and the separate testimonies of Dr. Bulosan, Rebujo's widow, and Pat. Arciaga. The ante-mortem statement, admitted in evidence as part of the *res gestae*, further revealed that the late Rebujo named one of the assailants as "Boy" Lamqui, which was never disputed by the defense throughout the entire proceeding, hence, proving familiarity between accused-appellants and their victims.

The Court agrees with the trial court that for the death of Rebujo, accused-appellants are guilty of murder. The allegations of treachery, evident premeditation, and craft charged in the information were duly proved by the prosecution and never refuted by the defense. The court a quo also correctly convicted them for attempted murder of Paquito Medrano, instead of frustrated murder as charged in the information, because the injuries sustained by Medrano were merely superficial and not capable of causing his death even without timely medical intervention. No mortal wound having been inflicted upon the victim, the offenders failed to perform all the acts of execution which would have produced the felony. They are, therefore, guilty only of attempted murder.[25]

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with the modification as to the award of moral damages which is hereby reduced to P10,000.00 in Criminal Case No. T-1061 and to P50,000.00 in Criminal Case

No. T-1086.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Rollo, p. 58.

[2] Exhibit "b", Records, p. 11.

[3] TSN, August 8, 1991, p. 3.

[4] TSN, August 23, 1991, p. 5.

[5] Ibid., p. 7

[6] Id.

[7] Rollo, p. 55.

[8] Rollo, pp. 62-63.

[9] TSN, October 3, 1991, p. 11.

[10] Rollo, p. 61.

[11] *People v. Talingdan*, 191 SCRA 333 (1990); *People v. Rebullar*, 188 SCRA 838 (1990).

[12] *People v. Clamor*, 198 SCRA 642 (1991).

[13] Rollo, p. 61.

[14] Appellant's Brief, pp. 2-3, Rollo, pp. 70.

[15] TSN, August 23, 1991, pp. 5-6.

[16] *People v. de Jesus*, 205 SCRA 383 (1992). The adverse presumption from suppression of evidence is not applicable when 1) the suppression is not willful; 2) the evidence suppressed or withheld is merely corroborative or cumulative; 3) the evidence is at the disposal of both parties; and 4) the suppression is an exercise of a privilege. [6 Moran, *Comments on the Rules of Court*, 1980, p. 41.]

[17] Rollo, pp. 60-61.

[18] Rollo, p. 60. Said Rule states that: "Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*."

[19] *People v. Putian*, 74 SCRA 133 (1976).

[20] *People v. Yparraguirre*, G.R. No. 117702, February 10, 1997; *People v. Pacapac*, 248 SCRA 77 (1995); *People v. Miranday*, 242 SCRA 620 (1995); *People v. Mision*, 194 SCRA 432 (1991).

[21] *People v. Layno*, G.R. No. 110833, November 21, 1996; *People v. Manzano*, 248 SCRA 239 (1995).

[22] TSN, February 18, 1993, p. 10.

[23] *People v. Umali*, 242 SCRA 17 (1995); *People v. Hortillano* 177 SCRA 729 (1989); *People v. Cabresos*, 244

SCRA 362 (1995); *People v. Marinas*, 248 SCRA 165 (1995).

[24] TSN, August 23, 1991, p. 5.

[25] *People v. Kalalo*, 59 Phil. 715 (1934).

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