

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGEL PRECIADOS (AT LARGE), ARTURO ENAD, EMIGDIO VILLAMOR, LEONCIO ALGABRE AND FLORIANO ALGABRE @ “LOLOY”, ACCUSED.

G.R. No. 122934. January 05, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Accused-appellant Arturo Enad[1] assails the decision rendered by the Regional Trial Court of Tagbilaran City, Branch 1, in two consolidated cases, Criminal Case No. 7887 for murder and Criminal Case No. 7888 for frustrated murder. It convicted and sentenced him to reclusion perpetua in the first case and to a prison terms of six (6) years and one (1) day of prision mayor, as minimum to twelve (12) years and one (1) day of reclusion temporal, as maximum, in the second case.

In Criminal Case No. 7887, the Office of the Provincial Prosecutor of Bohol charged Angel Preciados, Arturo Enad, Emigdio Villamor, Leoncio Algabre, and Floriano Algabre alias “Loloy” with murder allegedly committed as follows:

That on or about the 12th to the 13th day of May 1992, in the municipality of Sagbayan, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with (sic) one another, with intent to kill and without justifiable cause, did then and there, willfully, unlawfully, and feloniously pour poison into the mouth of one Primo Hilbero whereby causing the victim’s untimely death; to the damage and prejudice of the heirs of the deceased in the amount to be proved during the trial.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended, with the aggravating circumstances of (1) treachery, the victim being unaware and unsuspecting and (2) abuse of superior strength, two of the accused being armed with deadly weapons which they used in intimidating, threatening and forcing the victim to drink the poison.[2]

In Criminal Case No. 7888, the same persons were charged with frustrated murder. The charge sheet reads:

That on or about the 12[th] to the 13[th] day of May, 1992, in the municipality of Sagbayan, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with (sic) one another, with intent to kill and without justifiable cause, did then and there willfully, unlawfully and feloniously pour poison into the mouth of one Antonio Hilbero thereby inflicting serious injuries on the victim’s body; thus, the accused having performed in said manner all the acts of execution which would have produced the crime of Murder as a consequence, but which nevertheless did not produce it by reason of a cause independent of their will, that is, by the timely medical attendance and treatment rendered the damage and prejudice of the said offended party in the amount to be proved during the trial (sic).

Acts committed contrary to the provisions of Article 248 in relation to Articles 6 and 50 of the Revised Penal Code, as amended, with the aggravating circumstances of (1) treachery, the victim being unaware and unsuspecting and (2) abuse of superior strength of the accused being armed with deadly weapon which they used in intimidating, threatening and forcing the victim to drink the poison.[3]

The informations were both dated July 20, 1992 but the cases were tried before different salas. Branch 4 of the Regional Trial Court of Tagbilaran City, tried Criminal Case No. 7887, while Branch 3 tried Criminal Case No. 7888.

On August 26, 1992, the accused in Criminal Case No. 7888 were ordered arrested. But the police failed to apprehend any of the accused. Preciados and the Algebres were reported to have gone into hiding in Mindanao, while Enad and Villamor went to Cebu City. It was only on July 20, 1993, when appellant Arturo Enad was arrested. Arraigned in Criminal Case No. 7887, he pleaded not guilty. He waived pre-trial and the case was set for trial.

On September 13, 1993, Judge Achilles L. Melicor of Branch 4, RTC of Tagbilaran City, inhibited himself from Criminal Case No. 7887, since the accused were the political leaders of Mayor Arthur Melicor-Añana, his cousin, while the victims were supporters of the mayor's political rival, Narzal B. Ermac.

On February 14, 1994, Criminal Case No. 7888 was revived and jointly tried with Criminal Case No. 7887 in Branch 1, RTC of Tagbilaran City. Arraigned in Criminal Case No. 7888 on February 15, 1994, appellant entered a plea of not guilty. Thereafter, Criminal Cases Nos. 7887 and 7888 were jointly tried, without prejudice to the separate arraignment and trial of the other accused who continued to evade arrest.

The facts of the case, culled from the prosecution's presentation, are as follows:

Appellant and Antonio Hilbero,[4] the victim in Criminal Case No. 7888, are second cousins. Both are residents of Ubujaan, Sagbayan, Bohol. Appellant is also a cousin of Primo Hilbero's mother-in-law. Primo Hilbero is the victim in Criminal Case No. 7887.

During the May 11, 1992 elections, appellant and Antonio supported rival mayoralty candidates of Sagbayan. Appellant was a supporter and poll watcher of Arthur Añana, while Antonio, a barangay councilman of Ubujaan, was a partisan of Narzal Ermac. Appellant's co-accused were also identified with Añana who won.

