

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO BATO AND ABRAHAM BATO, ACCUSED, ABRAHAM BATO, ACCUSED-APPELLANT.

G.R. No. 113804. January 16, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In the absence of an eyewitness, the guilt of an accused may be established by circumstantial evidence. Such evidence, however, must still pass the test of moral certainty. When inadequate and uncorroborated, circumstantial evidence cannot sustain a conviction. Specifically, where the state's evidence does not constitute an unbroken chain leading beyond reasonable doubt to the guilt of the accused, the constitutional presumption of innocence prevails and the accused is entitled to an acquittal.

The Case

This postulate is applied by this Court in reversing the Decision of the Court of Appeals[1] finding Sergio and Abraham Bato guilty of murder and sentencing them to reclusion perpetua.

In an Information dated July 7, 1989, Leyte Provincial Prosecutor Joventino P. Isidro charged the brothers Bato with murder allegedly committed as follows.

“That on or about the 9th day of May, 1988 in the Municipality of Pastrana, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to kill, with treachery and evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound one Ernesto Flores, Sr. with deadly weapons locally known as ‘sundang’ which the accused had provided themselves for the purpose, thereby hitting and inflicting upon said Ernesto Flores, Sr. several wounds on the different parts of his body which wounds caused his death.”[2]

Contrary to law.”

On January 15, 1990, the accused were arraigned in the Waray dialect which they understood and spoke. Assisted by Counsel Benjamin Pore, both pleaded not guilty.[3] After due trial, the trial court[4] rendered a decision,[5] the dispositive portion of which reads:

“WHEREFORE, this Court finds each of the accused Abraham and Sergio, both surnamed ‘Bato’ GUILTY beyond reasonable doubt of the crime of Murder penalized under Article 248 of the Revised Penal Code. With the abolition of the capital punishment in 1987 Constitution, the penalty of Murder should now be Reclusion Temporal in its maximum period to Reclusion Perpetua. In the absence of any modifying circumstances, the penalty imposable is in its medium period or from EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY TO TWENTY (20) YEARS.

“Applying the Indeterminate Sentence Law, they are each imposed the penalty of TEN (10) YEARS AND

ONE (1) DAY OF Prison Mayor as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal as maximum with all the accessory penalties provided by law, to indemnify jointly and severally the heirs of the deceased Ernesto Flores, Sr. in the sum of P50,000 and to pay the corresponding costs.”[6]

Both accused appealed to the Court of Appeals. On January 26, 1994, the said Court promulgated the assailed Decision affirming their guilt but increasing the penalty to reclusion perpetua in view of this Court’s rulings in *People vs. Benitez, Jr.*[7] and *People vs. Muñoz*[8] . Pursuant to Section 13, Rule 124 of the Rules of Court,[9] the appellate court, instead of entering judgment, certified the case to the Supreme Court in this wise:

“WHEREFORE, since the crime for which the appellants were charged, tried and convicted is Murder, the penalty provided for by law is reclusion perpetua, within the power of the Supreme Court to review, revise, reverse, modify or affirm on appeal or certiorari (sec. 5-(2)-(d), Art. 8, 1987 Const.), this criminal case is hereby certified to the Supreme Court.”[10]

In a Resolution dated June 29, 1994, this Court (First Division) informed the parties that they may file additional briefs. Conformably, the parties complied with said Resolution within the extended period granted them.[11]

On July 28, 1994, during the pendency of the appeal, Sergio Bato died at the Leyte Regional Prison due to cardio-respiratory arrest secondary to acute beri-beri.[12] Death before a final judgment extinguishes both the criminal and civil liability (ex delicto) of an accused.[13] Hence, this Decision pertains only to the appeal of Abraham Bato.

The Facts

Version of the Prosecution

The prosecution presented two witnesses, namely: Ernesto Flores, Jr.,[14] son of the victim who was with the latter immediately prior to the killing; and Dr. Virisimo Opiniano,[15] who conducted the autopsy on the victim’s body. The prosecution’s version of the facts was summarized by the solicitor general as follows:

“On May 9, 1988 at about three o’clock in the afternoon, Ernesto Flores, Jr. together with his father Ernesto Flores, Sr., were going home from Barangay Tingib, Pastrana, Leyte to San Agustin, Jaro, Leyte. While passing by Barangay Hibucawan, they were called by the two appellants, Abraham and Sergio, both surnamed Bato, to join them in a drinking spree in the house of Paran Lescabo, which Ernesto, Sr. accepted. Ernesto, Jr. sat about two (2) meters away from his father while the latter joined appellants for two hours drinking tuba. When his father was already drunk, appellants tied him (father) with his hands placed at the back. Later, he saw appellants bring his father to somewhere else. Seeing his father being held, he ran away, as he was afraid he would also be taken by appellants (tsn, 6-18-90, pp. 3-10).

