

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORO YADAO, CLARITO INOCELDA @ CARING, HONESTO TATSON AND PABLITO PANIS, ACCUSED-APPELLANT.*G.R. Nos. 72991-92. November 26, 1992*

Ponente: CRUZ, J.

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It was about eleven o'clock in the evening of November 25, 1978, in Barangay Maradodon, Cabugao, Ilocos Sur. The brothers Soller were returning from a trip out of town in search of a carabao. When they reached a culvert, the two separated, Jesus proceeding north and Salustiano west, to their respective houses. A few minutes later, Salustiano heard a burst of gunfire that made him turn to the direction of the shots. He switched on his flashlight and saw Jesus moaning on the ground. Before his fallen brother stood four men, two of them carrying rifles. One of them turned on Salustiano and fired, hitting him in the buttock and clear through his forearm. He fell even as the four fled. Salustiano crawled to his house and called for help. His relatives immediately took him to the Don Mariano Marcos Hospital, where he was to be confined for treatment for more than one month.[1]

That same night, the shooting was reported to the police, who came to talk to Salustiano at the hospital. He narrated the shooting and named his and his brother's assailants as Clarito Inocelda, Floro Yadao, Honesto Tatson and Pablito Panis. The police went to the scene of the ambush and found the dead body of Jesus Soller and fifteen spent .30 caliber shells. The autopsy conducted later revealed that the victim had died from gunshot wounds in his chest and other parts of his body.[2]

The police immediately went in search of the persons named by Salustiano but were told they had gone fishing. The following morning, they were found in the house of Hipolito Sabugo in Barangay Sagayaden, in the same province, and taken to police headquarters for questioning. After investigation, the four were charged in separate informations with the murder of Jesus Soller, the frustrated murder of Salustiano Soller, and illegal possession of firearms. All of them pleaded not guilty and the three cases were set for joint trial.

In the course of the trial, Inocelda was killed while attempting to escape in connection with another case. Panis also escaped later and was reportedly also killed. The trial court then dismissed the charges against them, continuing to try only the other two co-accused, namely Floro Yadao and Honesto Tatson. They were ultimately convicted in the first two cases but absolved of the crime of illegal possession of firearms for insufficiency of evidence. Judge Florencio Ruiz, Jr. of the Regional Trial Court of Ilocos Sur sentenced them as follows:

1. In Criminal Case No. 485-K, each is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessories of the law, to indemnify, jointly and severally, the heirs of Jesus Soller in the amount of P20,000.00 without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs; and
2. In Criminal Case No. 487-K, each is hereby sentenced to a prison term ranging from Six (6) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal, as maximum, with all the accessories of the law; to indemnify, jointly and severally, Salustiano

Soller in the amount of P10,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

In the service of the penalties herein imposed, the provisions of Art. 70 of the Revised Penal Code shall be observed. The accused, Floro Yadao, shall be entitled to full credit corresponding to the period of his preventive imprisonment.

The separate amounts of indemnity herein awarded shall be subject to the payment of the corresponding filing fees which shall constitute a first lien thereon.

In arriving at his decision, the trial judge placed much credence on the testimony of Salustiano Soller, who described in detail how he and his brother were shot by the four men who had ambushed Jesus that night. He positively declared that he could recognize all the co-accused by the light of the flashlight he trained on them when he heard the first volley of shots. He said that the two men who were carrying rifles were Inocelda and Tatson and that it was Inocelda who pointed the gun at him.[3]

Yadao and Tatson pleaded alibi and denied they were anywhere near the scene of the crime in the evening of November 25, 1978. On the contrary, they and their other erstwhile co-accused left in the afternoon of that day, at about 3 o'clock p.m. for Barangay Sagayaden where they intended to go fishing, although that they could not do so because they found it was high tide and the sea was rough. They insisted that all four of them stayed overnight in the house of Hipolito Sabugo, who was related to Tatson, and did not leave the place until they were picked up by the police the following morning.[4]

Hipolito Sabugo corroborated their testimony and stressed that the four men went to sleep at 8 o'clock that night and awoke at 6 o'clock the following morning. He said that his house was about 8 kilometers away from Barangay Maradodon.[5]

In rebuttal, Lolita Soller Aguilar, Salustiano's daughter, testified that at about 6 o'clock in the afternoon of November 25, 1978, the four co-accused passed by her house as she was feeding her pigs and she even noticed one of them carrying a fatigue bag.[6]

This Court has said time and time again that alibi is an inherently weak defense and will be believed only if it is shown that the pleader could not have possibly committed the offense imputed to him because of the distance between the scene of the crime and the place where he claims he was at the time the offense was committed. Moreover, his alibi must be supported by credible corroboration, preferably from disinterested witnesses who will swear that they saw or were with him somewhere else when the crime was being committed.