At around 11:00 p.m. of May 12, 1992, Antonio with his common law wife and their two children, his brother, Primo and his wife, Helen with their three children, Antonio's mother, Dominga, and another brother, Severino were at the second floor of the old rice mill at Ubujaan. Except for Helen, the clan had retired for the night. She was about to go to sleep when she noticed Antonio go downstairs. Minutes later, her husband Primo, followed him. Then she heard someone utter, "Don't move." Alarmed, she rose from her mat and peeped through a two-inch hole in the floor.[5] The ground floor was illuminated by moonlight. She saw appellant holding a hand grenade while his other arm was locked in a stranglehold around the neck of Antonio who knelt on the floor.[6] Nearby stood Angel Preciados with a gun pointed at Antonio.[7] She then heard Emigdio Villamor say "Don't move so that your family will not die." She saw the latter forcing Primo to swallow an object.[8] The other accused held her husband to prevent him from struggling. Shocked, Helen then soundlessly cried and embraced her children. Shortly afterwards, Helen's mother-in-law, Dominga, was awakened by the barking of the family dog. Dominga went downstairs where she saw Primo lifeless on the floor, reeking of poison.[9] Antonio was nowhere to be found. Dominga rushed upstairs and woke up Severino, all the while shouting for help. Minutes later, the barangay captain and some neighbors responded to her shouts for assistance. They found Primo dead on the floor. Informed that Antonio was missing, they searched the immediate surroundings for him but to no avail.[10]

Early in the morning of May 13, 1992, the search for Antonio was resumed. He was finally found by his uncle, Simeon Degamo, holding on to rock in a natural well, some 300 meters away from the rice mill. A rope was thrown to him and he was pulled out from the well. Noticing that he smelled of some poisonous chemical, his rescuers made him drink coconut milk.[11] He was weak and appeared on the verge of death and brought to the hospital at Clarin, Bohol for emergency treatment.

The next day, prosecution witness Zosimo Viva,[12] a defeated municipal councilor candidate in the same slate of Ermac, Antonio's common law wife, and two police investigators transferred Antonio to the Gov. Celestino Gallares Memorial Hospital in Tagbilaran City.[13] According to prosecution witness Dr. Mayda[14] Reyes who admitted Antonio to the hospital, Antonio told her that the latter was forced to drink a certain liquid, which smelled like insecticide.[15] Another physician, Dr. Maria Luisa Tage, who attended to Antonio diagnosed, "Poisoning, Etiology not determined, Brief reactive psychosis."[16]

Since Antonio appeared to be dying, prosecution witness PO3 Leonardo Inoc, a police investigator, took his "ante-mortem" statement[17] in which he named the aforementioned accused as the persons responsible for poisoning him and dropping him in the well.[18]

Meanwhile, Ermac asked the National Bureau of Investigation (NBI) to conduct an investigation.[19] The toxicological examination of Primo's body revealed the presence of methamidophos, the active ingredient of the insecticide "Tamaron" in Primo's organs.[20] The NBI also recovered two empty bottles, at the scene of the incident. Chemistry tests on them revealed that the "Hoechst" bottle was positive for deltamethrine, an insecticide, while the other bottle revealed traces of methamidophos.[21]

Appellant denied any involvement in the poisoning incident. He claimed an alibi. He said he spent the whole night of May 11, 1992, in the municipal hall of Sagbayan, as a watcher for the party of Mayor Añana. He went home early morning of May 12, 1992 and spent the whole day repairing his pigpens even if he had not slept the previous night. At around seven o'clock P.M. his wife and he went to the house of his co-accused Angel Preciados to attend the birthday party of the latter's son.[22] Afterwards, they returned home and went to sleep.[23] He woke up at around 9:00 A.M. and learned about the incident. He went to the old rice mill to find out more about the poisoning incident and saw the Hilberos. When he asked Helen what happened, she said she knew nothing about the death of her husband.[24] Later that day, he returned to Cebu City where he worked as a crane operator. He could not think of any reason why he would be suspected for committing a crime, as he was on good terms with the victims.[25]

The defense offered a different version of the poisoning incident. According to the defense, Antonio and Primo agreed to commit suicide by taking poison.[26] It presented Antonio's affidavit dated February 28, 1994,[27] where he recanted his story in his affidavit of May 22, 1992.[28] Antonio testified that he and Primo decided to commit suicide by drinking poison to prevent defeated candidates Ermac and Viva from harming their families. Antonio refused to follow the orders of Viva to kill the political leaders of Mayor Añana, including the appellant. Thus, Antonio said, he and Primo feared for the lives of their relatives. After Primo and he drank poison, Primo immediately died. When he did not succumb right away, Antonio wrote a suicide note and tried to drown himself in the well.[29] After his rescue, Ermac and Viva took him into custody and brought him to Mindanao, allegedly for his safety.[30] The two, however, threatened to kill him and made him falsely charge the appellant with murder and frustrated murder.[31] Antonio totally repudiated his "ante-mortem" statement and his earlier affidavit charging the accused with murder and frustrated murder.

