

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2 ELEAZAR M. MADALI, SPO2 EUSTAQUIO V. ROGERO, AND SPO1 RANDY M. RUBIO, ACCUSED-APPELLANTS.*G.R. No. 126050. January 16, 2001*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-126050/>**MENDOZA, J.:**

This is an appeal from the decision[1] of the Regional Trial Court, Branch 81, Romblon, Romblon finding accused-appellants Eleazar M. Madali, Eustaquio V. Rogero, and Randy M. Rubio, all members of the Philippine National Police, guilty of the murder of Reynaldo M. Abrenica and sentencing each of them to reclusion perpetua. Accused-appellants were also ordered jointly and severally to pay the heirs of the deceased P50,000.00 as death indemnity, P124,800.00 for loss of earning capacity, P150,000.00 as moral damages, P150,000.00 as exemplary damages, P70,000.00 as attorney's fees, P50,000.00 as expenses of litigation, and P60,000.00 as actual damages, and to pay the costs, without subsidiary imprisonment in case of insolvency. In accordance with Art. 29 of the Revised Penal Code, accused-appellants' preventive imprisonment was ordered credited in their favor.

The following facts are undisputed:

On February 4, 1992, at around 11 p.m., Reynaldo Abrenica and his wife Helen came home at the house of Harry Mindo in Romblon, Romblon where Reynaldo had some drinks. Helen went to bed ahead of her husband in their bedroom on the second floor of their house. When Helen woke up at around 1 a.m., she found that her husband was not beside her. She looked for him in the bathroom but could not find him there either. She turned on the light and went to the stairs and there, on the landing of the stairs, she found her husband lying with his head towards the wall, his left hand placed on his back and his right arm pinned under his body.[2] He was wearing a white sleeveless undershirt (sando) with a towel over his bare buttocks. There were feces hanging from his anus. Helen did not find any trace of blood on the body of her husband nor in the place where it lay.[3] When she touched her husband she found he was dead. Helen became hysterical and went outside the house for help, crying that her husband had accidentally fallen from the stairs.[4]

After it was dressed, Reynaldo's body was loaded in a jeep by neighbors Joey Salgado, Romeo Ibal, Eduardo Galang, and Landoy Galang so that it could be taken to the hospital. Segundo Orola, also a neighbor of the Abrenicas, was going to drive the jeep but found that its headlights were not functioning. So his wife Orlene Orola and Leonilo Mangua went to the municipal building to look for another vehicle. They found a tricycle they could use to guide the jeep. Accused-appellant Eleazar M. Madali, who was on duty at that time, drove the tricycle. With the tricycle ahead, the way was lighted for the jeep bearing Reynaldo. However, Reynaldo was declared dead on arrival in the hospital. An autopsy conducted on Reynaldo's cadaver by Dr. Vladimir Villaseñor of the Philippine National Police Crime Laboratory showed the following:

FINDINGS:

Body belongs to a fairly nourished, fairly developed previously embalmed male cadaver.

TRUNK AND EXTREMITIES:

1)

Swelling, fronto-parietal region, measuring 9 x 7 cm., along the anterior midline, superimposed lacerated wound, measuring 1.3 x 0.5 cm.

2)

Scalp hematoma, frontal region, measuring 8 x 6 cm., along the midsagittal line.

3)

Scalp hematoma, parietal region, measuring 5 x 4.5 cm. along the midsagittal line.

4)

Area of multiple abrasions, left clavicular region, measuring 7 x 5 cm., 17 cm. from the anterior midline.

5)

Abrasion, proximal 3[rd] of the left arm, measuring 1.5 x 0.5 cm., 3.5 cm., lateral to its posterior midline.

6)

Abrasion, proximal 3[rd] of the right arm, measuring 6 x 1 cm., 5 cm. lateral to its anterior midline.

7)

Contusion, middle 3[rd] of the left thigh, measuring 6 x 3 cm., 2 cm. lateral to its posterior midline.

8)

Contusion, middle 3[rd] of the left thigh, measuring 6 x 6 cm., 2 cm. lateral to its anterior midline.

9)

Contusion, proximal 3[rd] of the left leg, measuring 6 x 4 cm., along its anterior midline.

