MANUEL BARTOCILLO, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 125193. October 23, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks to reverse and set aside the decision[1] dated January 18, 1996, of the Court of Appeals, in CA G.R. CR No. 15842, affirming with modification the decision of the Regional Trial Court of General Santos City, Branch 22, finding herein petitioner guilty beyond reasonable doubt of the crime of frustrated homicide.

The case against petitioner stemmed from an Information filed against him and his father which reads:

x x x

> That on or about the 28[th] day of December, 1982 in the evening thereof, more or less at Sitio Atlae, Barangay Malandag, Municipality of Malungon, Province of South Cotabato, Philippines, and within the jurisdiction of the Honorable Court, said two accused in company with one HOSPICIO "Boy" CURACHO who stands charged for the same incident before the 4[th] Municipal Circuit Trial Court of Malungon-Alabel at Malungon, South Cotabato, as Criminal Case No. 512, where the case is pending preliminary investigation pending arrest of the said HOSPICIO CURACHO, he being at-large, conspiring and confederating together and mutually helping one another with intent to kill and armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and hack one DIONISIO SANTILLAN with the use of the said weapon, hitting and wounding him on the back portion of his head, with brain injury, thus performing all the acts of execution which should have produced the crime of homicide as a consequence but nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is by the timely and able medical attendance rendered to the said DIONISIO SANTILLAN which prevented his death.
>
> CONTRARY TO LAW.[2]

On arraignment, duly assisted by counsel de parte, both accused pleaded not guilty. Thereafter trial ensued. The prosecution presented the following version of the facts:

In the early evening of December 28, 1982, at around 8:00 o'clock, Vicente Santillan was waylaid by the group of Hospicio "Boy" Curacho, Cesar Bartocillo, Sr., Manuel Bartocillo,[3] Henry Curacho and Salvador Arieta.[4] They threw stones at him, which made him run and hide behind a "doldol"[5] tree. Vicente then saw Cesar fire his gun.[6] He ran but Boy Curacho saw him, hacked him from behind and hit him in his right thigh.[7] Vicente continued to run towards their house but saw no one there.[8] He then heard shouts from the place where he came from so he went back and saw his wounded father being assisted by his sister Susan and her husband, Orlando Justan.[9]

That same night, Susan and Orlando Justan heard a "gun report"[10] followed by a shout for help, which they identified as coming from Vicente Santillan. This prompted the spouses to rush to the place where the gun

explosion and shout emanated from and there they saw Vicente holding a slingshot and Boy Curacho holding a stone.[11] According to Susan, Vicente was apparently being chased by Cesar and Manuel Bartocillo, Boy and Henry Curacho.[12]

According to Orlando, Vicente and Boy were trying to hit each other with stones. Vicente was using his slingshot and Boy was throwing stones.[13] According to Susan, she requested Orlando to bring Vicente to their parents' house while she tried to restrain her father, Dionisio Santillan. Dionisio wanted to confront Cesar Bartocillo. However, according to Orlando, Susan was the one who took Vicente to their parents' house while he went with his father-in-law Dionisio,[14] who was intent in confronting Cesar.

Upon meeting with Cesar's group, Dionisio was immediately ganged up by Cesar, Manuel, Henry and Boy.[15] Eventually, Dionisio wrestled Boy to the ground and overcame him. Dionisio started to pound Boy's head with a stone.[16] Manuel then hacked Dionisio on the head with a bolo.[17] Cesar tried to hit Dionisio with the butt of his gun but missed. Orlando then grappled with Cesar for the gun and took it from him.[18] Susan did not see her husband during the hacking incident. When she saw her father already wounded, she ran to embrace him and called out to her other brothers and sisters to bring him to the hospital.[19]

The defense had presented a slightly different version of the incident. Petitioner Manuel Bartocillo, his father Cesar Bartocillo and Henry Curacho were in the house of Cesar when they heard the wall of their store being stoned.[20] Cesar went out and saw Vicente Santillan running away with a slingshot. He shouted at Vicente that they settle the matter between them the following morning since it was already nighttime.[21] As Cesar was about to head back home, he saw Vicente already at Cesar's back carrying a long firearm.[22] They started to grapple for the gun. During their struggle, Letecia Peruelo suddenly appeared and hacked Cesar on his right arm.[23] A certain Dodong also arrived at the scene and stabbed Cesar hitting him at the upper portion of his left arm.[24] Cesar grabbed the gun. Meanwhile, Manuel approached him and took him home.[25] Upon arriving home, they heard someone shout: "Nong Carding, help Badong because they mauled him."[26] After an hour, they were informed by Patrolman Lando Octavio, who was with patrolmen Ricardo Moderacion and Quirino Gagula, who came looking for Boy Curacho that there had been a stabbing incident[27] and they were supposed to apprehend Boy regarding the incident.[28] Cesar surrendered the gun to them.[29]

The trial court, in its decision, exonerated Cesar Bartocillo of any criminal liability while petitioner Manuel Bartocillo was found guilty as charged. Aggrieved, petitioner appealed before respondent Court of Appeals which affirmed with modification the decision of the trial court. Hence, this petition.