Testifying for the defense, P/Col. Benjamin Absalon, of the Bohol Provincial Command of the Philippine National Police, testified that the police investigation revealed that Primo's death by poison was not due to foul

play. He declared that they did not finish their investigation because Antonio disappeared from the hospital before they could interview him.[32]

To rebut Antonio's testimony, Dr. Mayda Reyes was called anew to confirm what Antonio had told her, that he was forced to drink poison by several men.[33] SPO1 Leonardo Inoc testified again that he took Antonio's "ante-mortem" statement.[34] Apolinario Libranza, barangay captain of Ubujan, Sagbayan was presented to refute Antonio's claims regarding Zosimo Viva.[35] Antonio's mother, Dominga, testified that her son was not afraid of either Viva or Ermac[36] and affirmed the truthfulness of Helen's testimony.[37]

In sur-rebuttal, Antonio maintained the veracity of his suicide account.

Finding the prosecution's version more credible, the trial court on January 2, 1995, convicted appellant of the crimes charged in Criminal Cases Nos. 7887 and 7888. It concluded:

PREMISES CONSIDERED, in Criminal Case No. 7887 the Court finds the accused Arturo Enad GUILTY of the crime of Murder punished under Article 248 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA with the accessories of the law and to pay the costs.

The accused Arturo Enad is further ordered to indemnify the surviving spouse of the deceased Primo Hilbiro (sic) in the amount of P50,000.00 representing indemnity and P50,000.00 representing moral and exemplary damages. In both instances without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 7888, the Court finds the accused Arturo Enad GUILTY of the crime of Frustrated Murder under Article 248 in relation with (sic) Articles 6 and 50 of the Revised Penal Code, as amended and hereby sentences him to suffer an Indeterminate Sentence from SIX (6) YEARS and ONE (1) DAY, the Minimum of the Minimum Period of Prison Mayor, as Minimum, to TWELVE (12) YEARS and ONE (1) DAY, the Minimum of the Minimum Period of Reclusion Temporal, as Maximum, with the accessories of the law and to pay the cost.

The Court makes no pronouncement as to indemnity and damages for the Court viewed the retraction of the complainant Antonio Hilbiro (sic) of his previous testimony, as a waiver of indemnity.

It appearing that the accused Arturo Enad has undergone preventive imprisonment in Criminal Cases Nos. 7887 and 7888 he is entitled to the full time of his preventive imprisonment to be deducted from his term of sentences (sic) if he has executed a waiver otherwise he will only be entitled to 4/5 of the time of his preventive imprisonment to be deducted from his term of sentence (sic) if he has not executed a waiver.

SO ORDERED.[38]

On July 25, 1995, appellant filed his notice of appeal to this Court. On November 20, 1996, the Office of Legal Aid of the U.P. College of Law entered its appearance as counsel.

Before us, appellant poses the following questions for resolution:

- WHETHER OR NOT THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONTRADICTORY AND IMPROBABLE TESTIMONIES OF THE WITNESSES OF THE PROSECUTION.
- WHETHER OR NOT THE TRIAL COURT ERRED IN ADMITTING AND GIVING WEIGHT TO THE DOCUMENTARY EVIDENCE PRESENTED BY THE PROSECUTION.
- WHETHER OR NOT THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT AND IN DISMISSING THE DEFENSE OF THE ACCUSED.

In sum, appellant raises the following issues: First, Did the trial court err in giving credence to the testimony of alleged eyewitness Helen Hilbero? Second, Did the lower court err in relying on “dying statement” of Antonio Hilbero? Third, Did the prosecution evidence successfully overcome the presumption of innocence in favor of the accused?