10)

Contusion, middle 3[rd] of the right thigh, measuring 3 x 2.5 cm, 6 cm. medial to its anterior midline.

11)

Abrasion, middle 3[rd] of the right leg, measuring 2 x 0.8 cm., 1 cm. medial to its anterior midline.

12)

Contusion, distal 3[rd] of the left leg, measuring 2 x 1.5 cm, 2 cm. medial to its anterior midline.

13)

Contusion, distal 3[rd] of the left leg, measuring 5 x 3 cm., 4 cm. medial to its anterior midline.

14)

Contusion, distal 3[rd] of the left leg, measuring 2 x 1.5 cm., 2 cm. medial to its posterior midline.

15)

Contusion, distal 3[rd] of the left leg, measuring 5 x 3 cm., 4 cm. medial to its posterior midline.

16)

Sore, right clavicular region, measuring 7 x 1 cm., 11 cm. from the anterior midline.

17)

Swelling, middle 3[rd] of the left arm, measuring 13 x 4 cm., 6 cm. medial to its anterior midline.

PLEURAL, PERICARDIAL AND PERITONEAL CAVITIES:

The pleural, pericardial and peritoneal cavities are free from adhesions and fluid accumulations.

BRAIN:

The brain is pale white in appearance with shallow sulci and gyri. There are subdural hemorrhage noted at the anterior lobes of both cerebral hemispheres. Circle of Willis shows minimal amount of atheromatous deposits but otherwise patent. Cut section reveals widening of the white matter and congestion.

Microsection shows varying degrees of neuronal degeneration and focal dilated blood vessels, lumen of which are filled by blood fluid.

Assessment: Cerebral edema and congestion.

LUNGS:

Both lungs are dark gray in color with areas of anthracosis. More pronounced at the right upper lobe. There is crepitanity on pressure. The primary and secondary bronchi contain minimal amount of dark reddish fluid. Serial section shows areas of focal congestion.

Microsection shows severe congestion at the alveolar capillaries and the pulmonary alveoli are filled with eosinophilic fluid. Focal emphysema noted. Bronchial smooth muscle wall is slightly thickened and mildly infiltrated with round cell infiltrates.

Assessment: Pulmonary edema and congestion, moderate to severe Chronic Bronchitis.

HEART:

The heart is pale reddish brown in color, enveloped in moderate amount of epicardial fats, with multiple petechial hemorrhages noted in the surface. Cut section reveals clotted blood embedded on both chambers. The left ventricular wall measures 1.3 cm. thick while the right ventricular wall measures 0.5 cm. thick. Valvular leaflets are soft and pliable. Coronary artery shows minimal amount of atheromatous deposits.

Microsection shows separation of the myocardial muscle fiber by edema and is mildly infiltrated by round cells. Coronary arteries patent with slight thickening of its vascular wall.

Assessment:

Dilatation, ventricle

Atherosclerosis - 30 - 40%

LIVER:

The liver is yellowish brown in color, doughy to firm in consistency. A nut-meg liver pattern on section with focal areas of congestion.

Microsection shows focal areas of vacuolation of the hepatic cells. The sinusoidal spaces are filled with red blood cells, mildly infiltrated with mononuclear cell infiltrates.

Assessment:

Fatty changes, liver, moderate

Congestion, liver

KIDNEYS:

Both kidneys are reddish brown in color. Capsules are stripped-off with difficulty, leaving a fine granular cortical surface. Cut section reveals a well-defined cortico-medullary junction.

Microsection shows moderate to extensive acute tubular necrosis with tubular degenerations and focal thickening of its vascular wall.

Assessment:

Acute tubular necrosis

Tubular degeneration

SPLEEN:

The spleen is dark gray in color, firm and slightly wrinkled. Cut section reveals congestion.

Microsection shows congestion and hemorrhage on both the red and white pulp. Scanty germinal follicles are noted.

Assessment: Congestion and hemorrhage, spleen

PANCREAS:

The pancreas is pale yellowish brown in color, doughy in consistency, lobulated with petechial hemorrhages noted at the head and tail of the pancreas.

