

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANASTACIO BONEO Y BATALLER, AND JESUS BONEO Y BATALLER,
ACCUSED-APPELLANTS.**

G.R. No. 74522. June 30, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

This is what the fishermen saw through the clear waters of the sea along San Antonio, Malilipot, Albay in the morning of February 24, 1984. About nine meters below, there was a dead man with his neck tied to a rock to prevent his body from floating to the surface. Brought up by a diver, it was identified as the corpse of Solomon Barsaga, a 63-year old resident of the said barangay. There was a hack wound on his neck and swellings on his forehead and his left cheek. He had apparently died as a result of these injuries before being dumped into the sea to conceal the cadaver and the crime.

Subsequent investigation led to the filing of an information for robbery with homicide against two brothers, Anastacio Boneo and Jesus Boneo, the herein accused-appellants. Convicted on circumstantial evidence, they are now assailing the judgment of the trial court on the ground that their guilt has not been proved beyond reasonable doubt.

The prosecution version of the offense was narrated through the testimony of several witnesses, principally the victim's wife, Paz Barsaga, who was corroborated by Alejandro Beraquit and Eliseo Belda.

According to the widow, Anastacio Boneo came to their house at about 8 o'clock in the evening of February 21, 1984, to fetch her husband so they could buy the pig and cow they had apparently agreed earlier to get from Anastacio's Aunt Gunding in Tanagan. She remonstrated against his leaving as it was already late, but Solomon said he was not busy anyway and asked for the money to be paid for the purchase. Paz says she got the amount of P3,000.00 from their trunk and counted it before giving it to Solomon who placed it in his wallet. Solomon and Anastacio then left to join Jesus Boneo, who was waiting for them below in a small boat by the edge of the sea.[1]

The following morning, Anastacio returned to the witness to inform her that her husband had already bought the animals and was at the time in Centro, Bacacay, Albay. Anastacio asked her for a pig which he said he had already purchased from Solomon. When she refused, he forcibly took it anyway and then left, again in a small boat he had moored at the seashore. Paz says that the next time she saw her husband was on February 24, 1984, when his lifeless body was recovered from the sea. There was no sign of the money he had taken with him.[2]

Alejandro Beraquit testified that he was present when Anastacio Boneo came to fetch Solomon Barsaga in the evening of February 24, 1984, and saw the victim put the P3,000.00 in his wallet after receiving it from his wife. He had dropped in at Solomon's house that night, he said, to talk about the logs the latter had requested him to saw. On February 24, 1984, having heard of the dead man under sea, he and Pepito Barsaga, Solomon's son, went out to check who it was. Diving underwater, he verified it was Solomon, whose body had been sunk with a rock tied to his neck,[3]

The tale of the pig was continued by Eliseo Belda, another resident of San Antonio, who said that at about 7 o'clock in the morning of February 22, 1984, Anastacio arrived in a small banca at his house and left a pig which he said he would get back later. Anastacio said he had bought it from Solomon Barsaga for F300.00. As the pig was never recovered, Belda said he deposited it with Florida Buarao, a barangay councilor.[4]

The defense of the Boneo brothers was alibi. They denied they had ever gone to the house of Solomon Barsaga in the evening in question and accompanied Solomon to buy anything. They also disclaimed any knowledge of the pig Anastacio had allegedly taken from Paz Barsaga. They said they hardly knew Solomon and Paz Barsaga although they called them Lolo and Lola, being somewhat related to them. They said they had seen Solomon in their house only once during a prayer meeting and that they themselves had never gone to the old man's house. In the night of February 21, 1984, the two of them were sleeping with the rest of their family in their house in Hacienda San Miguel, Tabaco, Albay, an island about four kilometers from the Barsaga house. They never left their house that night.[5]

There was corroboration from their parents, but their testimony, such as it was, is hardly persuasive, given their relationship with the accused-appellants. The other defense witnesses were no less helpful and gave at best inconclusive support for their defense.

Alibi is one of the weakest of defenses and is usually unavailing unless inherently plausible and supported by convincing evidence. Nevertheless, it is an accepted axiom in our courts that a conviction must stand on its own feet to prove the charge against the accused beyond reasonable doubt. In the absence of clear and indubitable proof that the accused-appellants are guilty, their innocence must be presumed as mandated by the Constitution.

The question that nags the Court is why, when the Boneo brothers called at the Barsaga house at 8 o'clock in the evening of February 21, 1984 — when according to Paz Barsaga she and her husband were already "about to sleep" — Solomon nevertheless decided to leave, bringing with him the P3,000.00. Eight o'clock in the evening in a provincial town is not lit up by the bright lights of the city and must be as quiet as it is dark. Moreover, the group had to go by boat over the sea to another town. Also, Solomon would have to stay overnight in that place as he could not possibly have bought the animals and brought them back home the same night. Surely, Solomon, who was then 63 years old, would have considered all these inconveniences, let alone the danger of bringing P3,000.00 in cash at night and to a distant place. After all, there was no hurry about the transaction.

