

EN BANC

[G.R. No. 131588, March 27, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENN DE LOS SANTOS, ACCUSED-APPELLANT.

DECISION

DAVIDE JR., C.J.:

One may perhaps easily recall the gruesome and tragic event in Cagayan de Oro City, reported over print and broadcast media, which claimed the lives of several members of the Philippine National Police (PNP) who were undergoing an "endurance run" as part of the Special Counter Insurgency Operation Unit Training. Not much effort was spared for the search of the one responsible therefor, as herein accused-appellant Glenn de los Santos (hereafter GLENN) immediately surrendered to local authorities. GLENN was then charged with the crimes of Multiple Murder, Multiple Frustrated Murder, and Multiple Attempted Murder in an information filed with the Regional Trial Court of Cagayan de Oro City. The information reads as follows:

That on or about October 05, 1995, in the early morning, at Maitum Highway, within Barangay Puerto, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, taking advantage of his driven motor vehicle, an Isuzu Elf, and with treachery, did then and there willfully, unlawfully and feloniously kill and inflict mortal wounds from ... behind in a sudden and unexpected manner with the use of said vehicle ... members of the Philippine National Police (PNP), undergoing a Special Training Course (Scout Class 07-95), wearing black T-shirts and black short pants, performing an "Endurance Run" of 35 kilometers coming from their camp in Manolo Fortich, Bukidnon, heading to Regional Training Headquarters in Camp Alagar, Cagayan de Oro City, running in a column of 3, with a distance of two feet, more or less, from one trainee to another, thus forming a [*sic*] three lines, with a length of more or less 50 meters from the 1st man to the last man, unable to defend themselves, because the accused ran or moved his driven vehicle on the direction of the backs of the PNP joggers in spite of the continuous warning signals made by six of the joggers, namely: PO1 Allan Tabacon Espana, Waldon Sinda Sacro, Lemuel Ybanez Pangca, Artemio Jamil Villaflor, Nardo Omasas Collantes and Joselito Buyser Escartin, who were at the rear echelon of said run, acting as guards, by continuously waving their hands at the accused for him to take the left lane of the highway, going to the City proper, from a distance of 100 meters away from the jogger's rear portion, but which accused failed and refused to heed; instead, he proceeded to operate his driven vehicle (an Isuzu Elf) on high speed directly towards the joggers, thus forcing the rear guard[s] to throw themselves to [a] nearby canal, to avoid injuries, then hitting,

bumping, or ramming the first four (4) victims, causing the bodies to be thrown towards the windshields of said Isuzu Elf, breaking said windshield, and upon being aware that bodies of the victims flew on the windshield of his driven vehicle, instead of applying his brake, continued to travel on a high speed, this time putting off its headlights, thus hitting the succeeding joggers on said 1st line, as a result thereof the following were killed on the spot:

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| 1. Vincent Labis Rosal | 7. Antonio Flores Lasco |
| 2. Allan Amoguis Abis | 8. Igmedio Salinas Lituanas |
| 3. Jose Arden M. Atisa | 9. Roberto Cabussao Loren |
| 4. Nathaniel Mugot Baculio | 10. Raul Plaza Martinez |
| 5. Romil Gosila Legrano | 11. Jerry Pedrosa Pajo |
| 6. Arnulfo Limbago Jacutin | 12. Rolando Paremcio Pancito |

While another trainee/victim, Antonio Palomino Mino, died few days after the incident, while the following eleven (11) other trainee/victims were seriously wounded, the accused thus performing all the acts of execution which would produce the crime of Murder as a consequence but nevertheless did not produce it by reason of some cause other than said accused's spontaneous desistance, that is, by the timely and able medical assistance rendered on the following victims which prevented their death, to wit:

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| 1. Rey Go Boquis | 7. Melchor Hinlo |
| 2. Rene Tuako Calabria | 8. Noel Ganzan Oclarit |
| 3. Nonata Ibarra Erno | 9. Charito Penza Gepala |
| 4. Rey Tamayo Estofil | 10. Victor Malicse Olavo |
| 5. Joel Rey Migue Galendez | 11. Bimbo Glabe Polboroza |
| 6. Arman Neri Hernaiz | |

While the following Police Officers I (POI) sustained minor injuries, to wit:

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|------------------------|--------------------------------|
| 1. Romanito Andrada | 6. Romualdo Cotor Dacera |
| 2. Richard Canoy Caday | 7. Ramil Rivas Gaisano |
| 3. Rey Cayusa | 8. Dibangkita Magandang |
| 4. Avelino Chua | 9. Martin Olivero Pelarion |
| 5. Henry Gadis Coubeta | 10. Flordicante Martin Piligro |

after which said accused thereafter escaped from the scene of the incident, leaving behind the victims afore-enumerated helpless.

Contrary to Article 248, in relation to Article 6 of the Revised Penal Code.

