

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. COL. VICENTE D. LUCERO, JR. AND LT. BENJAMIN SANTIAGO, ACCUSED-APPELLANTS.

G.R. Nos. 64323-24. May 31, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by the accused Col. Vicente S. Lucero, Jr. and 1st Lt. Benjamin P. Santiago from the decision[1] of the Regional Trial Court of Isabela, Basilan, Ninth Judicial Region, Branch I in Criminal Cases Nos. 303 and 304, finding them guilty beyond reasonable doubt of the crime of murder and sentencing each one of them to suffer the penalty of life imprisonment or reclusion perpetua for each of the two crimes.

Two (2) separate informations, both dated July 9, 1979, were filed by the Provincial Fiscal Laurencio E. Saavedra at the then Court of First Instance of Basilan, Sixteenth Judicial District, each charging both accused Col. Lucero and 1st Lt. Santiago of Murder as defined and penalized under Article 248 of the Revised Penal Code, and are quoted as follows:

CRIMINAL CASE NO. 303

"The undersigned, Provincial Fiscal of Basilan, accuses Col. Vicente S. Lucero, Jr., 1st Lt. Benjamin P. Santiago and four (4) John Does of the crime of Murder committed as follows:

"That on or about the 27th day of November 1978, and within the jurisdiction of this Honorable Court, viz., at Dasalan Island, Municipality of Lantawan, Province of Basilan, Philippines, the above-named accused, Col. Vicente S. Lucero, Jr., Battalion Commander of the 36th Infantry Battalion, 4 ID, PA., 1st Lt. Benjamin P. Santiago, of the 36th Infantry Battalion, 4 ID, PA., and Four (4) John Does, members of the above-said Battalion armed with firearms, conspiring and confederating together, aiding and assisting one with the other, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously, assault, attack and shoot one- Tarzan Sahidni with said firearms, thereby inflicting gunshot wounds upon the body of the latter, which caused his death; after which the victim's ears were mutilated and the religious and community leaders of said place were ordered to eat the same, thereby causing ignominy."

CRIMINAL CASE NO. 304

"The undersigned, Provincial Fiscal of Basilan, accuses Col. Vicente S. Lucero, Jr., 1st Lt. Benjamin P. Santiago and Four (4) John Does of the crime of Murder, committed as follows:

"That on or about the 27th day of November, 1978, and within the jurisdiction of this Honorable Court, viz., at Dasalan Island, Municipality of Lantawan, Province of Basilan, Philippines the above-named accused, Col. Vicente S. Lucero, Jr., Commander of the 36th Infantry Battalion, 4 ID, PA., 1st Lt. Benjamin P. Santiago of the 36th Infantry Battalion, 4 ID, PA., and Four (4) John Does, members of the above-said Battalion armed with firearms, conspiring and confederating together, aiding and assisting one with the other, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully, and feloniously,

assault, attack and shoot one Sahiddi Adjuk with said firearms, thereby inflicting gunshot wounds upon the body of the latter, which caused his death; after which the victim's ears were mutilated and the religious and community leaders of said place were ordered to eat the same, thereby causing ignominy." (Rollo, pp. 15-17)

Upon arraignment, the accused assisted by their counsel entered a plea of not guilty (Records, p. 69); hence, trial of the case ensued.

In support of its charges, the prosecution presented seven witnesses, to wit: (1) Imam Jailani Jumdam (2) Imam Andam Jumahali; (3) Jaafar Anong; (4) Said Radji Usman; (5) Hadji Hassin Alih; (6) Amil Mohail; and (7) Capt. Rodolfo Valmoria.

