

## PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DELVIN ARELLANO, DIOSDADO DEGUILMO AND ROGER DANTES, ACCUSED-APPELANTS.

*G.R. Nos. 119078-79. December 05, 1997*

Ponente: ROMERO, J.

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### ROMERO, J.:

ROGER DANTES, DELVIN ARELLANO and DIOSDADO DEGUILMO, together with Jesus Edmilao, Vetaliano Deguilmo and four other John Does, were charged with MULTIPLE MURDER for the death of Elias Asi, Hadji Musanip Dimakuta, Hadji Meriam Dimakuta, Iminuma Imam, Olingon Mama Comandang, Saidamen Bidar, Sofia Ditupor, Olingon Ditupor, Carolyn Rokaya Dimakuta, Oti Manganggulo, Acmad Paute, Mamongkian Matabalo, Pawo Mamongkian, Sambulawan Palo, Artemia Rugay, Irene Indayaon, Libing Duay; with DOUBLE FRUSTRATED MURDER for the serious wounding of Rudie Gadia Manabilang and Maniuba Borac; and with ATTEMPTED MURDER committed against Cabugatan Pangkatsaumay in Informations which read:

Criminal Case No. 3728

"That on or about the 17th day of September 1991, at Kauswagan, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with Delvin Arellano and Diosdado Deguilmo, who are accused in Criminal Case No. 3709 and CPL Jesus Edmilao and CVO Vetaliano Deguilmo and four (4) other John Does, who are still at large and whose case is still pending preliminary investigation before the Office of the Provincial Prosecutor of Lanao del Norte, did then and there willfully, unlawfully and feloniously, with treachery, evident premeditation, taking advantage of superior strength, and with intent to kill, attack, assault, ambush and use personal violence upon the following persons. to wit: (1) Elias Asi, (2) Hadji Musanip Dimakuta, (3) Hadji Meriam Dimakuta, (4) Iminuma Imam, (5) Olingon Mama Comandang, (6) Saidamen Bidar, (7) Sofia Ditupor, (8) Olingon Ditupor, (9) Carolyn Rokaya Dimakuta, (10) Oti Manganggulo, (11) Acmad Paute, (12) Mamongkian Matabalo, (13) Pawo Mamongkian, (14) Sambulawan Palo, (15) Artemia Rugay, (16) Irene Indayaon, (17) Libing Duay, by then and there shooting and firing at them with assorted firearms thereby inflicting upon them mortal wounds and the different parts of their bodies which caused the instantaneous death of said Elias Asi, Hadji Musanip Dimakuta, Hadji Meriam Dimakuta, Iminuma Imam, Olingon Mama Comandang, Saidamen Bidar, Sofia Ditupor, Olingon Ditupor, Carolyn Rokaya Dimakuta, Oti Manganggulo, Acmad Paute, Mamongkian Matabalo, Pawo Mamongkian, Sambulawan Palo, Artemia Rugay, Irene Indayaon, Libing Duay, and the serious wounding of Rudie Gadia Manabilang, and Maniuba Borac, but victim Cabugatan Pangkatsaumay was not hit, thus said accused performing all the acts of execution which should have produced the crime of multiple murder as a consequence, but was nevertheless did not produce it by reason of some causes or accidents independent of their will, that is, the timely and able medical assistance rendered to said Rudie Gadia Manabilang and Maniuba Borac which prevented their deaths.

CONTRARY to and in violation of Article 248 of the Revised Penal Code in relation to Article 6 of the same Code."

Criminal Case No. 3709

"That on or about the 17th day of September 1991, at Kauswagan, Lanao Del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with Roger Dantes and six (6) John Does, who are still at large and whose case is still pending preliminary investigation before the Office of the Provincial Prosecutor of Lanao, Del Norte, did then and there willfully, unlawfully and feloniously, with treachery, evident premeditation, taking advantage of superior strength, and with intent to kill, attack, assault ambush and use personal violence upon the following persons to wit: (1) Elias Asi, (2) Hadji Musanip Dimakuta, (3) Hadji Meriam Dimakuta, (4) Iminuma Imam, (5) Olingon Mama Comandang, (6) Saidamen Bidar, (7) Sofia Ditufo, (8) Olingon Ditufo, (9) Carolyn Rokaya Dimakuta, (10) Oti Manganggulo, (11) Acmad Paute, (12) Mamongkian Matabalo, (13) Pawo Mamongkian, (14) Sambuwalan Palo, (15) Artemia Rugay, (16) Irene Indayaon, (17) Libing Duay, by then and there shooting and firing at them with assorted firearms thereby inflicting upon them mortal wounds and the different parts of their bodies which caused the instantaneous death of said Elias Asi, Hadji Musanip Dimakuta, Hadji Meriam Dimakuta, Iminuma Imam, Olingon Mama Comandang, Saidamen Bidar, Sofia Ditufo, Olingon Ditufo, Carolyn Rokaya Dimakuta, Oti Manganggulo, Acmad Paute, Mamongkian Matabalo, Pawo Mamongkian, Sambuwalan Palo, Artemia Rugay, Irene Indayaon, Libing Duay, and the serious wounding of Rudie Gadia Manabilang, and Maniuba Borac, but victim Cabugatan Pangkatsaumay was not hit, thus said accused performing all the acts of execution which should have produced the crime of multiple murder as a consequence, but was nevertheless did not produce it by reason of some causes or accidents independent of their will, that is, the timely and able medical assistance rendered to said Rudie Gadia Manabilang and Maniuba Borac which prevented their deaths.