The evidence for the prosecution disclose that the Special Counter Insurgency Operation Unit Training held at Camp Damilag, Manolo Fortich, Bukidnon, started on 1 September 1995 and was to end on 15 October 1995. The last phase of the training was the "endurance run" from said Camp to Camp Alagar, Cagayan de Oro City. The run on 5 October 1995 started at 2:20 a.m. The PNP trainees were divided into three columns: the first and second of which had 22 trainees each, and the third had 21. The trainees were wearing black T-shirts, black short pants, and green and black combat shoes. At the start of the run, a Hummer vehicle tailed the jogging trainees. When they reached Alae, the driver of the Hummer vehicle was

instructed to dispatch advanced security at strategic locations in Carmen Hill. Since the jogging trainees were occupying the right lane of the highway, two rear security guards were assigned to each rear column. Their duty was to jog backwards facing the oncoming vehicles and give hand signals for other vehicles to take the left lane.

[1]

Prosecution witnesses Lemuel Y. Pangca and Weldon Sacro testified that they were assigned as rear guards of the first column. They recalled that from Alae to Maitum Highway, Puerto, Cagayan de Oro City, about 20 vehicles passed them, all of which slowed down and took the left portion of the road when signaled to do so.[2]

While they were negotiating Maitum Highway, they saw an Isuzu Elf truck coming at high speed towards them. The vehicle lights were in the high beam. At a distance of 100 meters, the rear security guards started waving their hands for the vehicle to take the other side of the road, but the vehicle just kept its speed, apparently ignoring their signals and coming closer and closer to them. Realizing that the vehicle would hit them, the rear guards told their co-trainees to "retract." The guards forthwith jumped in different directions. Lemuel and Weldon saw their co-trainees being hit by the said vehicle, falling like dominoes one after the other. Some were thrown, and others were overrun by the vehicle. The driver did not reduce his speed even after hitting the first and second columns. The guards then stopped oncoming vehicles to prevent their comrades from being hit again.[3]

The trial court judge, together with the City Prosecutor, GLENN and his counsel, conducted an ocular inspection of the place where the incident happened. They then proceeded to inspect the Isuzu Elf at the police station. The City Prosecutor manifested, thus:

The vehicle which we are now inspecting at the police station is the same vehicle which [was] involved in the October 5, 1995 incident, an Isuzu Elf vehicle colored light blue with strips painting along the side colored orange and yellow as well as in front. We further manifest that ... the windshield was totally damaged and 2/3 portion of the front just below the windshield was heavily dented as a consequence of the impact. The lower portion was likewise damaged more particularly in the radiator guard. The bumper of said vehicle was likewise heavily damaged in fact there is a cut of the plastic used as a bumper; that the right side of the headlight was likewise totally damaged. The front signal light, right side was likewise damaged. The side mirror was likewise totally damaged. The height of the truck from the ground to the lower portion of the windshield is 5 ft. and the height of the truck on the front level is 5 ft.[4]

PO3 Jose Cabugwas testified that he was assigned at the Investigation Division at Precinct 6, Cagayan de Oro City, and that at 4 a.m. of 5 October 1995, several members of the PNP came to their station and reported that they had been bumped by a certain vehicle. Immediately after receiving the report, he and two other policemen proceeded to the traffic scene to conduct an ocular inspection. Only bloodstains and broken particles of the hit-and-run vehicle remained on the highway. They did not see any brake marks on the highway, which led him to conclude that the brakes of the vehicle had not been applied. The policemen measured the bloodstains and found them to be 70 ft. long.[5]

GLENN's version of the events that transpired that evening is as follows:

At about 10:30 p.m. of 4 October 1995, he was asked by his friend Enting Galindez and the latter's fellow band members to provide them with transportation, if possible an Isuzu Forward, that would bring their band instruments, band utilities and band members from Macasandig and Corrales, Cagayan de Oro City, to Balingoan. From there, they were supposed to be taken to Mambajao, Camiguin, to participate in the San Miguel-sponsored "Sabado Nights" of the Lanzones Festival from 5-7 October 1995. It was the thirteenth time that Enting had asked such a favor from him.^[6] Since the arrangement was to fetch Galindez and his group at 4:00 a.m. of 5 October 1995, GLENN immediately went to Cugman, Cagayan de Oro City, to get his Isuzu Elf truck. After which, he proceeded back to his house at Bugo, Cagayan de Oro City, and told his wife that he would go to Bukidnon to get his aunt's Isuzu Forward truck because the twenty band members and nine utilities and band instruments could not be accommodated in the Isuzu Elf truck. Three of his friends asked to go along, namely, Roldan Paltonag, Andot Peña, and a certain Akut.^[7]

