

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELO CABILES Y ANGUSTIA, EMERITO DELOS REYES Y NARANJO ALIAS “EMY,” ACCUSED-APPELLANTS.

G.R. No. 125005. October 03, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the decision of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 46 in Criminal Cases Nos. U-8389, U-8390, U-8391, and U-8392, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the Court finds:

"IN CRIMINAL CASE NO. U-8390:

"the accused MARCELO CABILES[1] y ANGUSTIA GUILTY beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE and applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty of 6 months of Arresto Mayor in its maximum period, as MINIMUM, to 2 years, 4 months and 1 day of Prision Correccional in its medium period, as MAXIMUM and to pay the costs.

"IN CRIMINAL CASE NO. U-8389:

"the accused EMERITO DE LOS REYES y NARANJO alias "Emy" GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm(s) and Ammunitions (Presidential Decree No. 1866) and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay the costs.

"IN CRIMINAL CASE NO. U-8391:

"the accused MARCELO CABILES y ANGUSTIA GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm(s) and Ammunitions (Presidential Decree No. 1866) and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay the costs.

"IN CRIMINAL CASE NO. U-8392:

"the accused MARCELO CABILES y ANGUSTIA and EMERITO DE LOS REYES y NARANJO alias "Emy" GUILTY beyond reasonable doubt of the crime of MURDER defined and penalized under Republic Act No. 7659, otherwise known as the Heinous Crime Law, the offense having been committed with the generic aggravating circumstances of taking advantage of superior strength and dwelling, hereby sentences EACH OF THEM the ultimum supplicium to DEATH; to pay jointly and severally the heirs of the victim MOISES PAMARANG, SR. in the amount of P50,000.00 as indemnity, P11, 000.00 as actual damages, P200,000.00 as moral damages and to pay the costs.

"Finally it is said: `Dura lex, sed lex' interpreted as "The law is harsh, but that is the law.

"SO ORDERED."[2]

The facts of this case, according to the trial court, are as follows:

Sometime between 7:30 to 8:00 P.M. of February 2, 1994, two persons went to the house of Moises Pamarang, Sr., calling out "Apo!." Arman^[3] Pamarang, son of the victim, who was then watching television in his grandfather's house, a few meters away from his parents' house, saw the duo. Thinking that the two were interested in buying something from their store, Arman went to their house and stood behind the two, whom he recognized as appellants Emerito delos Reyes and Marcelo Cabiles.

Meanwhile, the victim's wife, Estelita Pamarang, who also heard the call, went to their front door, which also served as the door of their store. The area was lighted as there was a fluorescent light on the awning above the front door. She recognized appellants delos Reyes and Cabiles standing outside, with her son Arman behind them. The two were fellow barangay residents who cultivated the land opposite the victim's family farm.

Upon seeing Estelita, appellant Cabiles muttered that he had something to tell her husband. Estelita replied that her husband was already asleep and asked them to return the next day. After a few moments, however, the victim arrived and asked appellants what they wanted. Suddenly, Cabiles pulled out a handgun and shot the victim in the mouth. The latter fell and while Estelita was holding him up, delos Reyes moved forward and shot the victim in the stomach with a long firearm. Cabiles fired a second shot, hitting Moises in the chest. The two gunmen then hurriedly left.

Seconds later, Arman rushed in to assist the victim, his father, while Estelita shouted for help. Moises, Jr., another son of the victim who was playing cards in his grandmother's house, heard the gunshots and the shouts of his mother and immediately rushed to their house. He met appellant Cabiles, who had just come out of their front gate. Suspecting that Cabiles was responsible for his mother's shouts for help, Moises, Jr. followed him and upon catching up, boxed Cabiles' nape. Cabiles shot him but missed. Cabiles began to run. When he noticed Moises, Jr., still dodging him, Cabiles fired at him again, missed a second time. Moises, Jr., decided not to press his luck and instead went home. By then, Moises, Sr., was dead.

When police officers arrived, they were informed by Moises, Jr., that he knew the person who killed his father. Moises, Jr., who accompanied the policemen to the residence of appellant Cabiles, pointed him out as the killer. Cabiles was taken into custody and Estelita and Arman were summoned to the police station. When confronted with Cabiles, however, Estelita, failed to identify him as one of the persons who shot her husband. Moises, Jr. and Arman, who were present, likewise failed to identify Cabiles.

