

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABRAHAM MARMITA Y BADILLA AND PABLO MARMITA Y BADILLA, ACCUSED-APPELLANTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Judgment[1] of the Regional Trial Court (RTC), Branch 6, Tacloban City dated November 9, 2010 finding accused-appellants Abraham Marmita and Pablo Marmita guilty beyond reasonable doubt of murder in Criminal Case No. 2000-08-454; and finding Abraham Marmita guilty beyond reasonable doubt of frustrated homicide in Criminal Case No. 2000-08-435.

The Antecedents

Abraham Marmita (Abraham) and Pablo Marmita (Pablo) were charged for the murder of Arnulfo Cadano (Arnulfo) in Criminal Case No. 2000-08-454 under the following Information,[2] viz.:

That on or about the 14[th] day of May 2000, in the Municipality of Alangalang, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and mutually helping one another, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, hack, stab and wound Arnulfo Cadano with the use of bladed weapons which both accused provided themselves for the purpose, thereby producing fatal hacking, incised and stab wounds on the different parts of the body of Arnulfo Cadano which were the direct and proximate cause of his death.

CONTRARY TO LAW.

Meanwhile, Abraham was also charged with frustrated homicide in Criminal Case No. 2000-08-435. The Information[3] against him reads, viz.:

That on or about the 14[th] day of May 2000, in the Municipality of Alangalang, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, strike, stab, hack and wound one ROMELO CADANO with the use of a stone and a long bolo which the accused provided himself for the purpose, thereby hitting and inflicting upon the said ROMELO CADANO multiple wounds on the different parts of his body, thus the accused performed all acts of execution which would have produced the crime of homicide as a consequence thereof, but which nevertheless did not produce it by reason of cause independent of his will, that is, by the able medical attendance rendered to ROMELO CADANO which prevented his death.

CONTRARY TO LAW.

Before Abraham could be arraigned in Criminal Case No. 2000-08-435, he moved that the case be consolidated with Criminal Case No. 2000-08-454. His motion was granted by the trial court in its Order[4] dated January 16, 2001.

When arraigned, both Abraham and Pablo pleaded not guilty to the offenses charged.[5]

The prosecution presented Romelo Cadano (Romelo) and his wife, Evangeline Cadano (Evangeline) as witnesses.

From their narrations, it could be gathered that accused-appellants Abraham and Pablo are brothers. Meanwhile, Arnulfo and Romelo, the victims in the murder and the frustrated homicide cases, respectively, are also brothers. The wife of Pablo, Josephine Cadano (Josephine), was the sister of Arnulfo and Romelo.

On May 14, 2000, at around 2:00 o'clock in the afternoon, Romelo and his wife Evangeline, together with their children, were at the house of Pablo as it was the birthday of the latter's child. At around 7:00 o'clock in the evening, Pablo and Josephine fought. Considering that Romelo and Josephine were siblings, Evangeline asked her husband that they would leave. When Romelo asked permission from her sister, Pablo followed Josephine and slapped her. Romelo tried to pacify Pablo and asked the latter not to harm his sister.

Subsequently, Romelo, Evangeline and their children went out of Pablo's house. While they were already on the road, Evangeline saw Romelo being hit by a stone thrown by Abraham. At that time, Evangeline was just about three arms stretch away from her husband. Thereafter, Abraham hacked Romelo thrice and hit the latter at his neck. When Romelo fell down, Evangeline saw Abraham proceeded towards Arnulfo who was lying on the road and drunk. Abraham also hacked Arnulfo repeatedly with the bolo he used to hack Romelo. Evangeline then saw Pablo approached Arnulfo and hit the latter with the butt of his shotgun. When the hostilities ceased, Evangeline rushed to the municipal police office of Alangalang, Leyte to seek help. The responding policemen brought Romelo and Arnulfo to EVRMC. Romelo survived but Arnulfo died on the following day.

