

SECOND DIVISION

[G.R. No. 138975, January 29, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX
MADERAS, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision^[1] of the Court of Appeals in CA-G.R. CR No. 15580, promulgated on June 14, 1999, convicting appellant Felix Maderas of murder and imposing upon him the penalty of *reclusion perpetua*, thus:

WHEREFORE, premised on the foregoing legal discussions, the decision of the court *a quo* in Criminal Case No. 19781 is MODIFIED. Accused-appellant Felix Maderas is found GUILTY of MURDER and is accordingly sentenced to suffer the penalty of *reclusion perpetua*. He is likewise hereby ordered to pay the heirs of Salvador Montefrio the amount of P50,000.00 as civil indemnity, P4,840.00 for actual damages and P50,000.00 for moral damages all without subsidiary imprisonment in case of insolvency.

Pursuant to Section 13, Paragraph 2 of Rule 124 of the *Revised Rules on Criminal Procedure*, (italics in the original) let the entire record of this case be immediately elevated to the Honorable Supreme Court for review.

SO ORDERED.^[2]

The assailed decision modified the judgment of the Regional Trial Court of Iloilo City, Branch 22, in Criminal Case No. 19781, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds accused Felix Maderas guilty of homicide for having shot to death Salvador Montefrio and he is hereby sentenced to suffer an indeterminate penalty of EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *prision mayor* to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal* with all the accessory penalties provided by law; to indemnify the heirs of the victim Salvador Montefrio the amount of FIFTY THOUSAND (P50,000.00) PESOS without subsidiary imprisonment in case of insolvency.

Costs against him.

SO ORDERED.^[3]

On January 21, 1986, appellant was charged with murder, in an Information, which reads:

That on or about the 7th day of October, 1985, in the Municipality of Maasin, Province of Iloilo, Philippines, and within the jurisdiction of this Court, above-named accused conspiring, confederating and cooperating with Enrique Maderas, who is still at large and two others who are still unidentified, armed with guns, with treachery and abuse of superior strength, and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one SALVADOR MONTEFRIO with the firearms they were provided at that time, hitting and inflicting upon him multiple gunshot wounds which caused his death.

CONTRARY TO LAW.^[4]

He pleaded not guilty to the charge. Trial on the merits ensued.

The prosecution's evidence, as summarized by the appellate court, shows that:

October 7, 1985 was a Monday, a market day at the *poblacion* of Maasin, Iloilo. As early as 6 o'clock that morning, 14-year old Gil Montefrio ("Gil"), in the company of his father, Salvador, and his uncle, Eleuterio Montefrio ("Eleuterio"), had set off from their residence at Sitio Ikikan, Barangay Abilay, Maasin, Iloilo, bound for the *poblacion* of Maasin to sell their *sawali* and to do some marketing. Their *sawali* they had loaded on a bamboo sled drawn by a carabao and Gil rode on the animal's back along the way while his father and uncle walked.

The poblacion was about five (5) to six (6) kilometers from Barangay Abilay and one had to pass through Barangay Tubang to reach the place. Around 7 o'clock that morning, on the road along Sitio Bungol, Barangay Tubang, Maasin, Iloilo, Gil, still riding the carabao, was about ten (10) armslength behind Salvador and ten (10) armslength distant ahead of Eleuterio when the sounds of gunshots rang in the air.

Instinctively, Gil stopped the carabao, looked to his left from where the gunshots emanated and there saw four (4) men, Felix and Enrique Maderas included, standing on the hilly portion of the side of the road about ten (10) armslength away from him, shooting at his father with their long firearms. Hit, Salvador slumped on the mud in the middle of the road and FELIX and the other three (3) attackers scampered away towards the sugarcane field behind them.

Gil ran to help his father but Salvador was dead and all bloodied up. His skull had been hit and his brain spilled out. Gil moved Salvador to the side of the road, mounted the carabao, then rushed home to inform his mother and other relatives about the incident.

Eleuterio, too, witnessed the attack on his brother, Salvador. He had caught sight of FELIX and his companions pointing their long guns at Salvador even before the first shot rang out but fear for his own safety prevented him from calling out a warning to his brother. He was walking

behind Gil on the carabao, about twenty (20) meters from Salvador, when the latter was ambushed. Like his nephew, Gil, Eleuterio positively identified FELIX and Enrique Maderas among the four (4) armed men who shot the victim.

...Dr. Ma. Camila Lellis Senupe, determined that the immediate cause of Salvador's death was "Severe Hemorrhage" and the antecedent cause was "Multiple Gunshot Wounds." She listed the wounds sustained by Salvador on the head and on the body as follows:

1. Gunshot wound on the left forehead (2 cm.)
2. Gunshot wound on the zygomatic area (1.5 cm.)
3. Gunshot wound on the left parietal area. (1.5 cm.)
4. Four (4) gunshot wounds at the left temporal area (1.5 cm x 2 cm.)
5. Gunshot wound on the port to left ear (1.2 cm.)
6. Gunshot wound on the right parietal area (2.5 cm.)
7. Gunshot wound on the right temporal area (2.5 cm.)
8. Multiple fractures of the skull.
9. Abrasions on the right shoulder; gunshot wounds at the right forearm; and wounds on the 5th, 7th, and 12th ribs below the shoulder, at the left lower side.^[5]

Appellant's defense was alibi. He presented Valentin Coronado, Margarito Ramos, Pastor Sulit, and himself, to establish that on the day of the incident, he was at Passi, Iloilo selling *sawali*, thus:

FELIX had gone to Passi as early as September 15, 1985, and had remained there the whole time without having gone home once until about the end of November 1985. He and his companions Valentin Coronado (Valentin), Bonifacio Macarse, and Francisco Falsis all stayed at the warehouse in the *poblacion* of Passi where the *sawali* was stored. During this period, nevertheless, Valentin managed to go home every week to Maasin on Sundays and came back to Passi on (sic) the following day. On one such return by Valentin to Passi from Maasin, FELIX learned that Salvador, whom he had only recently met around at Barangay Abilay, prior to his departure for Passi, had died on October 7, 1985.