CONTRARY to and in violation of Article 248 of the Revised Penal Code in relation to Article 6 of the same Code."

When arraigned accused-appellants Roger Dantes, Delvin Arellano and Diosdado Deguilmo pleaded not guilty. Jesus Edmilao, Vetaliano Deguilmo and the four other John Does remained at large.

The prosecution established that at around 6:30 o'clock in the morning of September 17, 1991 Hadji Musanip Dimakuta, Hadji Meriam Dimakuta, Iminuma Imam, Olingon Mama Comandang, Saidamen Bidar, Sofia Ditufo, Olingon Ditufo, Carolyn Rokaya Dimakuta, Oti Manganggulo, Acmad Paute, Mamongkian Matabalo, Pawo Mamongkian, Sambulawan Palo, Artemia Rugay, Irene Indayaon, Libing Duay, Rudie Gadia Manabilang, Maniuba Borac and Cabugatan Pangkatsaumay were all on board the passenger jeepney driven by Elias Asi bound for Poblacion, Kauswagan, Lanao del Norte. While traversing Bgy. San Isidro, several armed men flagged down the jeepney. One of the armed men, later identified as Roger Dantes, approached the front portion of the jeepney and fired Hadji Musanip Dimakuta which instantaneously caused his death. The other armed men, the two were later identified as Delvin Arellano and Diosdado Deguilmo, likewise peppered the other passengers with gunfire resulting to the death of Elias Asi, Hadji Meriam Dimakuta, Iminuma Imam, Olingon Mama Comandang, Saidamen Bidar, Sofia Ditufo, Olingon Ditufo, Carolyn Rokaya Dimakuta, Oti Manganggulo, Pawo Mamongkian, Sambulawan Palo, Artemia Rugay, Irene Indayaon and Libing Duay. Rudie Gadia Manabilang and Maniuba Borac were seriously wounded. Cabugatan Pangkatsaumay escaped unscathed. The three survivors, namely Rudie Gadia Manabilang, Maniuba Borac and Cabugatan Pangkatsaumay positively identified accused-appellants Roger Dantes, Delvin Arellano and Diosdado Deguilmo as among the perpetrators of the ambush.

All three accused-appellants denied any participation in the ambush and interposed the defense of alibi. Accused-appellant Dantes advanced that he left Kauswagan, Lanao del Norte in 1972 only to return there on September 16, 1991, one day before the ambush. Upon his arrival, he proceeded to his parents' coconut plantation in Kawit, Kauswagan, Lanao del Norte. On the night of September 16, 1991 several armed soldiers sought shelter in their kiln and when they left the following morning of September 17, 1991 one of them left

behind his bag. He caught up with the soldiers and returned the bag. On his way back to the kiln, he saw several armed men shooting at the passenger jeepney so he ran back towards the kiln. He estimated his distance from the scene of the crime to be about 60 to 70 meters away.

For his part, accused-appellant Deguilmo testified that he was a CAFGU member. Before the ambush he was at their detachment situated approximately seven to eight kilometers away from the ambush site. At 6:30 in the morning of September 17, 1991 he was at Kawit Occidental, Kauswagan, Lanao del Norte doing errands for his wife. He only learned about the ambush at around 12:00 o'clock noon that same day.

Accused-appellant Arellano alleged that at the time of the ambush he was at the store of his elder sister at the National Highway of Kauswagan, Lanao del Norte. Upon learning of the ambush and being a CAFGU member, he immediately proceeded to the place of the incident. He denied participation in the ambush. He however admitted that it will only take him 2 hours walk or 35 minutes ride from the place where he was at the time of the ambush to the place of the incident.

