

## **SPECIAL TWENTIETH DIVISION**

**[ CA-G.R. CR No. 01662, July 25, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ABRAHAM MARMITA Y BADILLA AND PABLO MARMITA Y  
BADILLA, ACCUSED-APPELLANTS.**

### **D E C I S I O N**

#### **QUIJANO-PADILLA, J.:**

This is an appeal on the Judgment<sup>[1]</sup> of the Regional Trial Court (RTC), Branch 6, Tacloban City dated November 9, 2010 finding accused-appellants Abraham Marmita and Pablo Marmita guilty beyond reasonable doubt of murder in Criminal Case No. 2000-08-454; and finding Abraham Marmita guilty beyond reasonable doubt of frustrated homicide in Criminal Case No. 2000-08-435.

#### **The Antecedents**

Abraham Marmita (Abraham) and Pablo Marmita (Pablo) were charged for the murder of Arnulfo Cadano (Arnulfo) in Criminal Case No. 2000-08-454 under the following Information,<sup>[2]</sup> viz.:

That on or about the 14<sup>th</sup> day of May 2000, in the Municipality of Alangalang, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and mutually helping one another, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, hack, stab and wound Arnulfo Cadano with the use of bladed weapons which both accused provided themselves for the purpose, thereby producing fatal hacking, incised and stab wounds on the different parts of the body of Arnulfo Cadano which were the direct and proximate cause of his death.

CONTRARY TO LAW.

Meanwhile, Abraham was also charged with frustrated homicide in Criminal Case No. 2000-08-435. The Information<sup>[3]</sup> against him reads, viz.:

That on or about the 14<sup>th</sup> day of May 2000, in the Municipality of Alangalang, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, strike, stab, hack and wound one ROMELO CADANO with the use of a stone and a long bolo which the accused provided himself for the purpose, thereby hitting and inflicting upon the said ROMELO CADANO multiple wounds on the different parts of his body, thus the accused performed all acts of

execution which would have produced the crime of homicide as a consequence thereof, but which nevertheless did not produce it by reason of cause independent of his will, that is, by the able medical attendance rendered to ROMELO CADANO which prevented his death.

CONTRARY TO LAW.

Before Abraham could be arraigned in Criminal Case No. 2000-08-435, he moved that the case be consolidated with Criminal Case No. 2000-08-454. His motion was granted by the trial court in its Order<sup>[4]</sup> dated January 16, 2001.

When arraigned, both Abraham and Pablo pleaded not guilty to the offenses charged.<sup>[5]</sup>

The prosecution presented Romelo Cadano (Romelo) and his wife, Evangeline Cadano (Evangeline) as witnesses.

From their narrations, it could be gathered that accused-appellants Abraham and Pablo are brothers. Meanwhile, Arnulfo and Romelo, the victims in the murder and the frustrated homicide cases, respectively, are also brothers. The wife of Pablo, Josephine Cadano (Josephine), was the sister of Arnulfo and Romelo.

On May 14, 2000, at around 2:00 o'clock in the afternoon, Romelo and his wife Evangeline, together with their children, were at the house of Pablo as it was the birthday of the latter's child. At around 7:00 o'clock in the evening, Pablo and Josephine fought. Considering that Romelo and Josephine were siblings, Evangeline asked her husband that they would leave. When Romelo asked permission from her sister, Pablo followed Josephine and slapped her. Romelo tried to pacify Pablo and asked the latter not to harm his sister.

Subsequently, Romelo, Evangeline and their children went out of Pablo's house. While they were already on the road, Evangeline saw Romelo being hit by a stone thrown by Abraham. At that time, Evangeline was just about three arms stretch away from her husband. Thereafter, Abraham hacked Romelo thrice and hit the latter at his neck. When Romelo fell down, Evangeline saw Abraham proceeded towards Arnulfo who was lying on the road and drunk. Abraham also hacked Arnulfo repeatedly with the bolo he used to hack Romelo. Evangeline then saw Pablo approached Arnulfo and hit the latter with the butt of his shotgun. When the hostilities ceased, Evangeline rushed to the municipal police office of Alangalang, Leyte to seek help. The responding policemen brought Romelo and Arnulfo to EVRMC. Romelo survived but Arnulfo died on the following day.

