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considering the existing conditions at the time. Moreover, this issue was rendered moot and academic by the subsequent return of the case to the respondent court in 1977, as stated in the Motion and/or Manifestations of petitioners filed with the Court on August 10, 1977, "[t]hat on August 2, 1977 respondent Judge Romeo M. Escareal issued an Order stating that the Judge Advocate General's Office, Armed Forces of the Philippines, Quezon City had returned the records of the instant case to the Circuit Criminal Court of Cebu pursuant to the General Order No. 59, dated June 24, 1977 implemented by Department of National Defense Order No. 94 dated July 16, 1977."

WHEREFORE, for lack of merit, the petition is DISMISSED and the Regional Trial Court of Cebu is hereby ORDERED to proceed with the trial of the case.

SO ORDERED.

de la Fuente and *Alampay, JJ.*, concur.

Teehankee (Chairman), J., in the result, since the basic issue that civilians may not be tried by Military Commissions has been rendered moot, with the return of the case to regular civil courts.

Melencio-Herrera and *Plana, JJ.*, in the result.

Gutierrez, Jr., J., I concur since the case is now back with the civil count.

SECOND DIVISION

[G.R. No. L-45088. February 28, 1985]

THE PEOPLE OF THE PHILIPPINES, ***plaintiff-appellee,*** ***vs.*** **EUSTAQUIO MANALO y REBOLLOS,** ***defendant-appellant.***

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SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI, DEFENSE CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.—** The defense of alibi presented by the accused-appellant is of no credit and could not prevail over the positive testimony of prosecution witnesses Julia Tolentino de Saavedra and Bernardito Saavedra who had no motive to testify falsely against him. Between the positive declaration of eyewitnesses to the incident and the uncorroborated testimony of Jose Ventura tending to show the alibi of the accused, the former deserves more weight especially since the evidence for the defense is not conclusive as to the whereabouts of the accused at the time the crime was committed. Jose Ventura merely testified that he and the accused, among others were having a conference in the store of one Isaias Rojas in Sibulao when Leonora Saavedra, sister of the deceased Victor Saavedra arrived at about 5:00 o'clock in the afternoon and requested him to accompany her to the Vitali Police Precinct to report the shooting of her brother Victor. Ventura, however, never stated that the accused was with him all the time, particularly at about 4:00 o'clock in the afternoon, when Victor Saavedra was shot. Alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; TRIVIAL INCONSISTENCIES DO NOT AFFECT CREDIBILITY.—** These inconsistencies and contradictions, however, refer to trivial details and are not sufficient to generate a doubt on the guilt of the accused-appellant.

3. **CRIMINAL LAW; MOTIVE ESSENTIAL TO CONVICTION ONLY WHEN DOUBT EXISTS AS TO THE IDENTITY OF THE CULPRIT.—** As to lack of motive, the well-settled rule is that motive is essential to conviction only when there is doubt as to the identity of the culprit or where there are no eyewitnesses and where suspicion is likely to fall upon a number of persons.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; FRIENDLY RELATION BETWEEN ACCUSED AND DECEASED, NOT DECISIVE.—** The friendly relation existing between the accused and the deceased

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prior to the commission of the crime is not decisive in determining the weight of evidence. As the Court once said, "Evil designs are sometimes concealed under the cloak of affection and friendship. The betrayal of the Great Master by one of his trusted disciples was stamped with a kiss and so runs the old adage: 'Faithful are the wounds of a friend, but the kisses of any enemy are hateful.'"

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Hector C. Suarez for defendant-appellant.

DECISION

CONCEPCION JR., *J.:*

Eustaquio Manalo y Rebollos was charged before the Court of First Instance of Zamboanga City with murder committed as follows:

"That on or about September 15, 1973, in the City of Zamboanga, Philippines, and within the jurisdiction of this Court, the above-named accused armed with a shotgun, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot with the shotgun that he was then armed with the person of Victor Saavedra, thereby inflicting upon the latter's person mortal wound which caused his death."