The first issue deals with the credibility of prosecution witness Helen Hilbero. Appellant argues that the testimony of the sole prosecution eyewitness, Helen Hilbero, is doubtful. He points out that it was odd that despite witnessing her husband murdered and her brother-in-law poisoned, Helen did not make a statement to the police on what she witnessed; that while the police took the sworn statement of Dominga, the mother of Primo and Antonio, they did not take the statement of the widow, who allegedly saw everything; and that even after meeting appellant face to face on the morning of May 13, 1992, no confrontation occurred between appellant and her. Furthermore, the prosecution did not rebut appellant’s testimony that Helen admitted to appellant that she did not know what happened to her husband and brother-in-law. The prosecution suggests that Helen’s testimony was a mere concoction of the political opponents of Mayor Añana and that Helen was coached on her testimony when it became apparent to Ermac and Viva that Antonio would not testify the way they wanted.

The Office of the Solicitor General, for its part, contends that there is nothing unnatural in Helen’s failure to immediately disclose what she knew. The failure to reveal the identities of the perpetrators should not impair her credibility since there is no set standards of human behavior when one is confronted with a strange, striking, or frightful experience. Moreover, she had her reasons to keep what she knew to herself. The accused were her neighbors and they could easily cause her and her family harm. Thus, the trial court, the OSG said, committed no error in relying on her testimony to convict appellant.

Where the credibility of a witness is an issue, the established rule is that great respect is accorded to the evaluation of the credibility of witnesses by the trial court. It is in the best position to determine the issue of credibility of a witness, having heard his testimony and observed his deportment and manner of testifying.[39] But, where there is a showing that the trial court overlooked material and relevant facts, which could affect the outcome of a case,[40] the Court will not hesitate to set aside the lower court’s findings and assessments regarding the credibility of witnesses.

In giving full faith and credence to the testimonies of the prosecution witnesses, the trial court explained:

The findings of the court relative to the credibility of the witnesses militate in favor of the prosecution witnesses (citations omitted). The court took into consideration...‘the most important factor(s) (of) each witness, his manner and behavior on the witness stand and the general characteristics, tone, tenor and inherent probability of his statement (citations omitted)’ for in most instances...‘the demeanor of a witness on the witness stand is often a better evidence of his veracity than the answer he gives (citations omitted)’ and...‘it is perfectly reasonable to believe the testimony of a witness with respect to other parts. Everytime when witnesses are found to have deliberately falsified some material particulars it is not required that the whole of their uncorroborated testimony be rejected but some portions thereof deemed worthy of belief may be credited. (emphasis ours).[41]

On record the lower court heavily relied on the testimony of Helen. However, it did not make any categorical finding as to her credibility or the veracity of her account.

We find Helen’s testimony riddled with inconsistencies and improbabilities which could affect the outcome of this case. Helen testified that upon hearing a different voice downstairs, she peeped through a two-inch hole in the floor and saw, with the moonlight cascading through the windows of the old mill, the accused forcibly make her husband, Primo, swallow poison.[42] On direct examination, she stated, she heard the words “Don’t move.”[43] Under cross-examination, she said what she heard was “Don’t move so that the grenade will not be exploded.”

As the cross-examination progressed, however, she declared that what she actually heard was “Don’t move otherwise your family will be included.” She initially admitted that the first words were uttered by a voice unknown to her. On further grilling by the defense, she claimed she recognized the voice as appellant’s. Relentless cross-examination, however, yielded an admission that it was the voice of accused Villamor she heard first.[44] The identification of an accused through his voice is acceptable, particularly if the witness knows the accused personally.[45] But the identification must be categorical and certain. We observed that the witness changed her version a number of times. A startling or frightful experience creates an indelible impression in the mind such that the experience can be recalled vividly.[46] Where the witness, however, fails to remain consistent on important details, such as the identity of the person whose voice she heard, a suspicion is created that “material particulars” in her testimony had indeed been altered. If an eyewitness contradicts himself on a vital question, the element of reasonable doubt is injected and cannot be lightly disregarded.[47]

Helen’s testimony contained contradictory statements. In one instance she said she witnessed the fatal poisoning of her husband by the accused because the mill was lit by moonlight. In another instance she said the mill was dark and unlit.[48] On further cross-examination she claimed that she witnessed the events because of the bright moonlight.[49] First, she said the moonlight was very bright[50] then later she said the moon was not very full.[51] The defense showed that during that night, five nights before its fullness, the moon was in its first quarter[52] and it was not as bright as a full moon. Note also that Helen’s view of the event was limited because she was only peeping through a small hole. Under these conditions, Helen’s flip-flopping testimony created serious doubts regarding its veracity and credibility. Thus her testimony concerning the destruction of the bamboo slats in one window of the mill invites serious doubt. The mill had two windows covered with bamboo slats. To enter the mill through the windows, the bamboo slats must be destroyed. Yet, Helen did not hear the sound of the bamboo slats being destroyed, which was the only way the intruders could have entered.

