

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARD MAPALO, ACCUSED-APPELLANT.

G.R. No. 172608. February 06, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In its Decision[1] dated 27 October 2004, the Regional Trial Court (RTC), Branch 32 of Agoo, La Union, in Criminal Case No. A-2871, found appellant Bernard Mapalo guilty beyond reasonable doubt of the crime of Murder, and imposed upon him the penalty of reclusion perpetua. On appeal, the Court of Appeals rendered a Decision[2] dated 21 November 2005, modifying the Decision of the RTC, and finding Bernard Mapalo guilty beyond reasonable doubt of the crime of Frustrated Murder.

The Indictments

Appellant, together with Peter Doe, John Doe and Peter Doe, Jr., was charged before the RTC of Agoo, La Union with the crime of Murder, said to have been committed as follows:

That on or about the 13[th] day of February, 1994, in the Municipality of Aringay, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and being then armed with lead pipes and bladed weapons and conspiring, confederating and mutually helping each other, did then and there by means of treachery and with evident premeditation and taking advantage of their superior strength, wil[l]fully, unlawfully and feloniously attack, assault and use personal violence on one Manuel Piamonte y Ugay by clubbing him with the said pipes and stabbing him several times with the said bladed weapons, and thereby inflicting on the aforementioned victim fatal injuries which were the direct and immediate cause of his death, to the damage and prejudice of his heirs.

Contrary to law.[3]

The RTC ordered the issuance of a warrant of arrest for the apprehension of the appellant. No bail was recommended.[4] When the case was called, appellant filed a Motion for Reinvestigation and Bail, which was granted.

On 27 March 1995, 3[rd] Assistant Provincial Prosecutor Manuel S. Oliva filed a Motion to Admit Amended Information and for the Issuance of Warrant of Arrest for the Apprehension of the Other Accused,[5] alleging that a reinvestigation was conducted and a prima facie case was found against the other accused. It was prayed that an amended information be admitted and a warrant of arrest be issued for the apprehension of Alejandro Fajardo, Jr., Jimmy Frigillana, and Rolando Mapalo alias "Lando." Finding the Motion to be well-taken, the RTC issued an Order,[6] dated 27 April 1995, admitting the Amended Information, viz:

The undersigned Assistant Provincial Prosecutor accuses BERNARD MAPALO, ALEJANDRO FAJARDO, JR., JIMMY FRIGILLANA and ROLANDO MAPALO alias Lando of the crime of MURDER, committed as follows:

That on or about the 13[th] day of February, 1994, in the Municipality of Aringay, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill and being then armed with lead pipe and bladed weapons and conspiring, confederating and mutually helping each other, did then and there by means of treachery and with evident premeditation and taking advantage of their superior strength, wil[l]fully, unlawfully and feloniously attack, assault and use personal violence on one Manuel Piamonte y Ugay by clubbing him with the said pipe and stabbing him several times with the said bladed weapons, and thereby inflicting on the aforementioned victim fatal injuries which were the direct and immediate cause of his death, to the damage and prejudice of his heirs.[7]

Consequently, a warrant of arrest was issued for the apprehension of Alejandro Fajardo, Jr., Jimmy Frigillana, and Rolando Mapalo alias "Lando." Only Alejandro Fajardo, Jr. was apprehended; the other two remain at large.

On arraignment, appellant pleaded not guilty.[8] Thereafter, trial on the merits commenced.

After the prosecution had rested its case, Alejandro Fajardo, Jr. filed a Demurrer to Evidence which was granted by the RTC, in its Order[9] dated 5 November 1998, on the ground that the prosecution did not present any evidence against him. Thus, only accused Bernard Mapalo proceeded to present his evidence. He was eventually found guilty.

The Case for the Prosecution

The prosecution presented Calixto Garcia (Garcia) as its lone eyewitness.

Garcia testified that on 12 February 1994, a pre-Valentine dance was held in Sitio Baracbac, Brgy. Sta. Cecilia in Aringay, La Union. He watched the dance, along with the appellant and Jimmy Frigillana.[10] In the early morning of 13 February 1994, at around 3:00 a.m., a fight erupted between Manuel Piamonte (Piamonte) and the group of Lando Mapalo,[11] Jimmy Frigillana, and the appellant.[12]

