

REY BORROMELO, PETITIONER, VS. COURT OF APPEALS, ASSOCIATE JUSTICES ANTONIO G. LUCERO, AMEURFINA MELENCIO-HERRERA, JOSE G. BAUTISTA, AND CITY COURT OF CEBU CITY, BRANCH I, JUDGE ...*G.R. No. L-39253. August 24, 1984*

Ponente: DE LA FUENTE, J.

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Petitioner Rey Borrromeo, a patrolman of the Cebu City Police Department, was accused of grave threats. Before the trial, the Assistant City Fiscal filed a motion to dismiss on the ground that the complainant, Francisco Castillo, had manifested his lack of interest to prosecute the case; but said motion was denied by the City Court.[1]

The case of the prosecution against the petitioner may be summarized as follows: At about 8:30 o'clock in the evening of March 4, 1968, while the complainant and his cousin, Renato Castro, were conversing at Fuente Osmeña, Cebu City, they saw the petitioner "escorting his [complainant's] sister, Rosa Castillo," with the arm of petitioner around her shoulder.[2] Piqued by what he saw the complainant immediately accosted Rosa and asked: "Why are you going with this man, you let our parents believe that you would no longer go with him." [3] Petitioner instantly drew his service revolver, pointing it at the complainant, and told him: "Luthangon ta ka karon" (meaning, "I will shoot you now"). Holding the petitioner's hand downwards, Rosa drove her brother away. He went home and reported the incident to his brother-in-law, Eugenio Amores. Afterwards, the complainant, accompanied by his sister Apolinaria and his brother-in-law, proceeded to the police precinct at Fuente Osmeña and, then, to the headquarters of the Cebu Police Department to report the incident and file a complaint. The complainant's cousin, Renato Castro, was also presented as witness by the prosecution to corroborate the complainant's testimony.

The defense version is quite different. It is claimed that at the time and place mentioned, petitioner and Rosa Castillo, law students and classmates at the Colegio de San Jose Recoletos, passed by Fuente Osmeña on their way to her dormitory to get back a book that Rosa had borrowed from petitioner; that at the said place Rosa's younger brother, Francisco Castillo, suddenly appeared and angrily threatened petitioner as follows: "Patyon ta ka bay kon mosigi ug kuyog ni Rosa" (which means "I will kill you if you continue to accompany Rosa"); that he simply ignored Francisco as suggested by Rosa who explained that her relatives disapproved of her being seen together with him. This version was corroborated by Rosa Castillo who categorically testified that petitioner did not threaten her brother Francisco with his service revolver.

Two other witnesses, Lt. Generoso Andrin and Patrolman Jose Oporto, also testified for the defense. They declared that when Renato Castro was asked in the course of their investigation if he witnessed the alleged incident, he answered that he did not because he was at that time buying some cigarettes.

After trial, rejecting totally the evidence adduced for the accused, the City Court of Cebu found him guilty beyond reasonable doubt as charged and he was sentenced to suffer imprisonment of one (1) month and one (1) day of

arresto mayor and to pay a fine of fifty (P50.00) pesos with subsidiary imprisonment in case of insolvency, plus costs.

This judgment was appealed by the petitioner to the Court of Appeals. There, the Solicitor General submitted a brief with the following observations, among others:

"Being the sister of the complainant, Rosa Castillo ordinarily would declare in favor of her brother since blood is thicker than water. Rosa Castillo and her brother, complainant Francisco Castillo, were in good terms for when Rosa told her brother to go home after the alleged incident, the latter obeyed immediately (pp. 51-52, tsn, January 15, 1969; pp. 205-206, tsn, June 27, 1969). In the absence of any evidence that bad blood existed between Rosa and her brother, the complainant, we are constrained to support appellant's view that she testified with candor and that appellant did not really threaten the complainant with a revolver. On this particular point, we find no reason why Rosa's testimony should not be given proper weight, considering that she was an eyewitness to what transpired between appellant and her brother. Being a law student, she was intelligent and competent enough to recall and narrate the true facts. Above all, there was no reason for her to fabricate and testify in a manner detrimental to her brother's cause.

"On the other hand, if there was bad blood that existed, it might be between appellant and Eugenio Amores, the instigator of this case which might have been generated by the cases filed by Amores and his wife, Apolinaria, against appellant and vice versa.