Petitioner assigns the following errors:

> I
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> BY SIMPLY AND CONVENIENTLY ADOPTING IN TOTO THE FINDINGS OF FACTS OF THE TRIAL COURT, THE HONORABLE COURT OF APPEALS TOTALLY DISREGARDED AND IGNORED THE VERY CLEAR EVIDENCE THAT PETITIONER MANUEL BARTOCILLO WAS NOT AT ALL A PARTICIPANT IN THE HACKING INCIDENT.
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> II
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN TOTALLY IGNORING THE SERIOUS, MATERIAL, UNEXPLAINED AND IRRECONCILABLE INCONSISTENCIES, IMPROBABILITIES, AND CONTRADICTIONS REEKING FROM THE TESTIMONIES OF THE PROSECUTION WITNESSES. VERILY, THESE SERIOUS AND MATERIAL FLAWS AND INFIRMITIES ALTOGETHER PROVE CONVINCINGLY, THE INNOCENCE OF THE PETITIONER, OR AT THE VERY LEAST, CAST DOUBT ON HIS ALLEGED CULPABILITY.

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III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN APPLYING NON-SEQUITUR CASES.[30]

Petitioner denies that he was a participant in the hacking incident. He contends that the totality of evidence adduced by the prosecution does not prove his guilt at all. He likewise assails the fact that the trial and appellate courts disregarded vital evidence which if properly considered, should absolve him from culpability. These are: (1) the affidavit of Herminito Reveche;[31] (2) the Entry in the Police Blotter on December 28, 1982 at 10:35 P.M.;[32] and (3) the affidavit of Hospicio "Boy" Curacho.[33]

The Office of the Solicitor General (OSG), for the State, alleges that the findings of fact made by the trial court and upheld by the appellate court should be sustained on the ground that it is the trial court which was in the best situation to assess and evaluate the credibility of the witnesses presented before it. The OSG recommends, however, that the penalty be modified.[34]

Basically, the issue raised in this petition is whether the guilt of the petitioner has been established beyond reasonable doubt. At the same time, we must also determine whether this Court should review the findings of the trial and appellate courts on the credibility of the witnesses and their testimonies in this case.

Well-entrenched is the doctrine that findings of fact by the trial court are accorded great weight, sometimes even with finality, more so when they are adopted and affirmed by the appellate court, unless the trial court has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case.[35] The reason for this rule is that the trial court judge is the best person to discern and evaluate the credibility of witnesses whose demeanor and manner of testifying he has closely observed.[36]

However, in this case, the records show that the judge who heard the testimony of Susan and Orlando, as well as the other prosecution witnesses, except Vicente, was different from the judge who heard the defense witnesses and who penned the decision. Thus, in one case we held:

> Ordinarily, this Court will not interfere with the trial court's findings and conclusions on the credibility of the witnesses, in deference to the rule that the trial court having had the opportunity to observe the demeanor and conduct of the witnesses while testifying, is in a better position to properly gauge their credibility. This rule of appreciation of evidence, however, does not apply where - as in the present case - one judge heard the testimony of the witnesses and another judge penned the decision, for, in such case, the reason for the rule does not exist. Besides, the said rule of appreciation of evidence must yield to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt, because the law presumes that an accused is innocent and this presumption must prevail unless overturned by competent and credible proof. [37]

A meticulous scrutiny of the records would show that both the trial and appellate courts failed to consider the inconsistencies and incompatibilities inherent in the testimonies of the two eyewitnesses. If properly appraised, in our view, they would yield a totally different result from that arrived at by the lower courts.

The trial and appellate courts viewed these inconsistencies and contradictions pointed out by petitioner as referring to irrelevant and immaterial matters of no consequence. A perusal of the records, however, show that these inconsistencies pertain to a pivotal issue: that is, who between Orlando and Susan was really present during the hacking incident? Being the witnesses who pointed at petitioner Manuel Bartocillo as the one who hacked Dionisio Santillan in the head, their whereabouts during the incident must be clearly established.