Microsection shows focal hemorrhages within the parenchyma and areas of dilated, slightly thickened ducta filled with impessated secretions. Other areas show focus of pseudocyst formation.

Assessment: Acute hemorrhagic Pancreatitis

There are subdural hemorrhages noted on both cerebral hemispheres.

Stomach is ¼ full of partially digested food particles consisting mostly of rice.

CONCLUSION:

Cause of death is Intracranial hemorrhage as a result of traumatic head injury.[5]

On December 1, 1995, three years after the death of Reynaldo Abrenica, this case was filed, after an alleged eyewitness, Mercy Villamor, surfaced and implicated accused-appellants in the death of Reynaldo. The information against accused-appellants alleged ¾

That in or about the early morning of February 5, 1992, in Romblon, Romblon, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, with intent to kill, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously inflict mortal wounds upon the person of one Reynaldo M. Abrenica thereby causing the latter's death.[6]

Accused-appellants pleaded not guilty to the charge, whereupon they were tried.

Mercy Villamor was a former bar girl at the Boulevard Music Lounge in Bagacay, Romblon, Romblon. She

worked there from June 2, 1990 to April 1992 and met accused-appellants who became her customers. She testified that accused-appellant Madali courted her in September 1990 and became her boyfriend in November of that year. She claimed that she had a son by Madali. The boy, named Mark Anthony, was born on November 10, 1992. Mercy claimed that Reynaldo M. Abrenica was also her customer at the night club. Reynaldo allegedly courted her in October 1991 and became her boyfriend on December 22, 1991, although she was still having an affair with Madali at that time.

According to Mercy, one evening in December 1991, the two men in her life met. Mercy was at Reynaldo's table at the Boulevard Music Lounge when Madali entered through the back door. Mercy asked Madali why he was there when his wife was supposed to be in town. Madali told her that he wanted to sleep at the music lounge and proceeded to the second floor. Mercy then rejoined Reynaldo. When Reynaldo asked whether Madali was her boyfriend, Mercy said Madali was the brother of the boyfriend of the owner of the night club, Hilda Yap. According to Mercy, before Reynaldo left, they agreed to go swimming on February 4, 1992. Mercy said she then went upstairs and lay beside Madali. When Madali asked whether Reynaldo was her boyfriend, Mercy answered in the affirmative. Mercy told him that she was going swimming with Reynaldo on February 4, 1992. Madali tried to dissuade her but she was adamant.

Mercy testified that while she was walking around town on February 4, 1992, at around 9 p.m., she met Reynaldo who was on a motorcycle. She said Reynaldo apologized to her for not going swimming with her on that day because his wife had arrived from Manila. He gave her an envelope and told her to meet him that same night at 11:30 p.m. in his jeep then parked outside his house. After Reynaldo left, Mercy opened the envelope and found a P500.00 bill inside with a note saying, "I love you, Mercy."

Mercy claimed that she and a friend, Mayet Espinosa (a.k.a. Leonora Orboc), who was then pregnant, went to meet Reynaldo at 11 p.m. on that date. On their way, they met Madali, who was in uniform and riding his motor tricycle. He asked where they were going. Mercy said they were going home, but Madali did not believe her.

Mercy said she and Mayet then proceeded to Reynaldo's house. Reynaldo was inside his jeep. The two women then joined him inside the jeep. Mercy said that while she and Reynaldo were talking, Mayet saw, on the jeep's side mirror, someone walking towards them. It was accused-appellant Madali, and the two hurriedly got off the jeep and hid behind a pile of boxes nearby. According to Mercy, Madali approached Reynaldo and asked, "Pare, kausap mo yata si Mercy." ("Pal, you seem to have been talking with Mercy"), to which Reynaldo replied, "Eh, ano ngayon?" ("So, what?"). Madali then pulled his gun and hit Reynaldo on the head with it. Madali hit Reynaldo on the head three times with his gun, as a result of which Reynaldo fell on the ground. Mercy said accused-appellants Rogero and Rubio, who were also in uniform, came and helped Madali carry Reynaldo's body inside the latter's house. Thereafter, accused-appellants closed the door. According to Mercy, after witnessing the incident, she and Mayet returned to the Boulevard Music Lounge.

