

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO ALIAS TONY MANAMBIT, JAIME ALIAS JIMMY MANAMBIT, FELICIANO ALIAS CHOY A. RANA, BENJAMIN ALIAS BEN LACBAY, RAMON MAMURI ...

G.R. Nos. 72744-45. April 18, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

After the promulgation of the Decision, the trial court issued an order directing the clerk of court to forward to this Court the original records and voluminous transcripts of stenographic notes of the consolidated cases in view of the imposition of the death penalty upon Jimmy Manambit.[3] Jimmy Manambit, nevertheless, filed his notice of appeal.[4] He is presently detained at the New Bilibid Prisons in Muntinlupa, Metro Manila.[5]

Mauricio Llames and Ramon Mamuri filed a joint notice of appeal[6] and a petition for bail.[7] On October 25, 1985, the trial court granted the petition for bail, requiring from each of them bailbonds of P15,000.00 in Criminal Case No. SC-2209 and P10,000.00 in Criminal Case No. SC-2210[8] which they forthwith filed.[9] Since they had earlier been committed to the New Bilibid Prisons in Muntinlupa, Metro Manila, their release from custody was ordered upon approval of their bailbonds.[10]

Appellant Jimmy Manambit's counsel of record and his new counsel failed to file a brief seasonably.[11] Hence, the Court appointed a counsel de oficio[12] for him in the person of Atty. Renato L. Cayetano.[13]

The Informations that were filed against the six (6) accused read:[14]

Criminal Case No. SC-2209:

"That on or about August 29, 1978, in the Municipality of Pagsanjan, Province of Laguna, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and by taking advantage of superior strength being then armed with unlicensed firearms, did then and there, willfully, unlawfully and feloniously, attack and shot at the back Reynaldo Baldemora who was then riding on a motorcycle driven by Hector Samonte and as a result thereof said Reynaldo Baldemora sustained a gunshot wound at the back causing the latter's death, to the damage and prejudice of the heirs of said Reynaldo Baldemora."

Criminal Case No. SC-2210:

"That on or about August 29, 1978, in the Municipality of Pagsanjan, Province of Laguna, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent to kill, and by means of treachery and by taking advantage of superior strength being then armed with unlicensed firearms, did then and there, willfully, unlawfully and feloniously, attach (sic) and shot (sic) Hector Samonte who was then driving a motorcycle

towards the direction of Lumban, Laguna, coming from Pagsanjan, Laguna, and as a result thereof Hector Samonte sustained gunshot wounds at the left lumbar region and right arm, which ordinarily would have caused his death, thus, the accused have performed all the acts of execution which would have produced the crime murder, but nevertheless was not produced by reason of causes independent of the will of the accused, that was the timely medical assistance rendered to said Hector Samonte which prevented his death. To the damage and prejudice of said Hector Samonte.”

All the accused pleaded not guilty to the crimes charged during arraignment.

The Facts Evidence for the Prosecution

At the joint trial of the two cases, the prosecution sought to prove the following facts:

Prior to the incident in question, Hector Samonte, then around 36 years old, was a gravel and sand concessionaire with the Bureau of Mines. He also took charge of a coconut plantation for his brothers and sisters.

Hector testified that at around 7 o'clock in the morning of August 29, 1978, in the company of Reynaldo Baldemora, he left his home in Rizal St., Lumban, Laguna. He drove a 70 cc. motorcycle with Reynaldo sitting behind him. They were bound for Magdalena to see a certain Cesar, a friend of Reynaldo. On their way to said place, they passed by the house of Tony Manambit in Barrio Maytalang Uno in Lumban. Hector saw Tony looking out from the window and making hand signals to Ramon Mamuri who was in the bahay pulungan nearby. Like Hector, Reynaldo saw Tony making gestures to Ramon.

Hector and Reynaldo arrived in Magdalena at around 9 o'clock in the morning. They stayed in the place until about 1 o'clock in the afternoon. On their way back, Reynaldo drove the motorcycle. Upon reaching Buenavista, Hector noticed that Reynaldo could not drive the motorcycle properly, so he took over the driving. Approaching the Rapids Hotel in Pagsanjan, Hector remembered the suspicious signals of Tony to Ramon. He stopped the motorcycle, waiting for a vehicle going to Lumban with which they could travel along. He wanted company in traveling because “the group of Tony Manambit and Jimmy Manambit” were “bad men.”

Hence, Hector and Reynaldo traveled with a red car closely behind them. Upon reaching the Ala-ala Memorial Park, Hector saw Ramon seated along the edge of the highway. Choy Rana, who was ten (10) meters away from Ramon, was standing and making hand signals while facing the coconut plantation. Ramon and Choy were on the right side of the road to Lumban between the Ala-ala Memorial Park and the old Pagsanjan municipal cemetery. Looking at the direction Choy had made signals to, Hector saw four (4) armed men near the new municipal cemetery around nine (9) meters from the edge of the cemented road. Hector first saw Antonio Manambit (Tony), then Mauricio Llamas, followed by Ben Lacbay and then Jimmy Manambit.

As the four men stood up with firearms raised, Hector veered the motorcycle to the center of the road to Lumban because the “red” car was about to overtake him. He blocked the way of the car that was traveling on his right side. Just then he heard shots coming from the direction of the four armed men. Feeling that he had been hit, he accelerated the motorcycle but lost control of it. He fell on the left side of the road while Reynaldo fell on the right side.

As he fell down, Hector saw Tony Manambit firing at them while Jimmy, Mauricio and Ben ran towards the river to a pathway to Maytalang, Lumban. Reynaldo crawled to the right, some five (5) meters away from Hector. Seeing a gun near Reynaldo, Hector crawled towards it and took it with his right hand. But because he could not raise his right arm, he transferred the gun to his left hand. He aimed the gun at Tony, but the latter moved away, so he returned to the left side of the road. A passing dump truck took him to the hospital.[15]

Pat. Rustico Liwanag testified that he had gone to the scene of the crime near the boundary of Lumban and

Pagsanjan with Pat. Alberto Baldemeca upon instructions of Pfc.[16] Benjamin Gaza. He took a jeepney bearing Atty. Zenon Samonte. When they arrived at their destination, PC[17] Sgt. Ramos was already there with some five (5) companions. Liwanag saw Reynaldo lying on the side of the road. With the permission of Sgt. Ramos, Liwanag loaded Reynaldo into the jeepney where Baldemeca held the latter. They brought Reynaldo to the Laguna Provincial Hospital.[18] While in the jeepney, Liwanag heard Baldemeca ask Reynaldo who the assailants were; Reynaldo answered that “he recognized only Tony Manambit” although the latter had other companions.[19] According to Baldemeca himself, Reynaldo’s reply was, “Sina Antonio Manambit.”[20]

Liwanag learned that Hector was also in the hospital, so he told Baldemeca to stay with Reynaldo while he investigated Hector. Upon seeing the bloodied victim, Liwanag asked him who had shot him. Hector said that “he recognized Tony Manambit, Jimmy Manambit, Mauricio Llamas, Ben Lacbay and Choy Rana.”[21] Liwanag reduced in writing Hector’s statement identifying the first four persons as the ones who had shot him and Rana as the one who had signaled to the assailants.[22] Because Hector’s right arm was broken, Liwanag dipped the former’s thumb in a bloody portion of his body and affixed the bloodstained thumbmark two times on the written document,[23] the contents of which Hector did not know.[24]

One of the responding police officers, Pat. Antonio Abillo, testified that he had gone to the crime scene where he saw Hector’s motorcycle and a car belonging to Fernando Gabatan blocking the road (“nakabara sa karsada”).[25] Abillo asked the persons milling around who were responsible for the shooting but no one would tell him.[26] He made a sketch of the scene,[27] indicating the positions of the motorcycle and Gabatan’s Toyota Corona car with plate number HG-719; the location of a tamarind tree where twenty (20) pieces of empty M16 shells were recovered, and the positions of the following items which were recovered near the motorcycle: a caliber .38 paltik, one carton containing 141 carbine ammunitions, 2 short carbine magazines, 1 long carbine magazine and 5 pieces of 12-gauge ammunition.