After trial, Judge Alberto V. Señeris found the accused guilty of the crime charged and sentenced him to suffer the penalty of *reclusion perpetua,* with all the accessory penalties provided for by law; to indemnify the heirs of the deceased Victor Saavedra the sum of P12,000.00, and to pay the costs. From that sentence the accused Eustaquio Manalo has appealed to this Court.

The People's version of the facts of the case, as stated in its Brief, is as follows:

"At about 4:00 o'clock in the afternoon of September 15, 1973, the deceased Victor Saavedra, his wife Julia Tolentino Saavedra and their two (2) children, Bernardito and Felizardo, were on their way

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to Sibulao, Zamboanga City, to evacuate because of the worsening peace and order situation obtaining in Buug Mundo, Vitali District, Zamboanga City, where they were then residing. The deceased was riding a carabao pulling a sled loaded with seven (7) heads of chicken, one (1) can of petroleum and some belongings. He was followed by his son Bernardito riding a cow which was also pulling a sled load with a plow, a box containing belongings and a cavan of corn. Behind Bernardito followed his mother Julia Tolentino Saavedra with Felizardo immediately behind her (tsn., pp. 3-5, December 20, 1973; tsn., pp. 26-27, January 28, 1975).

"After the deceased Victor had crossed the Buug Mundo creek but before his companions had reached it, the widow Julia heard a gunshot (tsn., pp. 6-7, December 20, 1974). Bernardito also heard the gunshot (tsn., p. 29, January 28, 1975). After the shot, mother and son saw the deceased Victor falling from the carabao. They ran to him but before they could reach him they heard another gun report. Thereafter the deceased Victor fell to the ground. Julia and her children ran and hid among the thick bushes behind banana plants growing along the sides of the trail some thirty (30) meters away from where the deceased fell (tsn., pp. 8 and 9 December 20, 1974; tsn., p. 28, January 28, 1975). While thus in hiding, Julia and Bernardito stood and peeped out. They saw appellant Eustaquio Manalo walk towards the fallen Victor with a shotgun (rifle) slung on his shoulder (tsn., p. 11, December 20, 1974; tsn., p. 29, January 29, 1975). When the appellant reached the fallen Victor he turned the body face up, took the latter's revolver, his homemade shotgun and bullets and left (tsn., p. 10, December 20, 1974; tsn., p. 28, January 29, 1975). When appellant disappeared and seeing that he (Victor) was no longer moving, Julia and his children went to the house of her sister-in law, Leonora Buscas at Buug Mundo. She told Leonora that her husband (Victor) was shot on the way and requested Leonora to report the killing to the Vitali Police Precinct, Zamboanga City (tsn., pp. 11 & 12, December 20, 1973). The following day, September 16, 1973, a team of policemen together with the widow Julia and relatives went to the scene of the crime to get the dead body of her husband. The body was brought to the La Merced Funeral Parlor for examination (tsn., pp. 13-14, December 20, 1974). Dr. Rogelio Silapan conducted a medico-legal examination on the body of the deceased Saavedra which was already in complete *rigor mortis,* prepared a post-mortem examination reports (Exhs. 'A', 'A-1' and 'A-2') containing his findings, thus:

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'The cadaver was in *rigor mortis,* complete, soaked with dried blood on the chest and upper abdomen. On further examination multiple bullet wounds were found.

'1. Gunshot wounds, (2) two (entrance) roughly wounded in shade, 0.7 centimeter in diameter surrounded by abraded edges 0.3 centimeter in width located at the submandibular region 1" below the ramus of the lower mandible, 2" infra-auricular, lateral aspect, neck and base of neck, supra-clavicular, latero-anterior aspect, neck, left.