Garcia further testified that he witnessed the fight from a distance of more or less five (5) meters. He claimed that he could see the incident very clearly because of the light at the dancing hall.[13] He saw the appellant club Piamonte with a lead pipe from behind, hitting him on the right side of the head.[14] The pipe was one and a half (1 and ½) feet in length, and one and a half (1 and ½) inches in diameter.[15] At that time when the appellant struck Piamonte with a lead pipe, he saw Jimmy Frigillana and Lando Mapalo standing in front of Piamonte. Later, he saw the dead body of Piamonte, which had suffered multiple stab wounds.[16] He saw stab wounds on the left and right parts of the abdomen, and below the left breast, as well as small wounds on the front part of his left hip.[17] Garcia disclosed that he neither witnessed how Piamonte was stabbed, nor did he see the act of stabbing Piamonte.[18] He does not know who stabbed the latter.[19] It was only when Piamonte's shirt was removed when he saw stab wounds on the former's dead body.[20]

The Case for the Defense

Appellant testified that in the evening of 13 February 1994,[21] at around 9:00 p.m., he, along with his wife, Caridad Mapalo, entertained several guests at their residence, namely, Crispin Calderon, Noel Cordero, Ruel Mercado, and Rolando Mapalo.[22] They drank wine.[23] Appellant knew that there was a Valentine's Day dance celebration at the dance hall, located northeast of his house at a distance of about 20-30 meters.[24] At 12:30 a.m., after his guests had left the house, he went to sleep.[25] At 3:00 a.m., his wife woke him up and was informed that somebody had been stabbed. He said he came to know that Piamonte was the person who was stabbed.[26] He added that he planned to go out of the house, but his wife prevented him from doing so.[27] He, thereafter, returned to his room, and went back to sleep.[28]

Corroborating the appellant's defense of denial and alibi, his wife, Caridad Mapalo, narrated that on 13 February

1994[29] at 8:00 p.m., she served brandy to her husband and their guests at their residence. The celebration finished at around 12:00 midnight.[30] Thereafter, she and her husband went to sleep, while their guests proceeded to the dance hall. At 3:00 a.m., she awoke because of a commotion from the dance hall.[31] She described that the dance hall is around 60 to 70 meters, southwest of their residence.[32] She went outside of their house, and along with her sister-in-law, Marissa Dapit, proceeded to the edge of the dancing hall.[33] She claimed that her husband did not go out and just stayed at their house.[34] She explained that she and Marissa Dapit went out to see or to know the name of the person who died at the commotion.[35] At the dancing hall, she saw the body of Piamonte, lying face down.[36]

The Ruling of the RTC

After trial, the RTC rendered a Decision, dated 27 October 2004, finding appellant guilty beyond reasonable doubt of the crime of Murder.

It ruled that appellant's defense of alibi cannot prevail over the positive identification of the lone eyewitness. As emphasized by the RTC, per admission of appellant, the distance between his house and the dancing hall is only 20 to 30 meters, more or less. There was no physical impossibility for the appellant to be present at the scene of the crime. Moreover, it found Garcia's testimony to be consistent and uncontradicted. On the other hand, the RTC considered the testimony of Caridad Mapalo as defying the natural course of human reaction and experience. The RTC found it strange that it was only Caridad Mapalo who was awakened by the commotion, while the appellant remained asleep. Learning of the same, Caridad Mapalo exposed herself to danger by proceeding to the dance hall to see what the commotion was all about without even informing her husband. The RTC conjectured that Caridad Mapalo proceeded to the dance hall not to see what the commotion was all about, but because she was informed that her husband was involved in a fight.[37]

Further, the RTC ruled that conspiracy was established by the prosecution. According to the RTC, the appellant was clearly identified by Garcia as the one who struck Piamonte on the head with a lead pipe, which alone is "sufficient manifestation of a concerted, common and united design with the other accused to commit an unlawful and felonious act." The fact that the medical certificate shows the cause of death as stab wounds was deemed by the RTC as immaterial, in view of the presence of conspiracy. The RTC also appreciated the attendance of abuse of superior strength as a qualifying circumstance, on the rationalization that the perpetrators were armed with bladed weapons and a lead pipe that were out of proportion to the unarmed Piamonte.

The decretal portion of the RTC Decision states:

WHEREFORE, the accused BERNARD MAPALO is hereby found Guilty beyond reasonable doubt of the crime of MURDER and is sentenced to suffer the penalty of RECLUSION PERPETUA.

Further, the accused is ordered to pay the heirs of Manuel Piamonte the amount of Twelve Thousand Seven Hundred Pesos (P12,700.00) as actual damages. Fifty Thousand Pesos (P50,000.00) as civil indemnity for the death of Piamonte and Fifty Thousand Pesos (P50,000.00) as moral damages.[38]

The Ruling of the Court of Appeals

Before the appellate court, appellant challenged the credibility of the prosecution's lone eyewitness. Appellant similarly assailed the ruling of the RTC on the ground that it erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[39]

The Court of Appeals found no adequate reason to disturb the findings of the RTC in weighing the testimony of Garcia. It did not find significant the alleged inconsistencies in Garcia's affidavits as executed before the investigating police and the prosecutor.[40] The appellate court did not accept the appellant's defense of alibi. The

positive identification of the prosecution witness which was consistent and categorical, and shown to be without ill-motive, has discredited appellant's defense.