Imam Jailani Jumdam, a farmer and resident of Dasalan Island and a religious leader of their community, testified that: One morning of November, twenty (20) months ago, several soldiers arrived at Dasalan Island, Basilan province. The inhabitants of the island were ordered to proceed to the school house. The males were segregated from the females, the latter having been ordered to go home. The menfolk were lined up and made to walk around the school house for more than one hour. Afterwards, they were ordered to stop, made to stand in pairs, holding each other's ears and standing back to back while proceeding back to the school house. While inside, Tarzan Sahidni was picked up by the soldiers and was brought outside the school house near the flagpole, with his hands tied behind his back. He was shot by the soldiers (four of them) ordered by Lt. Santiago. After Tarzan was shot, his ears were cut-off and were made to be eaten by some of the people inside the school building, including himself (Jumdam). Tarzan's body was dragged towards the seashore and his body has never been recovered. Minutes later, the same soldiers picked up Sahiddi Adjuk, who was likewise brought outside the school house and shot by the same soldiers as ordered by the same leader. After the killing, his ears were also cut-off in like manner as that of Tarzan and were forcibly fed to the males inside the school building. His body was dragged to the shoreline. On the ninth day after the incident, Sahiddi's body was recovered along the shoreline. He, Imam Jumdam, was the one who cleansed the body of Sahiddi and buried his cadaver under Muslim rites (TSN, Vol. I, pp. 3-19, Hearing of July 17, 1980).

Imam Andam Jumahali, Jaafar Anong and Hadji Hasim Alih, corroborated Jumdam's statement that accused Lt. Benjamin Santiago ordered the killing of Tarzan Sahidni and Sahiddi Adjuk and the eating of their ears as aforesated. (TSN, Vol. I, pp. 34-45, Hearing of October 3, 1980; Ibid., pp. 68-76; Ibid., pp. 174-179, Hearing of January 12, 1981).

Said Hadji Usman and Mohail Amil stated that they were among those herded into the school house by the soldiers who arrived in Dasalan Island. Accused Lt. Santiago ordered the killing of Tarzan and Sahiddi (TSN, pp. 99-115, Hearing of December 18, 1981; Ibid., pp. 210-219, Hearing of January 12, 1981).

Of accused Col. Vicente Lucero, Usman declares:

Q.

Do you know who led or leads the soldiers?

A.

Yes, sir, Lucero.

Q.

Do you know his rank?

A.

Yes, sir, Col. Vicente Lucero.

Q.

You saw the namecloth?

A.

He even told us he is the leader, sir.

Q.

Where exactly did Col. Vicente Lucero tell you that he is the leader?

A.

When we were in the school building he told us a story that he was Lucero, sir.

Q.

What story?

A.

He told us I am the leader including Jolo, Sulu, Basilan, Zamboanga del Sur and Norte, sir.

Q.

And at that time when Tarzan was shot near the flagpole, can you tell this Court where was Col. Lucero?

A.

He was inside the school building sitting down, sir.

Q.

At that time when Sahiddi was shot behind the school house, can you tell this Court where was Col. Lucero?

A.

The same, he was inside the school building.

Q.

When Tarzan was shot, do you know if there was anything that Col. Lucero did to stop the soldiers from shooting or killing Tarzan?

A.

No sir, he did not.

Q.

At that time when Sahiddi was also shot, did Col. Lucero do anything to prevent the soldiers from doing the shooting?

A.

No, sir.

Q.

When both Tarzan and Sahiddi were shot did Col. Lucero order or prevent the soldiers?

LT. COL. IRINGAN:

Objection, Your Honor. The witness has already answered.

COURT:

Witness may answer.

A.

No, sir, he did not.

Q.

At the time when the ears of Tarzan were cut-off, roasted medium rare and the Imams and Hadjis were ordered to eat it, did Col. Lucero stop them from giving them to the Imams and Hadjis?

A.

No, sir.

Q.

How about also when the ears of Sahiddi were cut-off and roasted and given to the Imams and Hadjis to eat, did Col. Lucero stop them from giving them to the Imams and Hadjis?

A.

He did not, sir. (TSN, Vol. I, pp. 193-196, Hearing of December 18, 1980).

While Amil spoke of accused Col. Lucero, thus:

Q.

Do you know Col. Lucero?

A.

Yes, sir, he was in uniform.

Q.

At that time when the soldiers arrived in Dasalan?

A.

Yes, sir.

Q.

Why do you know that he is Col. Lucero?