Why Solomon did not defer the trip to the following morning when it would have been safer and more convenient is beyond logic and plain common sense. Paz said that her husband was already "too tired" that evening. In fact, as she testified, Solomon's first impulse was to postpone the trip but he then changed his mind, saying he was not busy anyway. There was no special reason for the trip that night except that Anastacio allegedly said Solomon could then meet Aunt Gunding and her husband. The record does not show, however, how urgent that reason was. Paz mentioned it only in passing and the prosecution did not press the point.

The Court also feels that if the Boneo brothers did really kill Solomon on February 21, 1984, it is not likely that Anastacio would return early the next morning to Solomon's house and still forcibly get a pig from Paz on the pretext that he had bought it from her husband. Anastacio had presumably already murdered Solomon and robbed him of P3,000.00, yet here he was again trying to steal another P300.00 (the alleged cost of the pig) from his widow. Anastacio was certainly "pushing his luck," so to speak. It is not believable that he would be that reckless and brazen, or simply stupid.

As for Belda, who corroborated the widow, there is testimony that the two of them are related somewhat;[6] on the other hand, Jesus said Belda felt some enmity toward his family because they had not permitted them to plant on their land.[7] The Court also notes that the councilor to whom the pig was allegedly turned over by Belda was

never presented at the trial.

The trial court made much of the fact that the two brothers did not report to the police authorities although they knew they were being suspected of the crime, but they had no obligation to do so at that time. There was no warrant of arrest against them and they had not yet been charged with any crime. Their parents did go to the PC station to find out why their sons were wanted for investigation, and the accused-appellants themselves went to consult a lawyer. There was nothing wrong with these acts either. They were the natural reaction — and precaution — of persons suspected of the commission of an offense and who were awaiting possible arrest and prosecution. Such acts are not evidence of guilt.

In his decision, Judge Oscar B. Pimentel of the Regional Trial Court of Tabaco, Albay, made the irrelevant observation that Jesus Boneo was at the time facing another charge of homicide with another brother and that, during his testimony, he was disrespectful and a "filosofo." [8] These circumstances are also not evidence of guilt.

By contrast, there is the significant testimony of PFC Romulo Bilan, a prosecution witness, that when he went to Hacienda San Miguel to talk to the accused-appellants on February 25, 1984, he inspected a small boat being used by the family and found no trace of blood in it. [9] The balikwatan, as it was called, was presumably the boat referred to by Paz Barsaga, Beraquit and Belda as the boat where the Boneo brothers were riding.

The finding of the trial court is that Solomon Barsaga was killed in the night of February 21, 1984, by the Boneo brothers, who hit him with a paddle in the forehead and his left check and hacked him in the nape of the neck. They took the P3,000.00 he was carrying. Then they tied around his neck a nylon cord weighted with a rock at the other end and then dumped him into the sea.

These are mere conjectures based on only circumstantial evidence that does not appear to be strong enough to sustain the conviction of the accused-appellants. The boat where the body was carried so it could be sunk into the sea was found to be clean of blood. The missing P3,000.00 of the victim was never found. The murder weapons were not produced. The trial court was quick to accept the implausible testimony of Paz Barsaga of how her husband went out into the night to travel by sea to another town, and with a sizable amount of money, to enter into a transaction he could have more conveniently and more safely concluded the following morning. It is only this slender reed that supports the case for the prosecution.

True, the defense of the accused-appellants is only alibi. But this does mean it must necessarily be rejected simply because it is alibi. As weak as this defense may be, it is not and cannot be the basis alone of a conviction. As we have repeatedly declared, every conviction must be based not on the weakness of the defense but on the strength of the prosecution. The alibi of the defense may be weak, but the evidence of the prosecution is even weaker. This means that the guilt of the accused-appellants cannot be pronounced.

It is an unbending principle in this jurisdiction that in every criminal prosecution, the accused shall be presumed innocent until the contrary is proved. This rule must be observed with more rigor where the evidence of the prosecution is merely circumstantial, as in the case at bar. While this is not to say that this kind of evidence will never be sufficient to convict, it does mean that it must be especially persuasive if it is to still, as it must, every whisper of doubt that the accused is not innocent. Absent conclusive proof of his guilt, the prisoner on the dock must be released and purged of all the stigma of the charge upon his head.

WHEREFORE, the appealed decision is REVERSED. The accused-appellants are ACQUITTED.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Decision, p. 7.

[2] Ibid., p. 39.

[3] Id., p. 15.

[4] Id., p. 16.

[5] Id., pp. 21, 24, and 29.

[6] T.S.N., October 26, 1984, p. 6.

[7] Decision, p. 27.

[8] Ibid., p. 28.

[9] Ibid., p. 20.

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