Her testimony regarding the murder of her husband, Primo, is less than credible. She said that while Primo struggled not to imbibe the poison, he did not utter a sound. According to her, Primo could not utter a sound as his neck was “clipped”, or “headlocked” as the trial court puts it.[53] There was no showing, however, that the victim’s mouth was muffled to prevent him from shouting for help. From her testimony, she could have easily asked for help. It will be recalled that barangay captain and their neighbors quickly responded to her mother-in-law’s shout for help after seeing Primo’s corpse.[54] Helen’s account, that her husband violently struggled against his murderers yet soundlessly gulped down the poison they made him drink, is unnatural. It evokes disbelief. Evidence to be believed must not only proceed from the mouth of a credible witness but it must also be credible by itself, and must conform to the common experience and observation of mankind.[55]

As a rule, an eyewitness testimony cannot be disregarded on account of the delay in reporting the event, so long as the delay is justified.[56] In this case, Helen kept silent for almost two years. She had no affidavit during the preliminary investigation.[57] It was only at the trial that she came out to say she witnessed her husband’s murder. She did not explain why. Her long silence is out of character and appears inconsistent with her behavior in immediately reporting to the police and the barangay captain an incident when an unidentified man accosted her on the whereabouts of Antonio.[58]

Additionally, on direct testimony, she declared that she knew that Antonio was found in a hole filled with water on the morning of May 13, 1992.[59] Yet, on cross-examination, she declared that she did not know where his rescuers found Antonio that morning.[60] Such contradictory statements tend to erode Helen’s credibility as a prosecution witness and raise serious doubt concerning the prosecution’s evidence.

On the second issue, appellant submits that the trial court erred when it admitted and gave much weight to the probative value of the “ante mortem” statement of Antonio.[61] Appellant contends that the statement can neither

be considered as dying declaration under Rule 130, Sec. 37[62] nor part of the *res gestae* under Rule 130, Section 42[63] of the Rules of Court. It is inadmissible for being hearsay. Furthermore, he avers it was error for the trial court to give weight to the first affidavit of Antonio,[64] since Antonio repudiated the same, stating that its contents were false. According to appellant, Antonio claimed said affidavit was given under duress.

The Solicitor General, for its part, argues that Antonio's actions during and immediately after the incident were completely inconsistent with those of a person who allegedly wanted to commit suicide. Hence, his retraction should be looked at with jaundiced eye, following our ruling in *People v. Junio*, 237 SCRA 826 (1994), where we held that retractions are generally unreliable and looked upon with considerable disfavor.

A dying declaration is the statement which refers to the cause and surrounding circumstances of the declarant's death, made under the consciousness of an impending death.”[65] It is admissible in evidence as an exception to the hearsay rule[66] because of necessity and trustworthiness. Necessity, because the declarant's death makes it impossible for him to take the witness stand[67] and trustworthiness, for when a person is at the point of death, every motive for falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth.[68] The requisites for the admissibility of a dying declaration are: (1) the death is imminent and the declarant is conscious of that fact; (2) the declaration refers to the cause and surrounding circumstances of such death; (3) the declaration relates to facts which the victim is competent to testify; (4) the declarant thereafter dies; and (5) the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry.[69]

In the present case, the foregoing requisites were not met. A dying declaration is essentially hearsay, because one person is testifying on what another person stated. This is because the declarant can no longer be presented in court to identify the document or confirm the statement, but more important, to be confronted with said statement by the accused and be cross-examined on its contents.[70] It was patently incorrect for the trial court to have allowed prosecution witness PO3 Leonardo Inoc to testify on Antonio's so-called “dying declaration” because Antonio was alive and later even testified in court.

