

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIAL ABUCAY AND SALVADOR PEPITO ALIAS
“BADING”, DEFENDANTS-APPELLANTS.**

G.R. No. 55252. December 26, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Appeal[1] interposed by SALVADOR PEPITO alias BADING from the decision of the then Court of First Instance of Cebu-Branch IV, in its Criminal Case No. CU-5062 convicting him of MURDER and sentencing him to reclusion perpetua; and to pay half of the costs.

The prosecution's case against the appellant as summarized by the Hon. Solicitor General in the People's Brief runs thus:

"On September 15, 1979, Sitio Cumpang, in Barangay Tayod, Liloan, Cebu celebrated its traditional fiesta. (p. 2, TSN, March 5, 1980) In the evening, there was a public dance. (pp. 7-10, TSN, June 18, 1980)

At around 11:00 o'clock that evening, Segundino Garbo together with his wife Clarita and six year old daughter were near the stage in the area where there was a public dance. (p. 13, TSN, March 5, 1980) The place was well lighted with electric bulbs. (pp. 6-7, TSN, March 14, 1980) The appellant, Salvador Pepito, who was also near the stage with his friend, convict Marcial Abucay, called Segundino. (p. 14, TSN, March 5, 1980) Segundino, together with his wife and daughter went closer to the appellant. (Ibid.) Segundino and the appellant tried to negotiate the building of a boat, Segundino being a boat-builder. (pp. 3-4, 15, TSN, Id.)

Marcial Abucay was standing on the right side of the appellant, facing Segundino. Abucay was known to have a grudge against Segundino (pp. 10-12, Id.; p. 19, March 14, 1980) who, as a barangay police officer, had apprehended Abucay for causing public disturbance in a public dance some-time back and for which offense, Abucay was charged and convicted. (Ibid.; pp. 77-79, TSN, June 17, 1980)

While appellant and Segundino were conversing, the wife of the latter turned her back from them and leaned on Segundino's back (p. 5, TSN, March 5, 1980). While conversing, Segundino was holding, with his left hand, an arm of his 6-year old daughter who was standing on his side. (pp. 24-25, TSN, March 14, 1980) Two arms length away, Benjamin Garbo was watching his brother Segundino talking with the appellant who was accompanied by Abucay, (pp. 6-8, TSN, March 1, 1980) Benjamin was apprehensive because of the previous threat of Abucay on Segundino. (pp. 10-12, March 5, 1980; p. 19, March 14, 1980)

After about 30 minutes of conversation, appellant and Abucay suddenly and simultaneously stabbed Segundino, with appellant hitting Segundino on the right shoulder (clavicular area) and Abucay hitting Segundino on the nose between the eyes. Segundino struggled to pull out the knife from his nose with his right hand, while still holding his child with his left hand. (pp. 4, 18-22, TSN, March 14, 1980) Benjamin Garbo saw the incident. (Ibid.) Clarita who was leaning on her husband heard a thud, turned around and saw her husband collapse to the ground. (p. 6,

March 5, 1980) Seeing her husband bleeding with a knife sticking on his nose, Clarita immediately asked her husband who stabbed him. (p. 8, Id.) Segundino answered that his assailants were Salvador Pepito and Marcial Abucay. (Ibid.) Benjamin Garbo who in time ran to the rescue of his brother heard the answer of Segundino that he was stabbed by the appellant and Abucay. (p. 8, March 14, 1980) And right after perpetrating the felony, the appellant and Abucay ran away and disappeared in the dark. (p. 11, Id.)

With the help of neighbors, Segundino was rushed to the clinic of Dr. Felipe Vista in the poblacion of Liloan. (p. 8, March 5, 1980) While on the way, Segundino managed to tell Samuel Igot who was seated close to him inside the tricycle that his assailants were Salvador Pepito and Marcial Abucay. (p. 5, May 20, 1980) A few minutes after arrival at Dr. Vista's clinic, Segundino died. (pp. 5-6, TSN, June 16, 1980) Dr. Vista examined the wounds of Segundino and determined them to be a stab on the right shoulder on the base of the neck, 1 inch in length, 1/8 inch in width and 7 1/2 inch in depth downwards, and a stab on the bridge of the nose, 1 1/2 inches in length, 1/8 inch in width, and 1/2 inch deep. (p. 7, Id.)"[2]