At around 1 a.m., Madali arrived at the Boulevard Music Lounge. Mercy noticed that his uniform was stained with blood. When she asked him why there was blood on his uniform, he said he had run over a dog. Mercy retorted, "Nakasagasa ka ng aso o pumatay ka ng tao?" ("You ran over a dog or you killed someone?") In fact, according to Mercy, when she washed Madali's clothes, she noticed that his shoes were also stained with blood.

She said she did not report what she had seen because she was afraid for her life as Madali had threatened her. She said that she only implicated accused-appellants in her sworn statement on December 14, 1994[7] before the Commission on Human Rights, after she had been informed about the Witness Protection Program of the Department of Justice. Mercy was entered in the program only on April 15, 1995.[8]

Accused-appellants denied liability for the death of Reynaldo Abrenica. Accused-appellant Madali testified that,

at about 11 p.m. of February 4, 1992, he was in his house asleep. He set his alarm clock to 11:40 p.m. because he was on duty at the police station from 12 midnight to 8 a.m. of the next day. He said he arrived at the station at around 11:50 p.m. and stayed for awhile with accused-appellant Rogero in the latter's jeep. Rogero had the same schedule as Madali. According to Madali, when Orlene Orola and Leonilo Mangua came for assistance in bringing Reynaldo Abrenica to the hospital, he took the police motor tricycle and went with the two to the Abrenica residence. Then, with him leading the way because the jeep's headlights would not function, they took Reynaldo Abrenica to the hospital.

Madali said he had the chance to talk to Reynaldo's wife Helen in the hospital, and she said that she heard the sound of something falling and thought that it was their plastic container which fell.

Madali denied having an affair with Mercy Villamor. He stated that he only came to know her sometime in December 1991 when he and the other accused-appellants, Rogero and Rubio, and other policemen were introduced to her by Hilda Yap at the Boulevard Music Lounge. Madali denied having a child by Mercy. In fact, he said, when his wife heard about the rumor that Mercy bore him a child, his wife summoned Mercy to their house, but Mercy said she did not spread any rumor about her having a child by Madali.

Madali likewise denied he bore the Abrenicas ill will. He said that he and his wife in fact attended the nine-day prayers (*pasiyam*) for the soul of Reynaldo and, at the end of the ninth day, they were invited by Helen to dinner together with others who had condoled with her.

Accused-appellant Rogero testified that on February 4, 1992, his tour of duty as foot patrol and vigilante was from 12 midnight to 8 a.m. He arrived at the police station at about 11:40 p.m. in his jeep. He saw accused-appellant Rubio, whose duty as station guard and desk officer was from 8 p.m. to 12 midnight, standing outside the station. Rogero said he stayed in his jeep for sometime until it was time to begin his duty. He was joined by Madali who had the same schedule of duty. When Orlene Orola and Leonilo Mangua arrived, Madali attended to them. He was later asked by Madali to follow him to the Abrenica residence. Madali left with Orlene Orola and Leonilo Mangua aboard the police tricycle. According to Rogero, he woke accused-appellant Randy Rubio up and the two of them proceeded to the Abrenica residence. Rogero said he and Rubio were told by Susan Ybañez that Reynaldo fell from the stairs and was taken to the hospital. Rogero said he and Rubio then proceeded to the hospital where they were told by Madali that Reynaldo fell from the stairs. They stayed at the hospital's lobby for about two hours and then returned to their station. Madali later followed them to the police station. According to Rogero, he took Rubio to their headquarters and then went to the front of the post office, where he stayed until 6 a.m. before going home.[9]

Leonora Orboc, also known as Mayet Espinosa, testified for the defense. She denied being with Mercy Villamor when the latter met Reynaldo M. Abrenica near the latter's house on February 4, 1992. She stated that she worked from 10 p.m. of February 4, 1992 at the cash register at the Boulevard Music Lounge. She was then nine months pregnant. She said that she knew that Mercy was at the Boulevard Music Lounge that night because she tried to rouse her from her sleep as many customers were looking for her, but Mercy refused to get up. Mayet likewise denied that she witnessed the murder described by Mercy in court.[10]

On May 25, 1996, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused (1) SR. POLICE OFFICER II ELEAZAR M. MADALI, (2) SR. POLICE OFFICER II EUSTAQUIO V. ROGERO and (3) SR. POLICE OFFICER I RANDY M. RUBIO GUILTY beyond reasonable doubt of the crime of Murder under the Information, dated December 1, 1995, and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law.

