

FIRST DIVISION

[G.R. No. 131836, March 30, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELITA SINCO AND JOHN DOE, ACCUSED.**

MELITO SINCO, ACCUSED-APPELLANT.

D E C I S I O N

KAPUNAN, J.:

Melito Sinco appeals from the Decision^[1] of July 7, 1997 of the Regional Trial Court, Branch 24, Cabugao, Ilocos Sur disposing Criminal Case No. 1654-K as follows:

WHEREFORE, finding the accused, Melito Sinco, GUILTY beyond reasonable doubt as principal in the commission of the complex crime of Murder with Double Attempted Murder, unattended by any modifying circumstance, he is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided for by law, to indemnify the heirs of Justino Sarmiento in the amount of P50,000.00, and both Bonifacio Venadero and Nelson Sarmiento at P5,000.00 each, without subsidiary imprisonment in case of insolvency, and to pay one-half (1/2) of the costs. He shall be credited in full with the period of his preventive imprisonment.

SO ORDERED.

Appellant was accused of murder with double attempted murder with an alleged unidentified cohort in the information which reads as follows:

That on or about the 2nd day of September, 1993, in the municipality of San Juan, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot Bonifacio Vanadero, Nelson Sarmiento and Justino Sarmiento, thereby inflicting upon Justino Sarmiento mortal wound on his body which necessarily produced his instantaneous death, and simultaneously thus commencing the commission of the crime of Double Murder directly by overt acts but did not perform all the acts of execution which would produce the felony by reason of some causes other than their spontaneous desistance that is because of the ability of Bonifacio Vanadero and Nelson Sarmiento to evade other shots made by the accused.

Contrary to law.^[2]

Appellant pleaded not guilty to the crime charged.^[3] The facts are as follows:

At about noon of September 2, 1993, Bonifacio Vanadero fetched Justino Sarmiento and his son Nelson from their residence in Barangay Baliw, San Juan, Ilocos Norte. He was driving a tricycle. They proceeded to Barangay Bungro, Magsingal, Ilocos Sur to buy a cow as they were engaged in the business of buying large cattle.^[4] After loading the purchased cow in the sidecar of the tricycle at around 2:00 p.m., they proceeded home to San Juan, Ilocos Sur by going northward along the national highway. Justino Sarmiento rode behind Vanadero with both of his legs dangling on the left side of the seat, while Nelson Sarmiento stood on the running board of the tricycle's sidecar, in front of the cow.^[5]

They were cruising along the downhill portion of the highway when, from a distance of about ten to twenty meters away, Vanadero saw two men emerge from the bushes west of the national highway. One was armed with an armalite rifle while the other, who was three meters away from the former, was holding a .45 caliber handgun. Suddenly, the armalite-wielding man fired at them, spending a whole magazine of ammunition. Fearing for his life, Vanadero drove the tricycle at full speed, thus overtaking a cargo truck ahead of him and getting quite near the gunmen. As Vanadero got abreast with the armalite-wielding man, the latter was reloading his weapon. It was at that moment that the man with the .45 caliber firearm began shooting at them. Justino Sarmiento got hit and fell off the tricycle.^[6] Vanadero continued driving the tricycle northward until it started to sputter. After traversing a distance of around 500 meters more, the tricycle sustained flat tires. He and Nelson Sarmiento then jumped off and scampered for safety.^[7]

Justino Sarmiento was still breathing when he was brought to the Magsingal District Hospital at 2:40 p.m. on September 2, 1995. Forty minutes later, he expired in the emergency room. Dr. Rowena Dumag, the attending physician, examined his body and found that Justino had an entrance gunshot wound at the right parietal region of his head. The trajectory of the bullet that caused the wound was downward. Dr. Dumag opined that, by the presence of powder burns, Justino was shot at close range or at a distance of about two (2) yards. She would not hazard an opinion on the type of gun used in shooting Justino but she found a bullet embedded in his brain. Justino also sustained contusions and abrasions on the head and hands as he allegedly fell off from a vehicle.^[8]

Vanadero sought assistance from the people congregating in front of a school. Since he sustained shrapnel wounds on his left foot, he was rushed for treatment to the Pira Clinic in Cabugao, Ilocos Sur.^[9] The police proceeded to the crime scene where they recovered empty shells of an armalite rifle. At around 6:30 p.m., they entered the incident in the police blotter. The following day, Vanadero and Sarmiento were asked by the police if they knew or recognized their assailants. Since they answered in the negative, the police entered in the blotter that the perpetrators of the crime were "unidentified."^[10]

More than two years later or on October 11, 1995, Vanadero heard over Bombo Radio that members of an *akyat-bahay* gang had been arrested. Vanadero then invited Nelson Sarmiento to go with him to the provincial jail in Vigan, Ilocos Sur to check if their gunmen might be among those arrested.^[11] Accompanied by

elements of the San Juan Police Station, Vanadero and Nelson Sarmiento were showed six (6) detainees. From a distance of eight (8) meters, Vanadero and Sarmiento whispered and secretly pointed to SPO3 Adriatico that the "one with the curly hair" was one of the gunmen who shot them several times. The man turned out to be the accused-appellant. After inquiring from the provincial jail guard about the name of the man, they went back to the police station where, after an interrogation, Vanadero and Sarmiento executed sworn statements.^[12]

