

THIRD DIVISION

[G.R. No. 144090, June 26, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL
MAGUING Y SALIGUMBA, APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

When the identity of the appellant is not established beyond reasonable doubt, acquittal necessarily follows. Conviction for a crime rests on the strength of the prosecution's evidence, never on the weakness of that of the defense.

The Case

Michael Maguing y Saligumba appeals the December 1, 1997 Decision^[1] of the Regional Trial Court (RTC) of Antipolo, Rizal (Branch 74) in Criminal Case No. 93-9911. The RTC found him guilty beyond reasonable doubt of murder, as follows:

"WHEREFORE, this Court finds the accused Michael Maguing GUILTY beyond reasonable doubt of the offense of Murder charged in the Information, as qualified by the aggravating circumstance of abuse of superior strength and hereby sentences the accused to suffer the indivisible penalty of Reclusion Perpetua, to indemnify the heirs of Crisanto Saul for the death of the latter the amounts of P50,000.00 x x x; actual damages of P41,000.00 for burial expenses; and moral damages of P100,000.00; and to pay the costs."^[2]

The Information^[3] dated August 18, 1993, charged appellant in these words:

"That on or about the 12th day of August, 1993, in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with a certain John Doe whose true [name] and whereabouts[s] is unknown and mutually helping and aiding one another, both of them armed with guns, with intent to kill and by means of treachery did then and there wil[l]fully, unlawfully, feloniously shoot one Crisanto Saul thereby inflicting upon him gunshot wound which directly caused his death."^[4]

During his arraignment on February 8, 1994, appellant, with the assistance of his counsel *de oficio*,^[5] pleaded not guilty to the charge.^[6] After a trial on the merits, appellant was found guilty of murder.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts in this manner:

"On August 12, 1993, around 11:30 p.m., spouses Crisanto and Evelyn Saul were in the house of the Jamias couple (Aniceto and Angelita) located at Block 29, Lot 28, Kabisig Floodway, Cainta, Rizal. With them were Honoria Ontanillas and Nestor Jamias. The group was talking animatedly concerning the deployment abroad of Honorio Ontanillas as well as Crisanto's deployment on the last week of that month of August. In the course of their conversation, two (2) masked intruders suddenly appeared from the door. One of the intruders pointed a gun at the temple of Crisanto — then a shot rang out. Crisanto slumped on the floor. Evelyn was shoved inside a room by Aniceto Jamias and a scuffle ensued between the second intruder and the rest of the group of the Jamiases. The second intruder was subdued. Evelyn vividly recalled that the gunman who shot her husband had the letter 'M' tattooed between his thumb and forefinger.

"Post mortem examination conducted on the corpse of Crisanto Saul showed that the cause of his death was penetrating gunshot wound, left eye."^[7] (Citations omitted)

Version of the Defense

Appellant, on the other hand, relates his version of the facts simply as follows:

"Accused Michael Maguing interposed the defense of alibi. He testified that on August 12, 1993, he together with a certain Alex, Tetet and Dante were in the house of his uncle, Reynaldo Tanco, doing some repair works. They started working at 8:00 o'clock in the morning and finished their job at 5:30 o'clock in the afternoon. Thereafter, they engaged in a drinking session until 7:30 in the evening. They then took their dinner and watched television. After his companions left, he stayed in the house of his uncle.

"The foregoing testimony of the accused was corroborated by Reynaldo Tanco and Alex Agustin."^[8]

The Trial Court's Ruling

The trial court found the evidence for the prosecution sufficient to establish appellant's criminal liability for murder. It gave full credence to the testimonies of the prosecution witnesses — especially the wife of the victim. She was allegedly able to see the actual shooting and to identify the assailant through the tattoo mark on his right hand.

Hence, this appeal.^[9]

The Issues

In his Brief, appellant raises the following alleged errors for our consideration:

"I

The trial court erred in rendering a verdict of conviction despite the fact that the identification of the accused-appellant as the alleged perpetrator of the offense charged was not clear, positive and convincing.

"II

The trial court erred in giving credence to the incredible testimonies of the prosecution witnesses and in disregarding the evidence adduced by the accused-appellant which was corroborated on material points.

"III

The trial court erred in convicting the accused-appellant of the crime charged notwithstanding the fact that his guilt was not proven beyond reasonable doubt.

"IV

On the assumption that the accused-appellant is guilty, the trial court erred in convicting him of murder instead of homicide."^[10]

Simply stated, the main issue is the sufficiency of the prosecution evidence.

The Court's Ruling

The appeal is meritorious.

Main Issue: **Sufficiency of Prosecution Evidence**

Positive Identification Required to Sustain a Conviction

In every criminal prosecution, the prosecution must prove two things: (1) the commission of the crime and (2) the identification of the accused as the perpetrator of the crime.^[11] Cursory identification does not suffice to convict the accused. What is needed is positive identification made with moral certainty as to the person of the offender.^[12] Verily, the critical consideration in this appeal is whether the identity of the assailant was sufficiently established by the prosecution.

At the outset it must be noted that the assailants wore masks, which completely covered their faces during the entire course of the shooting. The prosecution never denied this vital piece of information at any stage of the proceedings. Further, even the trial court took cognizance of this fact. Given this factual premise, the prosecution had the task of showing that one of the masked assailants and appellant

were one and the same person. Regrettably, it failed to discharge this task.

Masked Man
Unrecognized by Witnesses

First, not having had any chance at all to see the face of the masked gunman, none of the eyewitnesses was able to recognize or give a definite description of him later on. Thus, their act of positively pointing to the accused as the assailant during the police lineup and the trial was the result of pure speculation and was contrary to human knowledge and common experience.

In recent cases, this Court has upheld the validity of the identification of masked assailants by prosecution witnesses, but only because of peculiar circumstances that served as reliable bases for pointing to the accused as the culprits.

In *People v. Mante*,^[13] the accused was convicted because the yellow *sando* (undershirt), which he had used to mask his face, was the same apparel he was wearing when he was seen by witnesses in the vicinity of the crime scene prior to the killing. In *People v. Nang*,^[14] appellants were deemed to have been positively identified, because the mask worn by one of them accidentally dropped from his face in the course of a struggle with the victim. In the same vein, we ruled in *People v. Sotto*^[15] that the prosecution witness had positively identified the masked assailant, because the two of them were previously known to each other. The witness was therefore familiar with the body contour and movements of the accused. Moreover, the gun used in the shooting belonged to the latter. He also tested positive for powder burns after undergoing a paraffin test.

Indubitably, the identification of the accused in the aforecited cases was based on significant facts and on circumstantial evidence other than the prosecution witnesses' self-serving declarations or statements.

In the present case, it was not established that the prosecution witnesses had previously known appellant or were familiar with his voice, gestures and mannerisms. Neither was it shown that the mask he was wearing was dislodged from his face, so as to allow thereby a reasonable view or even a slight glimpse of his facial features.

Unreliable Basis
for Identification

Second, the prosecution's basis for identifying the assailant was belatedly established, unsubstantiated, uncorroborated and therefore unreliable.

From the testimony of Prosecution Witness Evelyn Saul, it is clear that in identifying the assailant, her only point of reference was the tattoo on his right hand. Nonetheless, she audaciously declared that she was able to recognize the assailant, who was wearing a mask the whole time, as herein appellant. She testified as follows:

"Q: So, there were 5 persons present [on] x x x August ^[12]
1993 at 11:30 P.M.?"

A: Yes, [ma'am].

Q: What were you and your husband doing at the residence of Mrs. Angelita Jamias?

A: We were talking because her cousin has just had a medical examination and he was about to leave on that coming Saturday while my husband [was] going to leave on the last week of August.

Q: So, what this group, you and your husband and Mrs. Jamias and a brother of Mrs. Jamias and who else?

A: Honorio.

Q: Is he also with your group?

A: Yes, [ma'am].

Q: Cousin Honorio Ontanillas did anything unusual happen?

A: While we were talking then suddenly entered two armed men. And they entered the house and one of them poked a gun to my husband.

Q: How many person entered?

A: Two (2), [ma'am].

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Q: Did they [enter] x x x to a door?

A: Yes, [ma'am].

Q: And how did they enter, they just entered slowly or what?

A: They suddenly entered forcibly and then I just had transferred to the seat near my husband.

x x x

x x x

x x x

Q: So, you said the two armed men forcibly entered and immediately one proceeded, what did the one do?

A: One of them entered through the other door because there were two doors.

Q: Now, what did the one who entered the place where you were did? What did the one who entered exactly where you and your husband and the others were seated [did]?

A: The man who entered through the door poked a gun to my husband's left temple while the other man entered to the other door.

Q: Now when this man who poked a gun on the left side temple and pointed near the eyelid of your late husband what happen[ed]?

A: I was pushed inside by Mr. Aniceto Jamias and when I was pushed inside there was already a shot.

Q: And did you know where did the shot come from?

A: Yes, [ma'am].