

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO ABRENICA Y TEJANA, ACCUSED-APPELLANT.*G.R. No. 118771. January 18, 1996*

Ponente: MELO, J.

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Maximo Abrenica was charged in two separate Informations for the murder of Reynaldo Mabisa y Ebonia on September 11, 1991, and for frustrated murder, also allegedly committed on the same day concerning the multiple gunshot wounds suffered by Ramiro Garcia y Lachica.

After joint trial, Branch 24 of the Regional Trial Court of the National Capital Region stationed in Manila and presided over by the Honorable Sergio D. Mabunay, found Abrenica guilty as charged in a decision dated January 21, 1994, but promulgated on February 3, 1994, the dispositive portion of which reads:

Because of the foregoing, the court finds that the prosecution has established beyond reasonable doubt the guilt of the accused for the two offenses for which he is charged. The court therefore finds the accused guilty beyond reasonable doubt of the offenses of Murder under Criminal Case No. 92-103650 and Frustrated Murder under Criminal Case No. 92-103651 and sentences the accused under Article 248 of the Revised Penal Code, to a penalty of Reclusion Perpetua in Criminal Case No. 92-103650. Applying the provisions of the Indeterminate Sentence Law in Criminal Case No. 92-103651, the Court sentences the accused to 6 years, 1 month and 11 days of Prison Mayor in its Medium period to 12 years, 5 months and 11 days of Reclusion Temporal in its Medium period and to pay P50,000.00 in Criminal Case No. 92-103650, to the heirs of the victim Reynaldo Mabisa by way of civil indemnity without subsidiary imprisonment in case of insolvency, and also to indemnify the complainant, Ramiro Garcia in Criminal Case No. 92-103651 in the amount of P30,000.00 for lost income for five months, by way of civil indemnity without subsidiary imprisonment in case of insolvency. In the service of his sentence in both cases, the accused should be credited with full period of his preventive imprisonment if he is entitled thereto under the provisions of the Revised Penal Code.

(p. 22, Rollo.)

Dissatisfied therewith, Abrenica has interposed the instant appeal, anchored on his arguments that the surviving witness gave conflicting testimony which should not have been given credence, and that consequently, the trial court erred in holding that said witness had positively identified accused-appellant as the assailant.

The facts of the case, as set forth by the trial court in its decision and as supported by the evidence, are as follows:

The principal prosecution witness was Ramiro Garcia who is the complainant in Criminal Case No. 2103651. He testified that he worked as a stevedore at Muelle de la Industria along the Pasig River in the City of Manila. On September 10, 1991, around 7:00 o'clock in the evening, he was on the barge "Martam III" which was docked near the terminal of Elizalde and Company, at San Pedro Guevarra St., Binondo, Metro Manila, working with other stevedores in the unloading of the cargo of the barge. They worked from 7:00 p.m. of September 10, 1991 to dawn of the following day. It was raining intermittently. When he went up to the top of the barge, accused

Maximo Abrenica, pointed a gun at him and then fired the gun, and Ramiro Garcia was hit in the left chest. He fell down and the accused approached and shot him again, and he was hit on the left hand and upper lip. He lost his small finger when the accused fired the gun while the complainant was holding the barrel. The accused pushed him into the water and when he was already in the water, the accused kept on firing at him. The accused also shot “Yoyong,” his co-stevedore. “Yoyong” was hit in the face and “Yoyong” fell into the barge. He saw the accused shoot “Yoyong” when he had already been shot and he was already down when the accused shot “Yoyong.”

After being in the water for sometime, he got out after and he saw “Yoyong” already dead. He went home and from there, he was brought by his wife to the Philippine General Hospital where he was treated. He stayed at the hospital for four months. His wife paid for his hospital expenses. He was earning P260.00 a day as stevedore and he worked 6 days a week and his average monthly earning was around Six Thousand Two Hundred Forty Pesos a month. He was not able to work for about five months. The full name of “Yoyong” is Reynaldo Mabisa Ebonia.

(pp. 15-16, Rollo.)

Accused-appellant contends that the trial court erred in finding that Ramiro Garcia, the surviving victim, positively identified accused-appellant as the gunman. We quote in this regard, the pertinent testimony of Garcia, thusly:

Q. Who was the person who poked a gun at you?

A. There, sir. (witness pointed to a person inside the courtroom who identified himself as Maximo Abrenica).

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Q. What was the reason why the accused poked a gun at you?

A. There was no reason why the accused poked a gun at me. He immediately fired a gun at me, sir.

Q. Were you hit?

A. Yes, sir.

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Q. Were you the only one who was shot by the accused?

A. He shot also my co-stevedore, sir.

Q. Who was shot first, you or alias Yoyong?

A. He shot me first, sir.

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Q. Was Yoyong hit?

A. He was hit on the face, sir,

xxx xxx xxx

Q. Where is Yoyong now?

A. He was brought to the morgue, sir.

Q. He was already dead?

A. Yes, sir.

Q. And who shot alias Yoyong?

A. There, sir. (witness pointing to a person who identified himself as Maximo Abrenica).

(pp. 9-14, TSN., June 15, 1992)

The foregoing testimony unavoidably drives one to the conclusion that prosecution witness Ramiro Garcia positively identified accused-appellant as the culprit. We cannot conceive of a more positive and categorical identification of accused-appellant than the testimony of Garcia. He definitely pointed to accused-appellant as the one who poked a gun at him; he unequivocally declared that accused-appellant, unprovoked, fired at him; he likewise pinpointed accused-appellant as the one who shot Yoyong -the other victim, Reynaldo Mabisa y Ebonia, who unfortunately did not survive the murderous and bloody assault of accused-appellant.