The prosecution formally offered as exhibits the medical certificates of Arnulfo[6] and Romelo.[7] The defense admitted the due execution and authenticity of these documents.[8]

Meanwhile, the witnesses for the defense were Consolacion Dayata (Brgy. Captain Dayata), the barangay captain of Tombo, Alangalang, Leyte; Rosalinda Marmita (Rosalinda), the wife of Abraham; and the two accused-appellants, Abraham and Pablo.

According to the defense, on May 14, 2000, at around 7:00 o'clock in the evening, Abraham was in their house together with his family. Arnulfo and Romelo then came to Abraham's front yard, threw stones at Abraham's house and challenged Abraham to a fight. Not contented with throwing stones at Abraham's house, Romelo banged the door. Abraham instructed his wife Rosalinda and their children to go out of the house and hide themselves in the grasses as he feared that Arnulfo and Romelo might get inside. Rosalinda and the children did as instructed while Abraham stayed. When Arnulfo and Romelo tried to force themselves into the house, Abraham was compelled to hurt them. According to Abraham, Arnulfo delivered a hack blow to him using a long bolo but he managed to evade. He retaliated and hacked Arnulfo. Abraham also wounded Romelo because the latter also delivered a hack blow to him but failed to hit him. After hacking Arnulfo and Romelo, Abraham went to Brgy. Captain Dayata and told her about the incident.

Brgy. Captain Dayata recounted that she first learned of the incident from Edwin Cadano (Edwin), the elder brother of victims Arnulfo and Romelo. Edwin informed her that Romelo and Arnulfo went to the house of Pablo for a fight. She told Edwin that she would seek police assistance. She called the police through her hand-held radio but the police did not come right away. Before the police arrived, Abraham came to Brgy. Captain Dayata and told her that Romelo and Arnulfo challenged him to a fight. Abraham surrendered his bolo to Brgy. Captain Dayata. When the police arrived, Brgy. Captain Dayata went with them to the crime scene and she saw Arnulfo's body 3 meters away from Abraham's house. Arnulfo was lying on his back and already weak due to blood loss. She noticed that there were holes in the walls of Abraham's house. She further narrated that Pablo assisted in

bringing Arnulfo to the hospital.

When Pablo testified, he claimed that he was washing dishes at his house after the birthday celebration of his child. While doing so, police officers, together with the Brgy. Captain, arrived and brought him to the house of his brother Abraham. The police fetched him because his brother Abraham just killed a person. He saw Arnulfo's body near the door of Abraham's house. He also saw a big hole in the wall of Abraham's house but he did not know who was responsible for it. He helped load the body of Arnulfo into the truck.

The defense offered no documentary exhibits.

After receiving the parties' evidence, the trial court rendered the appealed Judgment finding Abraham and Pablo guilty of the charges against them. The dispositive portion of the trial court's Decision reads, viz.:

WHEREFORE, premises considered, Judgment is hereby rendered-

In Criminal Case No. 2000-08-454 – finding the two accused ABRAHAM MARMITA y BADILLA and PABLO MARMITA y BADILLA, Guilty beyond reasonable doubt in the Murder of the victim Arnulfo Cadano. There being the mitigating circumstances of voluntary surrender and intoxication proven by the two accused, each of them are hereby sentenced to suffer reclusion perpetua. Their preventive detention shall be credited in full if they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, they shall be credited in the service of their sentence with four-fifths of the time during which each of them has undergone preventive imprisonment. Both accused are also ordered to jointly and severally indemnify the Heirs of Arnulfo Cadano the sum of P75,000.00 for Civil Indemnity; Php75,000.00 for Moral Damages; and P30,000.00 as and for exemplary damages; and

