

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILSON HERNANI, ELSIE HERNANI, FELIX MATURAN, ALBERTO CASTILLON, SR., ALBERTO CASTILLON, JR., AND LORY CASTILLON, ACCUSED ALBE...

G.R. No. 122113. November 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated February 23, 1994, of the Regional Trial Court of Zamboanga del Norte, Branch 11, finding the accused-appellants Alberto Castillon, Sr. and Lory Castillon guilty of murder and sentencing them to each suffer the penalty of reclusion perpetua, and to indemnify the heirs of the victim, Adjing Malumbahi,[2] jointly and solidarily, the amount of P50,000.00.

The facts of this case are as follows:

Appellants spouses Alberto Castillon, Sr., and Lory Castillon were among those charged in an Information which states:

That, in the evening, on or about the 23rd day of November, 1991, in the municipality of Gutalac, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, box and maul one ADJING MALAMBAHI, thereby inflicting upon him multiple wounds on the vital parts of his body which caused his instantaneous death; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, viz:

a) Indemnity for victim's death - - - - - P 50,000.00

b) Loss of earning capacity - - - - - P 30,000.00

P 80,000.00

CONTRARY TO LAW.[3]

During arraignment, appellants both entered pleas of "not guilty." Trial on the merits commenced on July 31, 1992.

Health Officer Joshua Brillantes testified that he was the one who signed the death certificate of Adjing Malumbahi. He also testified that the cause of death was severe respiratory arrest and that the victim suffered fractures caused by a hard object.[4]

Arcadia Malumbahi, widow of the victim, testified that on November 23, 1991, at around 8:00 P.M., while she and her husband were on their way home from Barangay Sem, they were followed and later joined by the group

of Alberto Castillon, Sr., Lory Castillon, Alberto Castillon, Jr., Felix Maturan, Wilson Hernani, Elsie Hernani, Alberto Castillon, Jr. and Linda Maturan. While walking, they started arguing about a form of fishing called "Liba-liba" or "Holbot." The victim told the group that it was illegal. His comment angered Castillon, Sr., enough to threaten to kill him. A brawl started. Lory hit the victim with a stone in the forehead. As she hid inside a hole she saw the group maul her husband and drop him in the culvert used as a spillway. She witnessed them carry his body. When the group left, she hurriedly left, believing that her husband was already dead. She rushed to the house of her brother, Germogenes Villanueva who advised her to report the incident. She immediately headed for the municipal building and when she arrived there at around 9:00 P.M., she saw appellants already there surrendering themselves.[5]

Germogenes, the second prosecution witness, corroborated the testimony of Arcadia. He added that he went to see the body of the victim the following morning at around 6:30 A.M. He saw it inside the culvert in Liasan creek. After a while, PO3 Anquera and the Chief of Police arrived. They took pictures and removed the body from the culvert.[6] He was made to identify pictures of the victim taken in the site.[7]

PO3 Ernesto Anquera, a PNP member stationed at Gotalac Police Station, Zamboanga del Norte testified that on November 24, 1991, at around 8:00 A.M. he received a report from Barangay Captain Estelito Magbanua of Loay that there was a body inside the spillway. He accompanied Chief of Police Geraldo Benjamin Avengoza to the crime scene, photographed the body, and had the film developed himself. During cross-examination, he testified that at the time he saw the body, he had no suspects yet nor did he receive any report either from Arcadia or Germogenes regarding the death of Adjing.[8]

On September 17, 1993, the defense presented appellant Alberto Castillon, Sr., who testified that on November 23, 1993, at around 6:30 P.M., while he was on his way home with his wife, he saw Felix Maturan who was with Erlinda, boxing Adjing Malumbahi. When he asked Felix why they were attacking Adjing, Felix threatened him not to intervene lest he also get hurt. He and his wife rushed home. The following morning, before he went fishing, he and his wife told Arcadia of the incident. When he returned at around 9:00 A.M., he heard of Adjing's death. He went to Gotalac with Lucio Hernane, Lory and Arcadia to report what he saw the evening before to the police. Felix was apprehended but later released. The following day, November 25, 1991, he and his wife were arrested for the death of Adjing.[9]

Lory Castillon corroborated all of her husband's testimony.[10]

On February 23, 1994, the trial court rendered its decision. The dispositive portion of the decision reads:

WHEREFORE, this court finds accused Alberto Castillon, Sr. and Lory Castillon, guilty beyond reasonable doubt of the felony of MURDER for the killing of Adjing Malumbahi. There being no aggravating nor mitigating circumstance, sentences them to suffer each of RECLUSION PERPETUA and to pay the heirs of the victim jointly and solidarily the sum of P 50,000.00 as indemnity (People vs. Sison, 189 SCRA 643).