The Court of Appeals, however, found reason to modify the findings of the RTC. It convicted the appellant of frustrated murder only. It was not convinced that the evidence on record established conspiracy among the appellant and his co-accused. The appellate court rationalized that while the evidence shows that Piamonte sustained stab wounds which caused his death,[41] the appellant was never identified as the one who inflicted the stab wounds on the deceased. According to the appellate court, the prosecution's evidence only established that the appellant clubbed Piamonte with a lead pipe. However, the prosecution's witness did not see the stabbing. He was not able to describe the particular acts which caused Piamonte's death. Hence, it cannot be inferred from the account of the witness that the appellant and his co-accused came to an agreement to commit a felony, or that they decided to commit the same, by concerted acts.[42] The Court of Appeals made the following observations:

In the first place, the killing was the result of a fight that erupted suddenly during the Valentine dance, which discourages the conclusion that the killing was planned. Also, the witness did not see any stabbing. He did not see anyone else perform any act of stabbing or hitting, other than the appellant delivering blows with a lead pipe on the victim. There is no proof, therefore, of any concerted action or common design to kill the victim that could be the basis for a finding of conspiracy among several malefactors. Because of this, it could not be said that conspiracy was proven attendant beyond reasonable doubt.[43]

In the absence of a conspiracy, the Court of Appeals said that the appellant could only be held liable for the consequences of his own criminal act. It ruled that when the appellant hit Piamonte in the head with the lead pipe, he performed all the acts that would have brought about the death of the victim.[44] Piamonte's death however was due to some other supervening cause, independent of the appellant's will.[45]

The fallo of the Court of Appeals' Decision reads, viz:

WHEREFORE, premises considered, the lower court's Decision is hereby MODIFIED, in that the accused-appellant Bernard Mapalo is hereby found guilty beyond reasonable doubt of the crime of Frustrated Murder. Accused-appellant is hereby sentenced to 8 years and 1 day of prision mayor, as minimum to 14 years, 8 months and 1 day of reclusion temporal, as maximum.

Further, the accused is ordered to pay the heirs of Manuel Piamonte[,] the amount of Twenty Five Thousand Pesos (P25,000.00) as temperate damages, Thirty Thousand Pesos (P30,000.00) as civil indemnity and Thirty Thousand Pesos (P30,000.00) as moral damages pursuant to prevailing jurisprudence. (People v. Pacana, 345 SCRA 72 [2000]; People v. Givera, 349 SCRA 513 [2001]).[46]

The Issues

Appellant contends that:

I

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO IDENTIFY THE ACCUSED-APPELLANT IN OPEN COURT; and

II

ASSUMING THAT THE ACCUSED-APPELLANT IS GUILTY, THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING HIM OF FRUSTRATED MURDER INSTEAD OF FRUSTRATED HOMICIDE.[47]

The Ruling of the Court

In support of the first assignment of error, appellant raises, for the first time, the defense that the witness for the prosecution failed to positively identify him during the trial proceedings. Citing *People v. Galera*[48] and *People v. Hatton*,[49] appellant submits that the prosecution failed to discharge its first duty, which is the identification of the accused as the author of the crime charged.[50] Witness Garcia did not identify the appellant in open court.

Appellant further posits that Garcia did not deny drinking gin at around 9:00 p.m. on 13 February 1994 until 3:00 a.m. of the following day. Garcia was then intoxicated if he had been drinking hard liquor continuously for six hours. At such point, he can no longer positively determine a person's identity. It is argued that the foregoing circumstances create doubts as to the identity of the appellant as one of the perpetrators of the crime.

We first tackle the issue on the lack of in-court identification.

True that on the matter of identification, the Court in *Hatton* said:

More importantly, the accused-appellant was not positively identified in court. True, his name was referred to by both Basierto and Ongue in their respective direct testimonies. However, he was not identified in Court. The failure of the prosecution witness to positively identify the assailant in court is fatal to the prosecution's cause. Pre-trial identification is not sufficient.[51]

Verily, the records are bereft of proof that there was in-court identification by the witness Garcia of the appellant. Indeed, Garcia did not point to the appellant in the courtroom. Such fact can be gleaned from the pertinent portion of the transcript of stenographic notes of the trial, reproduced hereunder, as follows:

Direct-examination by Prosecutor Rudioof the witness Calixto Garcia

Q Do you know the accused Bernard Mapalo?

A I know, sir.

Q If that accused is inside the courtroom now will you please stand up and point to him if he is inside the courtroom?