"Moreover, we cannot just close our eyes to the testimony of the police officers (Lt. Generoso Andrin and Patrolman Jose Oporto) of Precinct 6, Cebu City Police, which further bolster the appellant's claim that he did not commit the crime charged. These peace officers, who are duty bound to enforce the law, conducted an investigation of the case upon complaint of Eugenio Amores, complainant's brother-in-law, just after the occurrence of the incident on March 4, 1968 (pp. 135-137; January 16, 1969). The result of the investigation conducted by said police officers pointed to the innocence of the appellant since no prima facie case could be established against the latter." (p. 141, tsn, January 16, 1969.)[4]

and recommended acquittal of the petitioner, the prosecution having failed to establish his guilt beyond reasonable doubt.

However, declaring that it was of the "same mind" as the lower court and disbelieving the defense witnesses, the Court of Appeals[5] affirmed the appealed judgment, except as to the penalty imposed which was increased to two (2) months and one (1) day of arresto mayor in its medium period, there being no mitigating circumstance.[6]

A motion for rehearing/reconsideration was filed by the petitioner on the ground of new and material evidence.[7] It was denied by the appellate court. A second motion for rehearing/reconsideration was likewise rejected.

The instant petition filed by the petitioner, alleging grave abuse of discretion on the part of appellate court, was initially dismissed. Subsequent motions for reconsideration and supplemental petitions were successively denied for lack of merit. At this point, complainant Francisco Castillo, allegedly to clear his conscience, filed with this Court a motion wherein he insisted that petitioner Rey Borromeo is an "innocent man" and that as complaining witness he had testified against the petitioner because he was threatened by the City Judge with perjury should he recant; and prayed that he be allowed to appear before the Supreme Court (First Division) to answer questions concerning the innocence of the petitioner.

Asked to comment, the Solicitor General gave the observation that the grounds relied upon by movant were not meritorious and that the movant was not the proper party to file the motion. However, the attention of the Court was invited to the original recommendation for acquittal made by the Office of the Solicitor General,[8] which in part reads:

"In fine, we believe that the prosecution evidence is not enough to sustain appellant's conviction and is not of the kind that can produce moral certainty in an unprejudiced mind. Faced with the evidence for the defense which is more preponderant, overwhelming, and above all, credible, the conclusion is inevitable that appellant (Rey Borromeo) deserves acquittal of the offense charged." (p. 12, People's Brief)

Upon due consideration of the motion of the complainant, Francisco Castillo, as well as the comment of the Solicitor General (which reiterated the foregoing recommendation as "still our position"), the Court calendared the case for hearing and required both petitioner Borromeo and said complainant "to appear personally at said hearing." [9] After the hearing and compliance by the complainant and the petitioner with the Court's resolution requiring the submission of proper pleadings and a certified photostat copy of the marriage contract showing that petitioner was married to Rosa Castillo, etc., and considering the various pleadings filed, this Court resolved to give due course to the instant petition. [10]

In lieu of a brief for the respondents, the Solicitor General filed a manifestation reiterating the recommendation for acquittal of the accused, petitioner Borromeo. Insofar as relevant, said manifestation reads:

"The judgment of the trial court finding herein petitioner guilty of grave threat and which judgment was affirmed by the Court of Appeals, was based mainly on the testimony of the complaining witness, Francisco Castillo. During the trial of this case, the complaining witness manifested his unwillingness to prosecute the case, so that the prosecuting fiscal filed with the court a Motion to Dismiss. The motion was, however, denied and trial proceeded, resulting in the judgment of conviction.....

"Without the testimony of the complaining witness, there is absolutely nothing to support the charge of grave threats against petitioner. Considering that this witness was threatened with possible prosecution for perjury if he backed out in his complaint against petitioner, he became an unwilling witness against the latter at the trial. When petitioner was found guilty of the charge, and the case elevated to the Court of Appeals by petitioner, the complaining witness suffered heavily from severe remorse of conscience, prompting him to execute an affidavit of retraction absolving petitioner of any culpability of the crime imputed to him. This affidavit of retraction was presented by petitioner to the Court of Appeals in support of his Ex-Parte Motion for Re-hearing/Reconsideration. The Court of Appeals, however, gave no credit to complaining witness' affidavit of retraction, and denied petitioner's Ex-Parte Motion for Re-hearing/Reconsideration.

"When this case was pending appeal before the Court of Appeals, we realized the insufficiency of the prosecution evidence to sustain the finding of guilt by the trial court. Because of this, we recommended petitioner's acquittal (pp. 12 & 13, People's Brief). However, the Court of Appeals did not give due course to our recommendation and affirmed the judgment of conviction by the trial court.

"In his struggle to clear his name and vindicate himself, petitioner came to this Honorable Court via his Petition for Review. His petition, initially denied by the Honorable Court for lack of merit, petitioner did not lose heart. He pursued his case before this Honorable Court with relentless vigor and persistence.

