

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMELIANO TRINIDAD, ACCUSED-APPELLANT.

G.R. Nos. 79123-25. January 09, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On the sole issue that the adduced evidence is insufficient to prove his guilt beyond reasonable doubt of two crimes of Murder and one of Frustrated Murder with which he has been charged, accused Emeliano Trinidad appeals from the judgment of the Regional Trial Court, Branch 7, Bayugan, Agusan del Sur.

From the testimony of the principal witness, Ricardo TAN, the prosecution presents the following factual version:

The deceased victim, Lolito Soriano, was a fish dealer based in Davao City. His helpers were TAN, a driver, and the other deceased victim Marcial LAROA. On 19 January 1983, using a Ford Fiera, they arrived at Butuan City to sell fish. In the morning of 20 January 1983 SORIANO drove the Fiera to Buenavista, Agusan del Norte, together with LAROA and a helper of one Samuel Comendador. TAN was left behind in Butuan City to dispose of the fish left at the Langihan market. He followed SORIANO and LAROA, however, to Buenavista later in the morning.

While at Buenavista, accused Emeliano TRINIDAD, a member of the Integrated National Police, assigned at Nasipit Police Station, and residing at Baan, Butuan City, asked for a ride to Bayugan, Agusan del Sur, which is on the way to Davao City. TRINIDAD was in uniform and had two firearms, a carbine, and the other, a side-arm - a .38 caliber revolver. SORIANO, LAROA, TAN, and TRINIDAD then left Butuan on 20 January 1983 at about 5:20 P.M. bound for Davao City. TAN was driving the Fiera. Seated to his right were SORIANO, LAROA and the accused TRINIDAD, in that order. When they reached the stretch between El Rio and Afga, TRINIDAD advised them to drive slowly because, according to him, the place was dangerous. All of a sudden, TAN heard two gunshots. SORIANO and LAROA slumped dead. TAN did not actually see the shooting of LAROA but he witnessed the shooting of SORIANO having been alerted by the sound of the first gunfire. Both were hit on the head. TRINIDAD had used his carbine in killing the two victims.

TAN then hurriedly got off the Fiera, ran towards the direction of Butuan City and hid himself in the bushes. The Fiera was still running slowly then but after about seven (7) to ten (10) meters it came to a halt after hitting the muddy side of the road. TAN heard a shot emanating from the Fiera while he was hiding in the bushes.

After about twenty (20) to thirty (30) minutes, when a passenger jeep passed by, TAN hailed it and rode on the front seat. After a short interval of time, he noticed that TRINIDAD was seated at the back. Apparently noticing TAN as well, TRINIDAD ordered him to get out and to approach him (TRINIDAD) but, instead, TAN moved backward and ran around the jeep followed by TRINIDAD. When the jeep started to drive away, TAN clung to its side. TRINIDAD fired two shots, one of which hit TAN on his right thigh. As another passenger jeep passed by, TAN jumped from the first jeep and ran to the second. However, the passengers in the latter jeep told him to get out not wanting to get involved in the affray. Pushed out, TAN crawled until a member of the P.C. chanced upon

him and helped him board a bus for Butuan City.

TRINIDAD's defense revolved around denial and alibi. He contended that he was in Cagayan de Oro City on the date of the incident, 20 January 1983. At that time, he was assigned as a policeman at Nasipit Police Station, Agusan del Norte. He reported to his post on 19 January 1983 but asked permission from his Station Commander to be relieved from work the next day, 20 January, as it was his birthday. He left Baan, his Butuan City residence, at about 3:00 P.M. on 20 January 1983 and took a bus bound for Cagayan de Oro City. He arrived at Cagayan de Oro at around 8:00 P.M. and proceeded to his sister's house at Camp Alagar to get his subsistence allowance, as his sister was working thereat in the Finance Section.

At his sister's house he saw Sgt. Caalim, Mrs. Andoy, one Paelmo, in addition to his sister. Sgt. Caalim corroborated having seen TRINIDAD then.

Continuing, TRINIDAD claimed that he left Cagayan de Oro for Butuan at lunch time on 21 January 1983 arriving at the latter place around 6:00 P.M., and went to his house directly to get his service carbine. He was on his way to Nasipit to report for duty on 21 January 1983 when he was arrested at around 6:00 P.M. at Buenavista, Agusan del Norte.

After joint trial on the merits and unimpressed by the defense, the Trial Court* sentenced the accused in an "Omnibus Decision", thus:

"WHEREFORE PREMISES CONSIDERED, this Court finds Emeliano Trinidad GUILTY beyond reasonable doubt of the crimes of Murder and Frustrated Murder.

"In the Frustrated Murder, there being no mitigating circumstances to offset the aggravating circumstance, and taking into account the provisions of the Indeterminate Sentence Law, accused Trinidad is meted out a penalty of:

- 1) 8 years and 1 day to 12 years of prision mayor medium;
- 2) to indemnify the complainant the amount of P5,000.00; and,
- 3) to pay the costs.

