

[SYLLABUS]

[G.R. Nos. 114263-64, March 29, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHN JENN PORRAS AND SERGIO EMELO, ACCUSED-APPELLANTS.

D E C I S I O N

FRANCISCO, J.:

The separate indictments are for MURDER and for FRUSTRATED MURDER respectively. The appealed judgment went for the People, found appellants John Jenn Porras and Sergio Emelo guilty of MURDER (Criminal Case No. 245-91) and sentenced them to "imprisonment of reclusion perpetua, to indemnify the heirs of Rosendo Mortel in the amount of P50,000.00 plus actual damages, funeral expenses in the amount of P67,000.00 and moral damages in the amount of P100,000.00,"^[1] and appellant Sergio Emelo guilty of FRUSTRATED HOMICIDE (Criminal Case No. 246-91) and sentenced him to "imprisonment of Four (4) years, two (2) months and one (1) day of prision correccional, as minimum to Eight (8) years of prision mayor, as maximum, John Jenn Porras is hereby acquitted. With costs in both instances."^[2]

Appellants impute fourteen alleged errors committed by the trial court which can be substantially reduced as follows: (1) misappreciation of facts; (2) giving credence to the inconsistent testimonies of the prosecution witnesses, i.e., Jose Malumay and Maribel German; (3) ignoring the defense of alibi; (4) not considering as fatal the prosecution's inability to present as witness Cpl. Crisanto de la Cruz; (5) admitting in evidence Sgt. Alvarez's hearsay testimony; and (6) in convicting appellants who were not positively identified in open court.^[3]

Hereunder is the recital of facts of the case as summarized by the trial court and duly substantiated by the evidence on record:

"Piecing together the testimonial and material evidence submitted in these cases, the Court cannot but conceive the following resume: that on the night of June 20, 1990, (sic) accused John Jenn Porras and Sergio Emelo went to the Police Station looking for Pfc. Roldan Emelo of the Cavite City PNP, a cousin of the latter and was directed by Sgt. Pilapil to where he was; that they had some food and drinks at the Banaue Restaurant and Emelo asked for his black ammo pouch and some .38 caliber ammunition; that thereafter, perhaps in connivance with Marcelo Real of the Philippine Coast Guard who was then moonlighting in his tricycle, flagged him down along M. Gregorio St. and in which Marcos Luciano was a passenger at the time and was told to alight as they were already overloaded and whereat Luciano identified John Jenn Porras, who was then wearing a maong jacket and maong pants when he was focused by the headlights of the incoming vehicle; that they proceeded to the

Aroma Beer House where the victim Rosendo Mortel was tabled (sic) and wherein some misunderstanding happened and Ronnie Mortel went out and was shot at close range by either Porras or Emelo as seen by a waitress, Maribel Herman who pointed to Porras as the assailant and who after seeing Rosendo Mortel sprawled on the ground and bloodied, fled into an alley and thereafter returned and shot the prostrate victim twice and sped away and who hailed Sgt. Catalino Bermas (sic) was then monitoring the situation as an Intelligence Operative on his motorcycle to give chase; that during the shooting Jose Malumay who was on a bicycle on his way home after going to a house near Sangley Point also heard a gun shot which he mistook for a blow-out and when he offered to assist, he saw two men, one in dark attire and the other in white T-shirt who from the information of the witnesses fixed their identities as the two accused John Jenn Porras and Sergio Emelo who fired the initial shot and ran away and later on returned to finish the job with Porras allegedly having fired the last two shots killing the victim instantaneously as he was brought to the hospital 'dead on arrival.

"During the chase given by Catalino Bermas he was shot by Emelo along the way after having told them (Emelo and Real) to go to the Police Station and Bermas, feeling the effects of his wounds chanced upon Cpl. Dela Cruz in front of the 501 Beer House and asked for his assistance and they rode in tandem and pursued the tricycle at the Saulog Terminal Compound where only the tricycle was left together with the driver Marcelo Real who pointed to the two accused as the assailants.

"Sgt. Amorico Alvarez who was then following up unsolved cases in the Station was apprised of the shooting and went to the place and was informed about the identity (sic) of the tricycle which they traced to the house of Real whereat they found the black ammo pouch and the camouflage holster with the name of Emelo inscribed and with live and spent bullets on the back seat and putting together the evidence thus far gathered, he was able to apprehend the three, namely: Porras, Emelo and Real."^[4]

Now, to dispose of the issues raised:

Appellants claim that some of the trial court's factual findings^[5] are product of imagination and gross misrepresentation allegedly due to lack of evidentiary support. While our examination of the record shows that (he assailed factual findings are in some respects inaccurate they, however, did not debilitate the prosecution's case and neither did they affect the appellant's finding of guilt. SPO3 Rolando Villegas, one of the prosecution's witnesses, indeed, positively identified the appellants as the persons who showed up at the Cavite City police station at around 9:00 o'clock in the evening of June 19, 1990, looking for Pfc. Roldan Emelo - persons who, the record reveals, were responsible for the dastardly crimes. Thus:

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Q: While doing it, Mr. Witness, while waiting for this report you have just mentioned, can you tell the Court if there was an incident which transpired in your office?