A.

Because he has a nameplate, sir.

Q.

Do you know how to read?

A.

Yes, sir, I know.

Q.

At that time when Sahiddi and Tarzan were shot and upon order of Santiago whom you identified, where was Col. Lucero?

A.

He was inside the school building, he was taking off his shirt wearing blue undershirt and also green pants, sir.

Q.

When Tarzan and Sahiddi were shot, did Col. Lucero try to prevent or stop either the soldiers or...

COL. MANALANG:

Leading, your Honor.

COURT:

Reform the question.

FISCAL SAAVEDRA (continuing):

Q.

What did Col. Lucero do when Tarzan and Sahiddi were shot?

A.

He was just sitting down, sir.

Q.

Did he say anything?

COL. MANALANG:

Leading, Your Honor.

COURT:

Witness may answer.

A.

None, sir, he did not say anything. He was just smiling.

Q.

While inside the school building, did Col. Lucero have any occasion to talk to your group?

COL. MANALANG:

The question is leading. It tends to put the answer to the mouth of the witness already, Your Honor.

COURT:

Witness may answer.

A.

He was able to talk when they were going home, sir.

Q.

In what dialect did he talk to the group?

A.

In Visayan, sir.

Q.

Do you understand the Visayan dialect?

A.

Yes, sir, I can understand a little.

Q.

What did he tell?

A.

He said he was the one who managed to go to Dasalan.

Q.

What else?

A.

He even informed us that he was the one who licked Jolo and Basilan, sir.
(TSN, Vol. I, pp. 293-295; pp. 221-222, Ibid.).

Capt. Rodolfo M. Valmoria, a medico-legal officer of the PC Crime Laboratory, conducted on March 2, 1979, the exhumation of the cadaver of Sahiddi in Dasalan Island. His findings were reflected in his Medico-Legal Necropsy/Exhumation Report as follows:

"The pit is about 20 meters from the coastline and under the trees. The exhumation team was able to recover first the skull, followed by long bones of the forearms and arms, ribs, vertebrae, pubic bone and lastly, the long bones of the thighs and legs.

"Further examination revealed that the skeletal remains belong to a human being and that of a male as testified by the witnesses who buried the body and as evident on the heavier appearance and consistency of the long bones. One of the ribs recovered showed evidence of comminuted fracture which could be due to an external force or stimulus that hit the human body.

"The probable cause of death was the soft tissue injuries, meaning damage to the muscles, blood vessels and internal organs which resulted in shock and massive hemorrhage or bleeding leading to acute cardiorespiratory failure." (list of Exhibits, pp. 223-224; TSN, pp. 234-238, Hearing of January 30, 1981).

He stated that it was possible that a bullet was the stimulus that caused the fracture of one of the ribs (TSN, pp. 261-262, Ibid.).

On the other hand, the defense presented the following witnesses, namely: (1) Capt. Felipe Salon; (2) Melanio Limpusan; (3) Imbag Camatod; (4) Capt. Benito Villareal; (5) Capt. Anatacio Andoy; (6) 2Lt. Bernardo Lucero; (7) Rufo Javier; (8) George Titing; (9) Accused 1Lt. Benjamin Santiago; and (10) Accused Col. Vicente Lucero, Jr..

The facts, from the point of view of the defense, are as follows:

"The two accused, Col. Vicente S. Lucero, Jr. and Lt. Benjamin Santiago, are both members of the Armed Forces of the Philippines.

"Lt. Benjamin Santiago began his service in the Philippine Army in 1974. In 1978 he was assigned with the 36th Infantry Battalion, 4th Infantry Division. Their Headquarters was in Calarian, Zamboanga City. In November, 1978 Benjamin Santiago was then a First Lieutenant. His Battalion Commander was the other accused, Col. Vicente S. Lucero, Jr. The Commanding General of the 4th Infantry Division was General Queding.