A No, he is not around.

COURT:

Q Was he notified for (sic) today's hearing?

INTERPRETER:

Yes, he signed, sir.

COURT: O R D E R:

It appears that the accused Bernard Mapalo was being notified for (sic) today's hearing and his wife came to Court and informed the Honorable Court that her husband could not come to Court because he is sick.[52]

The same testimony, however, conspicuously reveals that there was no identification in open court of the appellant because said appellant was not present at the time, despite notice, as according to his wife, he was sick.

In a later case, this Court clarified that a physical courtroom identification is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial. In *People v. Quezada*,[53] this Court expounded, thus:

We do not see the absolute need for complainant to point to appellant in open court as her attacker. While positive identification by a witness is required by the law to convict an accused, it need not always be by

means of a physical courtroom identification. As the court held in *People v. Paglinawan*:

"x x x. Although it is routine procedure for witnesses to point out the accused in open court by way of identification, the fact that the witness x x x did not do so in this case was because the public prosecutor failed to ask her to point out appellant, hence such omission does not in any way affect or diminish the truth or weight of her testimony."

In-court identification of the offender is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the information and subject of the trial. This is especially true in cases wherein the identity of the accused, who is a stranger to the prosecution witnesses, is dubitable. In the present case, however, there is no doubt at all that the rapist is the same individual mentioned in the Informations and described by the victim during the trial. (Emphasis supplied.)[54]

We do not find herein a case where there is a question or doubt as to whether the one alleged to have committed the crime is the same person charged in the information and subject of the trial. In fact, appellant never denied that he is the person indicted in the Information, and subject of the proceedings. His denial is that he did not participate in the commission of the crime. Hence, in-court identification is not indispensable in the case at bar.

We are convinced that the identity of the appellant was sufficiently established by the evidence on record.

The appellant is not a stranger to the witness Garcia. The identity of the appellant to Garcia does not appear to be controvertible. In fact, appellant himself admits that he and Garcia are friends. Thus:

Cross-examination by Prosecutor Lachicaof [appellant] Bernard Mapalo

Q Mr. Witness you said that you were informed by your counsel a while ago that a certain Calixto Garcia testified against you in this case did I get you right?

A Yes, sir.

Q And this Calixto Garcia is a resident of the same Barangay as you are?

A Yes, sir.

Q In fact this Calixto Garcia is an acquaintance of yours?

A Yes, sir.

Q He is considered a friend?

A Yes, sir I consider him as such.

Q Prior to the incident which happened sometime on February 13, 1994, you have never quarreled with this Calixto Garcia?

A No, sir.

Q Even after that incident that happened on February 13, 1994 you never quarreled with Calixto Garcia?

A No, sir.

Q You know that this Calixto Garcia is not a relative of Piamonte the victim in this case?

A I do not know whether he is a relative of the victim or not.

Q You know for a fact that Calixto Garcia executed a statement before the police pointing to you or pointing to you as the assailant of Paimonte did you come to know that?

A No, sir.

Q You said that you know Calixto Garcia your friend according to you, did you confront him when he testified against you in court?

A No, sir.

Q You did not tell your friend that he was mistaken in identifying you as the assailant of Piamonte, correct?

A No, sir. [55]

The proper identification of the appellant is further bolstered by the fact that appellant's wife, Caridad Mapalo corroborated the testimony that the witness Garcia is a family friend of the spouses. Thus:

Cross examination of Caridad Mapaloby Prosecutor Lachica

Q Do you know a certain Calixto Garcia?

A Yes, sir.

Q He is your Barangay mate?

A Yes, sir.

Q His house is closed to your house, correct?

A Far, sir.

Q But he is staying within your barangay which is Sta. Cecilia?

A Yes, sir.

Q This Calixto Garcia whom you know is a friend of your family, correct?

A Yes, sir.

Q In fact, your family have (sic) never quarreled with Calixto Garcia?

A None, sir.

Q Prior to the filing of this case, you know that Calixto Garcia being a friend will not falsify his testimony regarding your husband?

A Yes, sir.

ATTY. RIMANDO:
Objection, your honor.

COURT:
Objection overruled.

PROSECUTOR LACHICA:

Q Until now, this Calixto Garcia is your friend?

A Yes, sir.

PROSECUTOR LACHICA:
That would be all for the witness.

RE-DIRECT EXAMINATION BY ATTY. RIMANDO:

Q This Calixto Garcia was your guest in that evening in your residence?

A No, sir.

Q Is your family close with (sic) this Calixto Garcia?

