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SECOND DIVISION

[G.R. No. L-32102. February 10, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABUBAKAR ASIL, alias ABUBAKAR PONGA**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; STANDS IN THE ABSENCE OF ILL-MOTIVE TO FALSELY TESTIFY AGAINST THE ACCUSED.**— The trial court observed that the eyewitnesses had no grudge against the accused. They did not know him before the shooting. There was no reason to doubt their credibility.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.**— We hold that the accused is guilty beyond reasonable doubt of murder. There was *alevosia* or treachery because the defenseless victim was shot from behind without any risk to his assailants.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jose M. dela Cruz for accused-appellant.

DECISION

AQUINO, *C.J.*:

Abubakar Asil (Asil Ponga) appealed from the decision of the Court of First Instance of Cotabato, convicting him of murder, sentencing him to *reclusion perpetua* and ordering him to indemnify solidarily the heirs of Arturo Hofer in the amount of P12,000.

The prosecution's evidence discloses that in the early morning of May 7, 1968, while Arturo Hofer, 53, a resident and councilor

Supreme Court E-Library

of Balabagan, Lanao del Sur was going to board a passenger launch at the wharf in Cotabato City, intending to return to Balabagan, he was shot several times by a group of persons who fled after the shooting. Hofer fell into the water.

He died due to massive hemorrhage caused by multiple gunshot wounds which destroyed his vital organs (Exh. A and C). He sustained three wounds in the chest and two wounds on his left arm. His liver was slashed. His left ventricle was ruptured.

Asil Ponga or Abubakar Asil was identified by the eyewitnesses, Luminog Dimaporo, 12, and Corazon Oasan as one of the assailants. Dimaporo executed a sworn statement dated August 24, 1968 regarding the killing (Exh. E).

Motive for the shooting was revenge. Hofer had sued one Akob Ontal for ejectment from a certain parcel of land. Hofer won the case. Moncado Ontal, a member of Akob's family, was killed in connection with the land dispute. Isabel Hofer, a niece of Arturo, identified the father of the accused, as having received money from Mamandas Ontal in the Balabagan bakery sometime in June, 1968 after Hofer was killed (See Exh. D).

Accused Asil denied any complicity in the crime. He declared that he was walking behind Patrolman Radsak Dadang along Bonifacio Street in Cotabato City, going in the direction of the wharf, when he heard a volley of gunshots. He proceeded to the wharf. He found a crowd gathered near Hofer's dead body. The trial court regarded Asil's alibi as too flimsy to merit any consideration.

His counsel *de oficio* contends that the trial court erred in not taking note of the lies and contradictions in the testimonies of the eyewitnesses and in not giving weight to appellant's alibi.

The Solicitor General in his brief conscientiously answered appellant's contentions. The trial court observed that the eyewitnesses had no grudge against the accused. They did not know him before the shooting. There was no reason to doubt their credibility.

Supreme Court E-Library

We hold that the accused is guilty beyond reasonable doubt of murder. There was *alevosia* or treachery because the defenseless victim was shot from behind without any risk to his assailants.

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity is raised to P30,000. Costs *de oficio*.

SO ORDERED.

Concepcion Jr. (Chairman), Abad Santos, Escolin, Cuevas, and *Alampay, JJ.,* concur.

FIRST DIVISION

[G.R. No. 59378. February 11, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELIA NICANDRO y VELARMA,** *accused-appellant.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST SELF-INCRIMINATION; VIOLATED IN CASE THE TRIAL COURT RELIED PARTLY ON THE ORAL ADMISSION DURING CUSTODIAL INVESTIGATION.—** In convicting the appellant, the trial court relied partly on her alleged oral admission during custodial investigation, as testified to by Pat. Joves. This reliance is assailed as violative of Section 20 of Article IV of the Constitution which reads: "No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."