"Col. Vicente S. Lucero, Jr. joined the Army in 1961 after graduation from the Philippine Military Academy as 2nd Lieutenant. In 1978 as a full colonel, he was assigned as Commanding Officer of the 36th Infantry Battalion stationed at Southern Zamboanga del Norte and Zamboanga City. His immediate superior was Brig. Gen. Pedro Abangan. One of his company commanders was then Lt. Benjamin Santiago who reported to Col. Lucero for duty sometime in March, 1975 at Lahi-Lahi, Basilan.

"Sometime in the second week of November, 1978 Col. Lucero received a verbal order, confirmed by radio message from Gen. Queding, the Commanding General of the 4th Division, ordering him to conduct military operations in the Pilar Group or Lantawan, Basilan. Thereupon he ordered several officers of his command to make the necessary preparations for the operation. The code name of the operation was OPLAN KATURAY.

"In the morning of November 24, 1978, Col. Lucero, Jr., with his staff, made an aerial reconnaissance of the Pilar Group, Lantawan, Basilan, particularly Sangbay Big and Sangbay Small, Dasalan Island, Kaludlud and Pilas Island.

"In the afternoon of November 24, 1978, Col. Lucero conducted a briefing with his unit commanders, ICHDF commanders and navy officers at their Advance Command Post in Labuan, Zamboanga City.

"In the evening of November 24, 1978, Col. Lucero and his staff and contingent were at the beach waiting for their transportation to move out. At about midnight they boarded the Navy boats, tempers, and pumpboats and proceeded to their first target area which was Sangbay Island for two (2) days and two (2) nights.

"At about 7:00 o'clock in the morning of November 27, 1978, Col. Lucero and his contingent boarded the same watercrafts bound for Dasalan Island where they arrived at about 9:00 o'clock in the same morning. The officers and men landed ahead of Col. Lucero and went to their respective assigned areas.

"Col. Lucero had divided Dasalan Island into three sectors which he assigned to specific companies. The 7th Provisional Company under Lt. Santiago was assigned to occupy the southeast area of the island, the 6th Provisional Company occupied the northern portion and the 8th Provisional Company occupied the center of the island.

"Col. Lucero had instructed the officers and troops to gather all inhabitants and bring them to the school house for tactical interrogation. The old men, women and children were sent home. Only the able-bodied men remained in the school house.

"Meanwhile after all the troops had landed, Col. Lucero, at about 10:00 o'clock in the morning of November 27, 1978, went ashore in the center of the island in the area of Lt. Tagakag. The inhabitants were already gathered in the school building. Col. Lucero established his Command Post about 350 meters from the school building. At about 10:00 o'clock in the morning of the same date Lt. Santiago appeared in the Command Post and reported that he had brought some civilians from his sector to the school house. Col. Lucero ordered Lt. Santiago to go back to his sector and continue to scour the area.

"Sometime around 11:00 o'clock that morning of November 27, 1978, while Col. Lucero was in the Command Post, he heard shots coming from the northern direction of the island. He ordered Capt. Salon to go to the school building to verify what the firing was about. Later on Capt. Salon reported to Col. Lucero that a suspected rebel was shot when he tried to run away. Col. Lucero also instructed Capt. Villareal, the Intelligence Officer in Charge of the tactical interrogation, that although suspected rebels attempted to run away, they should not be shot but only held.

"From the time Col. Lucero landed at Dasalan Island, he did not leave the Command Post because he was monitoring and directing by radio the activities of the different companies. Sometime around 1:00 o'clock in the afternoon of November 27, 1978, Col. Lucero heard firing from the direction of the school house. He got angry and said that if they kept firing they might hit somebody. Col. Lucero ordered his Intelligence Officer to investigate the firing. Capt. Villareal reported that a suspected rebel was shot while trying to grab the rifle of the security man.