It was only the following morning that they found his father already dead at the Binaha-an River, five kilometers away from the place where he last saw him in the previous afternoon. He immediately reported the incident to the Barangay Captain of Barangay Tingib. The latter informed the police department about the incident. Many policemen responded and the dead body of his father was brought to the Municipal Building of Pastrana, Leyte (tsn, 6-18-0, pp. 10-11).

At the Municipal Building of Pastrana, Leyte, the Municipal Health Officer, Dr. Virisimo Opiniano, conducted the autopsy on the body of the deceased Ernesto Flores, Sr. He found that the deceased sustained five hacking and seven stab wounds. The cause of death is shock, secondary to a hacking and almost decapitating wound (Exhibit ‘A’ and ‘B’).”[16]

Version of the Defense

On the other hand, appellants raised the defense of denial. They maintained that their identification as the alleged perpetrators of Ernesto's murder is merely an afterthought, necessitated by a dearth of strong evidence on the part of the prosecution. They presented as witness Pfc. Benjamin Montanejos,[17] who affirmed that the entry he made in the police blotter[18] did not mention the accused as suspects to the crime. He further testified that it was the barangay captain who reported the incident to the police, contradicting the claim of Ernesto Jr. that he did so.[19]

Ruling of the Trial and Appellate Courts

The trial court ruled that the prosecution witness, Ernesto, Jr., positively identified the accused who invited him and his father for a drink. He witnessed how they tied the hands of Ernesto Sr. before they took him away. That the police blotter failed to state the names of the assailants did not negate appellant's participation in the slaying. Further, the entry was based on the information relayed not by the witness himself but by the barangay chairman, who had not witnessed the incident.[20] The trial court further appreciated the aggravating circumstance of treachery.

The Court of Appeals affirmed the ruling of the trial court and further declared that the totality of the prosecution evidence "constitute[d] more than sufficient incriminatory and inculpatory circumstances" to reach the conclusion that the appellants killed the victim. The appellate court declared:

"Ernesto's testimony is clear. He pointed to and positively identified Abraham Bato and Sergio Bato as the persons who invited his father to drink with them while he and his father passed by Barangay Hibucawan. His father accepted the invitation and[,] with them for two hours[,] drank tuba at the house of Lescabo. All the while, Ernesto sat there about two meters away from his father. He saw his father drunk, and, under that condition, also saw Abraham and Sergio tied [sic] his father's hand with a rope and placed [sic] them at the back, then they brought him away with them, to what direction, 'I do not know because I ran as I was also afraid' as 'they might bring me also.' He learned of his father's death on the following day, that they found him at the Binaha-an River, about 5 kilometers away from the house of Paran Lescabo. Ernesto added on cross-examination that after his father was taken by the duo, he went homeward, arrived there at about 6:00 p.m., told the incident to his mother, then they slept and that 'it was only the following morning when they look for his father'; that he and his mother reported the incident to the Barangay Captain of Tingib, and together with the barangay captain, they found his father dead at the Binaha-an River, and then they reported the incident to the police authorities." [21]

Like the trial court, the appellate court found that Ernesto Jr. "positively identified" the Bato brothers as the killers of his father and could not have been mistaken, as he had known them long before the commission of the offense, a fact not rebutted by the defense.

The Court of Appeals further opined that it was a natural human behavior for Ernesto Jr. to get frightened and to wait for daybreak before looking for his father and reporting the incident to the authorities. The appellate court noted that it was nighttime when Ernesto Jr. reached home, and that he did not know where to look for his father.

Assignment of Errors

In their brief[22] before the Court of Appeals, appellants assigned the following errors:[23]

- "I. The lower court erred in finding that there was positive identification of the accused-appellants.
- II. The lower court erred in finding that accused-appellants employed treachery in the commission of the offense."

In his additional brief[24] submitted before this Court, Appellant Abraham Bato further contends that the

appellate tribunal gravely erred in increasing to reclusion perpetua the penalty imposed by the trial court

This Court's Ruling

Pursuant to the doctrine that appeals involving reclusion perpetua are subject to a review de novo, this Court pored over the entire records of both lower courts and concluded, after careful deliberation, that the appellant is entitled to an acquittal. The circumstantial evidence adduced by the prosecution fails to evoke moral certainty that appellants is guilty.