In Criminal Case No. 2000-10-435 – finding accused ABRAHAM MARMITA y BADILLA, Guilty beyond reasonable doubt of Frustrated Homicide. There being the mitigating circumstance of voluntary surrender and intoxication proven by the said accused, without any aggravating circumstance, and applying the indeterminate sentence law, he is hereby sentenced to suffer imprisonment ranging from 6 months of Arresto Mayor maximum as the minimum to 6 years of prision correccional Maximum as the Maximum. His preventive detention shall be credited in full if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment. He is also ordered to indemnify Romelo Cadano the amount of P50,000.00 for moral damages

SO ORDERED.[9]

Abraham and Pablo sought reconsideration[10] of the Judgment but the trial court denied their motion.[11] Undaunted, they [hereinafter referred collectively as appellants] brought the matter to Us[12] on the following errors, which were also the same arguments advanced in their motion for reconsideration before the trial court, to wit:

(a) THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE INCONSISTENCIES AND INCREDIBILITY OF THE EVIDENCE OF THE PROSECUTION WHICH CREATED DOUBT ON THE CULPABILITY OF YOUR APPELLANTS;

(b) THE COURT A QUO GRAVELY ERRED WHEN [IT] FAILED TO APPRECIATE THE APPLICABILITY OF THE EQUIPONDERANCE OF EVIDENCE RULE IN THE LIGHT OF THE EQUIPOISE OF EVIDENCE OF THE PROSECUTION AND THE DEFENSE GRANTING ARGUENDO THAT THE EVIDENCE OF YOUR APPELLANTS IS WEAK;

(c) THE TRIAL COURT GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THE TESTIMONY OF WITNESS CONSOLACION DAYATA IN THE LINE WITH HER DUTY A[S] BARANGAY

CHAIRWOMAN WHICH CARRIES WITH IT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS;

(d) THE TRIAL COURT GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THAT INTENT TO KILL WAS NOT ATTENDANT IN THIS CASE IN VIEW [OF THE FACT THAT] APPELLANT ABRAHAM MARMITA[,] DESPITE AMPLE OPPORTUNITIES TO KILL ARNULFO CADANO AND ROMELO CADANO, LEFT THE DUO AND PROCEEDED TO BRGY. CHAIRWOMAN CONSOLACION DAYATA TO SURRENDER;

(e) AD ARGUMENTE THAT THE APPELLANTS ARE CRIMINAL[LY] LIABLE, APPELLANT ABRAHAM MARMITA SHOULD HAVE BEEN FOUND GUILTY OF HOMICIDE INSTEAD OF MURDER WHICH THE TRIAL COURT GRAVELY FAILED TO APPRECIATE

(f) AD ARGUMENTE THAT ABRAHAM MARMITA IS LIABLE FOR HOMICIDE[,] THE OTHER APPELLANT PABLO MARMITA SHOULD BE ACQUITTED ON ACCOUNT THAT CONSPIRACY DOES NOT EXIST IN THIS CASE.

This Court's Ruling

The appeal is partly meritorious.

From the evidence on record, the trial court correctly convicted Abraham of murder and frustrated homicide. However, We find that Pablo's conviction was not established beyond reasonable doubt.

For an orderly discussion, We shall tackle first the sixth assigned error. In arguing therefor, appellants contended that since the trial court found no conspiracy, Pablo could not be held liable for murder as there was no evidence that Arnulfo had injuries caused by the striking of the butt of the gun, or that his death was caused by such wound.

Appellants' arguments on this point are tenable.

The trial court disregarded conspiracy between Pablo and Arnulfo as it found no evidence that both came to an agreement and decided to commit the unlawful acts. Indeed, the absence of conspiracy between appellants, when evaluated together with the medico-legal findings, negates Pablo's liability for Arnulfo's death. The medical certificate described Arnulfo's injuries and the cause of his death, as follows:

FINDINGS

P.E Findings:

- = (+) Hack wound 6 cm in length tempoparietal area (L)
- = (+) Incised wound 18 cm in length posterior neck
- = (+) Stab wound 1.5 cm #2 mandibular area
- = (+) Stab wound 1 cm #2 (L) shoulder
- = (+) Stab wound 2.5 cm (R) shoulder.

