

## THIRD DIVISION

[ G.R. No. 123915, September 12, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RENATO REBOLTIADO ALIAS "RENE" AND JOSE MARARAC ALIAS  
"JOE", ACCUSED-APPELLANTS.**

### D E C I S I O N

**MELO, J.:**

Accused-appellants Renato Reboltiado and Jose Mararac jointly seek reversal of the trial court's ruling but pray for different results for different reasons. The former contends that he only committed homicide and not murder, as found by the trial court; while the latter seeks total exoneration of the crime charged for the reason that his identity as alleged co-conspirator was not clearly and unquestionably established.

Initially, only accused-appellant Reboltiado was charged in the Information dated August 7, 1990, whereupon during arraignment, he entered a plea of not guilty. Subsequently, an Amended Information dated November 20, 1990, in which accused-appellant Mararac was included, was filed, charging:

That on or about the 4<sup>th</sup> day of July, 1990, in the municipality of Vigan, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot with the use of illegally possessed firearm one Romeo Santamaria, thereby inflicting mortal wounds on his body, which wounds necessarily produced the death of said Romeo Santamaria.

Contrary to law.

(pp. 12, 15, 27, Rollo.)

Reboltiado reiterated his earlier plea, while Mararac entered a plea of not guilty (pp. 27-28, Ibid.). After trial, the Regional Trial Court of the First Judicial Region (Branch 25, Tagudin, Ilocos Sur) found accused-appellants guilty beyond reasonable doubt of the crime of murder and imposed upon them the penalty of *reclusion perpetua* (p. 41, Ibid.).

This much is undisputed. On July 4, 1990, at approximately 6 o'clock in the evening, accused-appellant Reboltiado, while riding on a motorcycle driven by another man, stopped in front of the store of the victim Romeo Santamaria along Del Pilar Street, Vigan, Ilocos Sur. Clutching a carbine M-1, he trained the firearm on the unsuspecting Santamaria who was then watching the card-playing Ricardo Castro, Joselito and Mauro Jabab, and Roger Rabago. Accused-appellant Reboltiado fired

and hit Santamaria. In the ensuing panic, the players all entered the store but managed to pull the victim inside. A second shot was fired but fortunately, no one was hit. Accused-appellant Reboltiado, together with his companion, then fled (pp. 28-32, *Ibid.*).

Santamaria's companions brought him to the Gabriela Silang General Hospital where Dr. Benjamin Tolentino performed emergency surgery. The slug entered the left side of the body of the victim and exited through the right side, causing, in the process, massive bleeding and multiple lacerations on the victim's intestines. After twenty-four hours, Santamaria died, the cause of death being the gunshot wound, hypovolemic shock secondary to multiple injury to his intestines (pp. 31-34, *Ibid.*).

#### The Case Against Accused-Appellant Jose Mararac

Accused-appellant Mararac, in seeking acquittal, alleges that his identification as one of the perpetrators of the crime is unreliable, inconclusive, and does not meet the required positiveness sufficient to convict him. He calls the Court's attention to the sworn statements of two witnesses, Ricardo Castro and Mauro Jabab, given to the police on July 5, 1990, a day after the incident. Both Castro and Jabab said they did not recognize the driver of the motorcycle. Three other persons — Gil Arci and Arnel Amistadis on July 5, 1990, and June Fortuno on July 6, 1990 — also gave sworn statements to the same effect that they never recognized the driver of the motorcycle ridden by accused-appellant Renato Reboltiado. Again, Castro, during the preliminary investigation reiterated his statement that he did not see who the driver was because the driver was facing the other way. However, when asked a year later while testifying at the trial of the case, both Castro and Jabab made a complete turnaround and pointed to accused-appellant Mararac as the person driving the motorcycle used by accused-appellant Reboltiado on the day of the incident. Such conflicting statements were never explained. Furthermore, accused-appellant Reboltiado himself testified that it was not accused-appellant Mararac who drove for him but one Alvin Alviejo (Alvin Vallejo in the trial court's decision, pp. 35-36, *Rollo*). Thus, accused-appellant Mararac contends, because an accused in a criminal case is competent to testify for or against any of his co-accused (*People vs. David*, 236 SCRA 45 [1994]), the testimony of accused-appellant Reboltiado denying any participation of accused-appellant Mararac in the crime, bolstered by unexplained, contradicting statements of witnesses who supposedly saw Mararac as the driver, renders the conviction of Mararac untenable (pp. 7-12, *Accused-Appellant's Brief*; pp. 64-69, *Rollo*).

The People concede that the conviction of accused-appellant Mararac cannot stand considering the uncertainty in his identification as the driver-companion of accused-appellant Reboltiado. The Office of the Solicitor General thus joins accused-appellant Mararac in pointing out that the preliminary statements of witnesses Castro and Jabab not implicating accused-appellant Mararac, cast serious doubts on the veracity of their inculpatory testimony later made at the trial. It may be observed further that the prosecution never bothered to explain the discrepancy between witness Jabab's sworn statement and his testimony and why the sworn statement of witness Castro was not offered in evidence. Although the defense tried to present this sworn statement in evidence to show the inconsistency, the prosecution objected on the ground that due to Castro's intervening death, he can no longer be cross-examined regarding such matter (pp. 10-13, *Plaintiff-Appellee's Brief*). But even if we take Castro's testimony alone, still, the same leaves much to be desired on the matter of

positive identification of the gunman's companion, the driver of the motorcycle, to wit:

**Q:** You said that these two persons who were riding on the motor vehicle were in fatigue?

**A:** Yes, sir.

**Q:** They were complete with caps?

**A:** It is not a military cap, it is an ordinary hat, sir.

**Q:** The two riders wearing hats?

**A:** The other one was not wearing hat, sir.

**Q:** Renato Reboltiado was not wearing hat and you are sure that the other was wearing hat?

**A:** Yes, sir.

**Q:** What color of the hat he was wearing?

**A:** There is somewhat yellow in color, sir.

**Q:** You mean it is not entirely yellow?

**A:** No, sir.

**Q:** What color was it then?

**A:** I was not able to know the front or infront of the hat. I only saw the back side of the head, sir.

(p. 4, tsn, October 11, 1990)

Then too, accused-appellant Reboltiado himself exculpated accused-appellant Mararac, thus:

ATTY. RAFANAN

**Q:** When you were already in your house, what did you do?

**A:** I borrowed a gun, sir.

**Q:** From whom?

**A:** From my friend, sir. My *compadre*.

**Q:** Who was that compadre of yours from whom you borrowed that gun?

**A:** Alvin Vallejo, sir.

**Q:** Do you know where is his house?

**A:** He is my neighbor, sir.

**Q:** And did he lend you a gun?

**A:** Yes, sir.

**Q:** What did you do then?

**A:** He brought the gun and I told my compadre to go with me, sir.

**Q:** And where did you go?

**A:** I returned to the place of Romeo Santamaria, sir.