According to M/Sgt.[28] Reynero Galarosa of the Criminal Investigation Service, aside from the 20 empty armalite shells which were recovered “in front of the Pagsanjan cemetery,” the following items were turned over to them by the police: “12 slugs of armalite (bullets), one empty shell of caliber .45 (bullet) and one pistol .38 caliber, serial No. 351527 home made, one pistol, .45 home made Serial No. 167608, 5 live bullets of 12 gauge gun, 13-a Ammo. for caliber 30, carbine, 2 magazine(s) for carbine and one raincoat.”[29]

Patrolman Virgilio Brecinio made another sketch of the crime scene,[30] indicating that the green and white motorcycle was unregistered and that the Toyota car was blue. Several photographs were taken of the premises and the objects found there.[31]

Hector’s brother, Atty. Zenon Samonte, was supervising the construction of his house in Lumban when, at about ten minutes before 2 o’clock in the afternoon, one Villa Mercado told him that Hector had been shot at the cemetery of Pagsanjan. Zenon ran towards the municipal hall and hailed a passenger jeepney along the way. With his cousin, Teodoro Bacsafra, Zenon boarded the jeepney. At the municipal hall, Zenon talked to Pat. Gaza who pointed him out to Pat. Rustico Liwanag. With Pat. Alberto Baldemeca, a certain Abadier and the driver, Zenon and Bacsafra proceeded to the place of the reported shooting incident, accompanied by Liwanag who had first dropped by his house to get his long firearm. Upon reaching the place, Zenon found that his brother was no longer around. Zenon berated PC Sgt. Ramos for just standing in front of Reynaldo instead of chasing the culprits.[32]

They loaded Reynaldo into the jeepney where Zenon sat on the right side. Baldemeca, who was cuddling the head of Reynaldo, asked the latter in Tagalog who had shot him. According to Zenon, Reynaldo answered, “Magkapatid ni Jimmy at Tony Manambit at iba.”[33]

At the hospital, after finding that his brother Hector was being attended to by a lady physician and two nurses,

Zenon looked for a doctor to attend to Reynaldo. After going to Sta. Cruz to buy blood, he looked for an ambulance to transport the victims to Manila. After failing to get the ambulance of the “Hydrau” Construction Company at Lumban, Zenon went to Dr. Malaya to borrow an ambulance. He learned that it was about to be used by Fernando Gabatan, another victim in the shooting incident. It was only after the latter had granted him permission to use the ambulance that Zenon returned to the hospital.

There, Zenon asked Hector who the perpetrators of the ambush were. Hector said that “he was able to recognize Antonio Manambit and Jimmy Manambit.”[34] In the course of their conversation, Hector also named Ben Lacbay, Mauricio Llamas and Ochoy Rana.[35]

When Zenon approached Reynaldo, the latter told him to call his wife as he was about to die (“Attorney, tawagin mo ang asawa ko mamamatay ako”). To his question on whether he recognized who had shot him, Reynaldo answered that he “recognized the brothers Antonio and Jimmy Manambit and the rest” who were from Maytalang. Zenon immediately sent someone to fetch Reynaldo’s wife.[36] However, when Rosita Baldemora arrived at the hospital at around 4:30 in the afternoon, her husband had been taken to the operating room.

Dr. Dario Mag-iba assisted Dr. Alabastro in performing exploratory laparotomy on Reynaldo. Before wheeling him into the operating room, the doctors found that Reynaldo’s blood pressure of 100 over 60 at 2:15 p.m. had gone down to “60 palpatory” at 3:30 p.m., rendering him “hardly” able to communicate. In fact, at 3:00 p.m., his blood pressure was zero and therefore there was “no sign of life.” Still, they proceeded with the operation. They found that Reynaldo had sustained one gunshot wound at the midlumbar region. The bullet which had entered Reynaldo’s body from the back exited at the hypogastric region or the area below the navel, perforating his small intestines and lacerating the mesentery and the descending colon. Aside from that sole gunshot wound, Reynaldo also had a lacerated left ankle.[37] Twenty-eight-year-old Reynaldo died at 7:05 p.m.[38] His wife, who had gone home at around that time, received the news later by telephone.[39]

Hector was taken to the Makati Medical Center where he was attended by Dr. Constantino Nuñez, a medico-legal officer of the National Bureau of Investigation, among other doctors. Dr. Nuñez found that Hector had sustained one gunshot wound on the left lumbar region. The bullet penetrated the intestine, completely transected the ileum, and exited at the left inguinal region. Without medical attendance, this wound would have caused Hector’s death. Another wound shattered and comminutely fractured the bones of Hector’s upper right arm.[40]

Evidence for the Accused

It was more than nine (9) months after the incident or on June 7, 1979, when the two aforementioned informations were filed. Later the accused, one by one, either surrendered or were arrested. At the trial, the defense interposed alibi and denial as defenses, weaving them into the following version of the incident:

After lunch on that fateful day, Antonio Manambit, allegedly one of the four gunmen, was at the house of Ka Maring Villegas in Maytalang. He was playing a card game called bikol or entrecuatro when he and his co-players heard successive shots. Ten minutes later, Rolly Alcantara arrived and told them that the exchange of shots had happened near the Pagsanjan cemetery. A few minutes later, Antonio left and went to the road where several people had converged looking at the direction of the place where the shooting had transpired. He learned that he was being implicated in the crimes only a little less than a year later. He surrendered to one Col. Sierra in Lucena City on July 15, 1980.[41]

Antonio’s alibi was corroborated by Margarita Sakay who had been among those playing cards with him. Margarita affirmed that Antonio left Ka Maring’s house after they heard the shots.[42]

Benjamin Lacbay, supposedly another gunman, was at the shop of Monark International in Caliraya, Lumban,

Laguna, repairing the truck he was driving for the company, when the incident occurred. He started fixing the truck at about 1 o'clock in the afternoon and finished at around 4:00 p.m.[43] His alibi was supported by Danilo Badillo, former personnel administrative officer of said company, and Arturo Beltran, another former company driver.

Feliciano Rana (also called "Ochoy" or "Choy"), who had reportedly made hand signals to his companions, was at the military detachment in Maytalang around 600 meters away from the cemetery, when the shooting occurred. He was then with Moring Llames, Francisco Lisma, Tosing Lacbay and Francisco Villanueva. Sgt. Ramos called him as he passed by the detachment. After entrusting to a helper the truck he was driving in delivering gravel and sand, he joined Sgt. Ramos who asked him to buy drinks as they already had food. After hearing gunshots, the military men left the area, with Sgt. Ramos dropping by first at the house of "Ate Minda" to make a telephone call. Afraid that he might get involved in the shooting, Rana stayed at the detachment. When Sgt. Ramos had left for the cemetery, people began milling around the detachment and on the highway. Rana was in front of the detachment when Sgt. Ramos returned with the news that Hector Samonte had been one of the victims in the shooting incident.[44] Sgt. Francisco Ramos, Sgt. Antonio Romilla and Guillermo Estrosa, another member of the Philippine Constabulary, corroborated Rana's story.

Further corroborating Rana's alibi was his fellow accused Mauricio Llames, who was said to have been another one of the gunmen. He asserted that he, too, was at the military detachment, where he had arrived ahead of Rana, when the shooting incident happened. He was there because it was his habit to converse with the constables when he had no work to do. After the incident, he stayed on at the detachment until around 4 o'clock in the afternoon, making inquiries about the said incident from people gathered around the detachment and on the street. It was about a year later that he learned of his implication in the crimes. By that time, he had gone to Manila to work. In July 1980, he surrendered to the Regional Command of Gen. Andres Ramos upon learning that an ASSO had been issued for his arrest in connection with the killing of one Judge Sobejana.[45]

Ramon Mamuri, who was supposedly seated along the edge of the highway where the incident occurred, must have been 19 years old[46] at the time. He was repairing the roof of their house along the path to the PC detachment in Maytalang between 8 o'clock in the morning and half past 4 o'clock in the afternoon on August 29, 1978. He was arrested almost a year later or in July 1980.[47] The person who could corroborate his story, Supre Villanueva, who had been with him as he repaired their house, died in 1980.

Appellant Jaime Manambit, nicknamed "Jimmy," who was said to have been one of the four armed men, was around 23 years old on that fateful day. He said that he was in Nichols Air Base from July 1978 until 1980. He was residing there because his wife was working with AVSECOM.[48] On August 29, 1978, he was at the chaplain's quarters arranging pieces of furniture. The chaplain, Fr. Rufino Oarga, was his mother-in-law's brother. He stayed in the quarters until lunchtime and went home thereafter as his two children had no companion at home.

