

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ADRIANO AMONCIO Y OLANTIGUE, EMEGDIO AMONCIO Y
OLANTIGUE AND SILVESTRE AMONCIO Y TAGLE ACCUSED,
ADRIANO AMONCIO Y OLAN...**

G.R. Nos. 66917-18. September 24, 1986

Ponente: PARAS, J.

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PARAS, J.:

Two separate informations were filed against the accused-appellants, namely: Criminal Case No. CCC-XIV-361, charging Adriano Amoncio y Olantigue and Emigdio Amoncio y Olantigue with the offense of Murder; and Criminal Case No. 3025, charging Silvestre Amoncio y Tagle and Adriano Amoncio y Olantigue with the crime of Frustrated Murder.

The aforesaid criminal cases refer to the same incident.

After a joint trial on the merits, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Adriano Amoncio and Emigdio Amoncio GUILTY beyond doubt of murder for killing Pablito Perocho and accused Adriano Amoncio and Silvestre Amoncio GUILTY of frustrated murder for stabbing Jose Aboabo. Consequently, accused Adriano Amoncio is hereby sentenced to the penalty of reclusion perpetua for murder in Criminal Case No. CC-XIV-361-Bohol and the indeterminate penalty of imprisonment from EIGHT (8) YEARS and TWENTY (20) DAYS to FOURTEEN (14) YEARS for frustrated murder in Criminal Case No. 3025. Accused Emigdio Amoncio is hereby sentenced to the penalty of reclusion perpetua for murder in said Criminal Case No. CCC-XIV-361-Bohol. Accused Silvestre Amoncio is hereby sentenced to undergo the indeterminate penalty of imprisonment from EIGHT (8) YEARS and TWENTY (20) DAYS to FOURTEEN (14) YEARS. He is entitled to credit for his preventive imprisonment. Each accused is to serve the accessory penalties inherent in their sentences.

Accused Adriano Amoncio and Emigdio Amoncio are ordered solidarily to indemnify the heirs of Pablito Perocho the sum of P12,000.00. Accused Adriano Amoncio and Silvestre Amoncio are ordered to solidarily indemnify Jose Aboabo the sum of P4,734.00 as actual damages and P2,000.00 as moral damages. All the accused shall pay the costs.

SO ORDERED.

City of Tagbilaran, January 20, 1984. (p. 7, Rollo).

The case is now before Us on appeal.

The facts of the case, as found by the trial court, are briefly as follows:

About 6:00 in the evening of November 29, 1981, people started leaving the cockpit, at Bagumbayan, Pilar, Bohol, bound for their respective homes.

The first group leaving the cockpit was composed of Godofredo Perocho, Segundino Butron, Bienvenido Espina and Jose Aclang. About ten (10) meters behind was the second group composed of Jose Aboabo, Adriano Amoncio and Pablito Perocho. A little behind was the third group composed of Hilario Espina, Sesino Escobal and an unidentified person.

The second group of Jose Aboabo, Adriano Amoncio and Pablito Perocho were singing in trio, placing their arms over each other's shoulders. When the three reached near the scene of the incident, Adriano Amoncio shouted "Bagdoki do Teban!" meaning "Hit me, Teban." Suddenly, the aforesaid Adriano separated himself from his companions, pulled out his dagger and stabbed Pablito from the back. Acting on Adriano's loud remark, Emigdio (brother of Adriano) and Silvestre (nephew of Adriano and Emigdio) emerged from behind the tree at the side of the road, and rushed at Pablito and Jose. Emigdio stabbed Pablito at the back below the nape, while Silvestre stabbed Jose on the left side of the chest. Thereafter, Adriano reached Jose and stabbed the latter in the left armpit. Jose ran away, but Adriano chased him.

Meanwhile, Godofredo Perocho having heard the commotion, turned back and walked towards the second group. He saw Jose running towards him, pursued by Adriano. Adriano on seeing Godofredo backed out and ran away. Thereafter, Godofredo heard Pablito (his brother) shouting for help.

Godofredo came upon Pablito, already prostrate on the ground and seriously wounded, and asked Pablito who stabbed him. The latter managed to declare: "Sila si Adring Amoncio may nagdengab ako", meaning: "They, Adring Amoncio stabbed me:" (Adriano Amoncio was commonly known by his nickname Adring). Quiliano Butron and Hilario Espina tried to look for a vehicle but the others decided to carry Pablito. On the way to the hospital, Pablito died. Meanwhile, Quiliano came upon Jose, slumped on the ground unconscious. Jose was brought to the hospital where he was confined for treatment for eighteen days.

According to Dr. David Indino, he found one stab wound on Jose, located on the hyponchondriac region, which punctured and perforated the liver and the lungs. (pp. 2-7, t.s.n.) Dra. Lourdes Tan, who conducted the post-mortem examination of the cadaver of Pablito, found two stab wounds: one located at the right shoulder, and the other at the right lumbar region posterior, which was fatal. (pp. 3-7, t.s.n.)