These three (3) accused, jointly and severally, are ORDERED to pay the heirs of the deceased Reynaldo M.

Abrenica the following sums, namely, (1) P50,000.00 as death indemnity; (2) P124,800.00 for loss of earning capacity of the deceased; (3) P150,000.00 as moral damages; (4) P150,000.00 as exemplary damages; (5) P70,000.00 for attorney's fees and appearance fees; (6) P50,000.00 for expenses of litigation; and (7) P60,000.00 as actual damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The period of preventive imprisonment the accused had undergone shall be credited in their favor to its full extent pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.[11]

Hence, this appeal. Accused-appellants assign the following errors as having been allegedly committed by the trial court:

- THE COURT A QUO ERRED IN FAILING TO RESOLVE DOUBTS AND DISCREPANCIES IN ITS FINDINGS OF FACT IN FAVOR OF THE ACCUSED.
- THE COURT ERRED IN FINDING CREDIBLE THE TESTIMONIES OF TWO PIVOTAL WITNESSES, MERCY VILLAMOR AND DR. VLADIMIR VILLASENOR.[12]

On June 2, 1997, Atty. Reynaldo Z. Calabio filed a Notice of Appearance[13] has counsel for complainant Helen M. Abrenica, widow of the deceased Reynaldo M. Abrenica. His request to be allowed to appear on behalf of the complainant was denied for lack of merit.[14]

On July 16, 1997, complainant filed a Motion for Time to File Brief, separate from that which the Office of the Solicitor General would file, by way of answer to the brief of accused-appellants.[15] This was likewise denied for lack of merit.[16]

On November 20, 1997, the Office of the Solicitor General filed a Manifestation and Motion In Lieu of Appellee's Brief recommending the acquittal of accused-appellants.[17] In view of the position taken by the Office of the Solicitor General, complainant filed on December 8, 1997 a Manifestation and Motion to be Allowed to File Brief.[18] On February 13, 1998, she filed a Memorandum for the Private Complainant,[19] which was noted in the Court's resolution of March 25, 1998.

When required to comment on complainant's motion for leave to file a separate brief, the Solicitor General stated that since complainant had already filed a memorandum, there was no further need for a brief sustaining the decision on appeal. On the other hand, complainant stated that her memorandum had already been noted by the Court and, in the interest of a balanced presentation of facts and the issues, the same should be considered in the resolution of this appeal.

Rule 122, §1 of the Revised Rules on Criminal Procedure provides that "(a)ny party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy." It has been held that the word "party" in the provision in question includes not only the government and the accused but other persons as well, such as the complainant who may be affected by the judgment rendered in the criminal proceedings. The complainant has an interest in the civil liability arising from the crime, unless of course he has reserved to bring a separate civil action to recover the civil liability.[20] Hence, in the prosecution of the offense, the complainant's role is that of a witness for the prosecution.[21] Ordinarily, the appeal of criminal cases involves as parties only the accused, as appellants, and the State, represented by the Office of the Solicitor General, as the appellee. The participation of the private offended party would be a mere surplusage, if the State were simply to seek the affirmation of a judgment of conviction. However, where the Office of the Solicitor General takes a contrary position and recommends, as in this case, the acquittal of the accused, the complainant's right to be heard on the question of award of indemnity and damages arises. In the interest of justice and equity and to provide perspective for this

appeal, therefore, the Court hereby allows in this case the memorandum filed by complainant which is hereby admitted as part of the records of this appeal.

Nevertheless, after considering the records of this case, we agree with the Solicitor General that the evidence is insufficient to sustain accused-appellants' conviction and, therefore, the decision of the trial court should be reversed and accused-appellants should be acquitted.