"Col. Lucero did not leave his Command Post during the whole day of November 27, 1978." (Rollo, pp. 295-298; Reply Brief for Appellants, pp. 1-4)

On April 4, 1983, the trial court rendered judgment, the decretal portion reading as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, this Court hereby finds the Accused Lt. (now Captain) Benjamin Santiago and Accused Col. Vicente Lucero, Jr. GUILTY beyond reasonable doubt of the crime of Murder as defined of the Revised Penal Code and considering the presence of the circumstances affecting criminal liability, hereby sentences each one of them to suffer the penalty of life imprisonment or Reclusion Perpetua, with all the accessory penalties of the law for each of the two above-entitled cases; to indemnify the next of kin, Twelve Thousand Pesos (P12,000.00) for each of the two victims, namely: Tarzan Sahidni (Criminal Case No. 303) and Sahididi Adjuk (Criminal Case No. 304), with subsidiary imprisonment in case of insolvency and to pay the costs.

"SO ORDERED." (Rollo, p. 48)

Hence, the instant appeal.

Appellants assigned the following alleged errors, namely:

I

THE LOWER COURT ERRED GRAVELY IN NOT HOLDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE LEGALLY INSUFFICIENT TO CONVICT THE ACCUSED, IN VIEW

OF THE INHERENT FATAL WEAKNESSES PERMEATING SUCH TESTIMONIES.

II

THE LOWER COURT ERRED GRAVELY IN HOLDING THAT LT. BENJAMIN SANTIAGO ORDERED THE FOUR SOLDIERS TO SHOOT THE SUPPOSED VICTIMS.

III

THE LOWER COURT ERRED GRAVELY IN HOLDING THAT COL. VICENTE S. LUCERO, JR. IS GUILTY OF THE SHOOTING OF THE SUPPOSED VICTIMS BY VIRTUE OF SUPPOSED CONSPIRACY.

IV

THE LOWER COURT ERRED GRAVELY IN MISAPPLYING THE PRINCIPLE THAT POSITIVE EVIDENCE IS SUPERIOR TO NEGATIVE EVIDENCE.

V

THE LOWER COURT ERRED GRAVELY IN MISUNDERSTANDING AND MISSTATING THE DEFENSES OF THE ACCUSED, TO THEIR DISADVANTAGE AND PREJUDICE.

VI

THE LOWER COURT ERRED GRAVELY IN RENDERING ITS DECISION AND JUDGMENT OF CONVICTION. (Rollo, p. 105)

The main thrust of the instant appeal is whether or not the guilt of the accused-appellants has been proved beyond reasonable doubt to justify conviction.

We cannot sustain the conviction of the accused-appellants on the ground that their guilt has not been proved beyond reasonable doubt.

There is no dispute that Tarzan Sahidni and Sahiddi Adjuk were shot and killed by soldiers on the same day, November 27, 1978. The principal factual issues are the circumstances of the death of the two victims, the sequence in which they were killed and who were present when they were shot.

In rendering its judgment of conviction, the trial court pointed out that the alleged inconsistencies among the testimonies of the prosecution eyewitnesses and between their testimonies and affidavits in the case at bar are but minor inconsistencies which are badges of truth and not falsehood and that in the absence of improper motive are entitled to full faith and credit (citing 6 Moran Comments on the Rules of Court, 1980 ed. pp. 140-141 and *People v. Angeles*, 92 SCRA 432 (1979)). Thus, the finding of guilt on the part of accused Lt. Benjamin Santiago. As for the conviction of accused Col. Lucero, the trial court dealt with the matters of command responsibility and conspiracy. On the basis of the doctrine of command responsibility, that is, the "accountability or responsibility or answerability of the commander of a Military Force or Unit for the acts of his men, inclusive of the authority to order, to direct, to prevent or control the acts of his men", (Decision, pp. 26-27; Rollo, pp. 189-190) Col. Vicente Lucero, being the Battalion Commanding Officer who was present during the killings but did nothing to prevent it, is liable. Corollarily, Col. Lucero is guilty as co-principal by means of conspiracy. Thus, the trial court cited the case of *State v. Patteson*, 155 SE 661, 109 W. vs. 588 which enunciated: "One merely witnessing a crime, without intervention, is not a party thereto, unless interference was duty and non-interference was condition of crime, or was designed and operated as encouragement to, or protection of, perpetrator." (Decision, pp. 28-29; Rollo, pp. 191-192).