But was the purported ante-mortem statement part of the *res gestae*? Where a victim's statement may not be admissible as an ante mortem declaration, it may nonetheless be considered as part of the *res gestae*, if made immediately after a startling occurrence in relation to the circumstances thereof and when the victim did not have time to contrive a falsehood.[71] For *res gestae* to be allowed as an exception to the hearsay rule, the following requisites must be satisfied: (1) that the principal act or *res gestae* be a startling occurrence; (2) the statement is spontaneous or was made before the declarant had time to contrive or devise, and the statement is made during the occurrence or immediately prior or subsequent thereto; and (3) the statement made must concern the occurrence in question and its immediately attending circumstances.[72]

In this case, the element of spontaneity is lacking in the alleged ante-mortem statement. Antonio's statement was taken by PO3 Inoc at around 3:00 o'clock P.M., May 14, 1992 or some thirty-nine (39) hours after the incident. Thirty-nine hours is too long a time to be considered subsequent immediately (stress supplied) to the startling occurrence. Even as contemplated by the rules, statements given a day after the incident in answer to questions propounded by an investigator cannot be considered part of the *res gestae*. [73] Furthermore, the testimony of the declarant, that the statement was made under threats and with coaching from losing candidates Ermac and Viva in order to get even with the winning candidate, Mayor Añana, is uncontroverted.[74]

Dying declarations and statements which form part of the *res gestae* are exceptions to the hearsay rule, thus they must be strictly but reasonably construed and must extend only insofar as their language fairly warrants.[75] Thus, doubts should be resolved in favor of applying the hearsay rule, rather than the exceptions. Under said rule, Antonio's so-called ante-mortem statement should not have been admitted in evidence, for it is neither a dying

declaration nor a part of *res gestae*.

Next we consider whether the trial court could properly rely on Antonio's affidavit dated May 22, 1994 naming the persons responsible for the poisoning incident, notwithstanding his subsequent repudiation of said affidavit. As a rule, retractions are generally unreliable and are looked upon with considerable disfavor by the courts^[76] because of the probability that recantation may later on be itself repudiated.^[77] Furthermore, retractions can easily be obtained from witnesses through intimidation or for monetary consideration,^[78] and a mere retraction does not necessarily negate an earlier declaration.^[79] When faced with a situation where a witness recants an earlier statement, courts do not automatically exclude the original testimony. The original declaration is compared with the new statement, to determine which should be believed.^[80]

In this case, the trial court rejected Antonio's retraction of his affidavit dated May 22, 1992, for being contrary to human experience and inherently unworthy of belief. The trial court cited, by way of illustration, the portion of the affidavit where Antonio claimed that after he and Primo agreed to commit suicide and drinking a bottle of insecticide, Antonio wrote a farewell letter to his barangay-mates. We note, however, that Antonio's second affidavit should have been rejected together with the first affidavit. Unless an affiant himself takes the witness stand to affirm the averments in his affidavit, the affidavit must be excluded from the judicial proceeding for being inadmissible hearsay.^[81] In this case the affiant expressly refused to confirm the contents of his first affidavit. Instead, he testified that said affidavit, Exhibit "E" was prepared under grave threats and severe pressure from Ermac and Viva.^[82] His earlier affidavit's contents were hearsay, hence inadmissible in evidence.

Noted further that Exhibit "E" and its sub-markings were offered, to prove that Antonio testified in detail before NBI Agent Atty. Amador Robeniol about what happened to him and his brother Primo in the hands of the five accused."^[83] Even if said Exhibit was admissible, all that it proves is that Antonio testified and executed an affidavit before the NBI. It does not prove the truthfulness of the allegations made and contained therein.

Coming now to the third issue: has the prosecution succeeded in proving appellant's guilt beyond reasonable doubt?

The records show that the only direct evidence linking appellant to the crimes charged and for which he was convicted are the direct testimony of eyewitness Helen Hilbero and the contents of Exhibit "E." But as discussed earlier, neither can be given much probative value. As to the testimonies of the other prosecution witnesses, we find them insufficient to convict appellant as none of them had any personal knowledge of facts that would directly link appellant to the offenses charged. Even if these witnesses testified in a straightforward and categorical manner, their testimonies contained insufficient evidence to establish appellant's guilt beyond reasonable doubt.

Appellant's defense of denial in the present case is inherently weak.^[84] Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence undeserving of any weight in law.^[85] But such weakness does not excuse the prosecution from presenting the adequate quantum of proof of the crime charged. The guilt of the accused must be proved beyond reasonable doubt. And the prosecution's evidence must stand or fall on its own weight. It cannot rely on the weakness of the defense. In the instant case, the prosecution failed to prove the guilt of appellant with moral certainty. The testimony of its single purported eyewitness, while positive, was less than credible. It did not meet the test such testimony of a lone witness to sustain a judgment of conviction, must be both positive and credible.^[86] In our view, the burden of proof required for conviction of appellant has not been adequately discharged by the prosecution.