A Yes, sir.[56]

Moreover, we do not find herein the presence of factors[57] that could cause the witness Garcia to misidentify the appellant. In *People v. Limpangog*,[58] this Court enumerated several other known causes of misidentification, viz:

x x x Known causes of misidentification have been identified as follows:

"Identification testimony has at least three components. First, witnessing a crime, whether as a victim or 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." [59]

There is no question that the witness Garcia was at a close range of merely five meters more or less from the scene of the incident.[60] Neither can it be said that the illumination was poor. The dancing hall was lighted.[60] No improper motive was attributed to the witness Garcia for testifying against the appellant. Moreover, witness Garcia is familiar not only to appellant. Garcia was also familiar with the deceased, Piamonte. Witness Garcia, in his testimony, referred to Piamonte as his third cousin.[62]

On appellant's submission that it is doubtful if witness Garcia can still have positively identified him as one of the perpetrators of the crime considering that the former admitted to drinking hard liquor from 9:00 p.m. on 13 February 1994 until 3:00 a.m. of the following day, we are not convinced that the same can overthrow the trial court's evaluation of Garcia's testimony. Beyond appellant's bare allegations, no evidence whatsoever was produced to show that Garcia suffered from such a level of intoxication as to impair his facility and disable him to identify appellant. In the case of *People v. Dee*,[63] the credibility of the surviving victim therein as witness was disputed because he was under the influence of liquor at the time of the incident. In *Dee*, the witness was even found positive for alcoholic breath, but the Court ruled that such fact does not necessarily prevent him from making a positive identification of his attackers, especially since his level of intoxication was not shown to impair his faculties. The credibility of the witness therein was not made to suffer on that score alone.[64]

The foregoing material considerations, taken together with the fact that witness Garcia and the appellant are not strangers to each other, satisfy us that the danger of Garcia misidentifying the appellant does not exist. Where the prosecution eyewitness was familiar with both victim and accused, and where the locus criminis afforded good visibility, and where no improper motive can be attributed to the witness for testifying against the accused, his version of the story deserves much weight.[65]

Hence, we do not find any reason to depart from the general rule that the conclusions of the trial court on the credibility of witnesses deserve great respect, viz:

The assessment of the credibility of witness and their testimony is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand; and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or

misinterpreted.[66]

Appellant's defense of alibi and denial cannot stand in the face of the positive identification of the accused. We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime.[67] It is facile to fabricate and difficult to disprove, and is generally rejected.[68]

For the defense of alibi to prosper, it must be shown with clear and convincing evidence that at the time of the commission of the crime charged, the accused is in a place other than the situs of the crime such that it was physically impossible for him to have been at the situs criminis when the crime was committed.[69]

In the case at bar, appellant was not successful in invoking the defense of alibi. Appellant insists that he was sleeping at his residence at the time when the incident occurred. The RTC and the Court of Appeals consistently found that the distance between appellant's residence and the dance hall, or the situs criminis, is 20 to 30 meters, more or less.[70] Such a distance is negligible. In fact, appellant's wife testified that from their residence, she could see the people dancing at the hall.[71] It was not highly impossible for the appellant to be physically present at the dancing hall at the time of the occurrence of the incident. We, therefore, reject appellant's defense of alibi.

We shall now determine the criminal liability of the appellant.

To reiterate, the RTC, in convicting the appellant guilty beyond reasonable doubt of the crime of murder, proceeded from a rationalization that there was conspiracy among appellant and his co-accused. It also appreciated the attendance of abuse of superior strength to qualify the crime to Murder.

The Court of Appeals was unable to agree with the RTC. It found that the conspiracy was not proven beyond reasonable doubt. It ruled that the witness Garcia admitted to not being able to see the stabbing. He could only attest to the clubbing of the victim by appellant with a lead pipe. No proof was shown as to the concerted action of the malefactors of their common design to kill. It, thus, modified the RTC's conviction, and, instead, found appellant guilty of frustrated murder.

The Amended Information charged the appellant and his co-accused with conspiracy in killing Piamonte.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[72] Conspiracy as a basis for conviction must rest on nothing less than a moral certainty.[73] Considering the far-reaching consequences of criminal conspiracy, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, i.e., it must be shown to exist as clearly and convincingly as the commission of the offense itself.[74] Thus, it has been held that neither joint nor simultaneous actions is per se sufficient proof of conspiracy.[75]

We are, further, guided by the following pronouncement of the Court:

For conspiracy to exist, the participants must agree to the commission of the felony and decide to commit it, which agreement may be deduced from the mode and manner of the commission of the offense or inferred from the acts that point to joint purpose and design, concerted action and community of intent. x x x.[76]

While conspiracy need not be established by direct evidence, it is, nonetheless, required that it be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of the common unlawful purpose.[77]