Circumstantial Evidence Palpably Insufficient

The conviction of Appellant Abraham Bato is based on circumstantial evidence gleaned from the sole testimony of the son of the deceased. True, in the absence of direct proof, a conviction may be based on circumstantial evidence,[25] but to warrant such conviction, the following requisites must concur: (1) there is more than one circumstance, (2) the facts from which the inferences are derived are proven, and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

Hence, it has been held that a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain leading to one fair and reasonable conclusion that the defendants are guilty, to the exclusion of any other conclusion. The circumstances proved must be concordant with each other, consistent with the hypothesis that the accused is guilty and, at the same time, inconsistent with any hypothesis other than that of guilt.[27] As a corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with his innocence.[28]

Prosecution's Main

Evidence Circumstantial

Aside from the doctor who conducted the post mortem examination on the cadaver of the deceased, the only other witness for the prosecution was Ernesto Jr., who testified mainly as follows:[29]

“Q

What happened since you said you were at Tingib at about 3:00 o'clock in the afternoon of May 9, 1988?

A

When we passed by Hibucawon, they called my father for a drink.

Q

This Brgy. Hibucawon belongs to what municipality?

A

Jaro, Leyte.

PROSECUTOR DAGANDAN:**Q**

You said that they called your father, who is this “they” you referred to?

A

Abe Bato and Sergio Bato.

Q

Where were Abraham Bato and Sergio Bato when they called your father?

A

They were drinking in the house of Paran.

Q

Do you know the real name of this Paran?

A

I only know him as Paran.

Q

What is his family name?

A

Loscabo.

Q

Where is this house of Paran Loscabo located?

A

Barangay Hibucawon, Jaro, Leyte.

Q

In what manner was your father called by Abe Bato and Sergio Bato?

A

They called my father to a drink.

Q

What did your father do?

A

He approached Sergio Bato and Abe Bato, and he drank because he was offered to drink.

Q

Where were you when your father was called by Sergio Bato and Abe Bato?

A

I was near.

PROSECUTOR DAGANDAN:

Q

Where were you when your father was called, at what distance were you to your father?

A

About two (2) meters (from the witness stand).

Q

Did you come to know if there were other persons present aside from your father and the two accused?

A

Yes, but I do not know them.

Q

Approximately, how many persons were present who were gathered?

A

They were many persons.

Q

Approximately, how many?

A

More than ten (10).

Q

Since you said you were near your father when you approached them, what did Abraham Bato and Sergio Bato got to do with your father when your father approached them?

A

They first offered my father a drink.

Q

Whay drink was offered?

A

Tuba.

Q

Did your father accept the offer?

A

Yes, ma'am

Q

For how long did he stay in that group?

A

He stayed long.

Q

How about you, where did you stay while your father was drinking?

A

I was at a certain distance but I did not get near them.

Q

At about what time did the drinking spree last?

A

Two (2) hours.

Q

After two hours, what happened, if any?

A

When my father was already drunk, they tied my father.

Q

Who tied your father?

A

Abe Bato and Sergio Bato.

Q

With what object or material was your father tied?

A

Rope.

Q

How was your father tied with the rope?

A

They tied him with a rope and both hands were placed at the back.

Q

After that, what happened?

A

They brought my father.

Q

Who is this “they” who brought your father?

A

Abe Bato and Sergio Bato.

Q

How did you come to know that your father was brought somewhere?

A

I saw them bringing my father.

Q

To what directions was your father brought?

A

I do not know because I ran away as I was afraid.

Q

Immediately before you ran away, where was your father.

A

They were bringing and holding my father.

Q

You said you were afraid, why were you afraid?

A

I was afraid because they might bring me also.

Q

Did you come to know what happened to your father?

A

I learned the following day that my father died because they brought him.”

In sum, therefore, the witness established only the following circumstances surrounding the crime: (1) that the Bato brothers invited the victim and his son for a drink; (2) after two hours of drinking, said brothers suddenly tied the hands of the older Flores and took him away; (3) the following day, the body of the victim, which sustained several hack and stab wounds, was recovered at the Binaha-an River, about five kilometers away from where he was last seen by the witness.

After a careful perusal of the evidence adduced by the prosecution, we believe that appellants’ authorship of the crime was not established beyond reasonable doubt.