WHEREFORE, the decision of the Regional Trial Court of Tagbilaran City, Branch 1, in Criminal Cases Nos. 7887 and 7888, finding appellant Arturo Enad guilty of murder and frustrated murder is hereby REVERSED and

SET ASIDE for insufficiency of the evidence to convict him beyond reasonable doubt. Appellant is ACQUITTED and ordered RELEASED from confinement immediately unless he is held for another lawful cause.

SO ORDERED.

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

[1] Sometimes spelled “Inad” in the records. Cases against his co-accused who are at large are still pending trial.¹

[2] Records, Criminal Case No. 7887, p. 1.

[3] Records, Criminal Case No. 7888, pp. 1-2.

[4] Also spelled as ‘Hilbiro’, “Helbiro” or “Helbero” in the records.

[5] TSN, March 3, 1994, pp. 7-9.

[6] TSN, March 4, 1994, pp. 9-10.

[7] TSN, March 7, 1994, p. 20.

[8] TSN, April 26, 1994, p. 3-11; TSN, March 7, 1994, p. 20.

[9] TSN, May 16, 1994, p. 4; TSN, March 7, 1994, pp. 7-9; TSN, March 3, 1994, pp. 12-14.

[10] TSN, March 3, 1994, pp. 13-14.

[11] TSN, May 18, 1994, pp. 7-9; TSN, May 16, 1994, pp. 5-6.

[12] Also referred to as “Semmie” or “Simmy” Viva in the records.

[13] TSN, March 11, 1994, p. 7.

[14] Also spelled as “Maida” or “Mayida” in the records.

[15] TSN, February 24, 1994, pp. 7-8.

[16] Records, Criminal Case No. 7887, p. 20.

[17] TSN, February 23, 1994, pp. 3-7.

[18] Exhibit “J”, Folder of Exhibits, p. 9.

[19] TSN, April 26, 1994, p. 7; TSN, March 1, 1994, pp. 4-5, 11-12.

[20] Exhibit “A”, Folder of Exhibits, p.1; TSN, February 15, 1994, pp. 7-8.

[21] Exhibit “B”, Folder of Exhibits, p. 2.

[22] TSN, August 25, 1994, pp. 4-6; See also TSN, August 31, 1994, p.2; See also Exhibits “7” & “8,” Folder of Exhibits, p. 37.

[23] TSN, August 25, 1994, p. 6 only.

[24] TSN, August 26, 1994, p.4.

[25] TSN, August 25, 1994, pp. 8-10.

- [26] TSN, February 24, 1994, p. 19.
- [27] Exhibit “5,” Records, Criminal Case No. 7887, p. 95.
- [28] Exhibit “E,” Records, Criminal Case No. 7887, pp. 16-18.
- [29] TSN, June 20, 1994, pp. 11-24.
- [30] TSN, June 22, 1994, pp. 15-16.
- [31] TSN, June 22, 1994, pp. 8-9.
- [32] TSN, September 19, 1994, pp. 10-11; Folder of Exhibits, p. 48.
- [33] TSN, October 27, 1994, p.7.
- [34] TSN, October 28, 1994, p 3.
- [35] TSN, November 7, 1994, pp. 6-7, 11.
- [36] TSN, November 11, 1994, p. 3
- [37] TSN, November 11, 1994, p. 3, 10.
- [38] Rollo, p. 55.
- [39] *People v. Castillo, et al.*, G.R. No. 130188, April 27, 2000, p. 11 citing *People v. Lapay*, 298 SCRA 62 (1998); *People v. Pantorilla and Dahan*, G.R. No. 122739, January 19, 2000, p. 7; *People v. Magpantay*, 284 SCRA 96 (1998); and *People v. Erese*, 281 SCRA 316 (1997).
- [40] *People v. Tanoy*, G.R. No. 115692, May 12, 2000, p. 6.
- [41] Rollo, p. 155.
- [42] TSN, March 7, 1994, p. 20.
- [43] TSN, March 3, 1994, p. 9. See also TSN, March 4, 1994, p. 27.
- [44] TSN, March 7, 1994, pp. 16-23.
- [45] *People v. Avillano*, 269 SCRA 553, 561 (1997).
- [46] *People v. De Guia*, 280 SCRA 141, 155 (1997).
- [47] *People v. Manambit*, 271 SCRA 344, 379 (1997).
- [48] TSN, March 4, 1994, p. 17.
- [49] TSN, March 7, 1994, p. 11.
- [50] TSN, March 4, 1994, p. 17.
- [51] TSN, March 7, 1994, pp. 11-12.
- [52] Exhibit “1”, Folder of Exhibits, p. 30.
- [53] TSN, March 7, 1994, pp. 14-22.
- [54] TSN, March 7, 1994, p. 34.