Likewise, in the two murder cases, Trinidad is accordingly sentenced:

- 1) to a penalty of Reclusion Perpetua in each case;
- 2) to indemnify the heirs of Marcial Laroa and Lolito Soriano the amount of P30,000.00 each; and,
- 3) to pay the cost." (p. 14, RTC Decision, p. 28, Rollo).

Before us now, TRINIDAD claims that the Trial Court erred in giving full faith and credit to TAN's testimony who, TRINIDAD alleges, was an unreliable witness. That is not so.

We find no variance in the statement made by TAN before the NAPOLCOM Hearing Officer that when TRINIDAD boarded the Fiera in Buenavista, he (TAN) was not in the vehicle, and that made in open Court when he said that he was with TRINIDAD going to Butuan City on board the Fiera. For the facts disclose that when TRINIDAD boarded the Fiera in Buenavista, TAN was still in Langihan distributing fish. The Fiera left for Buenavista, driven by SORIANO, between 6:00 to 7:00 A.M., while TAN followed only at 11:00 A.M. in another vehicle. So that when TRINIDAD boarded the Fiera in Buenavista, TAN was not yet in that vehicle although on the return trip from Butuan City to Davao City, TAN was already on board. In fact, TAN was the one driving. TAN's testimony clarifying this point reads:

"Q. Did you not say in your direct examination that you went to Buenavista, Agusan del Norte?

"A We were in Langihan and since our fishes were not consumed there, we went to Buenavista.

"Q Now, what time did you leave for Buenavista from Langihan?

"A It was more or less at 6:00 to 7:00 o'clock.

"Q You were riding the fish car which you said?

"A I was not able to take the fish car in going to Buenavista because they left me fishes to be dispatched yet.

"Q In other words, you did not go to Buenavista on January 20, 1983?

"A I was able to go to Buenavista after the fishes were consumed.

"Q What time did you go to Buenavista?

"A It was more or less from 11:00 o'clock noon.

"Q What transportation did you take?

"A I just took a ride with another fish car because they were also going to dispatch fishes in Buenavista.

"Q Now, who then went to Buenavista with the fish car at about 7:00 o'clock in the morning of January 20, 1983?

"A Lolito Soriano and Marcial Laroa with his helper.

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"Q Now, when this fish car returned to Butuan City who drove it?

"A Lolito Soriano.

"Q Were you with the fish car in going back to Langihan?

"A Yes, sir." (TSN, December 6, 1985, pp. 53-54).

Felimon Comendador, also a fish vendor, and a resident of Butuan City, testified that he saw TRINIDAD riding in the Fiera on the front seat in the company of TAN, SORIANO and LAROA, when the Fiera stopped by his house at Butuan City (TSN, November 5, 1985, pp. 32-33).

The other inconsistencies TRINIDAD makes much off, such as, that TAN was unsure before the NAPOLCOM Hearing Officer whether TRINIDAD was wearing khaki or fatigue uniform but, in open Court, he testified positively that TRINIDAD was in khaki uniform; and that while TAN declared that TRINIDAD was wearing a cap, prosecution witness Felimon Comendador said that he was not but was in complete fatigue uniform, are actually trivial details that do not affect the positive identification of TRINIDAD that TAN has made nor detract from the latter's overall credibility.

Nor is there basis for TRINIDAD to contend that the absence of gunpowder burns on the deceased victims negates TAN's claim that they were shot "point-blank." Actually, this term refers merely to the "aim directed straight toward a target" (Webster's Third New International Dictionary) and has no reference to the distance between the gun and the target. And in point of fact, it matters not how far the assailant was at the time he shot the victims, the crucial factor being whether he did shoot the victim or not.

TRINIDAD's defense of alibi is inherently weak and cannot prevail over the straightforward and detailed descriptive narration of TAN, thus:

"Q Now, from Butuan City, where did you proceed?

"A We proceeded to Davao.

"Q Did you in fact reach Davao on that date?

"A No, sir.

"Q Could you tell the Court why you failed to reach Davao?

"A Because we were held-up.

"Q Who held-up you?

"A Emeliano Trinidad, sir.

"Q Are you referring to accused Emeliano Trinidad whom you pointed to the Court a while ago?

"A Yes, sir.

"Q Will you tell the Court how did Emeliano Trinidad hold-up you?

"A When we reached between El Rio and Afga, Trinidad advised us to run slowly because this place is dangerous. Then suddenly there were two gun bursts.

"Q Now, you heard two gun bursts. What happened? What did you see if there was any?

"A I have found out that Lolito Soriano and Marcial Laroa already fall.

"Q Fall dead?

"A They were dead because they were hit at the head.