The prosecution formally offered as exhibits the medical certificates of Arnulfo<sup>[6]</sup> and Romelo.<sup>[7]</sup> The defense admitted the due execution and authenticity of these documents.<sup>[8]</sup>

Meanwhile, the witnesses for the defense were Consolacion Dayata (Brgy. Captain Dayata), the *barangay* captain of Tombo, Alangalang, Leyte; Rosalinda Marmita (Rosalinda), the wife of Abraham; and the two accused-appellants, Abraham and Pablo.

According to the defense, on May 14, 2000, at around 7:00 o'clock in the evening, Abraham was in their house together with his family. Arnulfo and Romelo then came to Abraham's front yard, threw stones at Abraham's house and challenged Abraham to a fight. Not contented with throwing stones at Abraham's house, Romelo banged the door. Abraham instructed his wife Rosalinda and their children to go out of the house and hide themselves in the grasses as he feared that Arnulfo and Romelo might get inside. Rosalinda and the children did as instructed while Abraham stayed. When Arnulfo and Romelo tried to force themselves into the house, Abraham was compelled to hurt them. According to Abraham, Arnulfo delivered a hack blow to him using a long *bolo* but he managed to evade. He retaliated and hacked Arnulfo. Abraham also wounded Romelo because the latter also delivered a hack blow to him but failed to hit him. After hacking Arnulfo and Romelo, Abraham went to *Brgy.* Captain Dayata and told her about the incident.

*Brgy.* Captain Dayata recounted that she first learned of the incident from Edwin Cadano (Edwin), the elder brother of victims Arnulfo and Romelo. Edwin informed her that Romelo and Arnulfo went to the house of Pablo for a fight. She told Edwin that she would seek police assistance. She called the police through her hand-held radio but the police did not come right away. Before the police arrived, Abraham came to *Brgy.* Captain Dayata and told her that Romelo and Arnulfo challenged him to a fight. Abraham surrendered his *bolo* to *Brgy.* Captain Dayata. When the police arrived, *Brgy.* Captain Dayata went with them to the crime scene and she saw Arnulfo's body 3 meters away from Abraham's house. Arnulfo was lying on his back and already weak due to blood loss. She noticed that there were holes in the walls of Abraham's house. She further narrated that Pablo assisted in bringing Arnulfo to the hospital.

When Pablo testified, he claimed that he was washing dishes at his house after the birthday celebration of his child. While doing so, police officers, together with the *Brgy.* Captain, arrived and brought him to the house of his brother Abraham. The police fetched him because his brother Abraham just killed a person. He saw Arnulfo's body near the door of Abraham's house. He also saw a big hole in the wall of Abraham's house but he did not know who was responsible for it. He helped load the body of Arnulfo into the truck.

The defense offered no documentary exhibits.

After receiving the parties' evidence, the trial court rendered the appealed Judgment finding Abraham and Pablo guilty of the charges against them. The dispositive portion of the trial court's Decision reads, *viz.*:

WHEREFORE, premises considered, Judgment is hereby rendered-

In Criminal Case No. 2000-08-454 – finding the two accused ABRAHAM MARMITA y BADILLA and PABLO MARMITA y BADILLA, Guilty beyond reasonable doubt in the Murder of the victim Arnulfo Cadano. There being the mitigating circumstances of voluntary surrender and intoxication proven by the two accused, each of them are hereby sentenced to suffer *reclusion perpetua*. Their preventive detention shall be credited in full if they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, they shall be credited in the service of their sentence with four-fifths of the time during which

each of them has undergone preventive imprisonment. Both accused are also ordered to jointly and severally indemnify the Heirs of Arnulfo Cadano the sum of P75,000.00 for Civil Indemnity; Php75,000.00 for Moral Damages; and P30,000.00 as and for exemplary damages; and

In Criminal Case No. 2000-10-435 – finding accused ABRAHAM MARMITA y BADILLA, Guilty beyond reasonable doubt of Frustrated Homicide. There being the mitigating circumstance of voluntary surrender and intoxication proven by the said accused, without any aggravating circumstance, and applying the indeterminate sentence law, he is hereby sentenced to suffer imprisonment ranging from 6 months of *Arresto Mayor* maximum as the minimum to 6 years of *prision correccional* Maximum as the Maximum. His preventive detention shall be credited in full if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment. He is also ordered to indemnify Romelo Cadano the amount of P50,000.00 for moral damages