At around 1:00 o'clock in the morning the following day, both Cabiles and delos Reyes were brought to the police station for re-investigation. This time, Estelita identified him as one of her husband's killers. She explained that she was not able to pinpoint him previously because his hair was brushed up; during the night of the incident his hair was brushed down. She also was then still in shock. Estelita also identified appellant delos Reyes as the other gunman. The two were placed in detention. Appellants asked that they undergo a paraffin test. These yielded negative results.

The autopsy on the cadaver showed that the victim had sustained gunshot wounds on his mouth, stomach, and chest. Two slugs were recovered from his body. The cause of death was "hypovolemic shock secondary to intrathoracic hemorrhage, secondary to gunshot wound, lungs."^[4]

Complaints were filed in the Municipal Trial Court of Urdaneta for Murder against Emerito delos Reyes and Marcelo Cabiles; for Attempted Murder against Cabiles; for Illegal Possession of Firearm and Ammunition against delos Reyes; and for Illegal Possession of Firearm and Ammunition against Cabiles. After preliminary investigation, the municipal court judge found that no prima facie case existed, and recommended that the cases be dismissed. The investigating judge's recommendation was forwarded to the Office of the Provincial Prosecutor for review.

On March 31, 1995, notwithstanding the recommendation of the investigating municipal judge, the Office of the Provincial Prosecutor of Pangasinan filed the following separate informations with the court a quo:

Criminal Case No. U-8389:

"The undersigned accused EMERITO DELOS REYES Y NARANJO alias "EMY" of the crime of ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION, committed as follows:

"That on or about the 2nd day of February, 1994, at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused did then and there, wilfully, unlawfully and feloniously (sic) have in his possession, control and custody one (1) long firearm with ammunitions without securing first the necessary authority or license to possess and carry the same, and which firearm he used in shooting to death Moises Pamarang y Uminga.

"CONTRARY TO P.D. No. 1866"[5]

CRIMINAL CASE No. U-8390:

"The undersigned accuses MARCELO CABLES Y ANGUSTIA of the crime of ATTEMPTED MURDER, committed as follows:

"That on or about the 2[nd] day of February, 1995 (sic) at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused with intent to kill and with treachery, did then and there, wilfully, unlawfully, and feloniously (sic) shoot one Moises Pamarang Jr., y Villota for two (2) times but missed with the use of a firearm, thus the accused commenced the commission of the crime of Murder directly by overt acts but did not produce it by reason of some cause other than his spontaneous desistance, that is, the victim was able to run away from said accused.

"Contrary to Art. 248, in relation to Art. 6, Revised Penal Code."[6]

CRIMINAL CASE No. U-8391:

"The undersigned accuses MARCELO CABLES Y ANGUSTIA of the crime of ILLEGAL POSSESSION OF FIREARMS AND AMMUNITIONS, committed as follows:

"That on or about the 2[nd] day of February, 1994, at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused did then and there, wilfully, unlawfully and feloniously (sic) have in his possession, control and custody one (1) short firearm with ammunitions without first securing the necessary authority or license to possess and carry the same, and which firearm he used in shooting to death Moises Pamarang y Uminga.

"CONTRARY to Presidential Decree No. 1866."[7]

CRIMINAL CASE No. U-8392:

"The undersigned accuses MARCELO CABLES Y ANGUSTIA and EMERITO DELOS REYES Y NARANJO alias "EMY" of the crime of MURDER, committed as follows:

"That on or about the 2[nd] day of February, 1994 at barangay Camantiles, municipality of Urdaneta, province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, and helping each other, and with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously (sic) attack and shoot one Moises Pamarang y Uminga with the use of firearms hitting and inflicting the latter with mortal wounds which caused his death, to the damage and prejudice of his heirs.

"CONTRARY to Article 248, Revised Penal Code."[8]

Upon arraignment, appellants, with the assistance of counsel de parte, pleaded "NOT GUILTY" to each of the foregoing informations. The four cases were tried jointly.

At the trial, appellants interposed the defense of denial and alibi. The trial court summed up appellant Cabiles' defense as follows:

"On February 2, 1994, at around 6:30 o'clock in the evening, he and his 3-year old son Mark Hausen, went to the house of Eddie Gandesa, his business partner in the chainsaw business, by riding in his motorized tricycle which he owned to inform him that somebody would like to have his tree cut. He conversed with Gandesa (and) with his four (4) visitors and at around 8:00 o'clock in the evening he asked permission to leave and proceeded to the house of Arsenia Garcia to buy rice but unable to purchase as there was no available rice for sale. They arrived in (sic) his house at around 8:20 o'clock and parked his tricycle on (sic) the yard of Francisca Angelito. After five minutes his co-accused Emerito delos Reyes, whose house is about 40 meters away and his acquaintance since 1992, arrived and asked for his tricycle as he would like to carry passengers for a fee. When delos Reyes left, Francisca Angelito went to his house bringing with her cooked camoteng cahoy which they ate together with Ernesto "Boy" Alvarez, who went to fetch water from their pumpwell for his cow. At around 9:00 o'clock a police patrol car went to the house of his co-accused delos Reyes and thinking that the latter met an accident in town he went out to observe. The police was asking from the wife of the accused delos Reyes the whereabouts of her husband but the former was told that he was out driving a tricycle for hire. The police then went to the place where he was and was asked if he saw a motorcycle with three (3) persons on board passed (sic) by their place as somebody was killed. Then Police Officer Ganceña told him that because he is a stranger in the place and somebody was killed it was better for him to go to the police headquarters to clear doubts on his part, as the wife of the victim said that she could identify the killers if she could see them. Before they left, the police told to (sic) the wife of his co-accused to tell the latter to go to the police when he arrives. At the police station, Estelita Pamarang, wife of the victim, when he was shown to her for identification, failed to identify him. Arman Pamarang and Moises Pamarang, Jr., children of Estelita Pamarang were also there and they did not say anything when their mother was not able to pinpoint him as one of the killers of the victim Moises Pamarang, Sr...

"On February 3, 1994 at around 1:00 o'clock in the morning, the police returned and took him again to the police headquarters at Urdaneta, Pangasinan where he saw Estelita Pamarang, Arman Pamarang and Moises Pamarang, Jr. again but most of all he saw his co-accused Emerito delos Reyes. The wife of the victim pointed and identified him and his co-accused (as the ones) who killed the victim which he denied. They were then incarcerated. They asked for a paraffin examination which was done, the result of which is "negative." [9]

Appellant delos Reyes' version was narrated by the court as follows:

"That around 7:00 o'clock in the evening of February 2, 1994, he was getting water for his 3 cows to drink at the water pump of his neighbor Alfredo Ladines and when he noticed that the tricycle of his co-accused Marcelo Cabiles arrived (sic) he changed his clothes and got the key of the tricycle from the wife of Cabiles at 8:15 o'clock on said night whose house is 40 meters away from his house. He did not converse with his co-accused as he was at the pigpen near his house. He arrived at the town proper of Urdaneta, Pangasinan to wait for passengers who came from Baguio and Manila to deliver them to their respective places for a fee. There was also Pastor Garcia, a tricycle driver like him who was his companion on said night. He used the tricycle of his co-accused to transport passengers three (3) times a week. He earned P250.00 that night and gave one-half to the wife of the accused Cabiles. He went home at 10:00 o'clock that same night and upon reaching his house, he was met by his wife and his younger sister at the road who told him to proceed to the police station as his co-accused was invited by the police and had no ride to return home. At the Mitura bridge, while proceeding to the police headquarters at Urdaneta, Pangasinan, he met his co-accused riding in a tricycle driven by Melandro "Allan" Coile, Cabiles' nephew. Being told by his co-accused that he better return home there being nothing that happened at the police station he (Cabiles) being suspected to have killed somebody, and not the one responsible, they joined together in going to their respective residences. After parking the

tricycle at the yard of Angelito he went to sleep and it was already 11:30 P.M.

"At 1:00 o'clock in the early morning of February 3, 1994, he was awakened in (sic) his deep slumber by the barking of dogs so that he went out and saw peace officers Ganceña and Andaya who invited him to go to the police station to clarify some important matters. He saw his co-accused in the patrol car when he rode in a tricycle with two (2) policemen. At the station he saw Estelita Pamarang, Moises Pamarang, Jr. and Arman Pamarang, the first being the wife of the victim and the two (2) are the sons of the former. At the investigating room, where he and his co-accused Cabiles were brought, Ganceña together with the Pamarangs entered and asked to identify them but said Pamarangs were not able to identify them, Ganceña and the three (3) Pamarangs went out and after five minutes they returned and it was at this time that the wife and two (2) sons of the victim pointed at them as the authors of the killing which they denied. Thereafter, he and his co-accused were incarcerated. As per their request paraffin examinations were conducted and the result was negative." [10]

The trial court disbelieved the two accused, convicted appellants of the crimes charged, and imposed upon them the supreme penalty of DEATH for the murder of Moises Pamarang, Sr. For the illegal possession of firearms and ammunitions, it imposed the grave penalty of reclusion perpetua.

Hence, this automatic review with appellants raising the following alleged errors of the trial court:

- THAT THE HONORABLE JUDGE JOVEN COSTALES COMMITTED A GRAVE ABUSE OF DISCRETION IN HAVING PARTICIPATED ACTIVELY IN THE PROSECUTION OF THE CASE AND AS A RESULT, HE RENDERED A BIAS (sic) JUDGMENT CONVICTING BOTH THE ACCUSED OF THE CRIMES CHARGED. THAT SUCH ACTUATIONS OF THE HONORABLE JUDGE CONSTITUTE A REVERSIBLE ERROR.
- THAT BY REASON HIS BIAS (sic) ACTUATIONS, THE HONORABLE JUDGE JOVEN COSTALES FAILED, AS HE DID FAIL, TO APPRECIATE FACTS OR CIRCUMSTANCES OF GREAT WEIGHT AND VALUE [WHICH IF CONSIDERED MIGHT ALTER THE OUTCOME OF THE CASE] HAS OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED THE SAME.
- THAT THE HONORABLE JUDGE JOVEN COSTALES MADE OFFICIAL DECLARATION IN OPEN COURT WHICH MADE COUNSEL BELIEVE TO BE LIKE AN ORDER OF THE COURT, THUS RELYING UPON SUCH DECLARATION, COUNSEL WAS THEREFORE OF THE HONEST EVALUATION THAT THE DEFENSE OF THE ACCUSED HAD BEEN FULLY ESTABLISHED SO THAT HE [COUNSEL] NO LONGER PROCEEDED TO PRESENT ADDITIONAL EXCULPATORY EVIDENCE.
- THAT THE LOWER COURT FAILED TO CONSIDER THE NUMEROUS INCONSISTENT AND CONTRADICTING TESTIMONIES OF THE PROSECUTION WITNESSES WHO WERE MOTHER AND SONS, WHICH IF TAKEN AND CONSIDERED ALTOGETHER, WOULD HAVE CREATED A STRONG REASONABLE DOUBT WHICH WOULD HAVE ACQUITTED BOTH ACCUSED.
- THAT THE HONORABLE JUDGE JOVEN COSTALES COMMITTED A GRAVE ABUSE OF DISCRETION IN DECLARING THAT ARMAN PAMARANG'S TESTIMONY IS CATEGORICAL, SPONTANEOUS AND STRAIGHT FORWARD MANNER" NOTWITHSTANDING SUBSTANTIAL INCONSISTENT STATEMENTS, WHICH DECLARATION ONLY SHOWS BIAS IN HIS DECISION.
- THAT THE LOWER COURT, COMMITTED A GRAVE ABUSE OF DISCRETION IN NOT GIVING WEIGHT TO THE TESTIMONIES OF THE TWO [2] ACCUSED WHICH WERE CORROBORATED BY DIS-INTERESTED, UNBIASED AND CREDIBLE WITNESSES.

Stated succinctly, the pivotal issue is: Was the guilt of appellants proven beyond reasonable doubt? This issue will be properly resolved as we proceed with the discussion of assigned errors.