We do not agree with the conclusions of the trial court. A careful review of the facts would reveal that the inconsistencies in the testimonies of the prosecution witnesses are not minor.

The evidence of the prosecution is that Lt. Benjamin Santiago ordered four soldiers to shoot Tarzan Sahidni and Sahiddi Adjuk for no reason at all. According to the defense, Tarzan was shot because he tried to run away while Sahiddi was shot because he attempted to grab the rifle of the security guard. Another fact in dispute is the period which intervened between the two killings. The prosecution argues that Adjuk was killed about twenty (20) minutes after Tarzan was killed. The defense on the other hand, contends that Tarzan was killed at about 11:00 a.m. while Adjuk was killed at about 1:00 p.m., both on November 27, 1978.

The evidence of the prosecution that Tarzan and Sahiddi were ordered killed by Santiago for no reason at all is at once unnatural and irrational.

The first witness of the prosecution, Iman Jailani Jundam, testified on the killings as follows:

Q.

While all of you men folk were inside the school house in Dasalan, what happened if any?

A.

That was the time Tarzan was picked up.

Q.

Where was Tarzan brought from the school where you were?

A.

He was brought outside and made to stand near the flagpole, sir.

A.

He was shot by four soldiers ordered by one person, sir. (TSN, p. 12, July 17, 1980)

Q.

You said a while ago that Sahiddi was also shot beside the school?

A.

Yes, sir. (TSN, p. 16, July 17, 1980)

Witness Jundam did not state the reason why Tarzan and Sahiddi were shot and the time interval between the two killings. Notably, he did not mention Col. Lucero at all.

The second prosecution witness, Iman Andam Jumahali, described the killings as follows:

Q.

Where was Tarzan brought after he was picked up?

A.

He was brought outside the school building, sir.

Q.

Where at?

A.

When he was about two (2) arms length from the school house, his hands were tied, sir.

Q.

Where was he brought?

A.

He was shot, Sir. (TSN, p. 40, Oct. 3, 1980)

Q.

After Tarzan was shot, what else happened?

A.

Tarzan was shot, the soldiers picked up another person, sir.

Q.

Who was that person?

A.

Sarti Sahiddi, sir.

Q.

And where was Sahiddi brought?

A.

He was also brought out of the school building and between the school building and the flagpole, he was also shot. (TSN, p. 43, October 23, 1980)

Witness Jumahali did not explain why Tarzan and Sahiddi were killed and did not state the time interval between the killings.

This witness did not mention Col. Lucero.

The version of Jaafar Anong, third witness of the prosecution, is as follows:

Q.

Yes, then what happened?

A.

There was one person who was shot by the soldiers, sir.

Q.

Who is that person?

A.

Tarzan, sir. (TSN, p. 71, Oct. 3, 1980)

Q.

Now, how many minutes interval were there after Sahiddi was killed and later on Tarzan was shot.

FISCAL SAAVEDRA:

I think the question is misleading. Before Tarzan was shot.

COURT:

Yes, after Tarzan was shot.

A.

I cannot because that time I have no wrist watch, sir.

Q.

Was it very fast?

A.

Yes, sir, right after Tarzan was shot Sahiddi was picked up right away. (TSN, pp. 91-92, October 3, 1980)

Witness Anong did not explain why Tarzan and Sahiddi were shot. In the same manner, he did not mention Col. Lucero.

Moreover, Anong's testimony that right after Tarzan was shot Sahiddi was picked up right away is not only physically impossible but contradicted by the other witnesses for the prosecution. Most of the witnesses of the prosecution declared that after Tarzan was shot, his ears were cut off. The Imams and Hadjis were made to eat the ears. Then Tarzan was dragged to the beach and thrown into the sea. All these events must have taken at least an hour.

Apparently, witness Jaafar Anong did not see the actual killings.

The fourth witness, Said Hadji Usman, testified on the killings as follows:

Q.

While inside the school house, what happened?

A.

When we were inside, Tarzan was taken away.

Q.

And to where was Tarzan brought?

