

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENEMESIO ABELLANOSA AND CRISANTO ABELLANOSA, JR., DEFENDANTS-APPELLANTS.

G.R. No. 121195. November 27, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Fundamental is the doctrine that the prosecution must rely on the strength of its own evidence rather than on the weakness of the defense's. And when faithful observance of this principle is wanting, as in the instant case, the constitutional presumption of innocence prevails and the accused are entitled to an acquittal.

This is an appeal from the judgment[1] of conviction for murder dated February 10, 1995 rendered by the Regional Trial Court of Iligan City, Branch 6,[2] against the accused Enemesio Abellanos and Crisanto Abellanos, Jr.

The Information[3] filed by Provincial Prosecutor Felix Fajardo before the trial court on June 1, 1993 reads as follows:

"That on or about the 26th day of April, 1993 at Salvador, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with John Doe, who is still at large and whose case is still pending in the lower court, did then and there wilfully, unlawfully and feloniously, with treachery, evident premeditation, taking advantage of superior strength and nighttime, and with intent to kill, attack assault and use personal violence upon one Maximo Abadies by shooting the latter with firearms thereby inflicting upon him gunshot wounds which were the direct and immediate cause of his death soon thereafter.

CONTRARY to and in VIOLATION OF Article 248 of the Revised Penal Code."

Arraigned on June 2, 1993, both accused, assisted by their counsel, individually pleaded not guilty to the crime charged.[4] They were re-arraigned on July 5, 1993 as the original Information failed to include the word "Jr." in appellant Crisanto's name. In any event, both entered the same plea of not guilty at their re-arraignment.

The Facts

According to the Prosecution

The version of the prosecution, as summarized by the trial court, is based on the testimonies of prosecution witnesses Crispulo Sanchez, Victoriano Damas, Enersto Tabalina, Remedios Damas, Elena Abadies, Dr. Cesar Anthony Sta Maria, SPO3 Elmer F. Robas and Senior Inspector Filipinas Francisco Papa, as follows:[5]

"On April 26, 1993 Maximo Abadies was a resident of Bgy. Mabatao, Salvador, Lanao del Norte. He was also the incumbent Bgy. Captain. He owned about 64 hectares of coconut and corn lands, a substantial portion of which is located in his barangay. In addition, he was engaged in the business of making hollow blocks at his residence. His live-in worker was Crispulo Sanchez who has been with him for two years. He also owned two tractors which he

hired out for plowing. At about 7:00 o'clock in the evening of April 26, 1993, Maximo Abadies brought along Crispulo Sanchez and Victoriano Damas, a tenant's son, to his corn land some 200 meters away from his residence to guard the newly harvested corn which were piled thereat. They brought with them a canvass or tarpaulin tent, a folding bed and a wink lamp. Mr. Abadies carried a garand rifle. Upon arrival at the cornfield, they set up the tent. They erected a steel post in front of a coconut tree and installed a parallel bar connecting the post and the tree. They draped the canvass across the parallel bar and tied the four ends of the canvass to corn stalks on the ground. Then they unfolded the bed on the ground under the tent directly below and along the same line as the parallel bar. Maximo Abadies laid down on the bed, placed his rifle on his side and went to sleep. His head was towards the coconut tree and his feet were near the post. On the ground near his feet was the lighted wick lamp. Crisanto and Crispulo went to their respective piles of corn about ten meters from the tent. Each squatted before their piles of corn facing towards the feet of Mr. Abadies and proceeded to unhusk the corn. At about 11:45 o'clock in (the) evening, Crispulo stood up and went inside the cornfield to defecate. After relieving himself, he returned to his corn pile and continued unhusking corn. At this juncture, Crispulo and Victoriano noticed three persons standing by the bed where Maximo Abadies was sleeping. (They) recognized two of them as Enemesio Abellanosa and Crisanto Abellanosa, Jr. but the third person was a stranger. Enemesio was holding a garand rifle while Crisanto Jr., was holding a revolver. There-upon Enemesio shot the sleeping Maximo Abadies eight times after which he stepped back and said: "Maximo Abadies is dead". Crisanto, Jr., picked up the garand rifle of the victim and fired four shots to the air. Then they left.

Crispulo and Victoriano remained rooted squatting in front of their piles of corn. (They) stayed in this position, unmoving and without sleep until 5:00 o'clock in the morning of April 27 when Francisca Alforo arrived. She went directly to her pile of corn nearer the bed of the victim and proceeded to unhusk the corn without noticing that Mr. Abadies was dead. Neither Crispulo nor Victoriano told her. A few minutes later, Victoriano left telling Crispulo that he will pasture his cow and the cow of Mr. Abadies. Later, Tony Alestre arrived and discovered that Mr. Abadies was lying dead on his bed. Several persons also arrived even as Crispulo went home to the house of the deceased. He met Mrs. Elena Abadies and told her Mr. Abadies was dead but the latter already knew about it. He did not tell her who killed her husband. Later that morning, the police brought Crispulo and Victoriano to the Salvador Police Station where they were investigated. They told the police that they did not know who shot and killed the deceased.

On April 29, 1993, they were again brought to the Salvador Police Station where they saw Angelito Bation, Pedro Bation, Federico Bacus, Enemesio Abellanosa and Crisanto Abellanosa, Jr. SPO3 Elmer Robas, a Crime Laboratory Technician of the PNP Regional Unit 10, Cagayan de Oro City, took paraffin casts of the hands of all seven of them upon the request of the Salvador Police Station. Mr. Robas took the paraffin casts to the Crime Laboratory in Cagayan de Oro City and submitted them to Sr. Inspector Filipinas Francisco Papa, forensic analyst, for forensic examination. Inspector Papa performed the required examination and reduced his (sic) findings in writing under Chemistry Report No. C-0007-93, Exh. N. The results revealed that the paraffin casts of Enemesio Abellanosa, Crisanto Abellanosa, Jr. and Crispulo Sanchez were positive for gunpowder contents or nitrates. She concluded that the three fired firearms. The results for the other four were negative. This report was transmitted to the Salvador Police Station.

On May 4, 1993, Crispulo Sanchez was arrested at the house of the victim on the basis of the results of the paraffin test. He was detained at the Salvador Municipal Jail. He found that Enemesio Abellanosa and Crisanto Abellanosa Jr. were also detained. The three of them were incarcerated in the same cell. In the late afternoon of May 5, Crispulo was released but he slept overnight on the Municipal Building. At about 10:00 o'clock in the morning of May 6, he was brought to the Maranding Police Station, Lala, Lanao del Norte and later to the Tubod Police Station, Tubod, Lanao del Norte. He was presented to the CIS agent Boy Sanchez, who is not a relative. He

slept at the house of Agent Sanchez. On May 7, 1993, he executed an Affidavit taken by CIS Agent Tirso Taclob at the CIS Sub-headquarters in Tubod, Lanao del Norte revealing formally for the first time that the assailants of Maximo Abadies were accused Enemesio Abellanosa and Crisanto Abellanosa, Jr.

Meanwhile, Victoriano Damas was brought by a son-in-law of the victim, to Municipal Judge Demetrio Sira, Jr. Who was conducting a preliminary investigation in connection with a complaint for murder filed on May 4, 1993 by the Officer-in-Charge of Salvador Police Station, SPO4 Juan Albino against Enemesio Abellanosa, Crisanto Abellanosa and Crispulo Sanchez before the 5th MCTC of Lala-Salvador. He executed an affidavit before Judge Demetrio Sira, Jr., Exh. B. On May 7, 1993, he executed another affidavit taken by CIS agent Tirso Taclob at the CIS Subheadquarters in Tubod, Lanao del Norte, Exh. A. In both affidavits, he pointed to the accused Enemesio Abellanosa and Crisanto Abellanosa, Jr. as the perpetrators in the killing of Maximo Abadies."

Version of the Defense

The Solicitor General, who recommended acquittal of the accused "for failure of the prosecution to discharge its bounden duty to prove their guilt beyond reasonable doubt", summarizes their story as follows:[6]

"x x x appellants denied having perpetrated the murder. Appellant Crisanto Abellanosa testified that on the fateful night of April 26, 1993, after taking his supper, he watched betamax at appellant Enemesio Abellanosa's (his uncle) house where he also resides from 7:30 P.M. up to 9:00 P.M., after which he went to sleep (pp. 6-7, TSN, August 2, 1994).

While asleep he was jolted by two (2) gunshots followed by three (3) more. He remained lying down until he heard Glyceria Bocus call for appellant Enemesio. Then Glyceria asked Enemesio about the shots who told her that the shots were merely fired into the air (pp. 8-10, TSN, *ibid.*). The next morning, April 27, 1993, Crisanto. As was his routine work, fed the horses, after which he fetched water. While fetching water, he met Raul Abellanosa who told him that "Memong," (referring to Maximo Abadies) their Barangay Captain, was dead. Crisanto went back to their house, then proceeded to the farm passing by the barn owned by Memong which was unoccupied (pp. 12-13, *ibid.*).