To denigrate the testimony of Garcia, accused-appellant adverts to some alleged inconsistencies in the testimony of said witness. Accused-appellant refers to the different names given by Garcia to the other victim, at one time calling him Yoyong and at other times, in his affidavit, calling him Rene.

The different names used by Garcia in referring to the other victim cannot be considered inconsistent to such a

degree as to negate the acts of accused-appellant. Indisputedly, accused-appellant did shoot both Garcia and the other victim named Reynaldo Mabisa. Then too, a person may have or be known by several nicknames. To be sure, accused-appellant cannot be heard to properly and competently raise any issue as to the identity of Mabisa. Be he known as Yoyong or Rene, he is just as dead by the hand of accused-appellant.

Another purported inconsistency in the testimony of Garcia asserted by accused-appellant is that “he testified that he and his co-stevedores were working from around seven o’clock in the morning of September 10, 1991 until dawn of the following day, September 11, 1991 in around the premises of the port area unloading the cargoes from the Martam III, but he however contradicted himself when he testified later on that after the rains have stopped at around two o’clock in the morning of September 11, 1991, he and Yoyong were directed by their Kabo (Lito Flores) to unload the cargoes from the Martam III” (p. 19, Appellant’s Brief).

We find no such inconsistency in the testimony of Garcia. When said witness declared that he and his fellow stevedores worked from seven o’clock in the morning of September 10, 1991 until dawn of the following day, he was merely referring to the entire period when he and his fellow stevedores were on duty to unload the cargo of Martam III. This period of almost 24 hours also covered the time they were idle and not actually working, due to the order to stop unloading because of the heavy rains.

Accused-appellant views as incredible the testimony of Garcia that he was able to swim safely to shore despite the gunshot wounds he suffered in his chest and his left hand. This argument must be peremptorily brushed aside, for surely, accused-appellant is not thereby suggesting that Garcia did not sustain any wound at all. Or could it be that accused-appellant is expressing surprise why Garcia survived, unlike Mabisa who did not live to testify against accused-appellant.

At any rate, the alleged inconsistencies noted by accused-appellant refer to collateral matters which do not impinge or detract from the main thrust of the testimony of Garcia that it was accused-appellant who shot him and Mabisa. Moreover, we have ruled that discrepancies between the affidavit of a witness and his testimony in court do not necessarily discredit him because it is a matter of judicial experience that affidavits taken ex parte are almost always incomplete and often inaccurate (*People vs. Calegan*, 233 SCRA 537 [1994]).

Finally, accused-appellant maintains that the delay of Garcia in lodging the criminal accusation impairs his credibility. We have held time and again that delay or vacillation in making a criminal accusation does not necessarily weaken the credibility of a witness where such delay is satisfactorily explained (*People vs. Errojo*, 229 SCRA 49 [1994]; *People vs. Gornes*, 230 SCRA 270 [1994]; *People vs. Dèla Peña*, 232 SCRA 72 [1994]). In the case at bench, it was but natural for Garcia to hesitate in immediately charging accused-appellant as the gunwielder for the simple reason that he personally knew that accused-appellant had homicidal tendencies, Garcia having been the object of accused-appellant’s murderous attack. Considering the absence of evidence that Garcia was impelled by ill motives, his testimony shall thus be entitled to full faith and credit (*People vs. Persiano*, 233 SCRA 393 [1994]).

In view of the positive identification of accused-appellant as the perpetrator of the crimes charged, his denial and alibi that he was asleep in a nearby parked truck at the time of the incident are rendered futile and worthless. Positive identification prevails over denials and alibis (*People vs. Cabuang*, 217 SCRA 675 [1993]).

The killing of Reynaldo Mabisa and the wounding of Ramiro Garcia were unquestionably committed with treachery. Both Mabisa and Garcia were totally unaware of the murderous designs of accused-appellant. Immediately after the victims boarded the barge, accused-appellant suddenly, without warning, shot both Mabisa and Garcia pointblank, affording the victims no opportunity to put up any defense and without risk to himself whatsoever. There is treachery when the offender commits any of the crimes against the person, employing

means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make (No. 16, Article 14, Revised Penal Code). There is treachery when the victims were shot unexpectedly and were not in a position to defend themselves (*People vs. Balanon*, 233 SCRA 679 [1994]). Even a frontal attack is treacherous when it is sudden and unexpected and the victim was unarmed (*People vs. Abapo*, 239 SCRA 469 [1994]). The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim (*People vs. Ponayo*, 235 SCRA 226 [1994]). The evidence on record clearly shows that the attack on the victims was swift and unexpected, that they were unarmed, and that they did not commit the slightest provocation.

The presence of treachery qualifies the crimes perpetrated by accused-appellant as murder and frustrated murder.

In the determination of the penalty, the applicable legal provision is Article 248 of the Revised Penal Code. Although Article 248 has been amended by Republic Act No. 7659, said amendatory statute is not applicable because the offenses charged against and committed by accused-appellant were perpetuated on September 11, 1991, before Republic Act No. 7659 took effect on December 31, 1993 (*People vs. David*, 235 SCRA 366 [1994]).

In fine under the original provisions of Article 248 of Revised Penal Code, the prescribed penalty is Reclusion Temporal in its maximum period to death. There being no attendant aggravating or mitigating circumstances, the medium period, Reclusion Perpetua, is the penalty imposable upon accused-appellant for the crime of murder.

The trial court not having committed any of the error imputed to it, its decision must thus be affirmed.

WHEREFORE, the appealed decision is hereby AFFIRMED, without special pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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