SO ORDERED.<sup>[9]</sup>

Abraham and Pablo sought reconsideration<sup>[10]</sup> of the Judgment but the trial court denied their motion.<sup>[11]</sup> Undaunted, they [hereinafter referred collectively as appellants] brought the matter to Us<sup>[12]</sup> on the following errors, which were also the same arguments advanced in their motion for reconsideration before the trial court, to wit:

(a) THE COURT *A QUO* GRAVELY ERRED IN NOT APPRECIATING THE INCONSISTENCIES AND INCREDIBILITY OF THE EVIDENCE OF THE PROSECUTION WHICH CREATED DOUBT ON THE CULPABILITY OF YOUR APPELLANTS;

(b) THE COURT *A QUO* GRAVELY ERRED WHEN [IT] FAILED TO APPRECIATE THE APPLICABILITY OF THE EQUIPONDERANCE OF EVIDENCE RULE IN THE LIGHT OF THE EQUIPOISE OF EVIDENCE OF THE PROSECUTION AND THE DEFENSE GRANTING ARGUENDO THAT THE EVIDENCE OF YOUR APPELLANTS IS WEAK;

(c) THE TRIAL COURT GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THE TESTIMONY OF WITNESS CONSOLACION DAYATA IN THE LINE WITH HER DUTY A[S] *BARANGAY* CHAIRWOMAN WHICH CARRIES WITH IT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS;

(d) THE TRIAL COURT GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THAT INTENT TO KILL WAS NOT ATTENDANT IN THIS CASE IN VIEW [OF THE FACT THAT] APPELLANT ABRAHAM MARMITA[,] DESPITE AMPLE OPPORTUNITIES TO KILL ARNULFO CADANO AND ROMELO CADANO, LEFT THE DUO AND PROCEEDED TO BRGY. CHAIRWOMAN CONSOLACION DAYATA TO SURRENDER;

(e) *AD ARGUMENTE* THAT THE APPELLANTS ARE CRIMINAL[LY] LIABLE,

APPELLANT ABRAHAM MARMITA SHOULD HAVE BEEN FOUND GUILTY OF HOMICIDE INSTEAD OF MURDER WHICH THE TRIAL COURT GRAVELY FAILED TO APPRECIATE

(f) *AD ARGUMENTE* THAT ABRAHAM MARMITA IS LIABLE FOR HOMICIDE[,] THE OTHER APPELLANT PABLO MARMITA SHOULD BE ACQUITTED ON ACCOUNT THAT CONSPIRACY DOES NOT EXIST IN THIS CASE.

### **This Court's Ruling**

The appeal is partly meritorious.

From the evidence on record, the trial court correctly convicted Abraham of murder and frustrated homicide. However, We find that Pablo's conviction was not established beyond reasonable doubt.

For an orderly discussion, We shall tackle first the sixth assigned error. In arguing therefor, appellants contended that since the trial court found no conspiracy, Pablo could not be held liable for murder as there was no evidence that Arnulfo had injuries caused by the striking of the butt of the gun, or that his death was caused by such wound.

Appellants' arguments on this point are tenable.

The trial court disregarded conspiracy between Pablo and Arnulfo as it found no evidence that both came to an agreement and decided to commit the unlawful acts. Indeed, the absence of conspiracy between appellants, when evaluated together with the medico-legal findings, negates Pablo's liability for Arnulfo's death. The medical certificate described Arnulfo's injuries and the cause of his death, as follows:

#### **FINDINGS**

##### **P.E Findings:**

- = (+) Hack wound 6 cm in length tempoparietal area (L)
- = (+) Incised wound 18 cm in length posterior neck
- = (+) Stab wound 1.5 cm #2 mandibular area
- = (+) Stab wound 1 cm #2 (L) shoulder
- = (+) Stab wound 2.5 cm (R) shoulder.

##### **Principal Diagnosis:**

=CP arrest from increased ICP from intracerebral hemorrhage from hacking wound (L) parietal area.

There is nothing in the medical certificate to indicate that Arnulfo sustained bruising/hematoma or any injury caused by having been struck with a hard object. The attending physician only found hack, incised and stab wounds, which must be caused by a sharp or bladed weapon and certainly not the butt of a shotgun.

During the cross-examination of defense counsel Atty. Arguelles on Romelo, the latter declared, thus: