

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAMERTO ALTERADO, JR. AND GILBERTO PATAGNAN, ACCUSED-APPELLANTS.

*G.R. Nos. 79039-41. October 27, 1989*

Ponente: MELENCIO-HERRERA, J.

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### MELENCIO-HERRERA, J.:

Sentenced to reclusion perpetua for the crime of Murder, and to twenty (20) days imprisonment for Slight Physical Injuries, accused Mamerto ALTERADO and Gilberto PATAGNAN now interpose this appeal from their conviction for Murder.

Accused-appellants have denied the commission of the felonies and have put up the defense of alibi.

The prosecution version of the occurrence has been summarized as follows:

"At about 9:30 in the evening of July 6, 1985, Victor Gaquit and his girlfriend Maria Elizabeth (Maribeth for short) Maglasang were sitting in the bamboo bench outside of the house of Maribeth Maglasang located in the corner of San Pablo and Carlos Tan St., at Ormoc City. While conversing, Victor noticed the arrival of two persons. One positioned himself just outside of the fence and the other one, near the jeep of Victor Gaquit which was only seven (7) meters away from where they (Victor and Maribeth) were sitting. (tsn, pp. 12-13, Sept. 13, 1985). Then, Victor Gaquit heard a shot, followed by another, and soon by a succession of shots from an armalite rifle. After the first shot Maribeth Maglasang shouted 'Agay', as if she was feeling pain. Immediately Victor pushed Maribeth down as he himself was hit in the breast. (tsn, p. 14, Sept. 13, 1985). When the burst of gunfire stopped, Victor carried Maribeth inside the house for he feared that the attackers would come near them. After placing the body of Maribeth near the door (half of her body was still outside), Victor stood and saw the faces of their attackers and recognized one of them as Bimbo Alterado, Jr. who was on the right side of the person who carried an armalite rifle. (tsn, pp. 15-16, Sept. 13, 1985)

"After the shooting, Victor Gaquit brought Maribeth Maglasang to the hospital. Unfortunately, Maribeth was already dead upon reaching the hospital. The cause of her death was loss of blood due to a wound in the heart. (tsn, p. 22, Sept. 10, 1985). Autopsy report indicates that Maribeth Maglasang suffered seven external wounds with four (4) of these wounds penetrating thoracic cavity (Exh. A). Victor Gaquit, on the other hand, suffered gunshot wounds at his chest near the left nipple. Dr. Celso Borres of the Ormoc Sugar Association Hospital removed a metallic object lodged in victim's chest. (tsn pp. 4, 7, & 8, Sept. 11, 1985).

"A few minutes before the shooting incident, Angelina Maurillo and her friends Juliet Pilapil and Normando Maglasang were conversing by the roadside near the stairs of the house of Jose Pilapil which was located along San Pablo St. and slightly opposite the house of Yoling Maglasang (father of victim Maribeth Maglasang). While her friends were engaged in a conversation, Angelina Maurillo noticed two (2) persons pass by—one was short with curly hair and a mustache and was handsome, while the other one wore a hat and carried a gun on his shoulder partially covered by a jacket. (tsn, p. 7 Oct. 1, 1985). Angelina Maurillo and her friends were only two (2) meters from the place of the road where the two persons passed by. When the two persons were already near the house of Yoling Maglasang, they positioned themselves and fired at Victor Gaquit and Maribeth Maglasang who were then sitting in the bench inside the fence that surrounds the house of Yoling

Maglasang. One of the persons who fired at them was identified as Mamerto Alterado, who at that time was holding a short firearm, while his companion was observed to be firing a long firearm. Angelina Maurillo was about twenty (20) meters away from the place where appellants fired their guns at the direction of Victor Gaquit and Maribeth Maglasang. After firing their firearms, the men walked hurriedly towards Carlos Tan St. (tsn, p. 9, Oct. 1, 1985)

"Right after the burst of gunfire, Federico Castillo, whose house was located near the corner of Carlos Tan St. and San Pablo St. (Ormoc City), and about sixty (60) meters from the house of Yoling Maglasang, went out to the street to look where the shots came from. He noticed many persons scampering away and the stores were closed. (tsn., pp. 6-7, Oct. 3, 1985). While standing in the street, he saw two (2) persons jogging towards him and when they were already near him, he went inside his house as they (persons) stopped 'jogging'. From his house, he can still see the two men (tsn, p. 21, Oct. 3, 1985). He heard one of them saying 'I am sure that one is dead.' He recognized appellant Mamerto (Bimbo) Alterado, Jr. as the one who spoke those words. Then, the companion who at that time was carrying an armalite rifle retorted 'It is good.' However, appellants continued walking towards San Pedro St., and turned right to Lopez Jaena St. (tsn, pp. 9-10, Oct. 3, 1985)

"A few minutes later, a certain policeman named Mayote and Sgt. Abbas of the Philippine Constabulary arrived on a motorcycle, and Castillo informed them that the two persons, whom he saw jogging, walked towards San Pedro St., and turned right to Lopez Jaena St. The peace officers, acting on the information of Castillo, followed the route taken by appellants, drove towards San Pedro St., and turned right to Lopez Jaena St. up to Arradaza St. At the store of a certain Emma Dawal located at Arradaza St., Mayote and Abbas inquired from the customers about two persons walking from Lopez Jaena St. The customers told the peace officers that they saw two persons going inside an apartment at the corner of Lopez Jaena and Arradaza St. (tsn, p. 26, Dec. 9, 1985). The apartment pointed to was rented by Bimbo Alterado, one of the appellants in this case. The peace officers (Mayote and Abbas), considering the situation that appellants were armed at that time, called for reinforcement. When the reinforcement arrived, they went to the apartment previously pointed out by the customers at the store of Emma Dawal and knocked at the door. The wife of Bimbo Alterado opened the door and when asked if the appellants were inside the apartment, answered that the appellants whom they (peace officers) were looking for were out (tsn, p. 46, Oct. 13, 1985). They also inquired if she has a firearm inside, but Mrs. Alterado also asked them to present a search warrant. They had none. However, the peace officers noticed that there was magazine of a M-16 rifle placed on top of the table, which, after inquiry, was given to them by Mrs. Alterado. (tsn, p. 48, Oct. 3, 1985).

"At about 11:00 P.M. of the same date or an hour and half after the shooting incident, appellant Bimbo Alterado, Jr. and a certain P.C. soldier by the name of Boboy Patagnan (whose real name is Gilberto Patagnan) arrived. Later on, the appellants accepted the invitation of the peace officers for questioning. Thus, they were brought to the P.C. camp, where an informal investigation took place. (tsn, p. 22, July 21, 1986)." (pp. 2-8, Brief for the Plaintiff-Appellee)

For their part, accused-appellants maintain that even if the felonies resulting from the above described factual narration were committed they had nothing to do with them as they were somewhere else before, during and after their commission. Their version is that in the evening of 6 July 1985 at about 7:00 o'clock, they had a drink at the "Bistro Cris." An hour later they went their separate ways after agreeing to meet again at 9:00 P.M. at the public plaza. At around 9:15 P.M., they went to the "Don Quixote Bar" at the "Don Felipe Hotel" where they drank beer. At around 11:00 P.M., they left the bar and went home. They were seen at the hotel lobby by Felipe Abad. Both accused-appellants then took a motorcab to Alterado's residence passing Arradaza Street. As they were nearing said residence, they were surprised to see the presence of police officers. Upon inquiry, they were told that the authorities were there to investigate two suspects who had entered ALTERADO's residence. ALTERADO offered his residence to be searched. The police entered the same and searched the place but found nothing in connection with the incident they were investigating. The authorities then invited accused-appellants to the camp for

questioning.

At the camp no positive identification was made of them, according to accused-appellants. Further, they maintain that as early as 7 July 1985 they had requested that they be subjected to a paraffin test, but that was accomplished only on 10 July 1985 because of lack of available transportation. Those tests, they call attention to, proved negative of powder burns (t.s.n., June 2, 1986, p. 82, Exhibit "2").

On 16 February 1987, the Trial Court\* sustained the prosecution version of the incident and convicted accused-appellants, thus:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered in Crim. Case No. 2718-0 for Murder, finding the accused, Mamerto Alterado, Jr. and Gilberto Patagnan, Guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code. Both accused are sentenced to suffer the penalty of Reclusion Perpetua, to pay the heirs of deceased, Maria Elizabeth Maglasang, jointly and severally in the amount of P30,000.00 and jointly and severally to indemnify the heirs of Ma. Elizabeth Maglasang in the amount of P46,840.00 for hospital expenses and funeral expenses and finally both accused are sentenced to pay one-half of the costs of this action.

"In Criminal Case No. 2720-0, this Court finds the accused, Mamerto Alterado, Jr. and Gilberto Patagnan, Guilty beyond reasonable doubt of the crime of Slight Physical Injuries and sentences them to suffer imprisonment of twenty (20) days each, each to pay one-half of the costs of this action" (p. 37, Regional Trial Court Decision, p. 734, Original Record).

Accused-appellants now submit that the Trial Court erred: 1) in holding that there was positive identification made by prosecution witnesses; 2) in giving credence to the prosecution witnesses; and 3) in holding that motive is immaterial.

The inter-related Errors 1 and 2 have to be rejected. While some of the prosecution witnesses were able to identify only one of the accused-appellants, two of said witnesses, namely, Victor Gaquit, a victim himself, and Angelina Maurillo, pinpointed both of them in the act of shooting. Victor Gaquit testified that immediately before they were fired at he saw accused-appellants approach him and Maribeth. He could even describe their relative positions. Then followed a burst of gunfire. After it stopped, and after carrying Maribeth near the door, he looked up and saw the faces of their attackers. He recognized ALTERADO whom he knew even before then and saw PATAGNAN carrying an Armalite rifle. He could tell the nature of the firearm being a soldier himself (t.s.n., September 13, 1985, p. 30). Quoted hereunder is the pertinent portion of his testimony:

"Q Now, at about 9:30 in the evening of the same date, July 6, 1985, while having that conversation with Maribeth Maglasang, could you recall an unusual incident that took place?

"A Two (2) persons arrived.

"Q Then, what happened?

"A I just did not mind, because I knew one of them.

"Q In what particular place were these two persons positioned?

"A They were walking but later on, they separated and one was stationed by the fence, and the other one was at the side of the jeep we rode on which was parked just across the street. (p. 12, tsn, Sept. 13, 1985)

x x x x x x x x

"Atty. Bantasan

"Q What particular position, relative to the position of Mamerto Alterado, Jr. during that time when he was just by the fence?

"Atty. Inting

There is no question.

"Q Where was Gilberto Patagnan, when the accused Mamerto Alterado, Jr. was just by the fence?

"A He was a little bit ahead to the left of Mamerto Alterado, Jr.

"Q Then, after these two persons whom you identified as Mamerto Alterado, Jr. and Gilberto Patagnan arrived in the place which you have just mentioned, what happened next?

"A I heard a shot, followed by another shot. And thereafter, successive shots were fired.

"Q Do you know where those two shots came from?

"A It just came from outside of the fence.

"Q How about those successive shots that followed, where did they come from?

"A It came from the person who was ahead of Mamerto Alterado, Jr." (t.s.n. November 7, 1985, pp. 10-11)

Angelina Maurillo also identified accused-appellants as the authors of the crime, ALTERADO having fired a gun, and PATAGNAN a long firearm (t.s.n., October 1, 1985, p. 17). She recounted that she was about twenty (20) meters away from the place of the incident when accused-appellants passed by the place where she and some friends were sitting and conversing outside the house of Jose Pilapil, situated slightly opposite Maribeth's house, stopped near it, positioned themselves and fired shots at their two victims. Thereafter, she saw the two (2) men walk hurriedly towards Carlos Tan Street (t.s.n., October 1, 1985, pp. 16-20). The witness had already seen ALTERADO twice before the incident (t.s.n., October 1, 1985, pp. 12-16).

The sound of gunfire attracted the curiosity of the residents. So much so that Federico Castillo, who saw accused-appellants after the incident walk towards named streets, guided peace officers towards that direction. Similarly, at the store of a certain Emma Dawal, the policemen were informed by customers thereat that they saw two persons going inside an apartment at the corner of Lopez Jaena and Arradaza Streets (t.s.n., December 9, 1985, p. 26), which turned out to be the apartment rented by ALTERADO. That volunteered information eventually led to the investigation of accused-appellants by the authorities.