- [55] *People v. Parazo*, 272 SCRA 512, 521 (1997); *People v. Manambit*, 271 SCRA 344, 376 (1997).
- [56] *People v. Lusa*, 288 SCRA 296, 305 (1998); *People v. Viovicente*, 286 SCRA 1, 8 (1998); *People v. Villamor*, 284 SCRA 184, 193 (1998).
- [57] TSN, March 4, 1994. p. 5-7.
- [58] TSN, March 7, 1994, pp. 37-42.
- [59] TSN, March 3, 1994, p. 14-16.
- [60] TSN, March 7, 1994, p. 36.
- [61] Folder of Exhibits, p. 9.
- [62] “SEC. 37. Dying Declaration. – The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.”
- [63] “SEC. 42. Part of the res gestae. – Statements made a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the res gestae.”
- [64] Records, Criminal Case No. 1887, pp. 16-18.
- [65] F. B. MORENO, PHIL. LAW DICTIONARY (3[rd] Ed. 1988) 300, citing *People v. Lugtu*, 108 SCRA 89 (1981).
- [66] “SEC. 36. Testimony generally confined to personal knowledge; hearsay excluded. – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception except as otherwise provided in these rules.”
- [67] *People v. Bautista*, 278 SCRA 613, 623 (1997); *People v. Sion*, 277 SCRA 127 (1997).
- [68] *People v. Amaca*, 277 SCRA 215, 223 (1997).
- [69] *People v. Bergante*, 286 SCRA 629, 638 (1998); *People v. Viovicente*, supra; *People v. Bautista*, 278 SCRA 613 (1997); *People v. Amaca*, 277 SCRA 215 (1997); *People v. Padoa*, 267 SCRA 64 (1997).
- [70] RULES OF COURT, RULE 115, Sec. 1. Rights of accused at the trial. – In all criminal prosecutions, the accused shall be entitled:
- x x x
- (f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter; the adverse party having had the opportunity to cross-examine him.
- [71] *People v. Bocatcat, Sr.*, 188 SCRA 175, 185 (1990).
- [72] *People v. Cariquez and Franco*, 315 SCRA 247, 261 (1999); *People v. Queliza*, 279 SCRA 145 (1997); *People v. Esquilona*, 248 SCRA 139 (1995); *People v. Peralta*, 237 SCRA 218 (1994); *People v. Tolentino*, 218 SCRA 337 (1993); *People v. Sanchez*, 213 SCRA 70 (1992).

[73] *People v. Navarro*, 297 SCRA 331, 350 (1998).

[74] TSN, June 22, 1994, pp. 7-12.

[75] RUBEN E. AGPALO, *STATUTORY CONSTRUCTION* (2nd Ed. 1990) 222.

[76] *People v. Junio*, 237 SCRA 826, 834 (1994); *People v. Logronio*, 214 SCRA 519, 531 (1992) citing *People v. del Pilar*, 188 SCRA 37 (1990), *People v. Aldaguer*, 184 SCRA 1 (1990); *People v. Navasca*, 76 SCRA 70 (1977), and *People v. Domenden*, 6 SCRA 343 (1962).

[77] *People v. Navarro*, *supra*, at 348, citing *People v. Soria*, 262 SCRA 739 (1996), *People v. De Leon*, 245 SCRA 538 (1995), and *People v. Liwag*, 225 SCRA 46 (1993).

[78] *People v. Bibat*, 290 SCRA 27, 39 (1998) citing *People v. de Leon*, 245 SCRA 538 (1995).

[79] *People v. Ballabare*, 264 SCRA 350, 361 (1996).

[80] *People v. Peralta*, 237 SCRA 218, 224 (1994); *People v. Mindac*, 216 SCRA 558 (1992); *People v. Clamor*, 198 SCRA 642 (1991); *Reano v. Court of Appeals*, 165 SCRA 525 (1988).

[81] *People v. Crispin*, G.R. No. 128360, March 2, 2000, p. 10 citing *People v. Silvestre*, 307 SCRA 68 (1999); *People v. Manhayod, Jr.*, 290 SCRA 257 (1998).

[82] TSN, June 22, 1994, pp. 13-15.

[83] TSN, June 20, 1994, p. 3.

[84] *People v. Juan and Juan*, G.R. Nos. 100718-19, January 20, 2000, p. 19.

[85] *People v. Fajardo, et al.*, 315 SCRA 283, 293 (1999).

[86] *People v. Reñola*, 308 SCRA 145, 152 (1998).

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