The killing of Pablito was due to his illicit relation with Silvestre's wife before she committed suicide in June, 1981 (p. 18, Appellee's brief).

On the other hand, appellant Adriano, giving the defense version, testified as follows: That in that evening of November 29, 1981, he left for home alone from the Pilar cockpit; that, on his way home, he came upon Jose Aboabo, Godofredo and Pablito Perocho, Quiliano Butron and Hilario Espina arguing at the road crossing; that Jose and Pablito engaged in a fistic fight; that, he went near to pacify, but he was instead challenged by Godofredo Perocho; that he went to the Poblacion, to report the fighting incident to the police; that later he saw Godofredo and others carrying the dead body of Pablito to the municipal building and then to Pablito's house. Thus, Adriano denied having stabbed Pablito and Jose.

The defense presented the testimonies of Silvestre and witness Urbano Gador to prove that Silvestre had been working as laborer in Twin-A Bakery, located in Butuan City, from August, 1981 to February, 1982. Emigdio likewise presented the defense of alibi by declaring that at the time of the incident, he was at Barangay Inogluban, 6 kilometers from the crime scene, where he harvested rice.

After trial, the trial court convicted all the appellants of the crimes they were respectively charged with.

The issue, therefore, rests on credibility. After a careful evaluation of the evidence on record, We find the prosecution's version deserving of more credence and belief.

Jose's identification of appellants as the assailants can hardly be doubted. He was not only an eyewitness to the stabbing incident; he was also a direct victim thereof. The evidence shows that Jose had known the appellants for a long time or since they were young (pp. 2-3 t.s.n.).

Adriano's defense that his actuations were constitutive of clearness of conscience and innocence is self-serving and unbelievable. There is no plausible testimonial or documentary evidence in the record which would in the least confer some semblance of truth on his negative assertion that he did not stab Pablito Perocho. Certainly, such negative assertion cannot prevail over the positive testimony of Jose and the dying declaration of the deceased Pablito to his brother Godofredo that said appellant stabbed Jose and Pablito. It cannot be doubted that Pablito made such declaration under the consciousness of an impending death because of the seriousness of the second wound inflicted on him by Adriano and of the fact that he died shortly on the way to the hospital.

Likewise, the alibi stories of Emigdio and Silvestre are unworthy of credence. While Emigdio stated that he ate supper at Jose Coquilla's house at 9:00 that fateful night, this was contradicted by the latter who testified that supper was served at 7:00 p.m. (pp. 6, 7, 15, 16, t.s.n.). Moreover, witness Faustino Deganso testified that while he was walking home after fishing at about 6:00 in the evening of November 29, 1981, he saw the said Emigdio with two companions hiding behind the tree near the scene of the crime and that he was able to identify Emigdio by means of a flashlight. (p. 5 Appellee's brief). The defense of alibi presented by appellant Silvestre, besides being weak, cannot prevail over the positive identification by Jose which confirms his presence at the crime scene and his having stabbed Jose.

Being easily fabricated, the defense of alibi must be established by evidence clear and free from doubt and bias (People v. Dimatulac, 122 SCRA 47). It may be credited only if established by convincing and satisfactory proof (People v. Porcare, 120 SCRA 546).

Appellants point out to some alleged statements which are "substantially incompatible, and materially contradictory" to the declarations of Jose, among them: (1) The Affidavit of Quiliano Butron (Exhibits "6", "6-A" and "6-B"), stating that Jose told him that the person who stabbed him (Jose) is "one Hilario Espina" (p. 7, Appellant's Brief); (2) witness Faustino Deganso's testimony that Jose told a group of 20 people that "it was Emigdio Amoncio who stabbed him" (pp. 8-9, id.); and (3) witness Amado Bagtasa's testimony that Jose told him that instead of two, all herein three appellants stabbed him (pp. 9-10, id.).

As correctly found by the trial court, the aforesaid "statements" have no probative value; first because Quiliano Butron was not presented in court to confirm his hearsay declaration contained in his affidavit; second, Faustino Deganso's declaration was only a part of what he heard Jose tell to about 20 persons inside the public market (pp. 20-22, t.s.n., Jan. 25, 1983); and third, Amado Bagtasa's declaration that Jose told him that instead of two, all herein three appellants stabbed him, was qualified in the later portion of his testimony that Jose "was just suspecting that Emigdio Amoncio was one of those who stabbed him" (p. 8, tsn, August 16, 1983).

It is well-settled that when the issue is one of credibility of witnesses, the trial court's findings are given great weight on appeal, and We find no cogent reasons to disturb the same.

WHEREFORE, the judgment of conviction is hereby AFFIRMED, except that the indemnity of P12,000.00 for the heirs of Pablito Perocho is hereby increased to P30,000.00.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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