A: Because I have read my statement, I remember that two men arrived at the police station asking for the whereabouts of Pat. Roldan Emelo.

Q: And this Pat. Roldan Emelo is connected with your office?

A: Yes, ma'am.

Q: Do you know this person who asked for Roldan Emelo?

A: I came to know those persons when they were involved in a shooting incident in San Antonio.

Q: At the time they came to you asking for Roldan Emelo, could you still recall how they look like?

A: Yes, ma'am because the suspects were identified by the witnesses. One involved is a small man, dark, wearing white T-shirt, maong pants and carrying a black shoulder bag. The other one is chubby, and he is wearing a sleeveless cream T-shirt, carrying a maong jacket and wearing maong pants.

Q: If you will be able to see these persons again, can you recall them?

A: Yes, ma'am.

Q: Kindly look around the Court room and point them out.
(Witness pointing to Emelo as the one carrying a shoulder bag and the other one who is chubby identified himself as John Jenn Porras.)

A:

Q: You said these two persons came to you asking for Roldan Emelo, what did you do?

A: I pointed to the traffic division.

Q: And that is where Roldan Emelo was?

A: Yes, ma'am.

Q: When the two men got your answer, what did they do?

A: They proceeded to the Traffic Division and a few moments later, they went out." [6](Italics supplied)

Next, appellants impugn the credibility of the prosecution witnesses by citing the seeming inconsistency between the testimonies of Maribel - German, who apparently saw one assailant, and Jose Malumay, who, on the other hand, claimed to have seen two assailants. The following are excerpts of the questioned testimonies:

JOSE MALUMAY:

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Q: What was this incident, kindly relate to the Honorable Court?

A: On that night, from Sangley going to Rafael Palma St. and M. Gregorio St., I passed by a tricycle upon reaching the corner of Calpo, I heard a shot which I presumed it (sic) was a tire which exploded so, I stopped my bicycle because I thought they would

need help. When I stopped and look towards the tricycle, I saw the man riding at the back seat of the driver alighted (sic), mam.

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Q: What happened to the man who used to sit at the back of the driver?

A: When the man went to the side of the sidecar, another man alighted from the sidecar, mam.

Q: And then, what happened when that man alighted from the sidecar?

A: When the man went to the side of the sidecar, another man alighted and (sic) jerked by the man coming from inside the sidecar?

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**FISCAL
DIESMOS:**

Let us just say the man who alighted from the driver (sic) seat, let us call him the second man and the man who alighted inside (sic) the tricycle as the first man.

COURT:

What did you see?

A: When the first man jerked himself, (sic) the second man went to the front of the tricycle, sir.

**FISCAL
DIESMOS:**

Q: In what direction was the second man headed when he ran?

A: He crossed the street going to Capt. Jose St., mam.

Q: What else happened when the second man ran towards Capt. Jose St.?

A: I hear (sic) another shot, then that second man fell on the ground, mam.

Q: And then, what else happened when that second man fell on the ground?

A: The third man alighted from the sidecar. When he alighted from the sidecar, he is going (sic) towards the back going to the fallen man, (referring to the second man). The third man went to the body of the fallen man which I thought he would help him but as I was about to go away, I heard another shot, then I saw a fire from the hands of that third man.

Q: When you saw that fire coming from the hands of the third man, at this point in time, where was the third man?

A: Beside the fallen man, mam.

Q: And his hands was (sic), how would you describe, how was the position as the fire was coming from

his hand?

A: His hand was positioned as if, he was going to help the fallen man.

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Q: But, Mr. Witness since you saw the incident would you be able to tell the Honorable Court the attire of the third man who shot the second man?

A: As far as I can remember, the man who shot the second man was wearing a dark attire, mam.

Q: What about the first man, the man who alighted from the back of the driver of the tricycle, did you see how he was attired?

A: It seems, he was wearing a white shirt because the upper portion of his attire was light, mam."^[7]

MARIBEL GERMAN:

"Q: While you were at work at Cathy's Refreshment, do you recall of (sic) any unusual incident that happened?

A: Yes, Ma'am, there was.

Q: What was this, will you please tell the Honorable Court?

A: I heard two gunshots.

Q: When you heard two gunshots, what did you do?

A: I looked where the gunshots came from.

Q: And you saw what? Did you see anything?

A: There was.

Q: What did you see, Madam Witness?

A: A fallen man crawling on the ground.

Q: What else did you see, if you saw anything else?

A: And a man standing about to enter an alley.

Q: Was that man able to enter the alley?

A: Yes, Ma'am.

Q: And what happened next after he enter (sic) the alley?

A: And who again emerged therefrom.

Q: After emerging from the alley, what did he do, if he did anything?

A: Again he shot the crawling man two times.

Q: After shooting the man twice, what did that man do next?

A: He poked (sic) his gun in our direction, so we went inside the Cathy's Refreshment.

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Q: You said you went inside the restaurant when that man poked a gun at you, is that right?

A: Yes, Ma'am.

Q: Inside the restaurant, what did you do?

A: I peeped.