There is a want of evidence to show the concerted acts of the appellant and his co-accused in pursuing a common design - to kill the deceased, Piamonte. The sole eyewitness for the prosecution, Garcia, was categorical and precise in declaring that he did not see the act of stabbing Piamonte, nor the manner in which Piamonte was

stabbed. He later learned that Piamonte died from stab wounds when he saw the latter's dead body covered with stab wounds. The cause of death of Piamonte, as found by the RTC and the Court of Appeals,[78] and as borne by the records, is multiple stab wounds.[79] It was, thus, incumbent on the part of the prosecution to prove beyond reasonable doubt that the appellant and his co-accused acted in concert with a unity of purpose to kill Piamonte. They must show to the satisfaction of this Court the appellant's overt act in pursuance or furtherance of the complicity.[80] They must show that appellant's act of striking Piamonte with a pipe was an intentional participation in the transaction with a view to the furtherance of the common design and purpose.[81]

The prosecution was unable to show, either by direct or indirect evidence, proof of the agreement among the appellant and his co-accused to warrant conspiracy as a basis for appellant's conviction. No evidence was even adduced to show implied conspiracy. Nothing has been shown that the appellant and his co-accused were "aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment." [82]

This complete absence of evidence on the part of the prosecution to show the conduct of the appellant and his co-accused, disclosing a common understanding among them relative to the commission of the offense, [83] is fatal to the prosecution. The prosecution's witness could not testify on the manner by which the deceased Piamonte was stabbed, precisely because by his own admission, he did not see the stabbing. No account of the stabbing which caused the death of the deceased Piamonte was ever given nor shown. Unfortunately, no account of how Piamonte died was ever given, except for the established fact that he died due to stabbing. The appellant's act of holding a lead pipe and hitting the deceased in the head was not shown to be in furtherance of the common design of killing the deceased. What transpired during the stabbing of the victim, which is material to proving the fact of conspiracy, is, regrettably, left merely to speculation. This Court must neither conjecture nor surmise that a conspiracy existed. The rule is clear that the guilt of the accused must be proved with moral certainty. [84] All doubts should be resolved in favor of the accused. Thus, the time honored principle in criminal law that if the inculpatory facts are capable of two or more explanations, one consistent with the innocence of the accused and the other with his guilt, the Court should adopt that which is more favorable to the accused for then the evidence does not fulfill the test of moral certainty. [85]

Liability of the Accused Bernard Mapalo

There being no conspiracy, the liability of the appellant will revolve around his individual participation in the event. [86]

In the case of *Li v. People*, [87] a street fight ensued resulting in the death of the victim therein. No conspiracy was proven beyond reasonable doubt. The liability of the accused Li who was shown to have struck the victim's right arm with a baseball bat, resulting in a contusion was, thus, determined by the Court in the following manner:

The only injury attributable to Li is the contusion on the victim's right arm that resulted from Li striking [the victim] Arugay with a baseball bat. In view of the victim's supervening death from injuries which cannot be attributed to Li beyond reasonable doubt, the effects of the contusion caused by Li are not mortal or at least lie entirely in the realm of speculation. When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance, the offense is only slight physical injuries, penalized as follows:

x x x x

The duration of the penalty of *arresto menor* is from one day to thirty days. The felony of slight physical injuries is necessarily included in the homicide charges. Since the Information against Li states that among the means employed to commit the felonious act was the use of the baseball bat, conviction on the lesser offense or

slight physical injuries is proper. There being no aggravating or mitigating circumstances established, the imposition of the penalty in its medium period is warranted. Li was convicted by the RTC on January 5, 1994. Having long served more than the imposable penalty, Li is entitled to immediate release unless, of course, he is being lawfully detained for another cause. [88]

In the case at bar, no injury was shown to be attributable to the appellant. The only medical evidence that appears on records is the deceased Piamonte's death certificate, [89] which indicates that the cause of death is massive hypovolemia [90] secondary to multiple stab wounds. The factual findings of the RTC and the Court of Appeals coincide to show that the cause of death of Piamonte is multiple stab wounds. Nothing has been shown otherwise. Other than the presence of multiple stab wounds, no other type of injury on the deceased was established. No contusions or injury on the head of the victim or anywhere else in his body caused by a lead pipe was shown. The witness Garcia, in his testimony, merely pointed to stab wounds on the different parts of the body of the deceased. [91] No proof on the injury that was sustained by the deceased that can be attributable to appellant's act was demonstrated. No other physical evidence was proffered. [92]

We cannot convict appellant of Attempted or Frustrated Murder or Homicide. The principal and essential element of attempted or frustrated homicide or murder is the assailant's intent to take the life of the person attacked. [93] Such intent must be proved clearly and convincingly, so as to exclude reasonable doubt thereof. [94] Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) words uttered by the offender at the time the injuries are inflicted by him on the victim. [95]

In the case at bar, no motive on the part of appellant to kill Piamonte was shown either prior or subsequent to the incident. Nor can such intent to kill be inferred from his acts. It bears reiterating that no injury on the body of the deceased was attributed to the appellant's act of hitting the victim with a lead pipe. On the nature of the weapon used, the lead pipe was described by Garcia as one and a half feet in length, and one and a half inches in diameter. The relevant testimony of Garcia on the incident follows:

Q Now you said that Bernard Mapalo clubbed this Manuel Piamonte. He clubbed him from behind?