In assailing his conviction, appellant raises but only one (1) error allegedly committed by the Trial Court, and that is - in convicting him despite the presence of reasonable doubt.[3]

Appellant contends that the prosecution's medical evidence is basically ambiguous for it admits of two possibilities. One is that the wounds sustained by the victim were caused by a single sharp bladed instrument, and this possibility favors the accused. The other, is that the wounds were caused by two (2) sharp bladed instruments, a possibility which is adverse to the accused. There being a doubt, the same must be resolved in favor of the appellant and not towards his guilt since accused is entitled to the constitutional presumption of innocence.

Appellant's aforesaid submission lacks legal support and factual basis. The evidence on record indubitably shows that the deceased sustained two (2) stab wounds. One, a clean cut, narrow deep wound on the middle of the clavicle posterior to the right side of the neck; and another one, a laceration on the bridge of the nose about 1 1/2 inches long, 1/8 of an inch wide and about 1/4 or 1/2 inch deep.[4]

Testifying on the nature of the aforesaid injuries, Dr. Felipe S. Vista, Municipal Health Officer of Liloan, Cebu declared that the stab wound on the base of the neck is fatal. Elaborating further on the above-described wounds, Dr. Vista stated –

"Q - What kind of wounds are these, Doctor?

A - Number 1 is a clean and incised wound but the one on the nose is unclean that is why I placed lacerated wound.

Q - So in your expert opinion, what weapon could have been used in making those wounds?

A - Those wounds could have been inflicted by a sharp bladed instrument.

Q Which wound was caused by a sharp bladed instrument?

A - The stab wound on the neck and this wound on the head.

COURT:

Q So, the two wounds?

A - Yes, sir.

ATTY. CANETE:

Q In your expert opinion, could it be that the accused have used two kinds of weapons?

ATTY. PORIO:

Misleading. The witness testified that the two wounds could have been caused by a single bladed sharp instrument.

ATTY. CAÑETE:

I am asking if it is possible that two kinds of weapons were used.

COURT:

Let the witness answer.

A The possibility of using two sharp bladed instruments is there. I could not definitely say that the wounds were inflicted by one bladed instrument or two bladed instruments, but both wounds were inflicted by sharp bladed instruments."[5]

Nowhere in the aforesaid declaration of Dr. Vista could an incontrovertible conclusion be drawn that only one and the same bladed instrument was used by the assailant or assailants. What is clear and definite, however, is that both stab wounds sustained by the victim were produced by a sharp bladed instrument, a class to which the hunting knife used by accused Abucay, and the kitchen knife used by the appellant belong. Appellant's claimed doubt allegedly generated by the testimony of the aforementioned physician is more of fiction than real. Appellant's reliance thereon lends him no support whatsoever.

Appellant admits being present at the public dance held at the Cumpang Barrio Fiesta, the situs of the stabbing incident. He had been there for a period of no less than an hour prior to the stabbing. He likewise does not controvert that at the time the victim was stabbed, he was just beside him.[6] In fact, at the precise moment he was discussing with the victim the secondhand boat he proposed to buy from him. And it was at that juncture when his co-accused Marcial Abucay (who pleaded guilty upon arraignment and thereafter sentenced accordingly) came near them and right then and there stabbed the victim.[7] Appellant, however, failed to see where the victim was exactly hit because upon seeing his co-accused Abucay raising a knife, he (appellant) immediately ran away.