On April 29, 1993, he was picked up by policemen of Salvador, Lanao del Norte and brought to the Salvador Police Station where he was told that he was a suspect in the killing of Memong (pp. 14-15, *ibid.*). A policeman from Cagayan de Oro City ordered him to wash his hands with soap. After waiting for sometime inside the police station, he heard two (2) gunshot from the outside. The person who must have fired the shots entered with two (2) spent shells on hand and ordered him to place his hands atop the table palms down. The policeman then tapped Crisanto's back hand and rubbed it on with his own hands. After which Crisanto's hand were poured with melted wax over which a cotton was laid (pp. 15-17, TSN, August 2, 1994). After a few moments, the wax softened and Crisanto was told to pull out his hands. Next to undergo the same process was his uncle appellant Enemesio (pp. 17-18, *ibid.*).

Meanwhile, appellant Enemesio Abellanosa, for his part, testified that on the morning of April 26, 1993, after taking breakfast, he, together with his wife, three children, a cousin, Raul, a nephew (co-appellant Crisanto Abellanosa) and some laborers, went to his coconut plantation to extract copra meat from gathered coconuts (pp. 4-6, TSN, August 3, 1994). They stopped work that day between 4:00 to 5:00 P.M. after which they proceeded home. Thereat, while the children and his wife attended to some household chores, he viewed Betamax films. Then Enteng Abadies, son of Memong (the victim, the then Barangay Captain), fetched his wife, Patricia, she being the Barangay Treasurer. Patricia left and came back about 6:30 P.M. After taking supper, he returned to watch TV and about 9:00 P.M., he retired (pp. 7-11, *ibid.*).

Having dozed for sometime, he was awakened by gunshots. He roused his wife, told her about the shots, then lighted a lamp. Conscious of prevalent cattle rustling and livestock thieveries in their area, he opened a window fronting their corral to see if the animals were still there. Then, a certain 'Nang Ceria' (Glyceria Bacus) called for him and inquired about the shots which she also heard. He advised Nang Ceria to just stay inside her

house (which was a mere 25 meters away from his) and told her to just listen and observe for more developments. 'Nang Tasia' (Anastacia Borlaza) came and inquired about the reason for the shots as she was anxious about her husband who at the time was still tending to their cornfield. Together with the rest of the household, appellant went back to sleep. He woke up about 5:00 or 6:00 A.M. the next day. His cousin, Raul, arrived and informed him that 'Noy Memong' was dead (pp. 12-21, TSN, *ibid.*).

He and his wife immediately went to the death scene and there saw the dead body of Memong lying on a folding bed. On board a motorcycle thereafter, they left for the municipal hall of Salvador as his wife was to attend a conference of all barangay treasurers of the municipality. Upon reaching the municipal hall, he saw some policemen revving up the patrol car preparing to go to Mabatao, the place of the incident, with the Municipal Mayor. Having dropped his wife at the municipal hall, he went home with Itsoy Tumogsok, a PC and son-in-law of the victim, who rode with him in tandem. Upon reaching Mabatao, they proceeded to the victim's house. Itsoy alighted while Enemesio went home to garage his motorcycle. He returned to Memong's house to assist the victim's family in whatever way he can. While there, he would occasionally talk to Nang Elen, the widow, on the matter of her husband's death (pp. 22-26, *ibid.*).

Incidentally, pictures of the victim's cadaver submitted on record^[7] show that the right portion of the victim's head was shattered and the left side of his abdomen had a bullet hole. The certificate of death states the cause of death as massive cerebral injury and gunshot wounds.^[8]

Although the trial court was cognizant of the prosecution's lapses in the presentation of evidence, it nonetheless gave weight to the eyewitness testimonies of Crispulo Sanchez and Victoriano Damas and to the fact that gunpowder residue was found on the hands of both accused-appellants. Hence, it ruled that latter's defense of alibi may not prevail over the positive identification by the prosecution's witnesses. The court *quo* found appellants guilty, thus:

"WHEREFORE, the court finds the accused ENEMESIO ABELLANOSA and CRISANTO ABELLANOSA, JR. guilty beyond reasonable doubt as principals of the crime of murder, qualified by treachery, defined and penalized in Art. 248 of the Revised Penal Code and there being neither mitigating nor aggravating circumstances present hereby sentences each of the said accused to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties prescribed by law and to indemnify the Heirs of Maximo Abadies the sum of P105,788.00 for and as actual damages, including attorney's fees, P100,000.00 for and as moral damages and P50,000.00 for and as death indemnity.

Since the accused have been under preventive imprisonment since May 5, 1993, the period of such detention shall be credited in full in their favor in the service of their sentences."

The Issues

In their brief, appellants assigned the following "errors":^[9]

I That the trial court erred in giving credence to the testimonies of prosecution witnesses Crispulo Sanchez and Victoriano Damas

II That the trial court erred in not disregarding the testimony of Crispulo Sanchez despite the fact that the trial court found Crispulo Sanchez to have lied on a very vital matter

III That the trial court erred in not holding that the (testimonies) of Crispulo Sanchez and Victoriano Damas to be incredible and not worthy of belief

IV That the trial court erred in not holding that the physical evidence clearly show that deceased victim Maximo Abadies was killed in some other place and not in the place claimed by prosecution witnesses.