"Q You mean to inform the Court that these two died because of that gun shot bursts?

"A Yes, sir.

"Q Did you actually see Trinidad shooting the two?

"A I did not see that it was really Trinidad who shot Laroa but since I was already alerted by the first burst, I have seen that it was Trinidad who shot Soriano.

"Q What was the firearm used?

"A Carbine, sir.

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"Q Now, after you saw that the two fell dead, what did you do?

"A I got out from the ford fieria while it was running.

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"Q From the place where you were because you said you ran, what transpired next?

"A I hid myself at the side of the jeep, at the bushes.

"Q While hiding yourself at the bushes, what transpired?

"A I heard one gun burst.

"Q From what direction was that gun burst you heard?

"A From the Ford Fiera, sir.

"Q After that, what happened?

"A At around 20 to 30 minutes, I moved out from the place where I hid myself because I wanted to go back to Butuan. Then, I boarded the jeep and sat at the front seat but I found out that Emeliano Trinidad was at the back seat.

"Q When you found out that Trinidad was at the back, what happened?

"A He ordered me to get out.

"Q Now, when you got down, what happened?

"A When I got out from the jeep, Trinidad also got out.

"Q Tell the Court, what happened after you and Trinidad got out from the jeep?

"A He called me because he wanted me to get near him.

"Q What did you do?

"A I moved backward.

"Q Now, what did Trinidad do?

"A He followed me.

"Q While Trinidad followed you, what happened?

"A I ran away around the jeep.

"Q Now, while you were running around the jeep, what happened?

"A The driver drove the jeep.

"Q Now, after that, what did you do?

"A I ran after the jeep and then I was able to take the jeep at the side of it.

"Q How about Trinidad, where was he at that time?

"A He also ran, sir.

"Q Now, when Trinidad ran after you what happened?

"A Trinidad was able to catch up with the jeep and fired his gun.

"Q Were you hit?

"A At that time I did not know that I was hit because it was sudden.

"Q When for the first time did you notice that you were hit?

"A At the second Jeep.

"Q You mean to inform the Court that the jeep you first rode is not the very same jeep that you took for the second time?

"A No, sir.

"Q Now, when you have notice that you were hit, what did you do?

"A At the first jeep that I took I was hit, so I got out from it and stood-up at the middle of the road so that I can catch up the other jeep." (TSN, December 6, 1985, pp. 44-49)

TAN's testimony remained unshaken even during cross-examination. No ill motive has been attributed to him to prevaricate the truth. He was in the vehicle where the killing transpired, was a witness to the actual happening, and was a victim himself who managed narrowly to escape death despite the weaponry with which TRINIDAD was equipped.

The defense is correct, however, in contending that in the Frustrated Murder case, TRINIDAD can only be convicted of Attempted Murder. TRINIDAD had commenced the commission of the felony directly by overt acts but was unable to perform all the acts of execution which would have produced it by reason of causes other than his spontaneous desistance, such as, that the jeep to which TAN was clinging was in motion, and there was a spare tire which shielded the other parts of his body. Moreover, the wound on his thigh was not fatal and the doctrinal rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only Attempted Murder, the accused not having performed all the acts of execution that would have brought about death (People vs. Pilonos, L-32754-5, July 21, 1978, 84 SCRA 167; People vs. Garcia, L-40106, March 13, 1980, 96 SCRA 497).

But while the circumstances do spell out the two crimes of Murder, the penalty will have to be modified. For, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua (People vs. Lopez, et al. G.R. Nos. 71875-76, January 25, 1988 citing People vs. Gavarra, No. L-37673, October 30, 1987; People vs. Masangkay, G.R. No. 73461, October 27, 1987). With no attending mitigating or aggravating circumstance, said penalty is imposable in its medium period or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. The penalty next lower in degree for purposes of the Indeterminate Sentence Law is prision mayor, maximum, to reclusion temporal, medium, or from ten (10) years and one (1) day to seventeen (17) years and four (4) months (Article 61, parag. 3, Revised Penal Code).

WHEREFORE, the guilt of the accused Emeliano Trinidad for the crimes of Murder (on two counts) and Attempted Murder, having been proven beyond reasonable doubt, his conviction is hereby AFFIRMED and he is hereby sentenced as follows:

1) In each of Criminal Cases Nos. 79123-24 (Nos. 96 and 99 below) for Murder, he shall suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum; to indemnify the heirs of Marcial Laroa and Lolito Soriano, respectively, in the amount of P30,000.00 each; and to pay the costs.

2) In Criminal Case NO. 79125 (No. 100 below) for Frustrated Murder, he is hereby found guilty only of Attempted Murder and sentenced to an indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum; to indemnify Ricardo Tan in the sum of P5,000.00; and to pay the costs.

SO ORDERED.

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

[*] Presided over by Judge Zenaida P. Placer.

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