First. The trial court erred in giving credence to the testimony of the supposed eyewitness, Mercy Villamor, despite its many improbabilities and inconsistencies which renders it doubtful.

(1) Mercy testified that, on February 4, 1992, Reynaldo Abrenica asked that, as they could not go out because his wife had arrived from Manila, they meet instead at 11:30 p.m. in his jeep which was parked in front of the Abrenica residence. This is incredible. If Reynaldo allegedly called off their date because his wife was in town, why would he instead appoint a place for their tryst right in front of his house where it was more likely they would be seen by his wife?

(2) Mercy testified that she saw accused-appellants, who were in their uniforms, bringing Reynaldo inside his house, Madali holding him by the nape, Rogero by the right arm, and Rubio holding the two legs. It is inconceivable, however, that accused-appellants would do this because they were in their uniforms and they could easily be noticed. The sight of uniformed policemen carrying a body would attract attention.

(3) Mercy claimed that at around 1 a.m. of February 5, 1992, accused-appellant Madali arrived at the Boulevard Music Lounge and she noticed that he had blood on his uniform and his boots. But Helen Abrenica, another prosecution witness, testified that there was no blood on her husband's body or on the floor or on the wall when she found him on the landing of their staircase. Indeed, Reynaldo Abrenica never suffered any stab or incised wound, and the theory of the prosecution was simply that he was clubbed to death.

(4) Mercy said that Reynaldo's jeep was parked along Republica Street in front of his house. The jeep was facing the pier. In the opposite direction are the market and the post office. According to Mercy, while they were seated inside the jeep, her companion, Mayet Espinosa, saw accused-appellant Madali on the side mirror of the vehicle. Accused-appellant was allegedly coming from the direction of the market and the post office.

This is contrary to the testimonies of the other prosecution witnesses, Helen Abrenica and the spouses Segundo and Orlene Orola, who said that the jeepney was facing the direction of the market and the post office. In fact Helen Abrenica said that when they arrived home on February 4, 1992, they passed through the pier so that when Reynaldo M. Abrenica parked the vehicle it was facing in the direction of the market and the post office. This was also the position of the vehicle when Segundo and Orlene Orola arrived at the Abrenica in response to the cry for help of Helen. It was, therefore, not possible for Mayet Espinosa to have seen accused-appellant on the side mirror of the vehicle.

At any rate, Mayet Espinosa denied that she and Mercy went to meet Reynaldo M. Abrenica in front of his house on the night of February 4, 1992. Mayet testified for the defense. She said that at the time and on the date in question, she was at the Boulevard Music Lounge while Mercy was upstairs sleeping, refusing to get up despite the fact that customers of the night club wanted to have her.

Mayet's testimony is more credible. At the time of the incident she was heavy with a child. Why should she go with Mercy who had a date with her lover? It is more probable that she worked at the cash register in the Boulevard Music Lounge than that, as Mercy claimed, she went with her to see the latter's lover.

(5) Mercy said that at around 9 p.m. of February 4, 1992, she saw Reynaldo riding on his motorcycle and she was

told that they could not go out that night because Madali's wife was around. This is contrary to Helen Abrenica's testimony that at that time Reynaldo was having drinks in the house of his friend, Harry Mindo, and that they left that place at around 10:30 p.m.[22]

(6) Mercy claimed that Reynaldo was wearing shorts and was half naked when they met inside his jeep. This is not what he had on when he was found. When he was found, Reynaldo was wearing a white sleeveless undershirt and was naked from the waist down with only a towel placed over his buttocks.

(7) Mercy said she saw Reynaldo being carried by accused-appellants into his house. Reynaldo was found lying in a prone position with knees bent toward his chest and his head facing the wall. The space in which his body was found was only 25 inches by 41 inches.[23] It was so small that if three men carried his body and dumped it there, they would have made noise and would have been detected by the occupants of the house. So small indeed was the space constituting the landing of the stairs that Reynaldo's body had to be crumpled so that his knees were bent toward his chest while his left hand had to be placed on his back and his right arm pinned under his body. If accused-appellants killed Reynaldo, they could just have left him on the street or placed him inside his jeepney. The risk of being seen carrying the body inside the house up to the first flight of stairs to the landing where it was found was too great.