V That the trial court erred in holding that physical evidence were available to accused-appellant and yet

accused-appellant did not use court processes to produce the same and hence the prosecution is not guilty of willful suppression of evidence

VI That the trial court erred in not dismissing the instant case and rendering a verdict of acquittal in favor of accused-appellants"

all of which may be summed up as challenging the trial court's assessment of the credibility of witnesses, and its appreciation of the weight and sufficiency of the prosecution's evidence, vis-a-vis that of the defense.

As earlier stated, the Solicitor General, the People's counsel, in his Manifestation and Motion in Lieu of Appellee's Brief dated September 25, 1996, submitted the following conclusion and recommendation:[10]

"PREMISES CONSIDERED, it is respectfully recommended that appellants be acquitted for failure of the prosecution to discharge its bounden duty to prove their guilt beyond reasonable doubt."

As this Court sees it, the resolution of this case hinges on the pivotal question of whether the guilt of the accused-appellants had been proved beyond reasonable doubt by the prosecution's evidence. Put differently, was the evidence presented by the prosecution sufficient to overturn the presumption of innocence guaranteed by the Constitution in favor of accused-appellants? The answer to this threshold question will determine whether the judgment of the court *a quo* will stand or fall.

The issues in the case can be reduced to four (4) and will be discussed in *seriatim* as follows:

1. Credibility of witnesses;
2. Sufficiency of evidence;
3. The defense of alibi; and;
4. Presumption of innocence.

The Court's Ruling

First Issue: Credibility of Witnesses

It is hornbook doctrine that ordinarily, conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[11] However, after a thorough review of the evidence presented, we find that the *aformentioned* rule of evidence does not hold in this case. It is evident to us that the trial judge gave credence to the obviously incredible and patently fabricated testimonies of the prosecution's witnesses.

The duty of the prosecution is not only to show clearly that a crime had been committed, but more importantly, to prove beyond reasonable doubt the identity of the person or persons who committed the crime. Proof of the crime without sufficient proof of its author cannot result in conviction. In the present case, the identification of accused-appellants does not measure up to the standard of moral certainty required in criminal cases and, consequently, their conviction cannot be upheld.

We cannot emphasize enough the oft-stated rule that "evidence to be believed, must proceed not only from the mouth of credible witness but the same must be credible in itself." [12] Evidence is credible when it is "such as the common experience of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience." [13] In this case, the trial court relied mainly on the testimonies of prosecution witnesses Crispulo Sanchez and Victoriano Damas who swore that they were squatting out in the open, husking corn a mere 10 meters away from the sleeping "Memong",

when out of nowhere accused-appellants appeared, and completely unmindful of the presence of the two onlookers, with unsurpassed sangfroid, murdered the victim in his sleep.

Moreover, they also testified that after having witnessed the brutal and gruesome slaying[14] of their master, they did not even bother to check if he was still alive, nor did they attempt to seek help from their neighbors. Oddly, they continued husking corn, as if nothing had happened. The testimony[15] of Crispulo Sanchez on this point is very striking:

"Q

And you want the Honorable Court to understand that for four hours you were there sheevering (sic), crouching together with Victoriano Damas you waited until morning to report the death of your employer, Maximo Abadies?

A

Yes, sir.

Q

And all the time you and Victoriano Damas were sitting, crouching in the pile of corn?

A

Yes, sir.

Q

You and Victoriano Damas did not even attempt to go to the tent where Maximo abadies was lying dead in the space of six hours, is that not correct?

A

No, sir.

Q

In that space of six hours together with Victoriano Damas (you) did not even shout for help, is that not correct?

A

No, sir.

Q

And you want the Honorable Court to understand despite the fact you have witness (sic) the shooting occurrence you became mute for six hours?

Atty. Padilla:

That was answered already, your Honor.

Witness:

Yes, sir."

Such inaction is hardly the normal conduct one may expect from a person under identical circumstances. Furthermore, their reaction immediately thereafter raises eyebrows. Again, we continue with the testimony[16] of Crispulo Sanchez as follows:

"Atty. Gapuz:

(continuing)

Q

At what time did Damas leave the pile of corn where you were staying for six hours?

A

6:00 o'clock in the morning.

Q

At 6:00 o'clock in the morning you and Victoriano Damas talked and he said he will go to his house while you will go to the house of Maximo Abadies, is that correct?

A

Victoriano Damas told me he will go ahead because he will pasture his cow.

Q

Will you kindly look to the court. So at 6:00 in the morning, you and Damas talked together on what you will do, is that correct?