'2. Gunshot wound, (3) three (entrance) 0.7 centimeter in diameter, roughly rounded and surrounded by contuso-abraded cellar, 0.3 centimeter in width, located in between the first and second intercostal space and fourth and fifth intercostal space, chest, left, penetrating toward the chest cavity.

'3. Gunshot wounds, (entrance) roughly rounded in shape, 0.8 centimeter in diameter surrounded by abradec cellar, located at the deltoid muscle, penetrating medially and posteriorly toward the scapular region, left with gunshot (exist) 1 centimeter in diameter.

'CAUSE OF DEATH
'Shock, meotrorax secondary to gunshot wound, multiple.

'ROGELIO L. SILAPAN MD
Medical Officer'

and issued a death certificate attesting to the fact of death of Victor Saavedra (tsn., p. 14, December 20, 1974).

"The widow spent P250.00 for embalment of her husband's cadaver and P800.00 for funeral and expenses for the last prayer."

The accused, Eustaquio Manalo y Rebollos, however, did not take the witness stand to deny or confirm the accusations against him. In his stead, Jose Ventura, barangay captain of Sibulao, Zamboanga City, then a barrio councilman of the locality, testified and declared that he and the accused were attending a conference in the house of one Isaias Rojas when Leonora Saavedra, sister of the deceased Victor Saavedra, arrived and sought his help in reporting the shooting incident to the police authorities. He also belied the testimony of Julia Tolentino de Saavedra, widow of the deceased, that she told

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the police investigators at the scene of the crime that she would reveal the identity of her husband's killer at an appropriate time. He declared that Julia, when asked if she saw the person who shot her husband, replied that she did not see the shooting and that she only heard the shot. He further stated that Bernardito Saavedra, when asked a similar question, also replied that he only heard the shot and did not see who shot his father.[1]

Pat. Magdaleno M. Alvarez, a member of the Zamboanga City Police Department, to whom the shooting was reported by Jose Ventura, corroborated the latter's testimony that Julia Saavedra, when asked where she was when her husband Victor was shot, answered that she was on the other side of the creek and that after the firing, she immediately left the place and proceeded home. He also stated that he saw the body of the deceased about 10 to 15 meters away from the creek, face down.[2]

There is no dispute that Victor Saavedra died as a result of gunshot wounds suffered by him when he was shot along a trail near the Buug Mundo creek in Vitali, Zamboanga City in the afternoon of September 15, 1973. The only question is whether or not the accused Eustaquio Manalo y Rebollos committed the felony.

The trial court found that the accused committed the crime in the manner testified to by the witnesses for the prosecution and gave no credence to the testimony of Jose Ventura that the accused was somewhere else when the crime was committed since the accused was positively and clearly identified by the witnesses for the prosecution as the author of the crime, and that Jose Ventura, a barrio official whose duty is to enforce the law, failed to inform the police investigators of what he knew; nor did he appear at the preliminary investigation of the case. As the learned trial judge said: "If Ventura was presented during the preliminary investigation, the Investigating

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[1] tsn., of July 10, 1975, pp. 2-5, 12, 14.

[2] tsn., of July 9, 1975, pp. 12-13, 33, 35.

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Fiscal could have absolved the accused if convinced that it was impossible for the accused to be at the crime scene at about 4:15 p.m. on September 15, 1973."

For sure, the defense of alibi presented by the accused-appellant is of no credit and could not prevail over the positive testimony of prosecution witnesses Julia Tolentino de Saavedra and Bernardito Saavedra who had no motive to testify falsely against him. Between the positive declaration of eyewitnesses to the incident and the uncorroborated testimony of Jose Ventura tending to show the alibi of the accused, the former deserves more weight especially since the evidence for the defense is not conclusive as to the whereabouts of the accused at the time the crime was committed. Jose Ventura merely testified that he and the accused, among others, were having a conference in the store of one Isaias Rojas in Sibulao when Leonora Saavedra, sister of the deceased Victor Saavedra arrived at about 5:00 o'clock in the afternoon and requested him to accompany her to the Vitali Police Precinct to report the shooting of her brother Victor. Ventura, however, never stated that the accused was with him all the time, particularly at about 4:00 o'clock in the afternoon, when Victor Saavedra was shot. Alibi, in order to be given full faith and credit, must be clearly established and must not leave any room for doubt as to its plausibility and verity.[3]