In addition to the inconsistencies and improbabilities in her testimony, Mercy's testimony shows hedging and trimming as is clear from the following portion of the transcript of stenographic notes:

Q -

You alighted from the jeep when you saw Madali coming because you were afraid and you wanted to hide from him, is that correct?

A -

We were not afraid, if he would see us because we told him we are going home.

Q -

Why did you hide?

A -

Because Bebot might see us, we told him before that we are going home.

Q -

That is why you hid so that you will not be seen by Madali, is that not right?

A -

Yes, sir.

Q -

You did not want that any portion of your body could be seen by Madali at that time?

A -

I don't want because we told him we are going home.[24]

This is not the only instance where Mercy gave confused and unsure statements. Testifying concerning the distance between the place where she and Mayet were hiding and the place where they saw Madali allegedly

hitting Reynaldo several times on the head, Mercy said:

Q - And you were how many meters away while watching and hiding behind the kamada of kahon?

A - It is near, from here to there.

....

Q - During the direct you answered apat (4) na dipa, 4 arms length, do you remember that?

A - Yes, sir.

Q - As a matter of fact the Court measured the distance you pointed earlier, do you remember that?

A - Yes, sir.

ATTY. ARIAS Continuing:

Q -

And that was the distance you said apat (4) na dipa, four (4) arms length, do you remember having stated that?

A - Yes, sir.

Q -

Madam Witness, you stated that in your affidavit that you are four (4) arms length away from where the pokpoking occurred?

A - I do not know, I cannot remember.

....

ATTY. ARIAS Continuing:

Q -

I am showing to you Exhibit A-2, No. 15, line 18, and I will let you refresh your memory, at paglapit ni Bebot Madali sa kinauupoan ni Rey sa loob ng jeep (harapan ng manibela) ay binati pa ni Bebot si Rey ng "kausap mo yata si Mercy", dinig na dinig namin ito ni Mayet sapagkat ang kinaroroonan namin ay dalawang (2) metro lamang, do you remember having given that answer?

A - Yes, sir.

Q - And you stated in the affidavit two (2) meters, dalawang (2) metro lamang?

A - Yes, sir.

Q - You know that a meter is shorter than one (1) dipa?

A - The same.

Q - So, when you said, two (2) meters that should be dalawang (2) dipa, according to you?

A - Two (2) arms length.

Q - And you know that two (2) arms length is shorter than apat (4) na dipa?

A - Yes, sir.

Q -

And you now discover that what you told earlier that Madali was four (4) arms length is not correct but only dalawang (2) metros or according to you pareho lang dalawang (2) dipa, is that correct?

A - No, sir.[25]

...

ATTY. ARIAS continuing:

Q - All right. You saw Madali struck the victim, how far were you?

ATTY. CALABIO:

From where?

ATTY. ARIAS:

Doon sa pinagpukpukan.

A - This distance, about two (2) arm's length.

ATTY. ARIAS:

I want to make of record that the witness had shown to us the distance by stretching her two (2) arms and pointing a little bit near and later on when she looked at the private prosecutor she changed her answer and said ...[26]

The inconsistencies, improbabilities, and uncertainties in Mercy's testimony are many, and they relate to material points. The suspicion cannot be helped that she was a rehearsed witness.[27] It cannot be too often repeated that for evidence to be believed, it must not only proceed from the mouth of a credible witness but must itself be credible. The evidence must be what the common experience and observation of mankind would approve of as probable under the circumstances.[28] We cannot help noticing that, in order to go through her direct examination, Mercy had to be asked leading questions by the private prosecutor. Contrary to the observation of the trial court, she was not consistent on cross-examination. In fact, she had to be cued by the prosecutor by timely manifestations. There were several instances when she did not make sense when confronted with her conflicting statements. In her dire attempt to explain away the irreconcilable statements in her affidavits and in her testimony in court, she used lame and shallow excuses.

