Supreme Court E-Library

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

Supreme Court E-Library

directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Sinforoso R. De los Reyes for defendant-appellant.

D E C I S I O N

CONCEPCION JR., *J.:*

Accused Gregorio Laquinon was charged with the crime of murder in the Court of First Instance of Davao del Sur for the killing of Pablo Remonde, committed as follows:

"That on or about November 13, 1972, in the Municipality of Hagonoy, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with treachery and evident premeditation, armed with a gun and with intent to kill, did then and there wilfully, unlawfully and feloniously shoot one Pablo Remonde with said weapon, inflicting upon the latter wounds which caused his death."

After the trial, the lower court rendered a decision finding the accused guilty of the crime charged and sentenced him as follows:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused guilty beyond reasonable doubt of the crime of murder, and imposes upon him the penalty of *reclusion perpetua* (Art. 248, Revised Penal Code); to indemnify the heirs of the deceased in the sum of P12,000.00 and to pay the costs."

From the foregoing judgment, accused Gregorio Laquinon interposed the present appeal.

The People's version of the case is as follows:

"On November 13, 1972, at about 11:30 o'clock in the evening, Samama Buat, barrio captain of Clib, Hagonoy, Davao del Sur, was at his residence in barrio Clib. In a short while he heard gunshots coming from the bank of a river some three hundred meters to the

Supreme Court E-Library

south of his house (pp. 4-6, tsn., Dec. 8, 1975). Then, his brother, Leocario Buat, arrived and told him that a man was shouting for help at the bank of the river. Samama Buat told his brother to call the barrio councilman. Thereafter, he proceeded to the place where the unidentified man was. His brother, Leocario and the barrio councilman also arrived there. Samama Buat found the man lying on the sand and asked who he was. The man answered, 'I am Pablo Remonde' (pp. 7-10, *id.*). Remonde's two hands were tied on his back. He was lying face down (p. 10, *id.*).

"Samama Buat then took the 'ante mortem' statement of Pablo Remonde. He asked him who he was to which he answered that he was Pablo Remonde. Samama Buat asked 'who shot you' and Remonde said that it was Gregorio Laquinon. He asked Pablo Remonde whether from the gunshot wounds he suffered he would survive to which the victim answered 'I do not know' (pp. 11, 19, 21, *id.*; see also Exh. A, Folder of Exhibits). After that, barrio captain Buat went to the municipality of Hagonoy and reported to Vice Mayor Antonio Biran the shooting of Pablo Remonde. Vice Mayor Biran went to the scene of the incident and asked the victim who shot him to which the latter answered that he was shot by Gregorio Laquinon (pp. 21 A to 23, tsn., Dec. 8, 1975). Pablo Remonde was placed on a jeep of the Vice Mayor and brought to the hospital (p. 23, *id.*). Pablo Remonde was admitted to the Canos Hospital in Digos, Davao del Sur where he was attended to by Dr. Alfonso Llanos. Dr. Llanos performed an operation on the victim from whose body a slug was recovered (pp. 15-16, tsn., Jan. 26, 1976; Exh. B). Pablo Remonde died in the hospital on November 16, 1972 because of bullet wounds (pp. 17-20, tsn., Jan. 26, 1976; see also clinical chart. Exh. C, Folder of Exhibits)."

The accused Gregorio Laquinon denied having killed the deceased. The trial court summarized his defense, as follows:

"In his defense, the accused declared that he was a KM member; that he was ordered by one Noli Cabardo, then their CO, to fetch Pablo Remonde; he requested one Cristino Nerosa to go with him, and matter of factly, they brought Remonde to the place where said CO Cabardo with ten companions, was waiting at the riverbank; that before reaching the place, Nerosa separated from him and he alone brought Remonde to Cabardo. There Cabardo confronted Remonde why, having been commanded to buy some provisions in Matanao, he (Remonde) never returned; to which Remonde

Supreme Court E-Library

answered that he spent the money 'in drinking and gambling', whereupon Cabardo got mad and as Remonde attempted to escape, he (witness) heard a shot which must have been fired by Cabardo as he was holding a .38 Cal. revolver; that he (witness) also had that evening a Cal. 22 *paltik;* that after the shot he saw Remonde sprawled on the ground, and then Cabardo ordered them to go to the mountain as in fact they did; that two days later during the day, their mountain camp was raided by the PC and Cabardo and two others were killed while he (witness) was able to escape and went to Magpet, North Cotabato, and engaged in farming therein with his relatives; but believing that as a KM member he 'committed something.' he surrendered to the Davao PC Barracks in May, 1975 (Exhibit '2'), where up to now he is being confined."

The accused-appellant prays for the reversal of the appealed judgment on the ground that the lower court erred in finding him guilty of the crime charged on the basis of the statement attributed to the deceased Pablo Remonde which reads:

"Q State your name and other personal circumstances.
A Pablo Remonde y Saballa, 24 years old, laborer and resident of Pob. this mun.