After trial on the merits the court a quo, in a joint decision [1] found the denials and alibis of accused-appellants to be weak and unworthy of any credence especially when weighed against the candid and straightforward testimonies of prosecution witnesses. Accused-appellants failed to prove the impossibility of their presence at the scene of the crime. The positive identification of accused-appellants by the three survivors as among the perpetrators of the crime significantly clinched the case for the prosecution.

The court below, however, sadly noted the prosecution's failure to establish the death of all 17 passengers, as only the following were proven dead: Elias Asi, Hadji Musanip Dimakuta, Hadji Meriam Dimakuta, Carolyn Rokaya Dimakuta, Mamongkiang Borac, Paukan Borac and Oti Manganggulo. Verily, the trial court found accused-appellants guilty of 7 counts of murder and correspondingly sentenced each of them to suffer the penalty of reclusion perpetua for each count. Each of the accused-appellants were likewise found guilty of 2 counts of frustrated murder for seriously wounding Rudie Gadia Manabilang and Maniuba Borac and correspondingly sentenced each of them to suffer the penalty of imprisonment ranging from 12 years as minimum to 20 years as maximum. Each of the accused-appellants were also found guilty of attempted murder on the life of Cabugatan Pangkatsaumay and were each correspondingly sentenced to suffer imprisonment ranging from 6 years as minimum to 12 years as maximum. In addition, accused-appellants were ordered to pay jointly and solidarily P50,000.00 each as indemnity for the death of their victims, to reimburse Rudie Gadia Manabilang P30,000.00 for hospital expenses and to pay P50,000.00 moral damages each to Rudie Gadia Manabilang, Maniuba Borac and Cabugatan Pangkatsaumay.

This Court affirms the findings of fact of the court below.

It is long settled that alibi cannot prevail over and is worthless in the face of the positive identification of the accused, especially in the light of positive testimony placing the accused at the locus criminis. It is, moreover, eyed with suspicion and always received with caution, not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted. [2] Denial and alibi, if not substantiated by clear and convincing evidence, are negative and self-serving evidence bearing no weight in law. [3] Maniuba Borac positively pointed to and identified the accused-appellants as the perpetrator of the killing. [4] During his cross-examination, he narrated how he came to know accused-appellant Delvin Arellano. [5] In corroboration, another survivor, Gadia Manabilang also pointed to and identified Delvin Arellano and Diosdado Deguilmo. [6] In the cross-examination of these two witnesses, the defense failed to impeach them and rebut their testimonies.

The only survivor who was unharmed, Cabugatan Pangkatsaumay positively identified accused-appellant Roger Dantes as the one who shot Hadji Musanip Dimakuta who was seated at the front passenger side of the jeepney.

[7] He also identified Delvin Arellano and Diosdado Deguilmo as the other two who joined the indiscriminate shooting after Roger Dantes shot Hadji Dimakuta. [8] Cabugatan Pangkatsaumay not only identified accused-appellants but also pointed out their positions relative to the jeepney as he was clinging to the right side of the jeepney together with the conductor.[9]

This Court has repeatedly held that for alibi to prosper, it is not enough to prove that appellants were somewhere else when the offense was committed, but it must likewise be demonstrated that they were so far away that they could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. [10] He must also demonstrate that it was physically impossible for him to have been at the locus criminis at the time the crime was committed. [11] In the case before this Court, not only did accused-appellant fail to disprove their presence at the crime scene. They also failed to prove that it was physically impossible for them to be present at the crime scene. Significantly, each of them admitted to be less than one hour away from the scene of the crime.

Accused-appellant Diosdado Deguilmo claimed to be in his detachment in Kawit, after which he proceeded to his house about two hundred meters away.[12] Kawit, by his own estimate, is only about seven to eight kilometers from the crime scene.[13]

As for Delvin Arellano, he claimed to be at the Kauswagan Municipal Hall at the time of the incident. Witness Xavier Didaya testified that the distance from the Municipal Hall to the ambush site could be negotiated within thirty minutes. If the road condition were better, it could be negotiated in five minutes by vehicle and one hour on foot. If one were to run, it would also take thirty minutes. By his own admission, accused-appellant Delvin Arellano estimated that by means of a vehicle, the distance from the poblacion to the ambush site could be negotiated in thirty five minutes. [14] Even if he were to drop by his CAFGU detachment in Bagumbayan, defense corroborating witness Nicolas Montecillo estimated that the distance from the detachment to the scene of the ambush was three kilometers. [15]