Lapses in the Prosecution Evidence

Ernesto Jr. admitted that there was no enmity or bad blood between his father and the accused. He further asserted that there was no altercation during the drinking spree. Likewise, he made no statement that any of the Bato brothers, at the time, carried any bladed weapon which could have been used in his father’s murder. Moreover, he did not see where the appellants brought his father after they had tied his hands. More significantly, he failed to testify on how his father was killed, who killed him, or even when he was killed. These lacunae in the prosecution account necessarily spawn doubts in the mind of a reasonable person. Because the appellants tied the victim’s hands, can it be inferred that they also intended to kill him, and actually killed him? Where did the accused take him? What happened between the time the accused tied the victim and the following morning when his lifeless body was found? There is absolutely no evidence of what transpired during that interval. The prosecution, in effect, asked the courts merely to guess or to surmise that the accused must have killed the victim during such interregnum. But conjectures, surmises and suspicions cannot take the place of evidence, particularly where – as in this case – contrary suspicions, surmises and queries can also be floated and believed.

It is also noteworthy that Ernesto Jr. did not attempt to attract the attention of other people who were nearby at the time, or to seek their aid. Instead, he ran home and related the events to his mother. Oddly, he and his mother reacted not by reporting the matter to the police, or even just to their barangay chairman, their council members or their neighbors. They simply slept the night away!

Notwithstanding the presence of other who were nearby when the appellants tied the hands of the victim, the prosecution failed to present any other witnesses to corroborate Ernesto Jr.'s testimony. As it was, his testimony was grossly insufficient and sorely in need of corroboration. It has been held that circumstantial evidence which has not been adequately established, much less corroborated, cannot by itself be the basis of conviction.[30]

Comparable Cases

In *People vs. Roluna*,[31] the trial court's conviction of the appellant for kidnapping with murder was based merely on the testimonies of two witnesses -- one of whom allegedly saw the appellant tie the hands of the victim before taking him away, and the other purportedly saw the victim walking with hands tied and the appellant following him. Declaring that the said circumstances were insufficient to convict the appellant, this Court held that the "conviction of accused-appellant for the serious crime of kidnapping with murder cannot be allowed to rest on the vague and nebulous facts established by the prosecution. x x x [T]he evidence presented by the prosecution surrounding the events of that fateful day are grossly insufficient to establish the alleged liability of accused-appellant for the death of Moronia."

In *People vs. Argawanon*,[32] appellant therein was charged and convicted with murder by the trial court. In acquitting the appellant, the Court explained:

"Furthermore, if indeed the two (2) Castro brothers were watching the cockfight when the alleged four (4) persons attacked Pat. Castro, it is quite difficult to comprehend that, considering that he (witness) was only six (6) meters away from his brother, nothing was done to him as he was able to run and hide. It seems out of the ordinary that the assailants, allegedly, two (2) of them armed with .45 caliber pistols would let Jennis Castro (an eye witness to the killing) loose and not put him out of the way. It is also quite unbelievable that despite his said distance, he (Jennis Castro) was able to identify the accused-appellant and was able to hear one of the assailants shout x x x.

In addition to the above extrajudicial statements of Jennis Castro, the trial court considered the following circumstantial evidence in convicting the appellant Lambujon, to wit: his presence at the house of one of the accused during the raid, the revolver of Pat. Castro which was allegedly found in accused-appellant's possession during the raid; positive testimony of Jennis Castro that the one who fired the second shot was the one wearing a blue T-shirt. We do not agree with the trial court's conclusion that the aforecited evidence are corroborative of Jennis Castro's incriminating testimony against the accused-appellant. Circumstantial evidence may be characterized as that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. This Court cannot infer from said evidence, the identity of the victim's assailant nor the actual participation of the appellant Lambujon in the crime charged."[33]

In *People vs. Ragon*[34] there was no actual witness to the killing of a tricycle driver, but appellant therein, with two others, was identified as the last passenger of the victim before the cadaver was found hours later. Relying on purely circumstantial evidence, the trial court convicted the appellant of murder. On appeal, this Court acquitted him. Holding that there was no sufficient evidence to establish his actual participation in the killing, we concluded:

"Circumstantial evidence is akin to a tapestry made up of strands which create a pattern when interwoven, and cannot be plucked out and considered one strand at a time independently of the others. If the picture does not point to the accused as the perpetrator of the crime beyond a reasonable doubt, conviction based thereon will

not weather judicial scrutiny. A painstaking review of the records of this case convinces us that the story pieced together by the trial court from the evidence of the prosecution provides no moral certainty of appellant's guilt. x x x." [35]

Presumption of Innocence

Not Overturned

In the instant case, the totality of the prosecution evidence does not constitute an unbroken chain leading beyond reasonable doubt to the guilt of the accused

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. [36] Where the State fails to meet the quantum of proof required to overcome the constitutional presumption, the accused is entitled to an acquittal regardless of the weakness or even the absence of his defense. [37] By constitutional fiat, the burden of proof is accordingly vested on the prosecution. [38]

In acquitting the herein appellant, this Court is not decreeing that he did not participate in the killing. It is merely ruling that the state failed to present sufficient evidence to overturn the constitutional presumption of innocence.