After leaving GLENN's house, the group decided to stop at Celebrity Plaza Restaurant. GLENN saw his "*kumpare*" Danilo Cosin and the latter's wife, and joined them at the table. GLENN finished three bottles of pale pilsen beer. When the Cosin spouses left, GLENN joined his travelling companions at their table. The group left at 12:00 midnight for Bukidnon. The environment was dark and foggy, with occasional rains. It took them sometime looking for the Isuzu Forward truck. Finally, they saw the truck in Agusan Canyon. Much to their disappointment, the said truck had mechanical problems. Hence, GLENN decided to go back to Cagayan de Oro City to tell Enting that they would use the Isuzu Elf truck instead.^[8]

GLENN drove slowly because the road was slippery. The vicinity was dark: there was no moon or star; neither were there lampposts. From the Alae junction, he and his companions used the national highway, traversing the right lane going to Cagayan de Oro City. At the vicinity of Mambatangan junction, as the Elf was negotiating a left curve going slightly downward, GLENN saw a very bright and glaring light coming from the opposite direction of the national highway. GLENN blinked his headlights as a signal for the other driver to switch his headlights from bright to dim. GLENN switched his own lights from bright to dim and reduced his speed from 80 to 60 kilometers per hour. It was only when the vehicles were at a distance of 10 to 15 meters from each other that the other car's headlights were switched from bright to dim. As a result, GLENN found it extremely hard to adjust from high brightness to sudden darkness.^[9]

It was while the truck was still cruising at a speed of 60 km./hr., and immediately after passing the oncoming vehicle, that GLENN suddenly heard and felt bumping thuds. At the sound of the first bumping thuds, GLENN put his right foot on the brake pedal. But the impact was so sudden that he was astonished and afraid. He was trembling and could not see what were being bumped. At the succeeding bumping thuds, he was not able to pump the brake, nor did he notice that his foot was pushing the pedal. He returned to his senses only when one of his companions woke up and said to him: "Gard, it seems we bumped on something. Just relax, we might all die." Due to its momentum, the Elf continued on its track and was able to stop only when it was already very near the next curve.^[10]

GLENN could not distinguish in the darkness what he had hit, especially since the right headlights of the truck had been busted upon the first bumping thuds. In his confusion and fear, he immediately proceeded home. GLENN did not report the incident to the Puerto Police Station because he was not aware of what exactly he had hit. It was only when he reached his house that he noticed that the grill of the truck was broken; the side mirror and round mirror, missing; and the windshield, splintered. Two hours later, he heard on *Bombo Radyo* that an accident had occurred, and he realized that it was the PNP group that he had hit. GLENN surrendered that same day to Governor Emano.^[11]

The defense also presented Crescente Galindez, as well as Shirley Almazan of the PAG-ASA Office, Cagayan de Oro City. The former testified that when he went to GLENN's house at about 10:00 p.m. of 4 October 1995, there was heavy rain; and at 12:00 midnight, the rain was moderate. He corroborated GLENN's testimony that he (Crescente) went to GLENN's house that evening in order to hire a truck that would bring the band instruments, band utilities and band members from Cagayan de Oro to Camiguin for the Lanzones Festival.^[12] Almazan, on the other hand, testified that based on an observed weather report within the vicinity of Cagayan de Oro City, there was rain from 8:00 p.m. of October 1995 to 2:00 a.m. the next day; and the sky was overcast from 11:00 p.m. of 4 October 1995 to 5:00 a.m. of 5 October 1995. What she meant by "overcast" is that there was no break in the sky; and, definitely, the moon and stars could not be seen.^[13]

The prosecution presented rebuttal witness Danilo Olarita whose house was just 100 meters away from the place where the incident occurred. He testified that he was awakened on that fateful night by a series of loud thuds. Thereafter, a man came to his house and asked for a glass of water, claiming to have been hit by a vehicle. Danilo further stated that the weather at the time was fair, and that the soil was dry and not muddy.^[14]

In its decision of 26 August 1997, the trial court convicted GLENN of the complex crime of multiple murder, multiple frustrated murder and multiple attempted murder, with the use of motor vehicle as the qualifying circumstance. It sentenced him to suffer the penalty of death and ordered him to indemnify each group of the heirs of the deceased in the amount of P75,000; each of the victims of frustrated murder in the amount of P30,000; and each of the victims of attempted murder in the amount of P10,000.

Hence, this automatic review, wherein GLENN contends that the trial court erred (a) in finding that he caused the Isuzu Elf truck to hit the trainees even after seeing the rear guards waving and the PNP trainees jogging; (b) in finding that he caused the truck to run even faster after noticing the first thuds; and (c) in finding that he could still have avoided the accident from a distance of 150 meters, despite the bright and glaring light from the oncoming vehicle.

In convicting GLENN, the trial court found that "the accused out of mischief and dare-devilness [*sic*], in the exhilaration of the night breeze and having dr[u]nk at least three bottles of beer earlier, merely wanted to scare the rear guard[s] and see them scamper away as they saw him and his vehicle coming at them to ram them down."^[15]