First, appellants complain that the trial judge actively participated in the prosecution of the case and thus rendered a biased judgment. They particularly assail the questions asked by the judge, of witness Arman Pamarang, following the redirect examination,[11] as indicative of his desire to convict appellants. Our scrutiny of the detailed questions asked by the trial judge, however, fails to disclose any bias on his part which would prejudice appellants. The questions were clarificatory. It is a judge's prerogative to ask clarificatory queries to ferret out the truth.[12]

Second, appellants contend that because of the eagerness of the judge to convict them, he overlooked certain facts, which if considered would affect the result of the case. Appellants particularly assail the failure of witness Estelita Pamarang to positively identify appellant Cabiles during their initial confrontation at the police station, just a couple of hours after the fatal shooting. Equally stressed is the failure of Estelita, Arman, and Moises Jr., to identify appellant delos Reyes as the other gunman during their confrontation in the presence of police investigators. However, Estelita explained that her failure to initially identify appellant Cabiles as one of the men who shot her husband was due the change in appellant's hairdo. The trial court found her explanation credible and convincing. We shall now determine if the identification of the appellants as the offenders suffices to hold them liable as charged.

Eyewitness identification constitutes vital evidence and, in most cases, decisive of the success or failure of the prosecution.[13] Yet, eyewitness identification is not always reliable or accurate, given the possibility of misidentification. In *People vs. Teehankee*,[14] we said:

"Identification testimony has at least three components. First, witnessing a crime, whether as a victim or as a bystander, involves perception of an event actually occurring. Second, the witness must memorize details of the event. Third, the witness must be able to recall and communicate accurately. Dangers of unreliability in eyewitness testimony arise at each of these three stages, for whenever people attempt to acquire, retain, and retrieve information accurately, they are limited by normal human fallibilities and suggestive influences."

In evaluating out-of-court identification, we have adopted the totality of circumstances test where the following factors are considered: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[15]

Against this test, we find that Estelita Pamarang's identification of appellants is of doubtful value. In this case, the crime allegedly took place at the door of the Pamarang residence, amply lit by a fluorescent bulb.[16] In her testimony, Estelita pointed out that there was sufficient light for her to identify a person up to a distance of 12 to 15 meters.[17] She also claimed that she had talked with Cabiles for 5 minutes before the shooting and could recognize him very well.[18] She also noticed that Cabiles had a beard "from the level of the ear down his chin." [19] Yet, when initially confronted with him at the police station, she could not identify Cabiles who at that hour was sporting a beard, not common among Filipino males.

Estelita also admitted that she knew appellant delos Reyes very well because his farm lot fronts the farm of the Pamarangs.[20] But when first asked to identify delos Reyes, she could not make a positive identification.

The victim's son, Arman, also claimed that he stood for three minutes behind the two men who killed his father,[21] and identified Cabiles and delos Reyes as assailants. The records show, however, that Arman, like his mother, failed to initially identify appellants when he was first asked at the Urdaneta PNP station.

Worth noting, the police presented a single suspect to the witnesses for purposes of identification. We have said before that this method is a grossly suggestive identification procedure used by the police.[22] We cannot

discount the possibility that the ability of the Pamarangs to suddenly identify Cabiles and delos Reyes as the gunmen, during the second confrontation, was influenced by SPO2 Ernesto Ganceña, considering that he is a compadre of the victim.[23] The prosecution failed to rebut delos Reyes' testimony that after the three Pamarangs failed to identify him and Cabiles as the authors of the crime, Ganceña brought them out of the investigation room for about five minutes and when they returned, it was then that the Pamarangs pointed to appellants as the killers.[24]

The failure to properly identify appellant Cabiles is instructive. Estelita explained that her initial failure to identify Cabiles was due to his hairdo change. Her testimony on this point is as follows:

"Q:

Is that the kind of hairdo that you saw at that time? (Atty. Banaga pointing at accused Cabiles who is seated inside the courtroom).

"A:

No, sir.

"COURT:

You describe the hairdo.

"COURT INTERPRETER: The hairdo of the accused is about one inch in length and his face could easily be recognized together with his forehead (sic).

"ATTY. BANAGA:

"Q:

Will you kindly brush down your hair? (Counsel referring to accused Cabiles who upon request of Atty. Banaga brushed his hair down with enough hair to cover a little of his forehead and his face can be recognized.)

"Q:

Was that the hairdo of Marcelo Cabiles when you first saw him in the night of February 2, 1994?

"A:

Yes, sir, that was the hairdo.

"Q:

When you were asked to identify the accused during the preliminary investigation conducted by the Honorable Judge Orlando Siapno and you saw the accused Marcelo Cabiles was his hairdo brushed down that time?