Upon being hit, the victim staggered and fell to the ground bleeding profusely. But despite the victim being an acquaintance of his and against whom he allegedly harbors no ill-feeling coupled with the fact that he was in the midst of a transaction regarding the purchase of a secondhand boat from said victim, no assistance of any kind was extended by him to the victim. He did not even attempt to give him any physical support much less bring him to any physician or hospital for the much needed medical attendance to save him. Instead, he ran away together with his co-accused Abucay, leaving the victim dying. On top of that, he did not report the said stabbing incident to the barangay official of their place nor to the police authorities thereof, much less to the PC or Mayor in their locality. In short, he was so conspicuously silent to the extent of not having re-reported and revealed to anyone, victim's being stabbed by Abucay which he had allegedly witnessed despite the ensuing death of the victim.[8] In fact, he has not even condoled nor commiserated with the victim's widow nor with any member of his bereaved family. Neither has he visited the victim while still in the hospital, nor attended the wake while the victim was lying in state, much less his funeral. He was so absolutely indifferent and unperturbed with the fate that had befallen the victim. On top of that, knowing that the police were running after him, he went into hiding, and of all places - - in the very same hideout where his co-accused Abucay likewise sought sanctuary - in the house of Ponciano Abucay. To ran away from the scene of the crime, is indicative of guilt.[9] He gave himself up only on October 2, 1978, or more than two (2) weeks following the killing of Segundino Garbo, the victim.[10]

All the foregoing incidents and circumstances decidedly militate against appellant's feigned innocence thus making his story an unreliable one and a big farce.

In his attempt to exculpate himself from criminal liability, appellant introduced his co-accused Marcial Abucay as his witness. Abucay, while on the witness stand and as expected, admitted sole responsibility for the killing of Segundino Garbo, totally exonerating his co-accused, the herein appellant. Such a move is not at all surprising and hardly convinces Us as emanating from a credible witness. Having been already convicted, as in fact he is now serving sentence for such conviction, and knowing fully well that his aforesaid admission cannot in anyway subject him to further or graver responsibility, his testimony must be received with extreme caution.

But what is more telling and decisive is the fact that Abucay's story on the witness stand - was never made known to nor revealed by him to any PC or police authority, barangay official of their place or mayor of their municipality. Clearly then, Abucay's attempt to salvage a hopeless cause is indubitably an eleventh-hour concoction which is part and parcel of a vain and futile attempt to exculpate the appellant.

But what click and tighten the case of the PEOPLE against the herein appellant are the testimonies of Benjamin Garbo, Samuel Igot and Clarita Garbo all pointing to the herein appellant as one of the two (2) persons who stabbed the victim. Despite rigid and thorough cross-examination, their version of the inci-dent appeared unshaken.

Indeed, the trial court's finding on their credibility is entitled to great respect,[11] there being no circumstance of note and of sufficient impor-tance which appeared to have been overlooked in the assessment of their testimonies.

As a last-ditch attempt towards exoneration, appellant made capital of the fact that the prosecution failed to prove motive for killing the victim. Motive, however, is not an essential element of the crime and need not be proven for purposes of conviction.[12] Neither is proof thereof essential when the identity of the criminal perpetrator is not in doubt as in the instant case.[13]

Finally, We note that in convicting the accused-appellant, the trial court made no pronouncement on appellant's civil liability despite the fact that all throughout the proceedings the offended party was actively represented by a private prosecutor and no express reservation to file a separate civil action for its recovery is made nor a waiver thereof placed on record. As recently decided by this Court, an award of P30,000.00[14] by way of indemnity is in order.

WHEREFORE, and except as thus modified, the judgment appealed from is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

[1] Not an automatic review as claimed by the appellant, the penalty imposed being that of Reclusion Perpetua.

[2] Pages 2, 3, 4 & 5, People's Brief.

[3] Page 1, Appellant's Brief.

[4] Necropsy Report, TSN, June 16, 1980, page 7.

[5] TSN, June 16, 1980, pages 10-12 or page 94 of the Record.

[6] TSN, June 17, 1980, page 7.

[7] TSN, June 17, 1980, page 14.

[8] TSN June 17, 1980, page 32.

[9] People vs. Pajenado, 69 SCRA 172.

[10] TSN, June 9, 1980, page 34.

[11] People vs. Gomez, 124 SCRA 216; People vs. Maranan, 124 SCRA 716.

[12] People vs. Balbas, 122 SCRA 859.

[13] People vs. Abadilla, 121 SCRA 368; People Pajenado, 69 SCRA 172.

[14] People vs. Tiengo, et al, G.R. No. L-55832, November 20, 1984; People vs. Ernesto Aquino, G.R. No. L-36468, November 20, 1984; People vs. Roberto Cruz, G.R. No. L-37173, November 20, 1984; People vs. Capillas, et al, G.R. No. L-38756, November 13, 1984.

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