Fr. Oarga's testimony supported Jimmy's alibi. According to Fr. Oarga, in July 1978, when he learned of the troubles in Lumban involving the Manambit family, he advised Jimmy to stay with his wife who was then residing at Nichols Air Base. Thus, between 1 and 2 o'clock in the afternoon of August 29, 1978, Fr. Oarga supervised Jimmy as the latter fixed the table and chairs at the chapel of Nichols Air Base "particularly the whole afternoon." [49]

To buttress their claim that the accused were not the perpetrators of the crimes, the defense presented 61-year-old Arturo de la Cruz, a mason who worked in the cemetery. At around 1 o'clock in the afternoon of August 29, 1978, Arturo was walking towards the cemetery when he heard a shot. He saw a masked man standing on an

elevated place on the shoulder of the road by the tamarind tree. Because of the mask (kumpa), only his eyes were visible. He ran towards the direction of the Ala-ala Memorial Park. As he heard successive shots, Arturo dropped to the ground (“dumapa ako”). He had no way of knowing whether the masked man had a companion because he scampered in fear.[50]

Testifying for the defense, Fernando Gabatan stated that he was seated on the front passenger seat of his car, talking to his driver as they crossed the border of Pagsanjan, when suddenly he heard shots muffled by the car's airconditioner. Stray bullets shattered the windshield in front of him. Thinking that he was the object of the assault, his driver pushed him down. The driver tried to stop the car but it did so only around a hundred meters away from the boundary of the two towns. Both of them rushed to the rice field nearby for cover.

Later, Gabatan and his driver found out that the car had three flat tires and the bullet which had hit its rear back seat ricocheted to the engine. His driver was hit at the back by either a bullet or a shrapnel. When PC men arrived, they asked him whether he had seen the assailants but Gabatan told them that he had not because when the shooting occurred, he was busy talking with his driver. There was a second volley of gunshots when the PC men fired at the direction of the cemetery.[51]

The Assignment of Errors

To secure his acquittal, Appellant Jimmy raises the following assignment of errors:[52]

"I. First:

The trial court erred in finding that accused-appellant Jimmy Manambit's guilt was proven beyond reasonable doubt, in view of the fact that:

- (A) The prosecution witnesses were biased and partial and their testimonies were flimsy, unreliable and contradictory.
- (B) The identity of accused-appellant Jimmy Manambit as a participant in the shooting incident was not conclusively shown.
- (C) The three other accused, particularly Antonio Manambit, were acquitted based on the same evidence which the trial court used to convict accused-appellant Jimmy Manambit.
- (D) The trial judge who rendered the decision was not able to fully appreciate the demeanor and bias of the prosecution witnesses, as he was a mere replacement of another trial judge who initially heard the case.

II. Second:

Considering the weakness and unreliability of the prosecution's evidence, the trial court erred in not giving credence to accused-appellant Jimmy Manambit's testimony and alibi.

- (A) The direct testimony of accused-appellant Jimmy Manambit that he was at the Villamor (Nichols) Airbase at the date and time that the shooting incident took place deserved full credence since the prosecution failed to contradict the same.
- (B) The testimony of Fr. Oarga is credible despite his relationship with accused-appellant Jimmy Manambit's mother-in-law.
- (C) There is no cogent reason to believe and give credence to the alibi of the other accused and to reject accused-appellant Jimmy Manambit's alibi.”

Appellants Llames and Mamuri did not file any brief.

The Solicitor General prays for affirmation of guilt but asks that the penalty imposed in Criminal Case No. SC-2209 be reduced to reclusion perpetua, instead of death, “pursuant to Section 19 (i), Article III of the 1987 Constitution.”

From the submissions of the parties, the Court believes that the resolution of this appeal hinges on the following matters:

1. Motive in relation to credibility and sufficiency of evidence,
2. Identification of the appellants as the assailants,
3. Relative weight of the defense of alibi,
4. Effect of the change of judges during trial, and
5. Liability of the two remaining appellants.

The Court’s Ruling

The appeal is meritorious. In a nutshell:

Because of the history of family feud, the motive of the prosecution witnesses (to inculcate the appellants) taints their credibility. In turn, the motive of the accused (to commit the crime) is diminished in evidentiary value by the insufficiency of the evidence against them. The insufficiency is brought to light by: the lone-unidentified-gunman theory (of the lower court itself) and the physical evidence tending to support it, contradictory testimonies as to who were really present at the crime scene, and the *res gestae* statements of the deceased Reynaldo Baldemora that failed to name the appellants as having been among the assailants. In this light, the defense of alibi assumes relative importance. We shall elaborate on these in the following pages.

Motive in Relation to Credibility and Sufficiency of Evidence

In convicting Jimmy Manambit, Mauricio Llamas and Ramon Mamuri; and in acquitting Antonio Manambit, Benjamin Lacbay and Feliciano A. Rana, the trial court did not take into account the pervading animosity between the Manambit and Samonte families when the incident occurred.

History of the Family Feud

The feud between the families began when Andres Manambit -- the father of the two accused brothers in this case -- in his capacity as a barangay captain, led occupants of lands that were being claimed by the Samontes in questioning the latter’s ownership thereof. Thereafter, Andres Manambit was shot by Mario Ablao who was allegedly related to the Samontes. Hector was also implicated in the crime. The incident bred another bloody event when Judge Sobejana, who had allegedly seen Atty. Zenon Samonte and Mayor Bruno Ablao signal Mario Ablao to shoot Andres Manambit, and who had vowed to testify on the matter, was gunned down.[53]

Even the death of the mother of Appellant Jimmy appears to be an offshoot of that animosity -- Hector Samonte, the victim in this case, had been convicted of killing her and sentenced to die before a firing squad by a military tribunal.

The death of the Manambit parents led to more bloodshed. Dr. Samonte, Hector’s brother, was shot at a bank. Tony and Jimmy Manambit were accused of the crime but they were acquitted. Atty. Zenon Samonte, another brother of Hector, was also shot and the Manambits were again implicated therefor.[54]

The other accused in this case provided motives why the Samontes would inculcate them in the crimes. Rana traced his involvement to the land dispute between his father and the Samontes.[55] According to Mauricio

Llames, he was named a defendant in these cases because his 13-year-old son testified against the Samontes after a grenade had been lobbed at the jeep of Andres Manambit.[56] Upon learning of the incident herein involved, Benjamin Lacbay remarked that he would surely be implicated because a Samonte was hurt. Lacbay testified in the 1976 bombing of the Manambit jeep which had killed appellant's mother and hurt her children. Thereafter, he was charged with the Manambits for the shooting of Dr. Samonte although, when the case was referred to JAGO, his name was removed from the list of defendants.[57] As regards Mamuri, he believed that he was charged in these cases because his father used to be the driver of Andres Manambit as all those who were close to the Manambits had been charged by the Samontes.[58]

Motive of Prosecution Witnesses

and Their Tainted Credibility

The trial court would have been properly guided in determining the culpability of the accused had it taken into account the prevailing highly charged situation. It should have remembered that, considering the feud between the families, any statement imputed by one family member against a member of the other family was suspect, coming as it would from a "polluted source." The rule as to motive and how it affects the witness' credibility is: "(a)bsent evidence to show any reason or motive why witnesses for the prosecution should have testified falsely, the logical conclusion is that no improper motive existed and that their testimony is worthy of full faith and credit." [59] On the other hand, if for any motive there is a possibility that a witness might have been prompted to testify falsely, courts should be on guard in assessing the witness' credibility.

Even if the testimony of Zenon Samonte as to the participation of Appellant Jimmy in the crimes corroborated that of his brother Hector, the evidentiary weight of the latter's testimony is nevertheless questionable. Hector's hatred for Appellant Jimmy and his family was duly established. Thus, in correctly rejecting the prosecution's claim that Hector's declaration as written by Pat. Liwanag was part of the *res gestae*, the trial court said:[60]

"Samonte's declaration is no more proof of an old grudge than would be a statement to the same effect made a month before the shooting incident or a month afterwards. His answers, then, to Liwanag's questions are to be equated with the running feud between his family and the Manambits."

The Court is not unmindful of the rule that the assignment of value and weight to the testimony of a witness is best left to the discretion of the trial court. But an exception to that rule shall be applied in this case where certain facts of substance and value, if considered, may affect the result.[61]

In view of its disregard of the declaration of Hector to Liwanag, the trial court apparently based its conclusions regarding Appellant Jimmy's complicity solely on the court testimony of Hector. Admittedly, the sole positive testimony of a credible eyewitness, which satisfies the court as to the guilt of the accused beyond reasonable doubt, is sufficient to convict.[62] However, Hector can hardly be considered a credible eyewitness as far as the identity of Appellant Jimmy is concerned. His open animosity toward Appellant Jimmy, which the trial court itself noted, can never make him the source of credible evidence to prove beyond reasonable doubt the culpability of the said appellant.