"Q Who shot you?
A Mr. Laquinon, a person who ran for councilor before the ticket of Liberal last local election and son of Suelo Maravillas whose name I don't know.

"Q Why you were shot by said persons above?
A They are suspecting me that I'm an informer of Vice-Mayor Viran regarding KM.

"Q Do you think you'll die with your wound?
A I don't know sir."

The accused-appellant argues that the foregoing statement is inadmissible in evidence as an ante-mortem declaration because it was not executed under a consciousness of an impending death; and that the deceased was not a competent witness.

The fact that the deceased had named the son of Suelo Maravillas who turned out as Cristino Nerosa as one of those who shot him in his dying declaration does not make the deceased an incompetent witness. Nor does it render said dying declaration

Supreme Court E-Library

incredible of belief. The testimony of the accused that he and Nerosa separated and that he alone brought the deceased to Noli Cabardo is not corroborated. It may be that Nerosa was with the accused when the latter shot the deceased, as stated in the dying declaration, but that the accused testified that Nerosa was not with him when he brought the deceased to Noli Cabardo in order to free Nerosa from criminal liability.

Nor does the testimony of Barrio Captain Samama Buat that the place was dark and that the victim had told him that he was shot by members of the KM make the deceased an incompetent witness. On the contrary, it strengthens the statement of the deceased since the accused is a member of the KM.

But 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."[1]

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.

On the whole, We are satisfied with the findings of the trial court that the accused was responsible for the killing of Pablo Remonde. We cite with approval the following observations of the trial court:

"Indeed, the Court cannot believe that CO Cabardo did the killing as related by the accused for the following reasons:

"*First*, when the deceased was allegedly delivered to CO Cabardo, he was already hand-tied at his back, that the place of the shooting was 'covered by thick bushes and beside the river', and that CO Cabardo was with ten men excluding the accused; under these circumstances, it is hard to believe that the deceased, with all those overwhelming handicap, would attempt to flee.

---

[1] People *vs.* Dominguez, L-22474, Nov. 26, 1970, 36 SCRA 59.

Supreme Court E-Library

"*Second,* if the deceased truly tried to flee, the logical thing he would do would be to *flee away from and not towards Cabardo;* in doing the former he would turn to his right or to his left or towards his back; if he fled to his left or right, or towards his back, he would be exposing one side of his body, or his back, and when fired upon in that position he would have been hit on one side of the body or at his back. The evidence — as testified to by Dr. Llanos — however, shows that the deceased had only *one wound.* a gunshot wound, *in the abdomen;* this shows he was fired upon frontally, the bullet going through and through the intestines and lodged, presumably in the bony portions of his back, that is why the slug (Exhibit 'B') was recovered. The accused's version, therefore, that the deceased tried to flee is hard to believe for being against the physical facts.

"Now, if the accused is innocent, why should he relate such an incredible version?

> "Oh what a tangled web they weave when first day practice to deceive."
>
> - Sir Walter Scott

"With these observations, the Court cannot believe that the accused really delivered the deceased to CO Cabardo and that it was Cabardo who shot him. As testified to by him, their mountain camp was raided by the PC two days after the incident, as a result of which raid Cabardo and two of their companions were killed. The accused himself was able to escape, went to hide in a relative's farm in far-away Magpet, North Cotabato, did farming there until one day in May, 1975, repentant that, as a KM member, he had 'committed something,' he finally surrendered to the PC Barracks in Davao City. Cabardo, may he rest in peace, having gone to the other world, and can no longer speak in his behalf, it is not unlikely that the accused conceived of this outlandish defense by pointing to CO Cabardo, to free himself from responsibility.

"Most important to remember on this point is that at the time the deceased made his 'dying' statement, Cabardo was still alive; that per the accused himself, he had no previous differences with the deceased or with the barrio captain; and that from the prosecution witness Bo. Capt. Buat, when he took the statement of the deceased, the deceased was feeling strong, surely, under such circumstances it is hard to believe that the deceased would name the accused with whom he had no quarrel and Nerosa as his killers if that was really not the truth."

Supreme Court E-Library

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 directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.

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

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 52715. February 28, 1985]

BENITO E. DOMINGUEZ, JR. and INTEGRATED CONSTRUCTION SERVICES, INC., *petitioners, vs.* HON. COURT OF APPEALS and JUAN T. DAVID, *respondents.*

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; ATTORNEYS; RENDITION OF PROFESSIONAL SERVICES; ENTITLEMENT TO ATTORNEY'S FEES; CASE AT BAR.—** The basic rule is that when one has rendered services to another and these services were accepted by the latter, in the absence of proof that the services were rendered gratuitously, it is but