"A:

His hairdo was already brushed up, sir."

"COURT:

"Q:

But you were already able to identify him during the preliminary investigation being conducted by Judge Siapno, is that correct?

"A:

Yes, sir."[25]

It would appear that regardless of Cabiles' hairstyle, Estelita could recognize him. Why then did she claim earlier that she could not recognize him when his hair was brushed up? As her testimony now shows, her identification of Cabiles as one of the victim's assailants becomes of doubtful value.

We also find Moises Jr.'s identification of Cabiles less than reliable. Moises, Jr., claimed he chased, caught up and boxed Cabiles who shot him twice, but missed each time.[26] He further testified that he accompanied the PNP members to the house of Cabiles, where he pointed Cabiles out as the gunman.[27] He averred that he identified Cabiles in the presence of his mother, Estelita and brother, Arman at the police station.[28] He denied any knowledge of the police asking his mother to identify Cabiles,[29] yet his testimony showed that he was present when his mother was confronted with Cabiles.[30] He said nothing when his mother failed to identify Cabiles nor volunteered to say he was positive Cabiles was one of the gunmen. We likewise note that Moises, Jr., under cross-examination gave evasive answers on his mother's failure to identify Cabiles and appears to have been a coached witness. He testified as follows:

"PROS. PERALTA (Re-direct)

"Q:

You mentioned that you talked with the Prosecutor after this morning's session, what did the Prosecutor tell you?

"A:

In connection with the case, sir.

"Q:

What about the case? What did the Prosecutor tell you about the case?

"A:

The Prosecutor advised me to good of (sic) my answers before the Judge.

"Q:

Is that all that you talked about with the Prosecutor?

"A:

Yes, sir.[31]

x x x

"ATTY. BANAGA: Re-cross, your Honor.

"COURT: Proceed.

"ATTY. BANAGA:

"Q:

When you talked to Prosecutor Peralta in his office and told you that you answer in a nice way, did he also tell you the points where questions should be answered in a nice way?

"PROS. PERALTA: Your Honor, on this point we will admit that we prepared the witness.

"WITNESS:

"A:

Yes, sir.

"ATTY. BANAGA:

"Q:

What were these points?

"A:

The question will be answered, sir.

"Q:

I am asking you what were the points which Prosecutor Peralta would like you to answer in a nice way?

"A:

In connection with the case, sir."[32]

Moreover, we find incredible the claim of Moises, Jr., that though unarmed, he chased Cabiles whom he saw was armed with a gun. It is highly improbable and unreasonable that a person armed with a firearm will run away from an unarmed opponent. This aspect of Moises, Jr.'s testimony invites incredulity. For no better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind.[33]

The testimonies of Arman and Moises, Jr., do not dovetail, instead they contradict each other on material points. On re-cross-examination, Arman testified:

"Q:

You mentioned on cross examination of the court that you assisted your mother when your father was shot, is that correct?

"A:

Yes, sir.

"Q:

And you went inside the house?

A:

"Yes, sir."[34]

Moises, Jr., however, testified on cross-examination thus:

"Q:

What makes you say that you are very sure of it were you with your mother at all times?

"A:

Yes, sir, we were side by side and I advised her to stop crying.

"Q:

About your brother Armand?

"A:

He was also inside the house and he was crying, sir.

"Q:

In other words, your brother Armand also arrived after the incident happened?

"A:

I do not know if he was there, sir.

"Q:

But certainly when you went to peep at your father who was lying down inside the store Armand was not there inside the house?

"A:

I do not know because I did not notice.

"Q:

But did you not say a while ago this morning that you never saw Armand inside your house?

"A:

Yes, sir.

"Q:

Which is which now, you saw Armand or you did not see Armand?

"A:

I did not see him really, sir."[35]

The foregoing exchanges at the witness stand strengthen the suspicion that the "eyewitnesses" in this case could have been "coached" witnesses. Where testimonies of two key witnesses could not stand together, then it would appear that one or both must be telling a lie, and their story is a mere concoction.[36] The experience of courts and our general observation teach us that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.[37] Given the testimonies of the key prosecution witnesses here, we have reasonable doubt regarding the identification of appellants as the perpetrators of the murder of Moises Pamarang, Sr.

