

**G.R. Nos. 204481-82 - ALBERT G. AMBAGAN, JR., *petitioner versus*
PEOPLE OF THE PHILIPPINES, *respondent.***

Promulgated:

October 14, 2015

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DISSENTING OPINION

VILLARAMA, JR., J.:

With due respect to my colleague and Member-in-Charge of this case, Justice Velasco, Jr., I disagree with his ruling to acquit, on ground of reasonable doubt, petitioner former Mayor Albert G. Ambagan, Jr. from the charge of two counts of homicide in connection with the fatal shooting of SPO2 Reynaldo Santos and Domingo Bawalan on July 4, 2004 at past midnight in Amadeo, Cavite when the latter tried to apprehend certain motorcycle-riding men carrying firearms.

As a general rule, an appellate court will not disturb the findings of the lower court, unless there appears in the record some facts or circumstances of weight and influence which has been overlooked or the significance of which have been misinterpreted.¹

Perusing the appealed decision and the evidence on record, I find no such fact or circumstance of weight and significance which has been overlooked or misappreciated by the Sandiganbayan regarding the participation of petitioner in the shooting incident that took place in his presence. *All* the matters discussed in the *ponencia* have already been thoroughly passed upon and exhaustively discussed by the Sandiganbayan in its decision convicting petitioner of the crime charged.

The issue boils down really to the credibility of prosecution eyewitness, Rommel Bawalan, who categorically testified that petitioner ordered his armed bodyguards and co-accused to fire at the victims.

This Court has consistently held that matters affecting credibility are best left to the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness deportment on the stand while testifying.² The Member-in-Charge found it

¹ *People v. Gomez*, 450 Phil. 253, 261 (2003), citing *People v. Alcodia*, 446 Phil. 881, 891 (2003) further citing *Cueme v. People*, 390 Phil. 294, 302 (2000) and *People v. Pascual*, 387 Phil. 266, 280 (2000).

² *Id.* at 260-261.

highly irregular that out of several witnesses presented by the prosecution, only Ronnel Bawalan testified that petitioner uttered the words “*Sige yan pala ang gusto mo. Mga kasama banatan na ninyo yan*” in those moments of petitioner’s intense anger over the repeated rejection by SPO2 Santos of his request to just talk over the matter respecting certain individuals whom Santos had just apprehended and whose illegal firearms he was confiscating at the time. However, this alleged discrepancy pointed out by the defense was already satisfactorily explained and judiciously resolved by the Sandiganbayan, as follows:

The Court is not convinced that Ambagan could not have made such utterance, because Patam, who was with the Mayor at that moment, had not mentioned about it in his testimony. Patam testified that when he was pushing Mayor Ambagan to Javier’s house, the Mayor was shouting invectives at Santos. Distinctly, Patam remembered the Mayor telling Santos, “*Ang hirap mong kausap.*” This was followed by more statements, but Patam could no longer understand them. It is of common knowledge that the nearness of the speaker to the hearer is not necessarily determinant of what the speaker actually said or did not say. In other words, whatever Patam had heard does not exclude what Ronnel had perceived, simply because Patam was nearer to Mayor Ambagan. A hearer’s perception of speaker’s utterance is affected by other factors, such as the hearer’s attention and understanding or interpretation about what has been said. At that time, Ronnel was differently situated from Patam. While Ronnel was simply a spectator waiting for what was going to happen next, Patam was in a move involved stance, being into the situation himself. He was foreseeing possible trouble which to his mind needed to be contained. In fact, Patam decided to bring the Mayor to Javier’s house when he sensed that the awkward situation was heating up. Faced with these concerns, it was not unlikely that Patam may have missed the other words of Mayor Ambagan. On the other hand, Patam’s testimony about Mayor Ambagan’s remarks only corroborates Ronnel’s testimony, rather than discredit it. Infuriated with Santos’ refusal to accommodate his requests, Mayor Ambagan bellowed unsavoury words to him. His tirade supports the possibility that he directed his men to fire at Santos. This was validated when gunfire ensued shortly after his command. That command induced Garcia and Roger Causaren to shoot Santos and Domingo.³

The other perceived inconsistencies and improbabilities pointed out in the *ponencia* which supposedly casts doubt on the truthfulness of Ronnel’s eyewitness account, were also addressed by the Sandiganbayan, *viz.*:

The aforesaid testimony of Ronnel on cross-examination should not be taken in isolation. Ronnel may not have adequately portrayed the exchange of shots between Santos and Rene *per se*. However, it cannot be denied that in his other declarations, he was categorical too, that the bodyguards of Mayor Ambagan fired shots. These seemingly inconsistent statements are reconcilable, if Ronnel’s testimony is viewed as a whole. He saw Santos and Rene fired at each other, and successive firings happened from the companions of Mayor Ambagan, although, Ronnel could not specifically name them all. For one, he did not know some of the bodyguards. For another, it is impossible for him to describe in detail

³ *Rollo*, pp. 124-125.

who fired in succession, because there were many gunmen involved, and the interval between gunfire was just a matter of seconds.

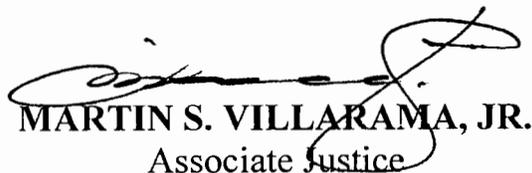
It is of no moment that Ronnel's allegation that Rene fired first at Santos may be disproved with the paraffin test result, showing that Santos was positive for gunpowder nitrates while Rene was found negative. Immaterial too is the argument that Ronnel was not consistent as to when he actually learned of the deaths of the victims, other than Santos and Domingo. If Ronnel failed to accurately testify on this part, his other testimony worthy of belief cannot, nonetheless, be excluded. Even assuming that Santos shot Rene first, it should be noted that the evidence cannot belie that Santos and Domingo both died from the gunfire of Malabanan, Roger, Garcia, and other unrecognized, men of Mayor Ambagan.⁴

The testimony of a single witness has been held sufficient to establish the guilt of the accused, and if found positive and credible, is sufficient to convict the accused even in a murder charge.⁵ Also, failure of a witness to reveal to the authorities that he witnessed a crime and to reveal the identities of the offender for a number of days, weeks or even a number of years, is allowable if there is a valid reason for such delay, as even a ten-year delay was still acceptable.⁶

Here, the Sandiganbayan ruled that petitioner is guilty as principal by inducement considering the attendant circumstances clearly indicating that petitioner's bodyguards would not have fired their guns at SPO2 Santos and Domingo had he not ordered them to do so. It also held that Ronnel Bawalan's delay of 22 days in reporting what he witnessed during the shooting incident, did not impair his testimony, which the Sandiganbayan found as bearing no earmarks of falsehood.

It is evident that petitioner herein seeks a review by the Court of the factual findings of the Sandiganbayan, which essentially involve the credibility of the testimonies of the witnesses. As the issue of credibility is to be resolved primarily by the trial court, I see no reason to reverse the findings and conclusions made by the Sandiganbayan as they are supported by the testimonial and documentary evidence on record.

I therefore **VOTE** to deny the petition.


MARTIN S. VILLARAMA, JR.
Associate Justice

⁴ Id. at 118-119.

⁵ *People v. Villamor*, 424 Phil. 302, 316 (2002)

⁶ *People v. Aquinde*, 457 Phil. 207, 225 (2003), citing *People v. Dacibar*, 382 Phil. 618 (2000); *People v. Bautista*, 352 Phil. 665, 679 (1998); and *People v. Rimorin*, 387 Phil. 925 (2000).