"After a series of reverses due to the denial by this Honorable Court of his Petition for Review and the Motions for Reconsideration filed thru his counsel, and the motion personally filed by him for a reconsideration of the resolution of this Honorable Court denying his Petition for Review complaining witness came to his rescue and pleaded with this Honorable Court that petitioner be granted a new trial and/or hearing. He also requested that he be directed to appear before this Honorable Court where he could testify This Honorable Court imbued with compassion and a high sense of fairness and justice, gave due course to complaining witness' plea

"In the hearing sought by complaining witness, both petitioner and complaining witness appeared and they were examined by this Honorable Court. Complaining witness informed this Honorable Court that he retracted his former affidavit and testimony implicating petitioner because he was an unwilling witness in the

prosecution of the case against petitioner, and that the case against petitioner was engineered by his (complaining witness') brother-in-law. Warned by Mr. Chief Justice Castro, ... that he is liable to be prosecuted for perjury because of his retraction, complaining witness stood obstinate and firm in his declaration of petitioner's complete innocence of the charge. The only material piece of evidence linking petitioner to the charge having been removed because of complaining witness' retraction, the case against petitioner has no leg to stand on.

"With the foregoing, the conclusion is inevitable that the guilt of petitioner of the crime charged has not been proved beyond reasonable doubt. We, therefore, reiterate once more our recommendation for his acquittal."

We agree.

It may also be pointed that the trial court's finding or conclusion regarding the inculpatory fact was arrived at by surmise or conjecture. This is readily seen from that portion of the appealed decision which says: "It is possible that ... when his beloved was reprimanded by her brother ... he [petitioner] could not control his temper and using his revolver he threatened the offended party with it." That does not jibe with common sense and experience. The most probable and natural reaction of a suitor, who finds himself in such predicament, would be to ignore the provocative utterance of the younger brother of his sweetheart or constant companion. It was, after all, a confrontation between brother and sister. It bears emphasis that factual findings or conclusions of the appellate court are not conclusive on this Court if shown to be the result of speculation, surmise or conjecture.[11]

Evidence to be believed "must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.[12] It is not so in the case at bar, not only in view of what was just noted but also because, the complainant having testified that prior to the incident he harbored no ill feelings towards and was in fact in good terms with the petitioner,[13] there was no reason for the latter (a policeman) to use a gun to threaten the former, a young man who was unarmed. The prosecution's evidence is not indubitable; it does not deserve the credence given to it by the trial court and the appellate court.

Finally, every circumstance against guilt and in favor of innocence must be taken into account and suspicion no matter how strong should not sway judgment.[14] Where the evidence, as here, gives rise to two probabilities, one consistent with the defend-ant's innocence and another indicative of his guilt, that which is favorable to the accused should be considered.[15] The constitutional presumption of innocence continues until overthrown by proof of guilt beyond reasonable doubt, which requires moral certainty which convinces and satisfies the reason and conscience of those who are to act upon it.

All things considered, we find the evidence for the prosecution insufficient to establish petitioner's guilt beyond reasonable doubt.

WHEREFORE, the decision of the defunct Court of Appeals and the judgment a quo convicting the petitioner are hereby reversed, and another one of acquittal shall be entered in this case. Costs de officio. SO ORDERED.

Teehankee, Acting C.J., Plana, Relova, and Cuevas[*], JJ., concur.

[1] pages 12 and 20, Original Records.

[2] p. 2, Appellee's Brief, p. 17, Rollo.

[3] p. 3, Id.

[4] pp. 11 - 12, Annex D, Rollo; underscoring supplied.

[5] First Division.

[6] p. 24, Rollo.

[7] Consisting of the Affidavits of Prudencia Castillo (mother of complainant) and Pat. Jose Borrameo, both claiming that Francisco Castillo confessed that the petitioner was innocent; and the affida-vit of complainant Francisco Castillo swearing that he testified as he did during the trial out of "fear of what the judge said to me at that occasion, plus the fact that my brother-in-law, Eugenio Amores, likewise vehemently objected and threatened me should I retract."

[8] which was brushed aside sub silentio in the decision of the appellate court.

[9] p. 96, Rollo.

[10] p. 122, Rollo.

[11] Duran vs. Court of Appeals, et al., 71 SCRA 68; Director of Lands vs. Court of Appeals, 117 SCRA 346.

[12] People vs. Flores, 125 SCRA 244; People vs. Torio, 126 SCRA 265.

[13] pp. 57 to 58, tsn., January 15, 1969.

[14] People vs. Clores, et al., 125 SCRA 67.

[15] People vs. Bautista, 81 Phil. 78.

[*] Designated to sit in the First Division by Special Order No. 284 dated July 30, 1984, vice Melencio-Herrera and Gutierrez, JJ.

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