Principal Diagnosis:

- =CP arrest from increased ICP from intracerebral hemorrhage from hacking wound (L) parietal area.

There is nothing in the medical certificate to indicate that Arnulfo sustained bruising/hematoma or any injury caused by having been struck with a hard object. The attending physician only found hack, incised and stab wounds, which must be caused by a sharp or bladed weapon and certainly not the butt of a shotgun.

During the cross-examination of defense counsel Atty. Arguelles on Romelo, the latter declared, thus:

Q:

Now, it is clear that Pablo Marmita did not help in inflicting these injuries?

A:

I did not see him participated in wounding me.

Q:

In fact, he was situated in the terrace of the house?

A:

Yes, Sir.[13]

The foregoing confirmation of Romelo that Pablo was in the terrace of the house induces serious doubts on the latter's participation in the incident. Such doubts are reinforced by the medical certificate showing that Arnulfo's body sustained no injury consequent to Pablo's alleged pounding of the butt of his shotgun.

The foregoing circumstances impel Us to reverse Pablo's conviction. It is only when the conscience is satisfied that the crime has been committed by the person on trial that the judgment be for conviction.[14] Where there is reasonable doubt as to the guilt of the accused, he must be acquitted even though his innocence may be doubted since the constitutional right to be presumed innocent until proven guilty can only be overthrown by proof beyond reasonable doubt.[15] As there is reasonable doubt if Pablo indeed participated in the commission of the crime, it then becomes Our constitutional duty to decree his acquittal.

We now confront the rest of the errors which can be summed up to a review of the following issues: (1) the value accorded by the trial court to the testimonies of the witnesses for the prosecution vis-à-vis that of the defense; (2) the trial court's non-application of the equipoise rule; and (3) the trial court's evaluation that Abraham had the intent to kill Arnulfo and the killing was aggravated by treachery.

On the first issue, appellants ascribed inconsistency, incredibility and bias in the testimonies of the prosecution witnesses. Appellants called Our attention to Evangeline's testimony that Romelo was hacked thrice, however, the medical certificate stated that her husband sustained 4 hacking wounds and 1 stab wound. The inconsistencies between her testimony and the medical findings suggest that the prosecution's accounts were fabricated. The testimonies of Evangeline and Romelo practically came from interested parties and were uncorroborated by other persons who were supposed to be present during the birthday celebration. Appellants found Evangeline's reaction incredible as she merely observed the commission of the crime and never made a move to admonish the attackers to stop, or ran away to secure herself and ask for help. Appellants further posited that the trial court should not have brushed aside the testimony of Brgy. Captain Dayata as she was not an ordinary witness, but a public official who has the presumption of regularity in the performance of her official function.

Appellant's ascriptions are not sufficient basis to reverse Abraham's conviction. It is well-entrenched that the findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses first-hand; and to note their demeanor, conduct and attitude under grueling examination which are significant factors in evaluating the sincerity of witnesses in the process of unearthing the truth.[16] Besides, a scrutiny of the records reveals that the attributions of inconsistency, incredibility and bias were only appellants' perceptions, hence, do not constitute as justification for Us to override the trial court's assessment of the credibility of witnesses.

It is true that Evangeline's account regarding the number of times that Abraham hacked Romelo did not coincide

with Romelo's actual number of wounds stated in the medical report. However, such discrepancy did not make Evangeline's account fabricated, especially since Abraham himself admitted that he indeed hacked Romelo. Discrepancies and inconsistencies on minor matters neither impair the essential integrity of the prosecution's evidence as a whole, nor reflect on the witness' honesty. Such inconsistencies, which may be caused by the natural fickleness of the memory, even tend to strengthen rather than weaken the credibility of the witness because they erase any suspicion of rehearsed testimony.[17] Although there may be inconsistencies on minor details, the same do not impair the credibility of the witness where, as in this case, there was consistency in relating the principal occurrence and positive identification of the assailant.[18]