Motive of the Accused and the Insufficiency of Evidence Against Them

Admittedly, evidence of motive for the commission of the crime assumes importance where the identification of the accused proceeds from an unreliable source and the testimony is inconclusive and not free from doubt.[63] However, mere proof of motive, no matter how strong, is not sufficient to support a conviction if there is no other reliable evidence from which it may reasonably be deduced that the accused was the malefactor.[64] In the cases at bench, the running feud between the Samontes and the Manambits might have provided a strong motive for Appellant Jimmy to commit the crime. However, it was not sufficiently proven, other than through the clearly

biased testimonies of Hector and Zenon, that such motive had in fact impelled Appellant Jimmy to shoot Hector and Reynaldo Baldemora.

Moreover, granting that indeed Appellant Jimmy had a motive to retaliate against the Samontes, such motive may not influence this Court's perspective. While it might have furnished the reason for the crimes, by the same token, a publicly known strong motive could have also been an equally strong deterrent against commission of the crime. Inevitably, the finger of suspicion would have surely and readily pointed to Appellant Jimmy as a culprit. What needs proper attention therefore is whether or not, by the rules of criminal law and procedure, Appellant Jimmy was properly identified as one of the perpetrators of the crimes.

The Identification of the Appellants as the Assailants

The Lone-Unidentified-Gunman Theory

and the Physical Evidence Tending to Support It

In acquitting Tony Manambit, Benjamin Lacbay and Choy Rana, the trial court posited the following theory as to the real assailant contrary to the allegations of Hector:[65]

"The evidence on record does not indicate that Hector Samonte sustained multiple gunshot wounds, despite the intense and simultaneous firing of shots aimed at him and Baldemora by the four accused, who were armed with long firearms. Neither does it indicate that Samonte's motorcycle was hit and damaged. This brings into focus the number of assailants who were actually at the scene. The Court is called upon in the exercise of its duty to protect the innocent and punish the guilty.

The discovery by the authorities of twenty spent/empty shells from an M-16 rifle near a tamarind tree on a grassy, elevated portion of the ground near the municipal cemetery, has not, likewise escaped the attention of the Court. The shells were found immediately after the shooting incident on August 29, 1978. The presence of another gunman, whose identity was not, however, established by the prosecution, at the place of their discovery cannot be discounted." (Italics supplied.)

The trial court then considered the findings of Dr. Nuñez -- that based on the gunshot wound of Hector, "the one who inflicted this wound must have been on an upper or elevated place behind the victim, and this considering, moreover, the downward trajectory of the bullet"-- and because there was no evidence of close-range firing, the assailant must have been more than 36 inches away from Hector. The trial court also repeated the findings of Dr. Mag-iba that only one gunshot wound had caused Reynaldo's death. It added:[66]

"Dr. Mag-iba's testimony lends credence to the testimony of Dr. Nuñez, who treated Hector Samonte, that the shots came from behind. The testimonies of the two attending physicians tend to show the actual number of assailants at the place of the shooting incident, considering not only the location of the wounds but also their number and extent. To say that four men participated in the attack by intensely and simultaneously firing their long firearms at a distance of ten to fifteen meters only from the intended victims, who were in the opposite direction, their right side exposed to the attackers, would be dwelling in the realm of improbabilities. Indeed, if we are to believe the version of Hector Samonte, then he and his companion at the time would not have suffered three gunshot wounds only, which, according to the attending physicians, were inflicted by an assailant behind them.

The more plausible theory is that there were only two gunmen at the edge of the highway, which is a level terrain, and that the two served as decoys who fired at random at the speeding motorcycle; that there was a hitman behind a tamarind tree on an elevated portion of the ground who held his fire upon seeing Gabatan's car trying to overtake Samonte's motorcycle, but realizing that his intended victim might escape or elude him when the latter managed to speed past the tamarind tree where he was hidden, he opened fire. In a portion of his testimony, Hector Samonte declared that he tried to prevent a trailing red car from passing through, which

would lay him and his company open or exposed to gunfire from the armed men who were by that time nine meters from the edge of the highway and ten to fifteen (sic) away from him and Baldemora. Continuing with his testimony, Samonte declared that he veered his motorcycle to the center of the highway, but the red car carrying Gabatan and driven by Abel Abarquez squeezed through, and that was the time he heard shots and felt that he (Samonte) was hit.

If Gabatan's car was caught in the line of fire intended for Hector Samonte and Reynaldo Baldemora, it was a freak of fate that he and his companion were drawn into the vortex of that fateful incident on August 29, 1978." (Italics supplied.)

However, in clear contradiction of its view that only two persons served as "decoys" with a lone unidentified gunman inflicting the desired result of the ambushade, the trial court convicted appellant as a principal and Llames and Mamuri as accomplices. It held:[67]

"To recapitulate, the inculpatory facts and circumstances in the above-entitled cases are consistent with the guilt of the accused Jimmy Manambit, Mauricio Llames and Ramon Mamuri, whose concurrence of wills with an unidentified gunman who was standing on an elevated portion of the ground near a tamarind tree, was established. Their close proximity or propinquity to each other in a given place and time justifies the imputation of scheming and execution of the plan to waylay the victims on August 29, 1978, at about 2:00 o'clock (sic) in the afternoon near the municipal cemetery of Pagsanjan.

Here, we have what the law or jurisprudence refers to as quasi-collective responsibility, wherein one of them is a principal and the others as (sic) accomplices. The extent of participation of the accused Mauricio Llames and Ramon Mamuri, being not sufficiently disclosed, their liability is considered as that of accomplices. 'The principal element of every punishable complicity consists in the concurrence of the will of the accomplice with the will of the principal or author of the crime, and the accomplice cooperates by previous or simultaneous acts in the execution of the crime by the principal'. (People v. Tamayo, 44 Phil. 49) Accused Llames and Mamuri knew the principal's purpose, but their participation was to a certain poin (sic) in the criminal design'. (Citing People v. Aplegido, et al., 76 Phil. 571)" (Italics supplied.)

Conflicting Testimonies as to Who Were

Really Present at the Crime Scene

Clearly then, the trial court could not with certainty point to who-shot-whom in the incident. It could not even decisively specify the participation of each accused. What is more bothersome is that Appellant Jimmy was not properly identified.

The question of identification should have been given more attention. The fact that Hector and Reynaldo were shot does not necessarily mean that the Manambits were the ones responsible. The prosecution, with due regard to the existing acrimony between the Samontes and Manambits, cannot discount the likelihood that Hector might have been prompted to accuse the Manambit brothers as the ones responsible. The previous circumstance of Antonio waving to Ramon Mamuri might have created a suspicion of evil design in the mind of Hector. The latter's prejudice against Antonio whom he referred to as a "bad man" so many times in his testimony might have further enhanced his premonition of a dire event when he and Reynaldo returned from Magdalena. These antecedents, however, should not have weakened the adherence of the court a quo to the principle that the guilt of an accused must be proven beyond reasonable doubt. A conviction in criminal cases must rest on nothing less than a moral certainty of guilt.[68]

The court a quo, however, disregarded contradictions between the testimony of Hector Samonte, the sole prosecution eyewitness, and the testimonies of other prosecution witnesses as to who were really present at the crime scene. Hector testified:[69]

Q

You mentioned that you started driving the motorcycle slowly towards Lumban. Now, will you tell us what happened after you have started the engine of the motorcycle?

A

Upon reaching Ala-ala Memorial Park I saw and I noticed Ramon Mamuri sitting along the roadside along the edge of the highway and then while I was driving the motorcycle I saw Choy Rana standing and making signs or signal while he was facing at the coconut plantation.

Q

Upon seeing those two persons that you mentioned, Mamuri and Choy Rana, what did you do if you did anything?

A

When I saw Choy Rana making a signal I look (sic) at the place where he was then making the signal and saw four (4) armed men who stood up.

Q

Will you tell us or describe to us the relative position of those four armed men that you said stood up?

A

I saw first Antonio Manambit and next to him is Llames and next to Llames is Lacbay and the other is Jimmy Manambit on the other hand.

Q

After you saw Tony Manambit, Mauricio Llames, Ben Lacbay and Jimmy Manambit stood up, what did you do if you did anything?

A

I suddenly veered my motorcycle at the middle of the road going towards Lumban.

Q

Will you tell the Court why did you veer your motorcycle towards the center of the road going to Lumban?

A

Because I saw their firearms were aimed at me or pointed at me

Q

Were you able to veer your motorcycle towards the center of the road going to Lumban?

A

Yes, sir.

Q

Then what happened after that?

A

I just heard shots.

Q

Did you come to know from what direction did those shots come from?