During the hearing, Nelson Sarmiento corroborated Vanadero's story on material points. He added that he was able to recognize the perpetrators of the crime despite the fact that he bowed his head to the level of the roof of the sidecar at the time they fired at them because their vehicle came close to the ambushers that they could almost touch them. At that time they were overtaking the cargo truck, Sarmiento alleged that he was able to focus his attention at the man wielding a .45 caliber pistol who turned out to be appellant. He also testified that the man was then wearing T-shirt and *maong* pants with a somewhat khaki-colored brimless hat. Sarmiento claimed familiarity with appellant since according to him, appellant used to play dice (*dado*) with him at the cockpit arena of Barangay Immayos Norte, San Juan, Ilocos Sur.^[13] Sarmiento also alleged that before the incident, he saw appellant at the house of the latter's in-laws in Barangay Immayos Norte, knowing him to be married to a woman from said place.^[14]

For his defense, appellant interposed alibi. He presented his live-in partner, Joy Valer, to corroborate his testimony. Both alleged that on September 2, 1993, when the incident happened, they were at the seashore of Pug-os, Cabugao, Ilocos Sur, from 9:00 a.m. to 5:00 p.m. They then went to the house of appellant's daughter, Marilyn, at Pug-os. From there, they went to Barangay Baclig, Cabugao, where they were residing. The following day, September 3, 1993, they went back to Barangay Pug-os to celebrate the birthday of appellant's son. Appellant stated that he did not have an occasion to meet Bonifacio Vanadero and Nelson Sarmiento nor did he see them at the provincial jail.^[15]

In this appeal, appellant raises the following assignment of errors:

I

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT MELITO SINCO NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE IDENTIFICATION MADE BY BONIFACIO VANADERO OF ACCUSED-APPELLANT MELITO SINCO.^[16]

In convicting the appellant, the trial court gave much reliance to the testimony of Bonifacio Vanadero whom the trial court found to be a credible witness since he "sounded very positive in his identification of the accused, Melito Sinco," and that his testimony rang "with truth and sincerity." On the other hand, the trial court found Nelson Sarmiento's credibility as "somewhat shattered" considering his claim

that he recognized the appellant as one of their assailants because he played dice with him, and yet, he never informed the police or Bonifacio Vanadero of such fact immediately after the incident. Finding Sarmiento's testimony as merely corroborative, the trial court arrived at the conclusion that "the evidence of Sinco's guilt is so strong as to overturn the constitutional presumption of innocence."^[17]

Appellant asserts otherwise. He claims that the trial court erred in giving credence to his identification by Bonifacio Vanadero.

We agree.

It is rather basic that when a crime is committed, the first duty of the prosecution is to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established.^[18]

Melito Sinco was pointed as one of their assailants by Bonifacio Vanadero and Nelson Sarmiento from among six men in a line-up.^[19]

In resolving the admissibility of out-of-court identification of suspects, courts have adopted the totality of circumstances test wherein the following factors are considered: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.^[20]

Following these tests, we find that the prosecution has dismally failed in proving beyond reasonable doubt that appellant was one of the gunmen.

Anent the first factor, we find the witnesses' opportunity to view the culprits at the time of the commission of the crime in the case at bar as far from ideal. While it is true that the crime occurred early in the afternoon on a clear day,^[21] the events narrated by the prosecution were, however, contrary to the natural course of things so much so that identification of the offenders was hardly possible. For evidence to be believed, it must not only proceed from the mouth of a credible witness. It should also be credible, reasonable, and in accord with human experience.^[22] As this Court once said:

xxx. Evidence is credible when it is such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience.^[23]

Indeed, if their testimonies on the matter were to be believed, both of them must have had a keen photographic memory considering that Vanadero even admitted that almost simultaneously after the hail of fire from the armalite, he crouched to evade the shots.

At the witness stand, the witnesses described the .45 caliber-wielding assailant as wearing maong pants, T-shirt and a brimless khaki-colored hat.^[24] However, the police report repeating the entry on the police blotter (Exhibit C) merely states that

"unidentified perpetrators" shot Vanadero and Nelson Sarmiento.^[25] Vanadero, who reported the incident to the police, also failed to provide any telling clues on the possible identity of the assailants.

We also doubt Vanadero's certainty as to his identification of the alleged malefactor. Upon hearing from the radio that there was a group of men arrested, Vanadero and Sarmiento, accompanied by SPO3 Santiago Adriatico went to the police station to find out if their gunmen were among them. From the line-up presented to them, Vanadero whispered to the ear of SPO3 Adriatico that the man with the curly hair was one of their alleged malefactors. His identification of appellant in secrecy evokes uncertainty and doubt that appellant was in fact the .45 caliber-wielding gunman. Thus, SPO3 Santiago Adriatico who claimed it was he who accompanied Vanadero and Nelson when they went to the provincial jail, testified thus:

Q Who were present when this question was asked and the witnesses pointed to the person of Emelito Sinco at the office of the Provincial Warden?

Witness

A It was secretly told to me by the witnesses, Vanadero and Sarmiento, that he was the one, referring to Melito Sinco, sir.

Q You said that the Provincial Warden was present. Who else aside from the prisoners and the Provincial Warden were present?

A The Provincial Guards, sir.

Q In what specific place in the Provincial Jail?

A Outside, sir.

Q How many prisoners were brought out for identification?

A Six (6) or seven (7), sir.

Q And after the two witnesses, Vanadero and Sarmiento secretly told you that the person is a certain Emelito Sinco, what happened next?

A We went back to the municipal building, sir.

Q Was there any police officer who went with you?

A I was alone, sir.

Fiscal Gascon

Q If you say you were alone, you were three, Vanadero, Sarmiento and you?

A Yes, sir.

x x x

Q If that person who was secretly identified by Vanadero and Sarmiento is inside the courtroom, that person who he called Emelito, can you point at him?