In the case at bar, it was not impossible for the four men to take the three hour-ride to Barangay Maradodon, ambush the Soller brothers, and then take the three-hour ride back to Barangay Sagayaden, all during the time they were supposed to be staying all night in Sabugo's house. Moreover, Sabugo's corroboration is suspect, considering his relationship to Tatson, whom he would naturally want to protect even with perjured testimony. There is also Lolita's rebuttal testimony that the four men passed by her house at half past 6 o'clock that afternoon, the very same hour they claimed to have reached Sabugo's house eight kilometers away.[7]

Besides, alibi cannot stand against the positive identification of the accused, as has been made in the case at bar. Motive is also not important in the face of such identification. Nevertheless, it is worth considering that the possible reason for the ambush-killing of Jesus Soller was his altercation with Inocelda, whom he found in possession of his missing gamecock.[8]

The Court also notes the incredible coincidence that the very four persons named by Salustiano as the assailants happened to be together, albeit in another place as they claim, when Jesus Soller was killed and his brother

Salustiano was also shot almost fatally. One may also wonder why, having decided to go fishing that night, the four men brought no fishing equipment at all, not even the standard kerosene lamp that is indispensable for night fishing.

The defense faults the trial judge for accepting the testimony of the prosecution witnesses despite their inconsistencies and general incredibility. It is pointed out that Salustiano declared in his earlier sworn statement that he ran away when he heard the first shots but later said at the trial that he trained his flashlight on the co-accused and was thus able to identify them. The appellants' brief also doubts that he could have, in the short moment that he pointed the flashlight at the four men, recognized each and every one of them and even remembered their individual attire, and this notwithstanding his admission that he had poor eyesight. Furthermore, it is hard to accept that although Salustiano gave his testimony more than five years after the occurrence of the event he was narrating, he could still remember it vividly, down to its every single detail.

This Court accords respect to the factual findings of the trial judge, who has the opportunity to directly observe the witnesses and to determine by their demeanor on the stand the probative value of their testimonies. The witnesses reveal much when they testify that is not reflected in the transcript, which only records what they said but not how they said it. The meaningful pause, the ready reply, the angry denial, the elusive eyes or the forthright stare, the sudden pallor when a lie is exposed or the flush of face that accentuates a sincere assertion - these and many other tell-tale marks of honesty or invention are not lost on the trial judge. It is for this reason that his factual findings are generally not disturbed by the appellate court unless they are found to be clearly biased or arbitrary. They are not so in the case at bar.

Salustiano's first statement was taken at the hospital when he had not yet collected his thoughts because of the shock of his traumatic experience only one day before. The most he could do then was identify his assailants. It was only later that he started remembering even the minutest details of that harrowing incident that claimed his brother's life and nearly cost him his own. It is not strange that he could do so in view of the personal significance to him of that event. The minor imperfections of his recollection only suggest that his narration was not contrived; in any case, they have not impaired the veracity of his testimony as a whole.

The defense theorizes that when Salustiano faced the ambushers with only a flashlight in his hand, the natural thing for him to do would have been to run. We need only repeat that persons do not necessarily react uniformly to a given situation; for what is natural to one may be strange to another. Salustiano was probably being brave, or simply reckless, or maybe he was not thinking at all, when he faced the four men who had just shot his brother.

We agree that there was conspiracy among the four co-accused, as deducible from their conduct at the time of the ambush. It is clear that they were motivated by the same purpose when they lay in ambush for the Soller brothers and subsequently felled Jesus as he approached and fired at Salustiano when he focused his flashlight on them. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.^[9] The four co-accused certainly did not just happen to be together at that unseemly hour that lonely night near the culvert when the two brothers appeared. There is no doubt that all four of them were joined by the same wicked plan, which they succeeded in carrying out, to waylay and murder their unsuspecting victims.

The Court sustains the finding of the trial court that the shooting of the Soller brothers was accompanied with treachery, to qualify the crimes to murder and frustrated murder. The victims were taken completely by surprise and had no chance to defend themselves against the sudden attack of the four ambushers. Nocturnity is absorbed in alevosia. Evident premeditation was correctly disregarded for failure of the prosecution to prove: (a) the time when the offenders determined to commit the crime; (b) an act manifestly indicating that they had clung to their determination; and c) a sufficient interval of time between the determination and execution of the crime to allow

them to reflect upon the consequences of their act.[10] The co-accused, as conspirators, are held equally guilty of, and subject to the same penalty for, each of the two crimes regardless of who actually killed Jesus Soller and inflicted the near fatal wounds on Salustiano Soller. In a conspiracy, the act of one is the act of all.[11]

WHEREFORE, the appealed decision is AFFIRMED in toto and the appeals are dismissed, with costs against the accused-appellants. It is so ordered.

Padilla, Griño-Aquino, and Bellosillo, JJ., concur.

[1] T.S.N., December 6, 1983, pp. 6-16.

[2] T.S.N., October 29, 1981, p. 11; Exh. "A", Records, p. 2.

[3] T.S.N., December 6, 1983, pp. 12-14.

[4] T.S.N., August 21, 1984, pp. 4, 11, 13-17.

[5] T.S.N., February 18, 1985, pp. 4-5.

[6] T.S.N., March 25, 1983, pp. 7-9; T.S.N., October 17, 1983, p. 9.

[7] T.S.N., August 23, 1985, p. 3.

[8] T.S.N., March 25, 1983, pp. 17-18.

[9] Art. 8, Revised Penal Code.

[10] Aquino, Ramon C., The Revised Penal Code, 1976 Ed., p. 325.

[11] People vs. Maranion, 199 SCRA 421.

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