A Yes, sir.

Q And what did he use in clubbing the victim, is it lead pipe?

A Yes, sir.

Q How long is that lead pipe?

A Around this length. (Witness demonstrated 1 1/2 feet).

Q And how wide is the diameter?

A 1 1/2 inches.

Q What part of his body was hit?

A Right side of the head, sir. (Witness showing the right side of his head.) [96]

Homicidal intent must be evidenced by the acts that, at the time of their execution, are unmistakably calculated to produce the death of the victim by adequate means. [97] We cannot infer intent to kill from the appellant's act of hitting Piamonte in the head with a lead pipe. In the first place, wounds were not shown to have been inflicted because of the act. Secondly, absent proof of circumstances to show the intent to kill beyond reasonable doubt, this Court cannot declare that the same was attendant.

When the offender shall ill-treat another by deed without causing any injury, and without causing dishonor, the offense is Maltreatment under Article 266, [98] par. 3 of the Revised Penal Code. It was beyond reasonable doubt that by hitting Piamonte, appellant ill-treated the latter, without causing any injury. As we have earlier stated, no proof of injury was offered. Maltreatment is necessarily included in Murder, which is the offense charged in the Information. Thus:

ART. 266. Slight physical injuries and maltreatment. - The crime of slight physical injuries shall be punished:

x x x x

3. By arresto menor in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

The duration of the penalty of arresto menor in its minimum period is 1 day to 10 days.

WHEREFORE, the Decision of the Court of Appeals, dated 21 November 2005, in CA-G.R. CR HC No. 00408 is MODIFIED. Appellant Bernard Mapalo is ACQUITTED of the charge of MURDER for lack of evidence beyond reasonable doubt. He is found GUILTY of the crime of MALTREATMENT, as defined and punished by Article 266, par. 3 of the Revised Penal Code. He is accordingly sentenced to suffer the penalty of imprisonment of arresto menor of 10 days. Considering that appellant has been incarcerated since 2004, which is well-beyond the period of the penalty herein imposed, the Director of the Bureau of Prisons is ordered to cause appellant's IMMEDIATE RELEASE, unless appellant is being lawfully held for another cause, and to inform this Court, within five (5) days from receipt of this Decision, of the compliance therewith.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Presiding Judge Samuel R. Martires; records, pp. 380-388.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; CA rollo, pp. 81-91.

[3] Records, p. 1-a.

[4] Id. at 6.

[5] Id. at 35.

[6] Id. at 41.

[7] Id. at 36.

[8] Id. at 62.

[9] Id. at 243-250.

[10] TSN, 15 July 1996, p. 7.

[11] Referring to one of the accused, Rolando Mapalo alias "Lando."

[12] Supra note 10 at 8.

[13] Id. at 10.

[14] Id. at 13-14.

[15] Id. at 14.

[16] Id.

[17] Id.

[18] Id. at 10.

[19] Id.

[20] Id. at 15.

[21] There appears to be a confusion on the date. The incident transpired from the evening of 12 February 1994 to early morning of 13 February 1994.

[22] TSN, 28 June 1999, p. 3.

[23] Id. at 4.

[24] Id. at 3-4.

[25] Id.

[26] Id. at 6.

[27] Id. at 5-6.

[28] Id.

[29] Supra note 21.

[30] TSN, 23 February 1999, p. 5.

[31] Id. at 7.

[32] Id.

[33] Id. at 8.

[34] Id. at 10.

[35] Id. at 9.

[36] Id.

[37] Records, p. 385.

[38] Id. at 387-388.

[39] CA p. 32.

[40] Id. at 85.

[41] Id. at 86.

[42] Id. at 86-87.

[43] Id. at 88.

[44] Id.

[45] Id.

[46] Id. at 90.

[47] Rollo, pp. 19 and 22.

[48] 345 Phil. 731 (1997).

[49] G.R. No. 85043, 16 June 1992, 210 SCRA 1.

[50] Supra note 45.

[51] Supra note 49 at 17.

[52] TSN, 15 July 1996, p. 6.

[53] 425 Phil. 877 (2002).

[54] Id. at 889.

[55] TSN, 28 June 1999, pp. 10-12.