A

No, sir.

Q

You want the court to understand that this Damas just merely told you I will go home because I will pasture my cow?

Atty: Padilla:

Argumentative, your Honor.

Court:

Witness may answer.

Witness:

Yes, sir.

Atty. Gapuz:

(continuing)

Q

And you did not ask him to accompany you to the house of Maximo Abadies so that both of you Damas will tell the wife that Maximo Abadies is already killed and has been killed by the accused?

A

I asked him but he told me he will just follow me.

Q

And you left walking going to the house of Maximo Abadies?

A

Yes, sir.

Q

You did not run?

A

No, sir.

Q

You walked in an ordinary manner?

A

Yes., sir."

In connection with the above-quoted testimonies, the accused appellants aptly observe that:[17]

"x x x The acts of [witnesses] Crispulo Sanchez and Victoriano Damas are NOT natural. Their acts as claimed by them, individually and jointly, are not in accord with the normal conduct of human beings when faced with such an occurrence, such as the shooting of their employer and companion. To remain rooted to the spot for six (6) hours doing nothing is incredible. To fail to inform the immediate members of the family of the deceased compounds the incredibility of their testimony. Their failure to verify what happened to Maximo Abadies after the alleged shooting together with failure to ask for help from nearby houses only adds more to the incredibility of their testimonies."

The incredible testimony of aforementioned witnesses had evoked the following observation from the trial court:[18]

"To be sure, there were aspects of their testimonies which, at first impression, elicit raised eyebrows. They are: (1) the fact that they remained rooted and unmoving in their respective positions at the time of the shooting at about 11:45 P.M. of April 26 until 5:00 A.M. of April 27, 1993 and (2) their refusal to reveal the identities of the accused to the police authorities and relatives of the victim despite repeated queries and investigations until May 4, 1993.

Indeed the reaction of Sanchez and Damas immediately after the shooting of their employer/landlord appeared unusual. They did not move. They did not approach the victim to verify if he was still alive. The following morning they did not inform those who arrived of the fate which befell Mr. Abadies x x x."

However, the trial court simply brushed aside these observations of unnatural behavior and dismissed them as the result of the witnesses having been "shocked into insensibility x x x (and) gripped with fear, their senses in turmoil and their minds incapable of rational judgment". The court a quo then concluded that "(t)hat makes their reaction not really strange or unusual."

We disagree. Such unfeeling and unnatural reactions are definitely inconsistent with human experience and simple common sense. As the Solicitor General pointedly argues:

"This finding by the Court is not only most contrary to human nature but is the most incredible reaction a witness to a brutal murder could demonstrate. To just squat and continue husking corn for more than six (6) hours after the killing without giving a curious look at the victim belie the conclusion of "shocked

insensibility" by the trial court. There was not even an iota of consciousness lost and consciousness regained on the part of the alleged eyewitnesses. The trial court should have noticed (sic) this into serious consideration."[19]

Moreover, the un rebutted testimony of defense witness Catalina Villarta shows that Crispulo Sanchez and Victoriano Damas were definitely not in a state of shock. They were able to converse and lie to the former. The salient portions of her testimony[20] are as follows:

"Q

While you were shouting, what happened, if any?

A

Somebody answered.

Q

Who was that person who answered?

A

Tony Alistre (sic)

Q

And what did Tony Alistre say?

A

He said, 'whom are you calling?'

Q

And what did you answer?

A

I said, 'I am calling for Vicente because he is in Patag and I am very worried because I heard shots.'

Q

And what did Tony Alistre tell you?

A

He said, 'somebody is guarding that area.'

Q

What else did he say, if any?

A

Nothing more.

Q

So when Tony Alistre assured you that somebody is guarding the area, what did you do?

A

I walked towards the back of the school and kept on calling.

Q

Did you pass by the school?

A

Yes.

Q

And when you passed by the school, what did you see next?

A

There were two (2) persons who answered.

Q

What did these two (2) persons say?

A

They said, 'it is nothing, Manang, because it was 'Noy Mimong who fired those shots.'

Q

When these two persons mentioned of 'Noy Mimong, to whom are they referring?

A

Maximo Abadiez (sic).

Q

Were you able to go near those persons who answered?

A

Yes.

Q

Who were they?

A

Victoriano and Crispolo (sic).

Q

What's the family name of Victoriano?

A

Damas.

Q

(What) About Crispolo?

A

Sanchez.

Q

When you saw Victoriano Damas and Crispolo Sanchez, how far were they from you?

A

Around 2 and one-half to three (3) meters.

Q

That was the distance when you first saw them?

A

Yes.

Q

When you were near them, what did you do?

A

I asked them where those shots came from.

Q

What did they tell you?