A.

Both his hands were behind him and he was later shot, sir.

.....

Q.

Where exactly was he brought?

A.

Near the flagpole, sir.
(TSN, p. 102, December 18, 1980)

.....

Q.

What else happened after Tarzan was shot?

A.

There was another person who was tied and told to go out, sir.

Q.

Who was the other person who was also tied and told to go out?

A.

Sahiddi, sir.

Q.

Where was Sahiddi, brought?

A.

He was brought behind the school building that was facing the North and then he was also shot.
(TSN, pp. 106-107, December 18, 1980)

Witness Usman declared that Santiago ordered four soldiers to shoot Tarzan and Sahiddi, and that Col. Lucero was in the school house sitting down when both killings took place. And on cross-examination, he testified as follows:

Q.

You mentioned during the direct examination that Tarzan was picked up by four soldiers?

A.

Yes, sir.

Q.

What time was that?

A.

I cannot tell the time but the sun was already up, sir.

Q.

Was it in the morning, noon or afternoon?

A.

Noontime, sir.

Q.

At about 12:00 o'clock?

A.

More or less, sir.

Q.

And you saw this Tarzan picked up by four soldiers, at 12:00 o'clock noontime of November 27, 1978?

A.

Yes, sir.

(TSN, p. 150, December 18, 1980)

However, Witness Usman also testified as follows:

Q.

And will you please tell this Honorable Court what time more or less were you requested (to help soldiers look for loose firearms) considering that you said the military men and ICHDF landed in Dasalan Island at 8:00

o'clock in the morning of November 27, 1978?

A.

We were in the school house when they requested us, sir.

Q.

About what time?

A.

Around 12:00 o'clock noon, sir.

Q.

So, you went with these four soldiers, you were rounding the Island?

A.

No, sir.

Q.

You only went to the houses in the Eastern portion of Dasalan Island?

A.

Yes, sir.

Q.

How long did it take you to make the search?

A.

Two hours, sir.

(TSN, pp. 147-148, December 18, 1978).

The foregoing testimony patently shows that witness Usman was not present when the two killings took place. He

was with the soldiers looking for loose firearms.

The affidavit of witness Usman, Exh. 4, states that he was not present in the school building on November 27, 1978 because on said date he was in Zamboanga City. Said Exh. 4 was admitted and the motion to strike it out of record was denied "considering the fact that a stipulation was entered into." (TSN, p. 130, December 20, 1982).

The fifth witness, Hadji Hassim Ali, testified on the killings as follows:

Q.

Now, tell this Honorable Court the period of time or the minute or length of time when Tarzan was picked and brought in front of the school building and later his hands were tied and he was shot, how many minutes did it take more or less?

A.

Five minutes, sir.

Q.

And from the time Tarzan was shot, tell this Honorable Court how many minutes it was from the time Sahiddi was picked up?

A.

Not so long because I have no watch, sir.

Q.

More or less?

A.

More or less twenty minutes, sir.

(TSN, p. 189, January 12, 1981).

The witness did not state why Tarzan and Sahiddi were killed.

As correctly argued by the appellant in the Reply Brief, the estimate of this witness that Sahiddi was shot about twenty (20) minutes after Tarzan was killed is physically improbable. The evidence of the prosecution is that after Tarzan was shot, his ears were cut off and half-cooked. The Imams and the Hadjis were made to eat the ears. Thereafter, Tarzan was dragged to the beach. All these acts must have taken much longer than twenty minutes.

Witness Hadji Hassim Ali did not state that Col. Lucero was present in the school house during the killings of

Tarzan and Sahiddi.

The sixth prosecution witness, Mahail Amil, described the killings thus:

Q.

After Tarzan was shot, what happened?

A.

After Tarzan was shot, his ears were cut off and his ears were placed above a lighter and we were ordered to eat, even myself, sir.

Q.

And then afterwards what happened?

A.

After that Sahiddi was picked up, sir.

Q.

Where was Sahiddi brought?

A.

At the back of the school, sir.

Q.

And then?

A.