Counsel for the appellant assails the trial court for giving full faith and credit to the testimonies of the witnesses for the prosecution, claiming that they are inconsistent, improbable, and contradictory, in that:

(1) Julia Tolentino de Saavedra testified in court that after her husband Victor was shot, she saw the accused emerge from the bushes alongside the trail, with a gun slung on his shoulders, whereas, in her sworn statement (Exh. 1) she did not say that the accused was carrying a gun slung on his shoulders;

(2) Julia Saavedra declared that she told police investigators at the scene of the crime that she will reveal the identity of her husband's killer at a later time, after she shall have

[3] People *vs.* Sagario, L-18659, June 29, 1965; 14 SCRA 468.

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removed her household goods from their old house, whereas, Pat. Juan Marcial, the police investigator, denied having investigated any person at the scene of the crime;

(3) Pat. Marcial testified in the direct examination that Julia Saavedra told him on September 26, 1975 that she saw the accused fire at Victor, whereas in the cross examination, he stated that Julia told him that she did not actually see the person who shot her husband, and

(4) It is hard to believe that the accused would come out from the bushes after shooting Victor and thus expose himself since the natural reaction of a killer would be to escape unseen, and besides, there is no proof of motive for him to kill Victor Saavedra who is his friend.

These inconsistencies and contradictions, however, refer to trivial details and are not sufficient to generate a doubt on the guilt of the accused-appellant. As to lack of motive, the well-settled rule is that motive is essential to conviction only when there is doubt as to the identity of the culprit or where there are no eyewitnesses and where suspicion is likely to fall upon a number of persons.

The friendly relation existing between the accused and the deceased prior to the commission of the crime is not decisive in determining the weight of evidence. As the Court once said, "Evil designs are sometimes concealed under the cloak of affection and friendship. The betrayal of the Great Master by one of his trusted disciples was stamped with a kiss and so runs to the old adage: 'Faithful are the wounds of a friend, but the kisses of any enemy are hateful.'"[4] On the whole, We find no overriding consideration to justify a reversal of the judgment appealed from.

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the deceased Victor Saavedra is increased to P30,000.00, the judgment appealed from should be, as it is hereby, AFFIRMED. With costs against the accused-appellant.

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[4] People *vs.* Salcedo, 62 Phil. 812, 814.

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SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, Escolin, and *Cuevas, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-45470. February 28, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* GREGORIO LAQUINON, *alias* "JOLLY", *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DYING DECLARATION; INADMISSIBLE AS SUCH WHERE DECLARANT DID NOT BELIEVE HIMSELF IN EXTREMIS.— The dying declaration of the deceased Pablo Remonde is not admissible as an ante-mortem declaration since the deceased was in doubt as to whether he would die or not. The declaration fails to show that the deceased believed himself in extremis, "at the point of death when every hope of recovery is extinct," which is the sole basis for admitting this kind of declarations as an exception to the hearsay rule.

2. ID.; ID.; ID.; ADMITTED AS PART OF THE *RES GESTAE.*— It may be admitted, however, as part of the *res gestae* since the statement was made immediately after the incident and the deceased Pablo Remonde had no sufficient time to concoct a charge against the accused.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCE; TREACHERY, ATTENDANT WHEN EMPLOYED AS A MEANS OF EXECUTION.— Accused is guilty beyond reasonable doubt of the crime of murder qualified by treachery. The victim was apparently shot while his two hands were tied at his back. Accused, in shooting the victim, obviously employed means or force in the execution of the offense which tended