On the charges of illegal possession of firearms and ammunition against appellants, the records show that the prosecution merely set to prove that neither appellant was listed in the list of registered firearm holders in the province of Pangasinan.[38] No proof whatsoever was adduced by the prosecution to show that appellants owned or possessed unlicensed firearms and/or ammunition. In view of the paucity of the prosecution's evidence, we are constrained to rule that with respect to the charges of possessing unlicensed firearms and ammunition there is

utter lack of evidence to convict either of the appellants beyond reasonable doubt. Simply said, the constitutional presumption of innocence in favor of both appellants has not been overcome.

The trial court, in our view, had rushed the conviction of and the imposition of severe penalties on appellants. It should have scrutinized minutely the evidence for and against them. Given the negative results of the paraffin tests, we are alerted to be painstaking in our appreciation of the testimonial evidence.

Granted that appellants' defense of denial and alibi is inherently weak. But where the identification of appellants as the offenders is doubtful, inconclusive, or unreliable, then the accused is entitled to acquittal. For alibi assumes commensurate significance and strength, when the evidence for the prosecution is frail and effete.[39] As well said often, conviction must rest on the strength of the prosecution's case and not on the weakness of the defense. In this case, we find that the guilt of appellants has not been adequately proved and they have to be acquitted for insufficiency of evidence.

WHEREFORE, the assailed decision of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Cases Nos. U-8389, U-8390, U-8391, and U-8392 is REVERSED and SET ASIDE. Appellants Marcelo Cabiles y Angustia and Emerito delos Reyes y Naranjo are ACQUITTED for lack of sufficient evidence to prove the charges against them beyond reasonable doubt. The Director of the Bureau of Corrections is hereby directed to cause the release of appellants forthwith, unless they are being lawfully held for another cause; and to inform the Court of his compliance, within ten days from notice. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Also spelled as "Cabilles" in the records.

[2] Rollo, pp. 143-144.

[3] Sometimes spelled "Armand" in the records.

[4] Records, Criminal Case No. U-8389, p. 10.

[5] Id. at 1.

[6] Records, Criminal Case No. U-8390, p.1.

[7] Records, Criminal Case No. U-8391, p. 1.

[8] Records, Criminal Case No. U-8392, p. 2.

[9] Supra Note 1, at 88-89.

[10] Id. at 92-93.

[11] TSN, October 2, 1995, pp. 50-55.

[12] People v. Castillo, 289 SCRA 213, 226-227 (1998).

[13] People v. Meneses, 288 SCRA 95, 97 (1998) citing People v. Teehankee, Jr., 319 Phil. 128, 179 (1995).

[14] 249 SCRA 54, 94-95 (1995) citing Lafave and Israel, Criminal Procedure, Hornbook Series, 1992 ed. P. 353.

- [15] Id.
- [16] TSN, October 9, 1995, pp. 17-20.
- [17] Id. at 11-12.
- [18] TSN, October 23, 1995, p. 5.
- [19] Id. at 12.
- [20] Id. at 2.
- [21] TSN, October 2, 1995, p. 25. 29
- [22] Tuason v. Court of Appeals and People, 311 Phil. 813, 829 (1995).
- [23] Supra Note 1, at 114.
- [24] TSN, January 29, 1996, p. 29.
- [25] TSN, October 16, 1995, pp. 28-29.
- [26] TSN, October 23, 1995, pp. 16-20.
- [27] Id. at 22-23.
- [28] TSN, October 30, 1995, P.M. Session, pp. 23-24.
- [29] Id. at 24, 29.
- [30] Id. at 37.
- [31] Id. at 49.
- [32] Id. at 50-51.
- [33] People v. Venerable, 290 SCRA 15, 24 (1998) citing People v. Baquiran, 20 SCRA 451, 454 (1967).
- [34] TSN, October 2, 1995, p. 56.
- [35] TSN. October 30, 1995, P.M. Session, pp. 9-10.
- [36] People v. Jubilag, 263 SCRA 604, 613-614 (1996)
- [37] People v. Ganan, Jr., 265 SCRA 260, 287 (1996).
- [38] TSN, October 13, 1995, p. 4.
- [39] People v. De la Cruz, 279 SCRA 245, 257 (1997).

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