When he was brought to the back of school building, there were four soldiers and on orders of one person, he was shot, sir.

(TSN, pp. 204-205, January 12, 1981)

This witness identified Santiago as the officer who ordered the four soldiers to shoot Tarzan and Sahiddi. He also said that at the time of the killings Col. Lucero was present inside the school house, seated and just smiling. (TSN,

pp. 210-211, January 12, 1981).

Witness Amil, like the other witnesses, did not say the reason why Tarzan and Sahiddi Adjuk were killed and how much time intervened between the killings.

This witness executed a sworn statement dated February 27, 1979 wherein he declared that more or less ten (10) soldiers participated in the shooting of Tarzan and Adjuk and that the shooting was ordered by Lt. Santiago. Amil, however, failed to mention the presence of Col. Lucero during the killings and stated in the sworn statement that the two victims were shot on the same spot of the flagpole. This discrepancy between Mohail Amil's sworn statement and his testimony shows that he did not even witness the killings.

It may be inferred from the foregoing quoted portions of the testimonies of the prosecution witnesses, together with their sworn statements, that said witnesses are unreliable. We find their testimonies unnatural and contradictory. Consequently, the guilt of the accused has not been proved beyond reasonable doubt.

The evidence presented by the defense, more particularly concerning the whereabouts of Col. Lucero at the time the killings took place, is more logical and more consistent with nature.

Col. Lucero and his troops landed at Dasalan Island on November 27, 1978 to identify rebels, pirates, and seajackers. As the commanding officer, Col. Lucero had to stay in the Command Post to monitor and direct the operation. The only means of communicating with his men was by the big radio in the Command Post. Besides, Col. Lucero was also expecting radio calls from higher headquarters. There was, therefore, no reason for him to have been at the school house during the killings just sitting down smiling and doing nothing.

Basic is the rule that an accused must be presumed innocent until his guilt is established by proof beyond reasonable doubt. It simply means that the evidence must engender moral certainty or constitute that degree of proof which produces conviction in an unprejudiced mind. (Sec. 2, Rule 133, Revised Rules of Court).

Accusation is not synonymous with guilt. Every circumstance favoring the innocence of the accused must be taken into account. Proof against him must survive the test of reason. The strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged. What is required is moral certainty. (People v. Bania, G.R. No. 46524, January 31, 1985).

It has been consistently held that a judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense. It is incumbent on the prosecution to demonstrate that culpability lies and the freedom of the accused can be forfeited only if the requisite quantum of proof necessary for conviction is in existence. (People v. Nazareno, 80 SCRA 487; People v. Go Bio, Jr., 142 SCRA 238; People v. Rojo, 175 SCRA 119; People v. Furugganan, G.R. Nos. 90191-96, January 28, 1991).

In the instant case, the testimonies of the witnesses for the prosecution as shown earlier are conflicting and incredible. Their evidence that Tarzan and Sahiddi Adjuk were killed for no reason at all is not plausible. The evidence that Col. Lucero was present in the school house when the killings took place is inherently unbelievable. As earlier stated, there is no reason at all why Lt. Santiago could have ordered the shooting because he was leading the Seventh Provisional Company in scouring the southern part of Dasalan Island. It is absolutely possible that in the hubhub of the commotion caused by the escape attempt of one victim and the attempted seizure of a rifle by the other, the four unidentified soldiers took it unto themselves to shoot the two Muslims, without any order from Lt. Santiago to do so. It at all any liability can be attributed to Lt. Santiago, it may be that, he did not prevent the cooking and the eating of the ears of the victims, but be it noted that these acts appertained to the ears of men already dead. Besides these acts are a far cry from the crime of murder.

We are thus not convinced and satisfied that the two accused, Col. Vicente Lucero and Lt. Benjamin Santiago, are guilty of the crimes charged. Certainly, any doubt as to the guilt of the accused should be resolved in favor of the presumption of their innocence.

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and the accused-appellants are hereby ACQUITTED on the ground of reasonable doubt.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Judge Jainal G. Rasul

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