Second. This case was not filed until three years after the death of Reynaldo M. Abrenica, and that was because Mercy Villamor came out with a claim that she saw accused-appellants kill Reynaldo. She claimed that she could not reveal earlier what she knew about the crime because of threats made by accused-appellant Madali. However, Mercy never explained the circumstances under which she was threatened. In fact, she admitted she only entertained the fear that Madali would harm her if she talked about what she allegedly knew. When asked when she was allegedly threatened, she stated that it was at 9 a.m. of February 4, 1992. At that time, however, the incident had not yet occurred.[29]

Third. On the other hand, the testimony of Dr. Villaseñor that the head injuries sustained by Reynaldo were caused by a blunt instrument is contrary to the statement he gave before the Office of the Ombudsman that the cause of Reynaldo's death could not have been a blunt instrument.[30] Although this statement was prepared by the investigator in the Office of the Ombudsman, it was signed by Dr. Villaseñor. Dr. Villaseñor tried to explain the prior inconsistent statement by means of the lame excuse that he failed to include some matters in his statement because he did not then have his files with him.

Fourth. The trial court erred in appreciating the aggravating circumstance of treachery. The essence of treachery is

the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[31] In this case, Reynaldo allegedly said "Eh, ano ngayon?" to Madali when the latter demanded to know whether he (Reynaldo) was talking to Mercy. The remark was certainly provocative and Reynaldo knew that his reply would invite a retaliation. Thus, Reynaldo could not have been surprised by Madali's alleged attack.

In sum, the prosecution failed to prove beyond doubt that the death of Reynaldo M. Abrenica was not accidental but intentional and that accused-appellants were guilty of killing him.

WHEREFORE, the decision of the Regional Trial Court, Branch 81, Municipality of Romblon, Romblon is REVERSED and accused-appellants Eleazar M. Madali, Eustaquio V. Rogero, and Randy M. Rubio are ACQUITTED on the ground of reasonable doubt. Consequently, they are ordered forthwith released from custody unless they are being lawfully held for another cause.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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

[1] Per Judge Placido C. Marquez.

[2] TSN (Helen Abrenica), pp. 16-37, March 20, 1996.

[3] TSN (Helen Abrenica), p. 95, March 21, 1996.

[4] TSN (Helen Abrenica), p. 38, March 20, 1996; TSN (Orlene Orola), pp. 24-27, March 25, 1996; TSN (Susan Ybañez), pp. 79-85, March 25, 1996;

[5] Exh. Q.

[6] Rollo, p. 12.

[7] Exh. A.

[8] TSN (Mercy Villamor), pp 13-83, Mar. 18, 1996.

[9] TSN (Eustaquio Rogero), pp. 23-31, Mar. 29, 1996; TSN (Randy Rubio), pp. 46-50, Mar. 28, 1996.

[10] TSN (Leonora Orboc), pp. 9-18, Mar. 26, 1996.

[11] Rollo, p. 50.

[12] Id., p. 69.

[13] Id., p 121.

[14] Resolution dated July 7, 1997.

[15] Rollo, p.128.

[16] Id., p.132.

[17] Id., pp. 145-178.

[18] Id., pp. 181-182.

[19] Id., pp. 188-214.

[20] Mosquera v. Panganiban, 258 SCRA 473 (1996); People v. Guido, 57 Phil. 52 (1932).

[21] Soriano v. Angeles, G.R. No. 109920, Aug. 31, 2000; People v. Santiago, 174 SCRA 143 (1989).

[22] TSN (Mercy Villamor), p. 42, Mar. 18, 1996; TSN (Helen Abrenica), pp. 14-17, Mar. 20, 1996.

[23] TSN (Helen Abrenica), pp. 55-56, Mar. 21, 1996; Exhs. K and M.

[24] TSN (Mercy Villamor), p. 27, mar. 19, 1996.

[25] TSN (Mercy Villamor), pp. 160-163, Mar, 18, 1996.

[26] TSN (Mercy Villamor), pp. 28-29, Mar. 19, 1996.

[27] People v. Ang-Nguho, 314 SCRA 480 (1999).

[28] People v. Milan, 311 SCRA 461 (1999).

[29] TSN (Mercy Villamor), p. 52, Mar. 19, 1996.

[30] Exh. 10.

[31] People v. Domingo, 312 SCRA 487 (1999).

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