The defense, however, assails Victor Caquit's testimony by stating that it is not a natural human reaction for someone who is being fired at to look at his assailants. It should be recalled, however, that he saw accused-appellants while they were still approaching and again when he had already carried Maribeth, who had been hit towards her house and when he was already by the door of said house. That there may have been discrepancies between his Court testimony and his Affidavit regarding the caliber of the firearm, and whether it was a pistol or a revolver, are details that should not detract from his positive identification of the assailants. The testimony of defense witness, Prescilla Enecio, that she had overheard Victor tell the deceased's family that he had not seen the culprits is pure hearsay.

In respect of Angelina Maurillo, her "tale" does not strike us as "fantastic." That she could not recall the exact dates when she saw ALTERADO twice before the incident does not affect her credibility there being nothing extraordinary to make her remember them. The fact that she did not go to the authorities to volunteer her statement, nor did she execute an affidavit, does not militate against her credibility either. Individuals react differently to given situations. What is important is that her testimony bears the earmarks of truth and

dependability.

That accused-appellants, after committing cold-blooded murder, would pass well-lighted streets with many people, neither detracts from the reliability of prosecution witnesses. A show of nonchalance is one way of deflecting attention from them. Besides, crimes committed even in broad daylight, unfortunately, are no longer extraordinary occurrences nowadays.

The declarations of other prosecution witnesses, taken singly, may have been circumstantial and lacking in full details. The totality of their testimonies, however, corroborates in no small measure the narrative of the two eyewitnesses, Victor Caguit and Angelina Maurillo, and as the Trial Court has found, deserves full credence. The inconsistencies and contradictions referred to by accused-appellants refer to minor details, which do not destroy credibility. Trivial discrepancies indicate that the witnesses were not previously rehearsed (*People vs. Hacbang*, G.R. No. L-75293, August 17, 1988, 164 SCRA 441).

In the face of the positive identification made of accused-appellants, the motive for the commission of the crime, subject of the third assigned error, looms unessential. Accused-appellants maintain that they do not even know Maribeth nor do they consider Victor Caguit their enemy. As jurisprudence has held, however, the absence of motive does not preclude the commission of the crime considering that nowadays it is of judicial knowledge that others have been killed or assaulted for lesser or no reason at all (*People vs. Laureta, Jr.*, G.R. No. L-31235, March 25, 1988, 159 SCRA 256).

The foregoing considered, the defense of alibi also proves futile. Aside from its inherent weakness, accused-appellants' argument that they were at the "Don Felipe Hotel" at the time of the commission of the crime cannot prosper. Not only were they positively identified as the perpetrators, but as the Trial Court had pointed out, the distance between the scene of the crime and that hotel is only about four-fifths (4/5) of a kilometer. With the good cemented road, the time of travel would be a matter of minutes by foot and shorter yet by riding a vehicle. This is proven by the fact that ALTERADO's wife testified that accused-appellants arrived home at 11:00 P.M. Both accused, for their part stated that they left the hotel at around 11:00 P.M.

The paraffin test may have shown that accused-appellants were negative for gunpowder residue (Exhibit "2"). However, it was taken only four (4) days after the incident. As the forensic chemist, Lt. Liza B. Madeja, PCCL, categorically stated, after four (4) days, gunpowder nitrate residue on a person's hands completely disappear (t.s.n., June 2, 1986, pp. 92-93). We have also had occasion to hold that a paraffin test showing negative results for burns may be disregarded where made three (3) days after the shooting incident (*People vs. Barbosa*, L-39779, November 7, 1978, 86 SCRA 217).

All told, the evidence on record does not tilt the scales of justice in favor of an acquittal verdict for accused-appellants.

WHEREFORE, the appealed judgment is hereby **AFFIRMED** in toto. Costs against Mamerto Alterado, Jr., and Gilberto Patagnan.

**SO ORDERED.**

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

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\* Presided over by Judge Francisco C. Pedrosa.

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