Furthermore, nowhere was it shown that the prosecution witnesses were actuated by any improper motive in pointing to accused-appellants as perpetrators of the crimes. In fact, Cabugatan Pangkatsaumay had no reason to testify falsely against accused-appellants as it was his first time to see them on the day of the ambush. [16] Absence of evidence of improper on the part of the principal witnesses for the prosecution strongly tends to sustain that no such improper motives existed, and that their testimonies are worthy of full faith and credit.[17]

Besides, the factual findings of a trial court deserve a high degree of respect, and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the conviction of the accused. Having observed the witnesses' deportment and manner of testifying during trial, the trial court judge is always in a better position to determine their credibility. [18] In the instant case, accused-appellants have not shown any reason why the principal witnesses, who are victim themselves, would testify falsely on them.

Treachery attended the killing and elevated the crime to murder. Abuse of superior strength is absorbed in treachery. Treachery is present when the offender commits any of the crime against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. In the instant case, it can be convincingly deduced that accused-appellants consciously adopted the means, methods and forms of their attack. Fully armed, they waited in ambush for the passenger jeepney and flagged it down upon its approach. On the other hand, the passengers aboard the jeepney were unarmed, unsuspecting and totally unaware of the danger that lurked ahead. They were in no position to defend themselves against the sudden and unexpected attack of

accused-appellants.

The court below correctly sentenced each of accused-appellants to suffer the penalty of reclusion perpetua for each count of murder. As to the 2 counts of frustrated murder, the proper imposable penalty for each count under Articles 50 and 250 of the Revised Penal Code is the penalty next lower in degree than that prescribed by law for the consummated felony, which is prision mayor in its maximum period to reclusion temporal in its medium period, the range of which is ten years and one day to seventeen years and four months. In the absence of any aggravating circumstance, the imposable penalty is the medium period which ranges from twelve years, five months and eleven days to fourteen years, ten months and twenty days. This is the maximum imposable penalty. The minimum imposable penalty applying the Indeterminate Sentence Law is the penalty one degree lower than that prescribed by the Revised Penal Code in any of its periods, which is prision correccional maximum to prision mayor medium, which ranges from four years, two months and one day to ten years. This Court modifies the sentence imposed by the court below for each count of frustrated murder to nine years, five months of prision mayor medium, as minimum, to fourteen years, ten months and twenty days of reclusion temporal medium, a maximum. Likewise, the sentence for attempted murder is modified. The penalty should be from four years and two months of prision correccional, medium, as minimum, to eight years and twenty days of prision mayor, medium, as maximum.

WHEREFORE, the decision of the Regional Trial Court, Branch III of Iligan City in Crim. Cases Nos. 3709 and 3728 is hereby MODIFIED. Accused-appellants Roger Dantes, Delvin Arellano and Diosdado Deguilmo are found GUILTY of seven (7) counts of murder and are hereby accordingly sentenced to suffer the penalty of reclusion perpetua for each count and to pay jointly and solidarily P50,000.00 for the death of each of their seven (7) victims. Accused-appellants are likewise found GUILTY of two (2) counts of frustrated murder and are hereby sentenced to suffer the penalty of imprisonment ranging from 9 years, 5 months of prision mayor medium, as minimum, to 14 years, 10 months and 20 days of reclusion temporal medium, as maximum, and to pay jointly and severally Rudie Gadia Manabilang and Maniuba Borac P50,000.00 each for moral damages. The award of P50,000.00 representing moral damages for Cabugatan Pangkatsaumay is DELETED. Costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

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[1] Decision penned by Judge Amir Pundogar, Rollo, p. 119.

[2] People vs. Castillo, G.R. No. 116748, June 2, 1997.

[3] People vs. Apongan, G. R. No. 112369, April 4, 1997.

[4] TSN, July 8, 1992, pp. 13-17, 42 & 56.

[5] Supra., pp. 28-36.

[6] Supra, pp. 68-72.

[7] TSN, September 21, 1992, p. 17.

[8] Supra, pp. 18-18.

[9] Supra, p. 48.

[10] People v. Javier, G.R. No. 84449, March 4, 1997.

- [11] People v. Compendo, Jr., 258 SCRA 255 (1996).
- [12] TSN, July 26, 1993, pp. 6-7.
- [13] Supra, p.22.
- [14] TSN, September 9, 1993, p. 74.
- [15] TSN, July 27, 1993, p. 93.
- [16] TSN, September 21, 1992, p.63.
- [17] People v. Belga, 258 SCRA 583 (1996).
- [18] People v. Quiano, et. al. G.R. No. 108454, March 13, 1997.

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