A

The shots came from the place near where I saw the four armed men.

Q

Then what happened after you heard those shots?

A

I sped (sic) the motorcycle but I felt that I was hit.

Q

After you lost control of the motorcycle, what happened?

A

My companion and I fell, sir.

Q

You mentioned that you fell on the left side of the road going to Lumban. In relation to the position where you fell, how far was Reynaldo Baldemora from you?

A

.When I fell, I saw Reynaldo Baldemora crawling towards the right side of the road going to the direction of Lumban.

Q

After you saw Reynaldo Baldemora stopped crawling more or less five meters away from you, what did you do?

A

When I saw him at his position I saw a gun near him so what I did then was to crawl going near him.

Q

Why did you crawl towards Reynaldo Baldemora?

A

In order to get the gun near him so that if something may happen I will be using the same gun to defend myself, sir.

Q

Before you crawl (sic) towards Reynaldo Baldemora, do (sic) you know where the four (4) accused Tony Manambit, Jimmy Manambit, Ben Lacbay and Mauricio Llames were?

A

Yes, sir. When I fell I look (sic) at them and I saw Tony Manambit at the side of the road firing at us while the three (3) were running away.” (Italics supplied.)

The testimony of Pat. Liwanag, however, shows that as narrated to him, Hector saw not only four armed men but other men who were present whom he was not able to recognize; Hector even failed to mention the name of Ramon Mamuri contrary to his direct testimony. Liwanag said:[70]

“FISCAL questioning:

Q

Upon seeing Hector Samonte with those (sic) blood, what did you do if you did anything?

A

I asked him as to who shot him?

Q

What was the answer of Hector Samonte?

A

He said that he recognized Tony Manambit, Jimmy Manambit, Mauricio Llames, Ben Lacbay and Choy Rana

ATTY. MANIKAD:

May I manifest that in the answer of the witness he did not mention Llames. The interpreter merely added the name Llames.

INTERPRETER:

No, in my interpretation I mentioned only four but I missed the fifth one which he also mentioned.

ATTY. MANIKAD:

He was the one who asked ...

FISCAL

Q

Was that the only question you asked him?

A

Hector Samonte further told me that there were others but he was not able to recognized (sic) who they were.

A

I also asked him whether he recognized others and he told (sic) or answered that he was not able to recognize the others.”

The discrepancy in the testimony as to the presence and identification of Ramon Mamuri in particular became even more apparent when Hector narrated what he had told Pat. Liwanag regarding the identity of the perpetrators of the crime. Thus:[71]

FISCAL questioning Hector:

Q

What happened after Rustico Liwanag went near you?

A

Pat. Liwanag asked me who shot at me

Q

What was your answer?

A

I told him, Tony Manambit, Jimmy Manambit, Llames and Ben Lacbay.

Q

Was that the only question asked of you by Rustico Liwanag?

A

There were still other questions asked of me by Pat. Rustico Liwanag and he further asked me who are still others who I saw, I answered that the question of him. (sic)

Q

What was your answer to that question?

A

I told him that it was Choy Rana who first made the signal to the four armed me (sic) with long firearms."

Zenon Samonte's testimony, from his recollection of what his brother told him right after the shooting, was marked by unresponsive answers to the fiscal's questions as to the names of the persons responsible.[72]Again, Ramon Mamuri did not figure in his testimony.

FISCAL questioning Zenon:

Q

At the place where your brother Hector was confined, what did you do?

A

I asked my brother if he recognize (sic) the people who perpetrated the crime.

Q

Were you able to get any information from your brother regarding the perpetrators of the crime?

A

He recognized the perpetrators (sic).

Q

Will you tell us who were the persons recognized by your brother?

A

He said that he was able to recognize Antonio Manambit and Jimmy Manambit.

Q

After having been informed by Hector Samonte that the persons or the perpetrators were Tony and Jimmy Manambit, what else happened?

A

He also mentioned other names who he saw as one of the members of the perpetrators (sic)

Q

Will you tell the court what was that other names (sic) that was mentioned by your brother Hector?

A

He mentioned Ben Lacbay, sir.

Q

After your brother Hector Samonte mentioned the name Ben Lacbay, did you still have any conversation with your brother?

A

He told me Mauricio Llames. He also mentioned Ochoy Rana.

Q

Was (sic) there any other persons mentioned aside from those that you have already mentioned?

A

. He knew the other persons by face but he could not remember the names.”We could not give much worth to such conflicting allegations. They are not sufficient to put Jimmy Manambit at the scene of the crime. We wonder how the trial court could have convicted Jimmy Manambit and acquitted Tony based on the same allegations by prosecution witnesses that the court a quo had disregarded because the physical evidence had put the true assassin near the tamarind tree. Evidence to be believed must not only proceed from the mouth of a credible witness but it must also be credible in itself, such that common experience and observation of mankind lead to the inference of its probability under the circumstances. Sometimes, we have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience.[73]

The error in the appreciation of the prosecutions’s evidence with respect to the proof of the identity of the offenders is a crucial question that calls for corrective appellate action. 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.[74] The prosecution having failed to meet this quantum of proof as to appellant’s identity, the latter’s culpability may not be upheld.

Probative Value of the Res Gestae Statements of the Deceased Reynaldo Baldemora

What further militate against conviction of Appellant Jimmy are the presented parts of res gestae[75] statements of deceased Reynaldo.

Immediately after the wounded Reynaldo Baldemora was taken on board the jeepney, Pat. Alberto Baldemeca

asked him who were responsible for the assault. Pat. Baldemeca testified thus:[76]

Q

After Reynaldo Baldemora was loaded (sic) on the jeep what happened next?

A

I asked Rey Baldemora, sir.

Q

What did you ask Rey Baldemora?

A

I asked Rey Baldemora who shot him.

Q

What was the answer given by Rey Baldemora?

A

Sina Antonio Manambit.'

Q

Did you come to know who were "sina mentioned by Rey Baldemora?

A

They were six but he did not know the other five companions, sir."

Pat. Rustico Liwanag, who was on board the same jeepney bearing the wounded Reynaldo, corroborated Baldemeca's testimony. In answer to the question of whether or not he had heard the conversation between Reynaldo and Baldemeca, Liwanag said:[77]

A

What I heard from the answer of Reynaldo Baldemora to the question propounded by Pat. Alberto Beldemeca (sic) was that he recognized only Tony Manambit as one of the persons who shot him although he (had) other companions but whom he does not know any of the others (sic)."(*Italics supplied.*)

On the other hand, Atty. Zenon Samonte, who had been on the same jeepney and who had also admitted having heard Reynaldo identify the assailants, testified as follows:[78]

Q

Now, after Baldemora was placed inside the jeep, what happened?

WITNESS

Along the way, I remember he was asked by Pat. Albert Baldemeca who shot him.

FISCAL

Q

Did you hear any answer from Baldemora insofar as that question of Baldemeca is concerned?

ATTY MANICAD (sic)

Hearsay, objection, your Honor.

COURT Answer.

WITNESS

He answered the question of Pat. Baldemeca in Tagalog.

FISCAL

Q

What was his answer?

A

Magkapatid ni Jimmy at Tony Manambit', and others." (italics supplied.)

Clearly then, Zenon Samonte included Appellant Jimmy among the ambushers as allegedly seen by Reynaldo, contradicting in the process the testimonies of two prosecution eyewitnesses -- Pat. Baldemeca and Pat. Liwanag -- who had also heard what was to be Reynaldo's dying declaration. Biased against Manambit, Zenon was expected to implicate the two brothers. Where eyewitnesses contradict themselves on a vital question, the element of reasonable doubt is injected and cannot be lightly disregarded.[79] Moreover, an inconsistency regarding the identity of an assailant is not just a lapse of memory on a trivial point but a glaring inconsistency on a material factor which affects the witness' credibility.[80] With more reason, Zenon Samonte's inclusion of appellant as one of the killers must be received with extreme caution considering that, aside from the fact that he was a member of a family with whom Appellant Jimmy's family was at odds, he was not an eyewitness. He only heard about the identity of the assailants from Reynaldo.

If indeed Appellant Jimmy was in the vicinity of the crime scene when it occurred, this fact would not have been lost on Reynaldo. The prosecution did not dispute that Reynaldo had at one time been in the employ of Manambit's father as a laborer.[81] Antonio Manambit even testified that Reynaldo had been known to him since their elementary school days. It is therefore undeniable that Reynaldo was familiar with Appellant Jimmy and his family. Reynaldo could have easily pinpointed him as having been in the company of his brother Antonio when the shooting happened.