[56] TSN, 23 February 1999, pp. 13-15.

[57] *People v. Pineda*, G.R. No. 141644, 27 May 2004, 429 SCRA 478, 503, citing PATRICK M. WALL, *EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES* 74 (1965), thus:

A well-known authority in eyewitness identification made a list of 12 danger signals that exist independently of the identification procedures investigators use. These signals give warning that the identification may be erroneous even though the method used is proper. The list is not exhaustive. The facts of a particular case may contain a warning not in the list. The list is as follows:

- the witness originally stated that he could not identify anyone;
- the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;
- a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;
- before identifying the accused at the trial, the witness erroneously identified some other person;
- other witnesses to the crime fail to identify the accused;
- before trial, the witness sees the accused but fails to identify him;
- before the commission of the crime, the witness had limited opportunity to see the accused;
- the witness and the person identified are of different racial groups;
- during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;
- a considerable time elapsed between the witness' view of the criminal and his identification of the accused;
- several persons committed the crime; and
- the witness fails to make a positive trial identification.

[58] 444 Phil 691 (2003).

[59] Id. at 707.

[60] TSN, 15 July 1996, p. 10.

[60] Id.

[62] TSN, 15 July 1996, p. 17.

[63] 396 Phil. 274 (2000).

[64] Id. at 283.

[65] Baldeo v. People, G.R. No. 152205, 5 February 2004, 422 SCRA 229, 239-240.

[66] People v. Tampis, G.R. No. 148725, 31 July 2003, 407 SCRA 582, 591.

[67] People v. Clores, Jr., G.R. No. 130488, 8 June 2004, 431 SCRA 210, 218.

[68] People v. Prieto, 454 Phil. 389, 407 (2003).

[69] People v. Aquinde, 457 Phil. 207, 232 (2003).

[70] Records, p. 384; rollo, p. 10; TSN, 28 June 1999, p. 3.

[71] TSN, 23 February 1999, p. 11.

[72] Dado v. People, 440 Phil. 521, 532 (2002).

[73] People v. Natividad, 458 Phil. 491 (2003).

[74] Id. at 500.

[75] Id. at 501.

[76] People v. Saul, 423 Phil. 924, 935 (2001).

[77] Timbal v. Court of Appeals, 423 Phil. 617, 622 (2001).

[78] We quote with approval the following observation made by the Court of Appeals, to wit:

The prosecution's sole eyewitness was incapable, or for some reason reticent, to identify who inflicted the fatal stab wounds. He also failed to describe the particular acts that caused the victim to sustain the stab wounds that were the proximate cause of his death. In fact, by his own admission, he had concluded that the victim was stabbed several times because he saw the stab wounds after the killing occurred, when the victim was already dead. (Rollo, p. 7.)

[79] Records, p. 386.

[80] People v. Bisda, 454 Phil. 194, 217-218 (2003).

[81] Id. at 218.

[82] Id. at 217.

[83] People v. Garalde, 401 Phil. 174, 213 (2000).

[84] People v. Garillo, 446 Phil. 163, 180 (2003).

[85] *People v. Duma*, 230 Phil. 1, 17 (1986).

[86] *People v. Macatana*, G.R. No. L-57061, 9 May 1988, 161 SCRA 235, 240.

[87] G.R. No. 127962, 14 April 2004, 427 SCRA 217.

[88] *Id.* at 235-236.

[89] *Records*, p. 4.

[90] Blood loss; See *Harrison's Principles of Internal Medicine*, (12th Ed., 1991), p. 233.

[91] TSN, 15 July 1996, pp. 14-15; TSN, 9 October 1996, p. 6.

[92] While it appears that 2nd Assistant Provincial Prosecutor Gloria D. Catbagan of the Office of the Provincial Prosecutor in Agoo, La Union sent a Letter of Request to the Branch Clerk of Court, RTC, Branch 32 of Agoo, La Union that a subpoena be issued to Dr. Armando Avena of RHU, Aringay La Union to bring the death certificate of the deceased Piamonte and to testify thereon on 23 April 1998, nothing appears on record with regard to the testimony or the appearance of the aforesaid Dr. Armando Avena in court.; See *Records*, p. 205.

[93] *People v. Catbagan*, G.R. Nos. 149430-32, 23 February 2004, 423 SCRA 535, 566.

[94] *Id.*

[95] *People v. Caballero*, 448 Phil. 514, 534 (2003).

[96] TSN, 15 July 1996, p. 14.

[97] *Supra* note 91 at 566.

[98] Art. 266 of the Revised Penal Code, provides:

ART. 266. Slight physical injuries and maltreatment. - The crime of slight physical injuries shall be punished:

- By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period;

- By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance.

- By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance.

- By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing injury.

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