Moreover, the fact that the witnesses for the prosecution were Romelo and his wife do not derail their credibility. On the contrary, the circumstance even lends more credence to their testimonies as their natural interest in securing the conviction of the guilty would deter them from indicating persons other than the culprits, for otherwise, the latter would thereby gain immunity.[19]

Anent the testimony of Brgy. Captain Dayata, the trial court could not be faulted for not giving credit to her testimony. The account of the said official could not even be considered favorable to appellants as her narration only magnified the fabrication of the defense's version. Brgy. Captain Dayata's testimony that she saw Arnulfo's body at 3 meters away from Abraham's house contradicted Abraham's claim that he hacked Arnulfo because the latter was at his door and attempted to force himself inside the house.

Going now to the second issue, appellants invoked the application of the equipoise rule since the evidence for the prosecution and the defense were both weak. Under the circumstance, the equipoise rule should be applied and the constitutional presumption of their innocence upheld.

Appellants' invocation of the equipoise rule is without basis. Under the rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.[20] The rule applies where the inculpatory circumstances are capable of two inferences, one of which is consistent with the presumption of innocence and the other compatible with a finding of guilt, the court must acquit the appellants because the evidence does not fulfill the test of moral certainty and, therefore, is insufficient to support a judgment of conviction.[21]

The rule finds no application in this case as there never was a finding that the evidence of the prosecution was weak. On the contrary, the trial court found the prosecution to have proven beyond reasonable doubt Abraham's culpability for the crimes. In fact, Abraham himself also admitted hacking the victims; hence, he cannot invoke the equipoise rule. Abraham's admission precluded any other inference but that he was guilty of the offenses. Corollarily, he can no longer invoke his constitutional right to be presumed innocent.

On the third issue, appellants contended that Abraham had no intent to kill since he left Arnulfo and Romelo after a fight ensued between them. Also, treachery could not be appreciated in this case. Evangeline did not see what really happened as it was dark, hence the mode and manner of commission of the crime were not sufficiently established.

Abraham's intent to kill Arnulfo is presumed from the fact of Arnulfo's death. Abraham admitted that he hacked Arnulfo with a bladed weapon. The latter eventually died due to the wounds inflicted on him by Abraham. In the case of *People v. Delim*,[22] it was specifically held that intent to kill is conclusively presumed if the victim dies because of a deliberate act of the malefactor, thus:

In xxx murder cases, the prosecution is burdened to prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that the defendant committed the criminal act or was in some way criminally

responsible for the act which produced the death. To prove the felony of xxx murder, there must be incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice); in other words, that there was intent to kill. Such evidence may consist inter alia in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactor, intent to kill is conclusively presumed. [Emphasis and underscoring supplied.]

As for the aggravating circumstance of treachery, this was rightly appreciated by the trial court. The prosecution was able to establish that Arnulfo was lying on the road and drunk when Abraham hacked him. Arnulfo's state precluded him from putting up a defense or retaliation to the assault of Abraham. In *People of the Philippines v. Flores*,^[23] a case where the victim was also dead drunk during the attack, the Supreme Court declared the attendance of treachery and thoroughly discussed the said aggravating circumstance, thus:

xxx The evidence clearly establishes the fact that the victim was totally unconscious, dead drunk, lying on the pavement, when accused-appellant administered strong, vicious, and as borne out later, killing kicks at the belly of the victim. Totally unconscious at the time of the attack, the victim could not have put up any defense whatsoever against the sudden assault by the accused-appellant. Unquestionably, the attack was characterized by treachery. An attack upon an unconscious victim who could not have put up any defense whatsoever is treacherous. There was absolutely no risk to accused-appellant from any defense that the victim might have made. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tends directly and specially to insure its execution, without risk to himself arising from the defense which the offended party may make. [Emphasis supplied.]