A

They said, 'it is nothing, Manang, it was just 'Noy Mimong who fired those shots, in fact, he is there, sleeping.'

Q

When they said 'Noy Minong', what are they trying to tell you?

A

That Maximo Abadiez was their companion.

Q

To what place did they point as the place where 'Noy Mimong was sleeping?

A

In that coconut tree, a little distant to where they piled the corn.

Q

And what were these two persons, namely Victoriano Damas and Crispolo Sanchez doing at the time you saw them?

A

They were husking corn.

Q

And when you saw them husking corn, did you ask them why they were still husking corn?

A

I asked them.

Q

And what was their answer?

A

They answered, 'we are husking corn because we don't feel sleepy.' (underscoring supplied)"

This uncanny ability of Crispulo Sanchez and Victoriano Damas to concoct a lie as to the source of the gunshots, and the location and condition of the victim refutes the trial judge's belief that the former were in a state of shocked insensibility. At this point, we cannot help but wonder whether the two were in fact associated with the commission of the crime and were acting thus in order to save their own skins and avoid detection. It will be noted that Crispulo Sanchez tested positive for gunpowder residue and nitrates.

Furthermore, their failure to report the crime immediately and to identify the authors thereof, and their initial denial of any knowledge as to the identities of the killers cast a shadow on the veracity of their testimony, and as noted[21] by the Solicitor General:

"x x x It was only on May 7, 1993 that Crispulo, when arrested for the second time, told the police who the killers were. But at several previous instances, he admitted not having known the killers of Maximo Abadies. The first of these instances was when Francisca Alfaro and Tony Alistre arrived at the scene the morning of April 27, 1993, Sanchez and Damas did not inform them of Maximo's death (p. 24, TSN, August 2, 1993). And when asked by the widow who killed her husband, Sanchez denied knowing the killers allegedly for fear of his life (p. 19, TSN, July 5, 1993). x x x"

Thus, the foregoing conduct of the prosecution witnesses is likewise not in accord with human nature and experience because "(t)he natural tendency of a person who has witnessed the commission of a crime is to report it, and describe the malefactors at the earliest possible opportunity. This is particularly true where the victim is so closely related to the witness who claims to have seen the commission of the crime"[22] It is true that such testimony may not be deemed unworthy of belief if the delay in the disclosure of the crime or of the identities of its authors had been satisfactorily explained. Yet, no such satisfactory explanation for the delay was ever proffered. Sanchez and Damas merely claimed that they feared for their lives, but this fails to persuade as it is not supported by any showing that the accused were indeed troublemakers or otherwise violently disposed. Even the testimony of Crispulo Sanchez himself shows otherwise:

"Q

During these two days period while you were in prison you were together with Enemesio Abellanos and Crisanto Abellanos inside the police station of Salvador, Lanao del Norte?

A

Yes, sir.

Q

Now will you inform this court during the time that you were together with Enimesio and Crisanto Abellanos

whether you converse with each other?

A

Yes, sir.

Q

And, what did you talk about?

A

Enimesio Abellanos talked to me, Mam.

Q

And what did Enimesion Abellanos tell you if any?

A

He told me that he will ask favor from me that I will tell the truth that they are not the killers of Maximo Abadies.

Q

What else if did Enimesio Abadies tell you if any?

A

On that."[23]

Second Issue: Sufficiency of Other Evidence

Quite apart from the fact that the prosecution witnesses' testimonies by their very nature are not deserving of credence, the physical evidence introduced contradicted the import of their testimony, particularly as to the place where the victim was killed. This doubt is brought out by the observation of Rodolfo Pagayon, the PNP officer in Salvador, Lanao del Norte who investigated the incident the morning after the crime was committed. He said that when he examined the cadaver and the surroundings, he did not see any blood stains under the victim's folding bed or on the peelings of corn piled beneath the bed. He testified in this manner:

"Q

Were there lots of blood on the ground under the folding bed?

A

We could not see the blood under the bed because there were plenty of peelings of corn.

Q

How about on the peelings of corn have you seen blood?

A

No sir."[24]

This finding is significant in view of the fact that the victim's head had been shattered and a big part thereof blown away by shots from the powerful garand rifle. The head wounds, together with other gunshot wounds, particularly one in the abdomen, would have produced profuse bleeding. So too, the folding bed on which he was

allegedly shot, and its immediate vicinity, would have also been blood-soaked. Surprisingly, signs of massive hemorrhaging were not found thereat. Thus, there is an irreconcilable gap between the prosecution witnesses' claim that the victim was shot there, and the physical evidence (or lack thereof) which negate the truth of such statements. Such inconsistency of their statements in comparison with the physical evidence is emphasized in the testimony[25] of practicing surgeon Cesar Anthony Sta. Maria, to wit:

Q

May I ask you a few questions? Head wounds caused a lot of blood clots or bleeding?