The prosecution also established that Pat. Alberto Baldemeca had taken Reynaldo's dying declaration.[82] The production of this vital piece of evidence as to the identity of the culprits would have corroborated and elevated the probative value of Hector's testimony. However, in spite of the opportunity afforded to the prosecution, this evidence was not produced. Thus, the fair presumption that evidence withheld for a sinister motive would, if produced, thwart the evil or fraudulent purpose of the one in possession thereof,[83] stands.

The Relative Weight of the Defense of Alibi

In confirming Appellant Jimmy's culpability, the trial court discredited his alibi. Thus:[84]

"What is surprising about the testimony of Fr. Oarga is that he did not inform the wife of the accused, who is his niece, that the accused was working with him in the chaplain's quarter as early as July, 1978, up to September of the same year when he (Fr. Oarga) was transferred to Clark Airbase in Pampanga. What was Fr. Oarga's intention in not telling his niece that her husband was with him in the chaplain's quarter during that

period? It is unthinkable that during that stretch of three months the accused and his wife did not meet each other, more so when the evidence of the accused shows that his wife was working during that time at the AVSECOM, which is within the same airbase. And how about the testimony of the accused that he and his family live in a house owned by a certain Sgt. Arroyo?

The testimony of Fr. Oarga raises a lot of conjectures; it is loose and vague. It is, moreover, biased. It leaves open to serious doubt the defense of alibi interposed by the accused. 'Where testimony in support of an alibi comes from a near relative, its value is necessarily reduced'. (People v. Escares, April 29, 1954, No. L-5562)

Sgt. Arroyo, the owner of the house where the accused and his family lived or stayed, should have been presented to corroborate the testimony of the accused. 'A defense of alibi cannot be taken seriously where it is not only uncorroborated, but could, clearly, if true, have been corroborated by certain persons who were not called upon to testify in support of it'. (People v. Mendova, January 31, 1957, No. L-7030)"

The alibi of Jimmy Manambit may be weak but the rule that "alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." [85] As one contradiction between prosecution witnesses' testimonies is followed by another -- in relation to the equally contradictory fact presented by the bullets found near the tamarind tree which tends to support the trial court's theory of an unidentified assassin -- the weakness of the prosecution's case is revealed and the appellants' defense of alibi is put into focus.

The weakness of the prosecution evidence on Appellant Jimmy's identification as an assailant would have eliminated discussion of his defense of alibi. It should be pointed out, however, that when the identification of the accused as the author of the crime charged is inconclusive or unreliable, alibi assumes importance. It acquires commensurate strength when the case for the prosecution is equally infirm. [86] Alibi is not always undeserving of credit, for there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts at the crucial time, and such defense may in fact tilt the scales of justice in his favor. [87] Neither may the fact that a witness to the alibi is a relative affect the probative value of his testimony. Family relationship does not by itself render a witness' testimony inadmissible or devoid of evidentiary weight. [88]

In these appealed cases, moreover, we find no factual basis for the aforequoted doubts of the trial court [89] in dismissing Fr. Oarga's testimony that Appellant Jimmy was at his quarters in Nichols Air Base. The defense raised by Appellant Jimmy might have been weak but he cannot be convicted on this score alone. To warrant conviction, the prosecution must be strong and convincing even if the defense itself is weak. [90]

In doubt as to who were really responsible, this Court cannot rest easy in convicting Jimmy Manambit based on the trial court's finding that his alibi is flimsy. Flimsiness of defense does not excuse the prosecution from proving Jimmy's guilt beyond reasonable doubt. "While the defense of alibi frequently deserves little consideration because it is easily fabricated, it is not always false and without merit and when coupled with the improbabilities and uncertainties of the prosecution evidence, the defense of alibi deserves merit (People vs. Delmendo, 109 SCRA 350). Indeed, we must 'emphasize the fact that courts should not at once look with disfavor at the defense of alibi. x x x x x When an accused puts up the defense of alibi, the court should not at once have a mental prejudice against him. For, taken in the light of all the evidence on record, it may be sufficient to acquit him x x x x x' (People vs. Tabayoyong, 104 SCRA 753, citing People vs. Villacorte, et al., 55 SCRA 640, 655). It would be worthwhile to add that 'every circumstance against guilt and in favor of innocence must be considered. Suspicion x x x should not sway judgment' against the accused (People vs. Clores, 125 SCRA 67). THE ACCUSED NEED NOT PROVE HIS INNOCENCE BECAUSE THAT IS PRESUMED (Section 19, Article 1V, 1973 Constitution)."[91]

The Court, however, is unable to sustain Appellant Jimmy's argument that the trial court erred in giving credence to the alibi of the other accused while rejecting that of the appellant. Courts are not required to accept or reject the whole testimony of a particular witness in toto.[92] Or for that matter, to grant wholesale acquittal on the sole basis of similar defenses.

Appellant Jimmy contends that the other accused, particularly Antonio Manambit, were acquitted based on the same evidence which the trial court used to convict him. What spelled the difference between them were the different treatments given by the trial court to their respective defenses of alibi. We hold however that it is not the weakness of alibi that shall warrant conviction, but rather the prosecution's quantum of evidence proving commission of the offense beyond reasonable doubt.

Effect of Change of Judges During Trial

Appellant Jimmy argues that the trial judge who rendered the Decision was not able to appreciate fully the demeanor of the prosecution witnesses as they testified, because he was a mere replacement for another judge who had initially heard the cases. As a rule, the fact that the judge who had heard the evidence did not himself prepare, sign and promulgate a decision does not necessarily constitute a compelling reason to jettison his findings and conclusions.[93]

However, this rule is not without exceptions. A judge's assessment of the credibility of the witnesses must be received with caution if he neither personally heard the testimonies of the witnesses nor observed their deportment and manner of testifying.[94] In *People vs. Pido*,[95] this Court departed from the rule that appellate courts shall generally not disturb the factual findings of the trial court by taking into account two special considerations. Firstly, it was another judge who had heard and received the whole testimony on direct examination of the complainant and the major portion of her testimony on cross-examination. The judge who decided the case did not then have sufficient basis to form an opinion as to the complainant's deportment and manner of testifying. Secondly, the trial court ignored or overlooked substantial facts and circumstances which would have affected the result of the case.

These two considerations obtain in the cases at bench. Firstly, it was Judge Antonio Malaya who had heard the testimonies of the main prosecution witnesses: Hector Samonte, Pat. Liwanag, Pat. Baldemeca and Atty. Samonte. Then Judge Maximiano C. Asuncion heard the rest of the testimonies of both prosecution and defense witnesses, and eventually rendered the questioned Decision. Secondly, the latter judge appeared to have overlooked vital contradictory evidence on the identification of the accused which would have been evident to him had he heard the testimonies of said principal witnesses.

We note that the trial judge made conclusions that were not in accord with the evidence in hand. Thus, as earlier stated, the trial judge found as plausible the theory that aside from the unidentified gunman behind the tamarind tree, there were only two gunmen on the edge of the highway.[96] He found appellant to be one of them and accordingly held him responsible as a principal.[97] Because he found Ramon Mamuri to be only an accomplice as he did not have a firearm,[98] he concluded that the other gunman on the edge of the highway could have been Mauricio Llamas. However, the trial judge found him guilty only as an accomplice on the basis of the same evidence that found appellant guilty as a principal. These lapses in the Decision could have been avoided had the trial judge been able to ascertain the truth or falsity of the testimonies of the witnesses by exercising his prerogative to propound clarificatory questions to resolve conflicting testimonies.

In criminal law, the quantum of evidence for conviction of an accused is that which produces moral certainty in an unprejudiced mind that the accused is guilty beyond reasonable doubt. But, if the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, the

accused must be acquitted. After a judicious evaluation of the evidence in these cases, the Court cannot assert with moral certainty that Appellant Jimmy is guilty of the crimes charged.

Liability of the Two Remaining Appellants

Appeal in criminal cases is governed by Rule 122 of the Rules of Court:

“SECTION 3. How appeal taken. --

(c) The appeal to the Supreme Court in cases where the penalty imposed is life imprisonment, or where a lesser penalty is imposed but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death or life imprisonment is imposed shall be by filing a notice of appeal in accordance with paragraph (a) of this Section.”

In view of this, we cannot ignore the appeal interposed by Appellants Llamas and Mamuri in spite of their failure to file their briefs or to inform this Court of the name of their counsel who could have been required to file one. Inasmuch as this Court has jurisdiction to pass judgment on the two appellants on the basis of their joint notice of appeal,[99] and consistent with the rule that the entire controversy should be settled in a single proceeding leaving no root or branch to bear the seeds of future litigation, we shall discuss their culpability as well. Indeed, the Supreme Court is clothed with ample authority to review matters, even those not raised on appeal, if it finds that their consideration is necessary in arriving at a just disposition of the case.[100] It is a matter of justice that the two other appellants be exonerated of the charges. This we do because an appeal in a criminal action opens the whole case for review and this includes the review of the penalty and indemnity. Every circumstance in favor of the accused shall be considered.[101]

The conflicting testimonies of the prosecution witnesses base the conviction of Mamuri only on the bare allegations of Hector. But as stated, Hector’s testimony, being tainted with bias, cannot be given credence. Therefore, we cannot convict Mamuri on the basis of his assertion as weighed against the glaring omission of his name from what was allegedly confessed to Zenon and Liwanag. What further supports his acquittal is the same reasoning the trial court used in convicting him. The trial court convicted him because his defense of alibi was weak. The trial court reasoned:[102]

“The accused Ramon Mamuri claims that he could not be at the place and time of the shooting incident on August 29, 1978, because at that time he was repairing the roof of his house from 8:00 o’ clock in the morning until 4:00 o’ clock in the afternoon. He further claims that one Supre Villanueva (now deceased) was with him at that time. His house is situated at barrio Maytalang Uno in Lumban, which is more or less 700 meters away from the municipal cemetery of Pagsanjan, where the shooting incident occurred. He was arrested by the PC only in 1979, although the incident happened on August 29, 1978.

From his testimony it could be gleaned that he did (sic) even hear a single shot coming in (sic) the direction of the cemetery of Pagsanjan, which accounts for the fact that he did not even stir in his place. Having been arrested, he did not ask why or what the reason behind his arrest was. He has not given any statement to the authorities from the time he was arrested up to the present.

The Court is aware of the facility with which a defense of alibi can be concocted and fabricated, although there are cases in which it maybe (sic) entertained when it is predicated upon substantial and reliable evidence which can engender in the mind of the Court reasonable doubt as to the guilt of the accused. ‘The defense of alibi has repeatedly been referred to as one easily fabricated, inherently weak, and not to be seriously considered if there is credible evidence of the presence of the accused at the time and place of the commission of the crime, or of his participation therein.’ (People vs. Aguipo, July 31, 1958, No. L-12123; People vs. Briz, August 22, 1958, No. L-11063)

Mamuri was positively identified by Hector Samonte who declared that he saw the former along the highway which adjoins the cemetery of Pagsanjan. The weather was clear, and there could be no mistake on Samonte's part as to the identity of the accused. There was no sufficient explanation on Mamuri's part as to his presence in a place far removed from his house in barrio Maytalang Uno in Lumban, which, he avers, was more or less 700 meters away. Neither was there any affirmative showing from Mamuri's testimony that Hector Samonte was biased against him."

This reason for conviction is made untenable by the admission of the trial court that the participation of Mamuri "was not sufficiently disclosed." This wavering disquisition only made it clear that the trial court itself did not in clear conscience convict Mamuri. Even Hector in his testimony averred that Ramon had not done anything that would have facilitated the commission of the crime. The most that he can be faulted with is that he was with Choy Rana when the latter made hand signals to allegedly four (4) armed men, but even then he was not committing a crime. The cooperation in the commission of a crime, which results in fixing upon the guilty agent the responsibility of an accomplice, requires acts, either prior to or simultaneous with the commission of the crime, that constitute an aid to and protection of the person or persons guilty of the actual commission of the crime; that is, perpetration of acts of moral or physical aid given immediately or by indirect means in such a way as to make it clearly appear that the principal and the accomplices acted upon a common agreement for the purpose of effecting some criminal act, although the means employed by each might have been distinct and separate.[103]

With respect to Llames, he was found guilty as an accomplice for the following reasons:[104]

"As to the version of the accused Mauricio Llames, there is much to be desired, considering his opening statement that after the shooting incident on August 29, 1978, he left for Manila where he engaged in driving, painting and the like. When he came home from Manila one day, he came to know that he was one of the accused, having received a subpoena in connection with the incident in question, yet he did not bother much to surrender or to give any exculpatory statement to the authorities. He claimed that he did not surrender because he might be incarcerated and his family might not eat. The truth is, he went into hiding, avoiding contact with the police authorities. He surrendered only when an ASSO was issued.

In a nutshell, the version of the accused Mauricio Llames betrays a guilty conscience. If in truth he was not involved in the shooting incident in question, he should have made a clean breast of the accusation against him. Instead, he fled and hid. "The wicked fleeth, but the innocent is as brave as the lion."

Apparent is the inconsistency of the trial court. If it truly believed that there was an unidentified assassin hiding near the tamarind tree, thus weakening the case against the four accused (who allegedly fired shots), then why -- of all the four accused -- was it Llames who was convicted together with Jimmy and only as an accomplice? The trial court must have considered Hector as a witness to have been so bereft of credibility that even Antonio Manambit whose name had been consistently repeated by Liwanag and Zenon was acquitted. It follows that the trial court had no factual consistency in its conviction of Llames. The liability of Llames as an accomplice is also a big question to this Court. If the trial court wanted to insinuate that Llames had acted only as a decoy for Jimmy Manambit, then this finding directly contradicts its basis for conviction which was the testimony of Hector who accused Llames of having been one of the four armed men who had shot at Hector and Reynaldo. These obvious hesitations and directly conflicting grounds for conviction cannot escape our attention.

Epilogue

In sum, we hold that the prosecution failed to prove the guilt of appellants beyond reasonable doubt. It has not provided this Court with moral certainty of their culpability. While the ambush and the resulting death of Reynaldo Baldemora and the near-death of Hector Samonte were duly proven, the identity of the malefactors was not satisfactorily shown. The trial court itself was hesitant and appeared not completely convinced of its own

verdict. While it posited the theory of an unidentified gunman “behind a tamarind tree” and effectively debunked the prosecution’s thesis of four armed men, it nonetheless convicted Jimmy Manambit as principal, Mauricio Llamas -- who (like Jimmy) the prosecution theorized as one of the four armed men -- as an accomplice, and Ramon Mamuri as another accomplice, simply because it was unable to pinpoint their exact participation. The medico-legal evidence showing that Baldemora was shot from behind directly contradicts and negates the prosecution’s claim that four armed men fired at said victim from the front, right. The trial court’s acquittal of the three original accused, particularly of Antonio Manambit who had been consistently named as a principal by the prosecution, and its conviction of three others on the basis of its varying treatments of their respective alibis completely overlook the prosecution’s hodgepodge of theories and faulty and flimsy presentation of facts. Worse, it placed on the accused the burden of showing their innocence; rather than on the prosecution, that of proving their guilt. All these inconsistencies and inadequacies -- taken in light of the pervading bloody family feud between the Samontes and the Manambits, and the admitted bias of the Samonte brothers against the Manambit brothers -- create sufficient doubts in the Court’s mind. We find the prosecution’s case thoroughly wanting in consistency, logic, cogency, credibility and reliability. All in all, the presumption of innocence in favor of the accused has not been overturned by the prosecution.

Indeed, this is one case that time has apparently forgotten. The case was begun in 1979 when the informations for murder and frustrated murder were filed. Appellant Jimmy Manambit has been under detention while this case was pending for nearly two decades.[105] Justice is now long overdue. It is time to give him back his freedom.

WHEREFORE, the appeal is GRANTED. The assailed Decision in consolidated Criminal Cases Nos. SC-2209 and SC-2210 is REVERSED and SET ASIDE. Appellant Jaime “Jimmy” Manambit as principal, Mauricio Llamas and Ramon Mamuri as accomplices, are ACQUITTED of the crimes of murder and frustrated murder, their guilt not having been proven beyond reasonable doubt. The bails posted by Appellants Llamas and Mamuri are cancelled and ordered released. Unless convicted for any other crime or detained for some lawful reason, Appellant Jimmy Manambit is ORDERED RELEASED immediately.

SO ORDERED.

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

[1] Presided over by Judge Maximiano C. Asuncion (now Associate Justice of the Court of Appeals).

[2] Rollo, pp. 110-112.

[3] Record of Criminal Case No. 2209, Vol. IV, p. 268-a.

[4] Ibid., p. 269.

[5] Rollo, p. 135-A.

[6] Record of Criminal Case No. 2209, Vol. IV, p. 270. (Llamas and Mamuri indicated in their notice of appeal that they would be appealing “to the Supreme Court and/or the Intermediate Appellate Court.”)