On one hand, if we are to believe Susan, Orlando could not have possibly seen the hacking incident since he had

accompanied Vicente home.[38] On the other hand, if we are to accept the testimony of Orlando, then Susan could not have possibly witnessed the hacking incident since she was with Vicente at that time.[39] Their testimony simply cannot stand together. This court is left with no option but to disregard both their testimony since we have no means to ascertain who is telling the truth and who is lying. This is consistent with our ruling in People vs. Castillon,[40] where we held that "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".[41]

This brings us to the principal issue regarding the sufficiency of the prosecution's evidence. Since the testimonies of Susan and Orlando are irreconcilable and unreliable, the prosecution's case is weak. Lacking credible support, it is like a shack that cannot withstand the monsoon wind. For no eyewitness remains who could convincingly point to petitioner as the one who attacked Dionisio Santillan. The victim himself was unable to identify his assailant since his testimony was aborted due to illness.[42] All the other prosecution witnesses arrived at the scene after the hacking and therefore none of them could positively and categorically identify petitioner as the perpetrator. The alleged weapon was not recovered, nor was it traced to petitioner. Because of these considerations, we are constrained to hold that the prosecution failed to establish the guilt of petitioner beyond reasonable doubt.

True, the defense of appellant is simple denial which had been considered, along with alibi, to be inherently weak and viewed with disfavor by the courts.[43] However, this does not mean that when an accused avails of this defense, the court should automatically adjudge him guilty. We are not unmindful of the reality that in most cases, denial is the only plausible defense available to an innocent person.[44] But, when the credibility of the prosecution witnesses is wanting and the veracity of their narratives questionable, the defense of denial assumes significance,[45] as in this case.

WHEREFORE, the petition is GRANTED. Both the assailed decision of the Court of Appeals and that of the Regional Trial Court are REVERSED and SET ASIDE. Appellant Manuel Bartocillo is ACQUITTED on the ground of reasonable doubt. His immediate release from detention is hereby ordered, unless there are other existing legal causes for his continued confinement.

Costs de oficio.

SO ORDERED.

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

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[1] Rollo, pp. 43-51.

[2] Records, pp. 2-3.

[3] Also known as Emmanuel Bartocillo, TSN, January 28, 1991, p. 243

[4] Also referred to as "Badong" and "Salvador Arita", Rollo, p. 24.

[5] Also referred to as "kapok"; TSN, March 19, 1986, p. 147.

[6] TSN, March 19, 1986, p. 132.

[7] Id. at 133, 135.

[8] Id. at 136

[9] Id. at 137.

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[10] TSN, March 26, 1985, p. 6.

[11] TSN, February 10, 1986, p. 87.

[12] TSN, August 26, 1985, p. 65.

[13] TSN, February 10, 1986, pp. 87-88, 91.

[14] TSN, August 26, 1985, pp. 51-52.

[15] TSN, August 26, 1985, p. 56.

[16] Id. at 58.

[17] Ibid.

[18] TSN, February 10, 1986, pp. 99-100.

[19] TSN, March 26, 1985, pp. 17-18.

[20] TSN, October 24, 1989, pp. 203-204.

[21] Id. at 205.

[22] Id. at 206.

[23] Id. at 208.

[24] Id. at 209.

[25] Id. at 210.

[26] Id. at 211.

[27] Id. at 212-213.

[28] TSN, January 28, 1991, p. 248.

[29] TSN, October 24, 1989, p. 213.

[30] Rollo, p. 21.

[31] Id. at 22-23.

[32] Id. at 23-24.

[33] Id. at 25-26.

[34] Id. at 216-222.

[35] People vs. Batidor, 303 SCRA 335, 345 (1999).

[36] See People vs. Tuvilla, 259 SCRA 1, 7, citing People vs. Davatos, G. R. No. 93322, 229 SCRA 647, 652 (1994).

[37] People vs. Escalante, 238 SCRA 554, 563 (1994).

[38] TSN, August 26, 1985, p. 52.

[39] TSN, February 10, 1986, pp. 88-89.

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[40] GR No. 122113, November 27, 2000, p. 9,

[41] Citing People vs. Jubilag, G. R. No. 112148, 263 SCRA 604, 613-614 (1996).

[42] TSN, March 19, 1986, p. 127.

[43] People vs. Dacoba, 289 SCRA 265, 273 (1998) citing People vs. Danao, G. R. No. 116058, 253 SCRA 146, 153 (1996).

[44] People vs. Masalihit, 300 SCRA 147, 159 (1998).

[45] People vs. Perucho, 305 SCRA 770, 784-785 (1999).

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