About a week after he had finally gone back home to Barangay Abilay, Maasin, from Passi in the latter part of November 1985, FELIX had occasion to meet his accusers, Gil and Eleuterio, but their meeting [was] far from disturbing. That was why he was totally surprised when he was arrested in December 1985 in connection with this case.

...[H]e cannot recall of any misunderstanding with either Salvador or any

member of the victim's family.

FELIX' witness, Valentin, corroborated accused-appellant's alibi. Further to this, the testimony of Margarito Ramos ("Margarito") clashed head on with the allegation of the alleged eyewitness, Gil.

According to Margarito, in the morning of October 7, 1985, between the hours of 6 and 7 o'clock, while he was at his uncle's store located along the road of Barangay Abilay with one Morog Magarso, a nephew of Salvador, the latter passed by. Salvador was without any companion and Margarito even greeted him. Thus, he learned that Salvador was on his way to the *poblacion*.

At about thirty (30) minutes later, Margarito and Morog heard three (3) gunshots. At almost the same instance, Gil was coming along the road heading towards the direction of the poblacion. Twenty (20) minutes after Gil had passed the store, he returned riding a carabao.

When Morog asked Gil what had happened, Gil told them that his father had been shot upstream. Margarito and Morog decided to go [to] the place of the incident and found Salvador lying wounded on the road. With banana leaves they had cut, these two (2) covered Salvador's already lifeless body.

As for FELIX, what Margarito recalled is that he saw accused-appellant at about the end of August 1985 when FELIX passed by his house on his way to Passi to sell "sawali."^[6]

The trial court characterized the testimonies of the victim's son and brother as "straightforward, natural, and believable,"^[7] and appellant's alibi as "very flimsy and weak."^[8] As earlier stated, it proceeded to convict appellant for homicide. In convicting appellant of homicide, instead of murder, the trial court observed that the qualifying circumstances of treachery and abuse of superior strength had not been adequately proved by the prosecution.

On August 12, 1993, Maderas notified the trial court that he was appealing his conviction to the Court of Appeals.

Before the appellate court, Maderas submitted that his participation had not been duly established since there was no direct and concrete proof to show that he actually fired at the victim. He also questioned the findings of the trial court as to the credibility of the prosecution witnesses, Gil and Eleuterio.

The appellate court found that both Gil and Eleuterio actually saw and positively identified Maderas as among those who fired successive gunshots at the unsuspecting victim. It agreed with the trial court on the credibility of the testimonies of Gil and Eleuterio. However, it disagreed with the trial court on the presence of treachery in this case and the propriety of awarding damages. The Court of Appeals modified the conviction from homicide to murder, as well as the corresponding penalty imposed, and the award of damages.

Hence, the instant petition, assigning as sole error:

That the Court of Appeals and the lower court erred in finding that there was positive identification of the Accused-Appellant because the two (2) alleged eyewitnesses WERE NOT AT THE SCENE OF THE CRIME WHEN IT ACTUALLY HAPPENED. (Italics in the original).^[9]

To resolve this issue concerning appellant's identification as the gunman, the credibility of witnesses Gil and Eleuterio, both surnamed Montefrio, must be thoroughly considered.

Firstly, however, we have to address the matter of appellant's flight and its legal consequences.

When the Court accepted the instant appeal, appellant was out on bail. The records show that on January 24, 1986, bondsmen Mateo Villasor, Emiliano Magarso, and Maurita Bindol filed, on appellant's behalf, a property bail bond.

On July 21, 1999, in accepting the appeal, we required the parties to file their respective briefs; and directed "the Presiding Judge of the Regional Trial Court of Iloilo City, Branch 22, to [a] CANCEL the bail bond of accused-appellant, [b] ORDER the latter's arrest and commitment to the New Bilibid Prison, and [c] SUBMIT to this Court a report of compliance, all within ten (10) days from notice hereof."^[10]

On October 12, 1999, we received a copy of the order dated September 9, 1999 of Judge Emilio S. Legaspi in compliance with the aforecited directive. But, on December 1, 1999, he informed this Court that appellant "has remained at large and the Warrant of Arrest dated September 9, 1999 issued against him was returned/reported unserved."^[11]

After Atty. Vicente B. de Asis entered his appearance as counsel for appellant and submitted a "Memorandum on Automatic Review of Accused-Appellant," he filed a motion to recall the order of arrest stating that he had timely filed a "Memorandum of Automatic Review" and that the decision in this case had not yet become final.

We denied the motion and required Judge Legaspi to inform the Court whether appellant has been arrested and committed to New Bilibid Prison. We were informed that appellant has remained at large and that an Alias Warrant of Arrest had been issued.

We required Attys. de Asis and Teresita S. De Guzman, counsel for appellant to inform the Court of appellant's whereabouts. Atty. De Guzman gave the address of appellant in Barangay Abilay, Maasin, Iloilo but added she has never spoken to appellant or been to Iloilo or the Visayas. Atty. de Asis likewise manifested that the accused had left his residence in January 2000 and could not be located.

Notwithstanding the pendency of his appeal before this Court, appellant had gone into hiding.

Among the conditions for appellant's bail was that he would at all times hold himself amenable to the orders and processes of the Court.^[12] Under the terms of said bail