It appearing from the record of the above-entitled case that the co-accused Wilson Hernani, Elsie Hernani, Alberto Castillon, Jr. and Felix Maturan are still at large; hence, their case be sent to the files without prejudice to its subsequent prosecution as soon as they are apprehended.

COSTS de officio.[11]

Hence, this appeal.

In their brief, appellants assert that the court a quo committed the following errors:

I.... IN SETTING ASIDE THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY OF PUBLIC OFFICERS BY GIVING CREDENCE, AND IN EFFECT ADMITTING

PROSECUTION WITNESS ARCADIA MALUMBAHI'S STATEMENTS IN THE WITNESS STAND, RETRACTING HER PREVIOUS EXTRA-JUDICIAL STATEMENTS WHICH WAS DULY EXECUTED AND SWORN TO BY HER BEFORE JUDGE JOSE BRILLANTES.

II.... IN DISREGARDING THE ACCUSED-APPELLANTS' ALIBI NOTWITHSTANDING THE OBVIOUSLY UNTRUTHFUL AND FALSE CLAIM OF POSITIVE IDENTIFICATION BY PROSECUTION WITNESS ARCADIA MALUMBAHI OF THE HEREIN ACCUSED-APPELLANTS.

III.... IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[12]

Essentially, the issue boils down to the credibility of witnesses and the sufficiency of the evidence to convict the accused-appellants beyond reasonable doubt.

Appellants argue that the testimony of Arcadia Malumbahi should be "disregarded for being inconsistent, improbable and very much contrary to the instinct of an ordinary person given the same situation." [13] Appellants raise that the affidavit [14] executed by Arcadia stating that she was in their house when her husband was killed and that she was merely informed by a certain Arcy Solomon about it contradict her open court testimony that she witnessed her husband's death. It is the contention of appellants that the affidavit contains the truth of Arcadia's whereabouts during the night of the fateful killing and she was not an eye-witness as she swore during the trial. Her open court testimony was a mere afterthought to implicate the accused-appellants and strengthen the otherwise unwitnessed killing of her husband. [15]

Appellants also point to some contradictions and improbabilities in the testimony of Arcadia which make it unbelievable. For one, Arcadia testified that she hid herself when the killers attacked her husband because she sensed that the killers will also kill her. [16] However, when she was asked how she knew that the attackers would also kill her, she changed her statement and said that the attackers stated that they will kill her. [17]

Appellants also assert that it is unnatural for the killers to take time to hide the victim's body first before making sure an eyewitness would not escape; for the accused to casually go home after committing a crime knowing there was a witness who could identify them; and for Arcadia to first bravely tail her husband's assailants than check on her husband's condition first. [18]

Appellants also point to the inconsistency in the testimonies of Arcadia and Anquera regarding the time when the incident was reported to the police. According to Arcadia, she reported the incident the same night she witnessed it. On the other hand, Pat. Anquera testified that it was already the next day, when he received a report about a body found in the spillway. [19]

The claim of Arcadia that she reported the incident to her brother and the latter's reaction are unnatural and equally suspect. It was strange that Germogenes let his sister go to the municipal hall late in the evening unaccompanied after her horrifying experience and the possibility of the assailants still lurking around.

Lastly, appellants submit that Arcadia's testimony that she witnessed the attack on her husband is belied by her own behavior during and after the killing. Instead of first running for safety or checking on her husband, she followed her husband's attackers.

The Office of the Solicitor General (OSG), for its part, argues that the testimony of Arcadia deserves weight and credence for being "positive, straightforward and for having the earmarks of sincerity." [20] The OSG avers that when the issue boils down to the credibility of witnesses, the appellate court should not disturb the factual findings of the lower court since the latter is in a better position to gauge the credibility of witnesses and properly appreciate the relative weight of the often conflicting evidence for both parties. [21] It also emphasized that the

appellants were not able to show any reason for Arcadia to falsely accuse them. The OSG proposes that the affidavit executed by Arcadia should be disregarded. It explains that affidavits are generally subordinated in importance to open court declarations because they are oftentimes executed when an affiant is distraught and thus the contents are incomplete and oftentimes prepared by the administering officer and the affiant simply signs them especially since in the instant case affiant did not know how to read.[22]

The OSG further points out that the testimony of accused Lory Castillon that she and her husband merely saw the victim being boxed by Felix Maturan contradicts her husband's declaration that he even tried to pacify Felix Maturan.[23] They likewise lied when they testified that they immediately told Arcadia that they saw her husband being boxed by Felix.

As a rule, factual findings of the trial court are conclusive upon this Court and its evaluation regarding the credibility of witnesses are given great weight and respect unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case.[24] In our view, there are facts and circumstances which had been overlooked by the trial court. Among them: (1) the affidavit of Arcadia stated that she merely learned who her husband's killers were from Arcy Solomon; (2) the testimonies of Arcadia, Germogenes and PO3 Anquera regarding the time when the killing was reported to the latter were contradictory; and, (3) the testimonies of Arcadia and Germogenes were seriously improbable.

It is undisputed that Arcadia had executed an affidavit.[25] In it she stated that she was not present when her husband was killed and that she learned of her husband's attackers from an information provided by a certain Arcy Solomon. Although she denied having said so when she testified in court, these statements were contained in her affidavit duly sworn before Judge Brillantes, Jr.. Arcadia says these statements were merely placed there by the investigating public officers. Her explanation should not be taken hook, line and sinker. Absent a strong showing to the contrary, the court must accept the presumption of regularity in the performance of official duty and strong evidence is necessary to rebut this presumption.[26] Aside from the self-serving denial of Arcadia, the prosecution offered no proof that Pat. Anquera and Judge Brillantes, Jr. irregularly performed their duties. Nor did the prosecution give any plausible reason why they should insert any untruth in Arcadia's affidavit.

We are also unconvinced by the OSG's argument that oral testimony should be given more weight than affidavits since the latter are almost always incomplete. In our view, this is not a case of an incomplete affidavit but an affidavit directly and significantly contradicting an oral testimony. The statements contradict each other not only in minor details. Furthermore, nothing in the records show that Arcadia was distraught when she executed the affidavit. She offered no reason why the two public officers would place false statements. Under these circumstances, we shall presume that Pat. Anquera and Judge Brillantes, Jr. did their work without any irregularity.

That the affidavit contains the truth is further strengthened by a perusal of the inconsistencies and improbabilities in the testimonies of the prosecution witnesses.

In paragraph 9 of her sworn affidavit, Arcadia referred to the attackers as the companions of her husband. The stenographic notes of Arcadia's testimony reads:

Q: Question and Answer No. 9: Q: How did you know that this (sic) 5 [five] suspect[s] killed your husband?

A: Because they are with him when my husband went home.

Q: Is that correct?

A: That is true.[27]

The testimony of Germogenes curiously reads:

Q: Will you tell the Court what was the purpose of Arcadia alias Cading your sister in going to your house at 10:00 in the evening on November 23, 1991?

A: She informed me that Norhaji was killed and he was killed by his companions.[28]

The above testimonies suggest that Arcadia was not with her husband during the attack since if she were present she should have referred to them as "our" companions.

Arcadia explicitly said that after witnessing the killing of her husband, she went to her brother's house and on the same night proceeded to the municipal building where she saw the group of the accused who were apparently surrendering themselves.[29] She said she arrived at the municipal building at around 9:00 P.M.[30] However, PO3 Anquera tells a different tale. According to Anquera, it was the Barangay Captain who informed him of the discovery of Adjing's body at around 8:00 A.M. on November 24, 1991, the day after the alleged killing. He did not mention a report by Arcadia.[31] He likewise testified that he had no suspects yet at the time. Where the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction.[32]

Arcadia alleged that after her husband's assailants left, she trailed them without checking and verifying the condition of her husband.[33] If it were true that Arcadia did see the actual killing, her natural reaction would be to assist her husband, seek medical aid or to report it immediately. But the record show that her husband was discovered and claimed only the following day.

Arcadia also testified that she ran away and hid herself inside a hole while her husband was being attacked. She did not shout for help, explaining she was too terrified and feared for her safety. Yet, she had the inexplicable courage to look up from her hiding place and watch in detail how her husband was killed and thrown over the spillway, risking detection especially since, according to her, the moon shone brightly that night. Evidence to be worthy of credit must not only proceed from a reliable source but it must, in addition, be credible in itself.[34]

Witness Germogenes Villanueva said he waited until the following morning to check on his brother-in-law. Waiting till the next day and not accompanying her sister to the municipal building are strange and unusual responses to news of a relative's death. Courts are not required to believe that which they judicially know to be unnatural, unusual and improbable when tested by the rules which govern men of ordinary capacity and intelligence in a given matter.[35]

In fine, we are unable to give full credence to the testimonies of the witnesses for the prosecution. Nor can we concur in the assessment of the Solicitor General that the appellants' testimonies should not be given weight for being contradictory and that their defenses are mere alibis and denials. Their testimonies as a whole do not show significant contradictions. In fact their testimonies complement each other. Alberto, Sr. testified that he tried to pacify Felix. Lory declared that they merely saw Felix box Adjing. There is no inconsistency in these two statements. Alberto pacified Felix while Lory was merely watching. Clearly, they both witnessed the incident but Alberto in addition tried to step in and pacify the protagonists. In any case, these alleged inconsistencies are minor and do not vitally detract from their declarations on the witness stand.

We also note that Dr. Joshua Brillantes admitted he did not conduct any examination on the cadaver of the victim and his entry in the medical certificate on the cause of death was based solely on the information given to him by the relatives of the victim.[36] This makes his certificate unreliable, his testimony hearsay, and both are without probative value.[37] The cause of death of Adjing Malumbahi clearly was not sufficiently established.

The burden of proving and establishing the guilt of the accused rests on the prosecution. Their conviction must be

based on the strength of the prosecution evidence and not on the weakness of the defense. In this case we are constrained, after a careful review, to conclude that the prosecution has not discharged its burden sufficiently.

WHEREFORE, for insufficiency of evidence to prove the guilt of the appellants beyond reasonable doubt, the decision of the Regional Trial Court of Zamboanga del Norte, Branch 11, in Criminal Case No. S-2119 is REVERSED and SET ASIDE. Appellants Alberto Castillon, Sr. and Lory Castillon are hereby ACQUITTED and ordered RELEASED immediately, unless there are other lawful grounds for their continued detention.

No pronouncement as to costs.
SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 13-21.

[2] Sometimes referred to as Nolhaje or Nolhaji; Malumbahi is spelled as "MALAMBAHI" in Information.

[3] Rollo, pp. 7-8.

[4] TSN, July 31, 1992, pp. 4-5. Health Officer Brillantes was referred to as "she" in the Decision, Rollo, p. 66 and "he" in the Appellant's Brief, Rollo, p. 40.

[5] TSN, September 18, 1992, pp. 5-8.

[6] TSN, November 6, 1992, pp. 3-5.

[7] Records, p. 41.

[8] TSN, January 15, 1993, pp. 2-5.

[9] TSN, September 17, 1993, pp. 5-7.

[10] TSN, January 28, 1994, pp. 3-17.

[11] Rollo, p. 21.

[12] Rollo, pp. 36-37.

[13] Id. at 49.

[14] Records, p. 2.

[15] Rollo, p. 51.

[16] Id. at 57.

[17] Ibid.

[18] Id. at 58.

[19] Id. at 59-60.

[20] Id. at 99.

[21] Id. at 119.

[22] Id. at 111.

[23] Id. at 106.

[24] Id. at 119. Appellee's Brief citing *People vs. Ablaza*, 30 SCRA 173, 176 (1969); *People vs. Carido*, 167 SCRA 462 (1988); *People vs. Tejada*, 170 SCRA 497 (1989).

[25] Records, p. 2.

[26] *People vs. Figueroa*, 248 SCRA 679, 683 (1995).

[27] TSN, September 18, 1992, p. 13.

[28] TSN, November 6, 1992, pp. 3-4.

[29] TSN, September 18, 1992, p. 7.

[30] Id. at 8.

[31] TSN, January 15, 1993, pp. 2-3.

[32] *People vs. Jubilag*, 263 SCRA 604, 613-614 (1996).

[33] TSN, September 18, 1992, p. 7.

[34] *People vs. Arcilla*, 256 SCRA 757, 768 (1996); *People vs. Gecomo*, 254 SCRA 82, 106 (1996).

[35] *People vs. Vasquez*, 280 SCRA 160, 178 (1997).

[36] TSN, July 31, 1992, p. 6.

[37] *Waterous Drug Corporation vs. NLRC*, 280 SCRA 735, 745 (1997).

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