We could not subscribe to appellants' argument that since it was dark, Evangeline did not see the mode and manner of commission of the crime. The absence of illumination in the place of commission of the crime does not detract from Evangeline's positive identification of Abraham as the assailant. Although visibility is an important factor in the identification of a criminal offender, its relative significance depends largely on the attending circumstances.^[24]

There is no basis for assuming that darkness was so absolute as to preclude Evangeline from seeing anything. Evangeline testified that she saw Abraham when the latter stoned Romelo and that Abraham was just three-arms length away from her at the time he attacked her husband.^[25] Evangeline further recounted that Arnulfo Cadano was only four meters away from where her husband was attacked.^[26] It must also be pointed out that Abraham and Evangeline were neighbors. Thus, it is not difficult to believe that Evangeline recognized Abraham when the latter attacked the victims. Considering also that the unexpected acts of violence were committed against her husband and brother-in-law, We find it plausible that Evangeline's most natural reaction was to strive to see the look and face of the assailant and observe the manner in which the crime was committed.

WHEREFORE, the appeal is PARTLY GRANTED. The Judgment of the Regional Trial Court (RTC), Branch 6, Tacloban City dated November 9, 2010 is hereby AFFIRMED but with MODIFICATION in that ONLY ABRAHAM MARMITA y BADILLA is CONVICTED for murder in Criminal Case No. 2000-08-454.

PABLO MARMITA y BADILLA is ACQUITTED in Criminal Case No. 2000-08-454 on the ground of reasonable doubt and ORDERED IMMEDIATELY RELEASED from custody, unless he is being held for some other lawful cause. The responsible officer is ORDERED to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

The rest of the appealed Judgment stands.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*]Acting Chairperson in lieu of J. Ramon Paul L. Hernando, per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Rollo, pp. 45-62.

[2] Record for Criminal Case No. 2000-08-454, p. 1.

[3] Record for Criminal Case No. 2000-08-435, p. 1.

[4] Record for Criminal Case No. 2000-08-435, p. 28.

[5] See Certificate of Arraignment record for Criminal Case No. 2000-08-435, p. 30 and record for Criminal Case No. 2000-08-454, p. 34.

[6] Record for Criminal Case No. 2000-08-454, p. 9.

[7] Record for Criminal Case No. 2000-08-435, p. 9.

[8] See Order dated October 16, 2002, record of the consolidated proceedings, p. 77.

[9] Rollo, p. 62.

[10] Record of Criminal Case No. 2000-08-435, pp. 59-68.

[11] See Order dated January 6, 2011, record of Criminal Case No. 2000-08-435, pp. 71-72.

[12] See Notice of Appeal, Record of Criminal Case No. 2000-08-435, pp. 74-75.

[13] TSN taken on December 16, 2003, p. 19.

[14] See People of the Philippines v. Cañete, G.R. No. 138400, July 11, 2002.

[15] See People of the Philippines v. Divina, G.R. No. 146423, November 12, 2002.

[16] See People of the Philippines v. Osianas, G.R. No. 182548, September 30, 2008.

[17] See People of the Philippines v. Tagaylo, G.R. Nos. 137108-09, November 20, 2000.

[18] See People of the Philippines v. Molina, G.R. No. 129051, July 28, 1999.

[19] See People of the Philippines v. Abria, G.R. No. 113445, December 29, 1998.

[20] See Tin v. People, G.R. No. 126480, August 10, 2001.

[21] See People v. Leaño, G.R. No. 138886, October 9, 2001.

[22] G.R. No. 142773, January 28, 2003.

[23] G.R. No. 116524, January 18, 1996.

[24] See People v. Cambi, G.R. No. 127131, June 8, 2000.

[25] See TSN dated January 29, 2003, p. 9.

[26] See TSN dated January 29, 2003, p. 13.

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