A

Definitely.

Q

As a matter of fact, a shattered head will be so profuse bleeding that a place where a person fell as you may be fell or you would likely fell down, you will be saturated with blood because of the shattered wound?

A

Yes.

Q

How about wounds affecting, hitting the right side of the stomach just below the ribs, a punctured wound, let us say, projected bullet through and through. Will that cause a profuse bleeding?

A

It would cause profuse bleeding.

Q

And what would also cause a person's death?

A

Yes.

Q

How about a wound for example on the right thigh which is through and through by a fast moving (projectile) let us say caliber 30. Would that cause profuse bleeding somewhere in the center of the thigh?

A

It would cause bleeding. It depends on the (projectile) that hit on the legs, it might hit on the muscles, it might hit on the major artery, major vein, it depends.

Q

Supposed it hit on the major artery?

A

If it hit on the major artery, there must be a massive bleeding.

Q

In case of only in the muscle?

A

If it hit the muscle, there will be so much blood compared in an injury hitting the major artery.

Q

In case of a head injury, the head shattered with a brain going out, as a matter of fact being exposed. Would bleeding be so massive?

A

Yes definitely.

Q

For example on the person who is lying on a pillow, would this pillow clotted with blood?

A

Yes.

Q

Are you sure of that, Doctor?

A

Yes."

Furthermore, we take note of the fact that a garand rifle is a semi-automatic rifle which expels an empty shell everytime a shot is fired.[26] Prosecution witnesses Sanchez and Damas testified that the firearms used in the shooting were fired twelve times.[27] But PNP investigating officer Rodolfo Pagayon testified that he did not find even one empty shell at the "scene" of the crime. Nor was he able to locate the garand rifle of the victim. These material findings as to the physical evidence render the testimony of the two prosecution witnesses unworthy of credit.

Moreover, the prosecution failed to present in evidence the folding bed and the clothes worn by the victim when he was shot, which, had they been presented, could have thrown light upon the questions at hand. The significance of the physical evidence in the determination of the guilt or innocence of the accused is paramount. The failure of the prosecution to account for the whereabouts of the folding bed and clothes of the victim does not inspire belief in the already tenuous and questionable proof of the guilt of the accused. Even the trial court decried this lapse of the prosecution:

"The Court agrees that the bed, the victim's clothing, the blanket and pillow used by him and the canvass tent are significant evidences. Taking off from the testimonies of Damas' and Sanchez the bed should have tears or rips coinciding with the holes on the clothing indicating the trajectory of the bullets. The blanket and pillow should be soaked with blood. The eight bullets or at least some should be embedded in the ground under the bed. The canvass tent should show bullet holes through which Crisanto, Jr. fired four shots with the victim's garand rifle. These are physical evidences which do not lie. Their presentation would have strongly confirmed the eyewitnesses testimonies or as the accused would have it, categorically debunked them."

So too, the fact that both accused-appellants tested positive for gun-powder nitrates does not conclusively show that they had indeed fired the murder weapon, or any gun for that matter, for such forensic evidence "should be taken only as an indication of possibility or even of probability but not of infallibility, since nitrates are also

admittedly found in substances other than gunpowder." [28] In this case, the accused-appellants' claim that "the companion of officer Robas fired a gun immediately prior to the test, held the spent shells in his hand and deliberately rubbed the palm on the back of their hands while taking the paraffin test," [29] should have placed the trial court and the prosecution on alert for the possibility that the paraffin test could have been rigged. It should also be stressed that the appellant's accuser, Crispulo Sanchez, himself tested positive for gunpowder residue and nitrates. [30]

Before moving on to the next issue, we make the final note that the testimonies of said witnesses are replete with improbabilities and raise more questions than answers. For instance, it is almost unimaginable that the appellants -- if they were really the authors of the murder -- would allow Sanchez and Damas to remain as they were and continue husking corn even after having witnesses the fatal shooting. Would they not have finished off the two, if only to eliminate any eyewitnesses to the killing and eradicate any risk of identification? And in the first place, would such witnesses not have instinctively taken cover or scampered away upon hearing the gunshots?