[7] Ibid., p. 271.

[8] Ibid., p. 276.

[9] Ibid., pp. 279-288; Record of Crim. Case No. 2210, Vol. II, p. 507-515.

[10] Ibid., p. 289; & id., p. 517.

[11] After his two motions for a total extension of sixty (60) days within which to file a brief was granted by this

Court (Rollo, pp. 130 & 132), appellant's counsel of record, Atty. Hernando Zaide, withdrew appearance from the cases (Ibid., p. 137). Atty. Anorito A. Alvero appeared as appellant's new counsel (Ibid., p. 142) but he failed to file a brief within the reglementary period. Required to show cause for such failure, Atty. Alvero explained that he could not prepare the brief because appellant's wife ran away with another man, taking with her money and the records of the case and that even appellant's brother was no longer interested in pursuing the case for lack of money (Ibid., p. 157). Finding Atty. Alvero's explanation to be unsatisfactory, the Court imposed upon him a fine of P500.00 with a warning that a repetition of his unethical attitude towards the speedy administration of justice would result in a more drastic penalty (Ibid., p. 161).

[12] Record of Criminal Case No. 2209, Vol. IV, pp. 183-184.

[13] Now the Presidential Legal Counsel of President Fidel V. Ramos.

[14] Rollo, pp. 44-47.

[15] TSN, April 6, 1982, pp. 1-11.

[16] Private First Class.

[17] Philippine Constabulary.

[18] TSN, April 27, 1981, pp. 4-8.

[19] Ibid., p. 10.

[20] TSN, August 17, 1981, p. 6.

[21] TSN, April 27, 1981, pp. 11-12.

[22] Exhibit A.

[23] TSN, April 27, 1981, pp. 14-18.

[24] TSN, April 6, 1982, pp. 10-11.

[25] TSN, March 28, 1983, p. 3.

[26] Ibid., p. 5.

[27] Exhibit J.

[28] Master Sergeant.

[29] TSN, March 28, 1983, p. 23.

[30] Exhibit K.

[31] Exhibits. K-1 to K-6.

[32] TSN, March 29, 1982, pp. 21-27.

[33] Ibid., pp. 32-40.

[34] Ibid., p. 41.

[35] Ibid., pp. 44-45.

[36] Ibid., pp. 46-48.

- [37] TSN, September 22, 1982, pp. 40-42, 48-50 & 17-24.
- [38] Exhibit H.
- [39] TSN, June 22, 1983, pp. 2-3.
- [40] TSN, October 4, 1983, pp. 5-7.
- [41] TSN, January 28, 1985, pp. 2-4, 17. Col. Sierra's first name was not mentioned in the TSN.
- [42] TSN, October 9, 1984, pp. 3-4.
- [43] TSN, August 21, 1984, p. 3.
- [44] TSN, May 28, 1984, pp. 2-5.
- [45] TSN, December 11, 1984, pp. 5-7. Judge Sobejana's first name was not mentioned in the TSN.
- [46] Per the transcript of stenographic notes, he was 26 years old when he testified on January 29, 1985.
- [47] TSN, January 29, 1985, pp. 1-2.
- [48] Aviation Security Command.
- [49] TSN, January 14, 1985, pp. 2-3.
- [50] TSN, November 27, 1984, pp. 2-4 & 7.
- [51] TSN, January 29, 1985, pp. 5-10.
- [52] Rollo, pp. 196; Appellant's Brief, pp. 17-18.
- [53] TSN, January 28, 1985, pp. 7-8.
- [54] TSN, April 6, 1982, pp. 2-17; March 26, 1985, pp 3-4.
- [55] TSN, March 28, 1984, p. 6.
- [56] TSN, December 11, 1984, p. 4.
- [57] TSN, August 21, 1984, pp. 5-6.
- [58] TSN, January 29, 1985, p. 3.
- [59] People vs. Pacapac, 248 SCRA 79, September 7, 1995.
- [60] Rollo, p. 106; Decision, p. 59.
- [61] People vs. Deunida, 231 SCRA 520, 532, March 28, 1994.
- [62] People vs. Fulinara, 247 SCRA 28, 40, August 3, 1995.
- [63] People vs. Lazarte, 200 SCRA 361, 376, August 7, 1991.
- [64] People vs. Macatangay and Cunanan, 107 Phil. 188 [1960].
- [65] Rollo, pp. 90-91; Decision, pp. 43-44.
- [66] Rollo, pp. 92-94; Decision, pp. 45-47.
- [67] Rollo, pp. 108-109; Decision, pp. 61-62.

[68] People vs. Argawanon, 231 SCRA 614, 619, March 30, 1994 citing People vs. Castro, 178 SCRA 274.

[69] TSN, April 6, 1982, pp. 5-9.

[70] TSN, April 27, 1981, p. 12-14.

[71] TSN, April 6, 1982, pp. 10-11.

[72] TSN, March 29, 1982, pp. 40-45.

[73] People vs. Dayag, 56 SCRA 439, 449-450, March 29, 1974 citing Vreeland vs. Vreeland 21, A 627, 631; People vs. Lacson, 53 O.G. 1823, 1838; People vs. Nicanor Alvarez, L-34644, January 17, 1974.

[74] People vs. Maongco, 230 SCRA 562, 575, March 1, 1994.

[75] Rule 130 of the Revised Rules of Court provides:

“SEC. 42. Part of the res gestae. -- Statement 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 part of 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.”

[76] TSN, August 17, 1981, pp. 5-6.

[77] TSN, April 27, 1981, p. 10.

[78] TSN, March 29, 1982, p. 33.

[79] People vs. De la Iglesia, 241 SCRA 718, 732, February 24, 1995; People vs. Eroles, 226 SCRA 554, 559, September 17, 1993.

[80] People vs. Pidia, 249 SCRA 687, 701, November 10, 1995.

[81] TSN, January 28, 1985, p. 9.

[82] TSN, August 17, 1981, pp. 10-11.

[83] People vs. Rodriguez, 232 SCRA 498, 504, May 25, 1994.

[84] Rollo, pp. 98-99; Decision, pp. 51-52.

[85] People vs. Fraga, et al., 109 Phil. 241, August 31, 1960.

[86] People vs. Argawanon, 215 SCRA 652, 665, November 13, 1992.

[87] People vs. Maongco, 230 SCRA 562, 575, March 1, 1994.

[88] People vs. Adofina, 239 SCRA 67, 81, December 8, 1994.

[89] People vs. Agguihao, 231 SCRA 9, 19, March 10, 1994; People vs. Deocariza, 219 SCRA 488, 498, March 3, 1993.

[90] People vs. Jorge, 231 SCRA 693, 700, April 22, 1994.

[91] People vs. Castelo, 133 SCRA 667, 684, December 26, 1984.

[92] People vs. Badeo, 204 SCRA 122, 134, November 21, 1991; People vs. Bombesa, 162 SCRA 402, 47, June 22, 1988.

[93] People vs. Rayray, 241 SCRA 1, 8, February 1, 1995; People vs. Gamiao, 240 SCRA 254, 265, January 19, 1995; People vs. Sadiangabay, 220 SCRA 551, March 30, 1993; Abaya vs. People, 216 SCRA 455, December 11, 1992.

[94] People vs. Surit, 233 SCRA 117, 124, June 14, 1994.

[95] 200 SCRA 45, 55, August 2, 1991, .

[96] Rollo, p. 93; Decision, p. 46.

[97] Rollo, pp. 110-111; Decision, pp. 63-64.

[98] Rollo, p. 102; Decision, p. 55.

[99] Cf. People vs. Galit, 230 SCRA 486, March 1, 1994.

[100] Heirs of Crisanta Y. Gabriel-Almoradie vs. Court of Appeals, 229 SCRA 15, January 4, 1994.

[101] People vs. Villagrancia, 226 SCRA 374, 381 citing case of Sacay vs. Sandiganbayan, 142 SCRA 593 (1986).

[102] Rollo, pp. 100-101; Decision, pp. 53-54.

[103] United States vs. Dasal, et al., 3 Phil. 6, 14-15, December 4, 1903.

[104] Rollo, pp. 99-100; Decision, pp. 52-53.

[105] The trial court rendered its Decision on October 4, 1985. On appeal, the brief for appellant Jimmy Manambit was filed by counsel de oficio Renato L. Cayetano on January 29, 1991 while the People's brief was submitted by the Solicitor General on March 27, 1991. The records of the case, including the voluminous transcripts, are about two feet high. The case (along with about a thousand others) was assigned to the ponente for study about a year ago in late 1995 after his appointment to the Court.

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