WHEREFORE, the appeal is GRANTED and the assailed Decision is hereby REVERSED and SET ASIDE. Appellant Abraham Bato is ACQUITTED on reasonable doubt. His RELEASE from confinement is immediately ORDERED, unless he is being detained for some other legal cause. The director of prisons is DIRECTED to inform this Court, within five days from receipt of this Decision, of the actual date the appellant is released. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo and Francisco, JJ., concur.

[1] Sixth Division, composed of J. Artemon D. Luna, ponente; and JJ. Arturo J. Buena and Alfredo J. lagamon, concurring.

[2] Records, p. 1.

[3] See Certificate of Arraignment, CA Rollo, p. 6; and RTC Order dated January 15, 1990, records, p. 73.

[4] Presided by Executive Judge Lolita O. Gal-lang.

[5] CA Rollo, pp. 12-17.

[6] RTC Decision, p. 6; CA Rollo, p. 17.

[7] 202 SCRA 478, October 4, 1991.

[8] 170 SCRA 107, February 9, 1989.

[9] Section 13, Rule 124 reads in part:

"Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of reclusion perpetua or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review."

[10] CA Decision, p. 10; CA Rollo.

[11] The case was deemed submitted for resolution upon receipt by this Court on February 20, 1996 of the letter of Geriberto N. Navat, Superintendent IV of the Bureau of Corrections , certifying that Appellant Abraham Bato “was received (at) the Leyte Regional Prison on December 15, 1995.”

[12] See letter sent by OIC Frederick Q. Garces of the Leyte Regional Prison in Abuyog, Leyte; Rollo, p. 21.

[13] *People vs. Bayotas*, 236 SCRA 239, 255, September 2, 1994, per Romero, J. See also Article 89 of the Revised Penal Code.

[14] TSN, June 18, 1990, pp. 2-22.

[15] TSN, June 19, 1990, pp. 3-7.

[16] Brief for the Appellee, pp. 2-3; CA Rollo, pp. 56-57.

[17] TSN, Nov. 6, 1990, pp. 2-9.

[18] Records, p. 131. It reads:

“Brgy. Capt. Alfredo Samson, of Brgy, Tinib, this MPLTY reported to the Office that person was found dead in the Binaha-an River, Brgy Tingib. A Patrol lead [sic] by OIC Pfc B. Montanejos, Pat F. Sales and Pat Arnulfo Tan, proceeded to the crime scene and said dead person was identified by the Brgy. inhabitants to be one Ernesto Flores 60 years of age, married and a resident of Brgy. San Agustin, Jaro, Leyte, subject was killed w/ the use of long bolos, suspects was still unknown.” (Page no. 007; Entry No. 1259; Dated May 10, 1988, and Time 1153H)

[19] TSN, November 6, 1990, p. 5.

[20] RTC Decision, p. 5; CA Rollo, p. 16.

[21] CA Decision, p. 7; CA Rollo.

[22] Brief for Accused-Appellant, pp. 1-7; CA Rollo, pp. 36-42.

[23] Brief for Accused-Appellant, p. 1; CA Rollo, p. 36. All caps in the original.

[24] Rollo, pp. 8-12.

[25] *People vs. Yip Wai Ming*, 264 SCRA 224, 243, November 14, 1996.

[26] *People vs. Ragon et al*, G.R. No. 100593, *People vs. De Guzman*, 250 SCRA 118, November 16, 1995.

[27] *People vs. Adofina*, 239 SCRA 67, 76-77, December 8, 1994 and *People vs. Tiozon*, 198 SCRA 368, June 19, 1991.

[28] *People vs. Yip Wai Ming*, 264 SCRA 224, 243, November 14, 1996.

[29] TSN, June 18, 1990, pp. 6-11.

[30] *People vs. Parel*, 261 SCRA 720, 736, September 16, 1996; *People vs. Ilaoa*, 233 SCRA 231, 235, June 16, 1994.

[31] 231 SCRA 446, March 24, 1994, per Puno, J.

[32] 215 SCRA 652, November 13, 1992, per Padilla, J..

[33] *Ibid.*, pp. 664-665.

[34] G.R. No. 100593, November 18, 1997, per Panganiban, J.

[35] *Ibid.*, pp. 16-17.

[36] Section 14 of Article III of the 1987 Constitution.

[37] *People vs. Alcantara*, 240 SCRA 122, 130, January 17, 1995.

[38] *People vs. Austria*, 195 SCRA 700, 709, April 8, 1991.

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