Third Issue: Alibi

Juxtaposed against the prosecution's theory that the accused-appellants were the ones who did in the victim are the latter's denial and defense of alibi. While it has been held that alibi is indeed the "weakest" of all defenses, however, "judges should not at once look with disfavor at the defense of alibi. Alibi should be considered in the light of all the evidence on record for it can tilt the scales of justice in favor of the accused." [31] Stated differently, "(w)hen an accused puts up the defense of alibi, the courts should not at once have a mental prejudice against him. For, taken in the light of all the evidence on record, it may be sufficient to acquit him." [32] It is precisely when the prosecution's cause is weak, as in this instance, that the defense of alibi interposed by the accused-appellants "assumes importance and becomes crucial in negating xxx criminal liability." [33] The accused-appellants both claim that in the wee hours of the night when the victim was slain, they were already sleeping in their respective dwellings and were awakened only by the sound of the gunfire. [34] Prior thereto, the accused contend that they had had dinner with their kin and Enemesio Abellanosa in particular claims having watched betamax after dinner and before turning in for the night. These are all actuations not contrary to but in accord with ordinary human experience. Although alibi is weak, it should not be outrightly dismissed as false. The appellants' alibi in fact appears to be the truth when viewed in the light of the inherent weaknesses of the prosecution's case.

Fourth Issue: Presumption of Innocence

The Consitution [35] provides that "in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved". It is thus axiomatic that "an accused under our law is entitled to an acquittal unless his guilt is proved beyond reasonable doubt." [36] In fact, unless the prosecution discharges the burden of proving the guilt of the accused beyond reasonable doubt the latter "need not even offer evidence in his behalf". [37] Clearly, the prosecution has utterly failed to discharge its burden of proof. A review of the decision and the evidence on record merely engenders more doubts in our mind as to the guilt of the accused-appellants. We perforce rule that Enemesio Abellanosa and Crisanto Abellanosa, Jr. are entitled to a mandatory acquittal.

WHEREFORE, the appeal is hereby GRANTED. The Decision of the court a quo is hereby REVERSED and VACATED. Accused-appellants Enemesio Abellanosa and Crisanto Abellanosa, Jr. are hereby ACQUITTED on reasonable doubt. Their immediate release is herewith ordered, unless there are other valid causes for their continued detention.

SO ORDERED.

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

- [1] In Crim. case No. 07-4724. Rollo, pp. 46-57.
- [2] Presided by Judge Valerio M. Salazar.
- [3] Rollo, p. 27.
- [4] Records, p. 57.
- [5] Decision pp. 1-3, rollo pp. 46-48.
- [6] Manifestation and Motion In Lieu of Appellee's Brief, submitted by the Office of the Solicitor General on October 4, 1996, pp. 7-11.
- [7] Record, pp. 236-237.
- [8] TSN, May 11, 1994, p. 5.
- [9] Appellants' Brief, pp. 1-2, rollo p. 72.
- [10] Manifestation and Motion In Lieu of Appellee's Brief, page 24.
- [11] Collado vs. Intermediate Appellate Court, 206 SCRA 206, 212-213, February 13, 1992
- [12] Tuason vs. Court of Appeals, 241 SCRA 695, 701, February 23, 1995.
- [13] People vs. Escalante, 238 SCRA 554, 563, December 1, 1994.
- [14] TSN, July 5, 1993, p. 12, and August 2, 1993, pp 68-70.
- [15] TSN, July 5, 1993, pp. 29-30.
- [16] Ibid., pp 31-32.
- [17] Appellant's Brief, p. 5.
- [18] Decision p. 7.
- [19] Manifestation and Motion in Lieu of Appellee's Brief, pp. 13-14.
- [20] TSN, June 21, 1994, pp. 14-19.
- [21] Manifestation and Motion in Lieu of Appellee's Brief, p. 17.
- [22] People vs. Escalante, 238 SCRA 554, 556, December 1, 1994.
- [23] TSN, July 5, 1993, pp. 23-24.
- [24] TSN, June 27, 1994, p. 7.
- [25] TSN, May 11, 1994, pp. 11-13.
- [26] Appellant's Brief, p. 15.
- [27] TSN, July 5, 1993, pp. 12-13, 16-17. Crispulo Sanchez alleged in his testimony that Enemesion Abellanosa had used his own garand rifle in shooting the victim eight times and that Crisanto Abellanosa who had a revolver

tucked in his waist had picked up the victim's garand rifle and fired it four times in the air.

[28] People vs. Adofina, 239 SCRA 67, 81, December 8, 1994.

[29] Decision, p. 9.

[30] TSN, September 17, 1993, p. 20.

[31] Tuason vs. Court of Appeals, supra, p. 707.

[32] People vs. Escalante, supra, p. 571, citing People vs. Villacorte, 55 SCRA 640, February 28, 1974.

[33] People vs. Adofina, supra, p. 81.

[34] TSN, August 2, 1994, p. 8, and TSN, August 3, 1994, p. 12.

[35] Article III, §14.

[36] People vs. Bostre, 230 SCRA 139, 143, February 18, 1994.

[37] People vs. Baclayon, 231 SCRA 578, 584, March 29, 1994, citing People vs. Garcia, 215 SCRA 349, November 4, 1992.

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