

THIRD DIVISION

[G.R. No. 110129, August 12, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. EDELCIANO AMACA @ "EDDIE" AND "JOHN DOE" @ "OGANG,"
ACCUSED, EDELCIANO AMACA @ "EDDIE," ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

The *ante mortem* statement of the victim is sufficient to identify the assailant in the case at hand. However, the accused cannot be convicted of murder attended by treachery, because the Information charged him with murder qualified only by evident premeditation. This legal lapse of the prosecution -- for that matter, any prosecution lapse -- should benefit the appellant, because in a criminal case, the accused may be held accountable only for the crime charged (or for the crime necessarily included therein), and every doubt must be resolved in his favor. Thus, we hold him guilty only of homicide. Furthermore, since the heirs of the victim waived their claim through an affidavit of desistance, no award for civil indemnity should be included in this Decision finding the accused guilty of the homicide.

Statement of the Case

These postulates are explained in the Court's adjudication of this appeal from the Decision^[1] dated November 19, 1992 of the Regional Trial Court of Bais City, Branch 45,^[2] in Criminal Case No. 550-C convicting Accused Edelciano Amaca of murder and sentencing him to reclusion perpetua.

On December 17, 1990, an Information^[3] was filed by Bais City Prosecutor Epifanio E. Liberal, Jr. against Appellant Amaca and one known only by his alias "Ogang," charging them as follows:

That on October 1, 1990 at around 7:00 o'clock in the evening, more or less, in Purok Liberty Hills, Barangay Mabigo, Canlaon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused mutually helping one another and with evident premeditation and at nighttime did then and there wilfully, unlawfully and feloniously attack, assault and shot with the use of a firearm one Wilson Vergara who, as a result thereof, suffered fatal gunshot wound as reflected in the medical certificate issued on October 2, 1990 by the Guihulngan District Hospital which was the immediate cause of his immediate death.

Contrary to Art. 248 of the Revised Penal Code."

A warrant for the arrest of accused-appellant was issued on January 16, 1991.^[4] However, this was returned unserved on two different occasions for the reason that the subject had already changed address and "his whereabouts [were] unknown."^[5] A motion for reinvestigation filed by appellant's Counsel de Oficio Marcelo Ondoy was denied in an Order dated April 15, 1991 on the ground that the trial court had not yet acquired jurisdiction over the accused who was then still at large.^[6] Jurisdiction over the person of appellant was acquired by the said court only on July 1, 1991 when he was arrested by police authorities.^[7] Thereafter, reinvestigation was conducted but the prosecutor, reiterating his prima facie findings, resolved to continue the prosecution of the accused.

Arraigned on September 25, 1991, the accused-appellant, assisted by Atty. Ondoy, pleaded not guilty to the charge.^[8] Trial ensued in due course. Thereafter, the trial court rendered its Decision, the decretal portion of which reads:

WHEREFORE, premises considered, this Court finds accused EDELCIANO AMACA alias 'EDDIE' guilty beyond reasonable doubt of the crime of murder as penalized under Article 248 of the Revised Penal Code, and hereby sentences the said accused to a penalty of **RECLUSION PERPETUA**, without pronouncement as to civil liability, and damages, and to pay costs.

SO ORDERED."^[9]

The Facts

The trial court synthesized the facts, based on the testimonies of witnesses for the prosecution and the defense, as follows:

To prove the injuries sustained by the victim, Wilson Vergara, and his cause of death, the prosecution presented Dr. Edgar P. Pialago, a resident physician of the Guihulngan District Hospital, Guihulngan, Negros Oriental, who testified that on October 2, 1990, he was on duty at the aforesaid hospital, and was able to attend to victim Wilson Vergara who had just undergone a surgical operation conducted by another doctor, Dr. Gonzaga. The major organs of the victim, namely, the heart, lungs and kidney, were no longer functioning normally, and thus, he was suffering from multiple organ system failure. Furthermore, there was injury in the pancreas, causing a leak of the pancreatic juice. Victim suffered two gunshot wounds at the back, and x-ray revealed two (2) bullets inside the body, and there was no exit wound. The patient was admitted at 10:45 in the evening of October 1, 1990, and died at 7:00 in the evening of the following day. He identified the death certificate (Exh. 'A'), and the data sheet of the victim and the final diagnosis. (Exh. 'B') Even with immediate medical attention, the victim could not have survived with the wounds he sustained.

Bernardo Mangubat, member of the Philippine National Police of Canlaon City, testified that as a police investigator one of his companions in the force fetched him from his residence at about 7:00 in the evening of October 1, 1990, and informed him of a shooting incident, where the victim was at the clinic of Dr. Cardenas, which was near his residence. Upon reaching the clinic of Dr. Cardenas, he saw the victim already on board a Ford Fiera pick up ready for transport to the hospital. He inquired from the victim about the incident, and the former answered he was shot by CVO Amaca and Ogang. Upon query why he was shot, the victim said he did not know the reason why he was shot. Upon being asked as to his condition, the victim said that he was about to die. (TSN, p. 22, March 4, 1992) Upon being asked, the victim identified himself as Nelson (sic) Vergara. He was able to reduce into writing the declaration of victim Vergara, and have the latter affixed (sic) his thumbmark with the use of his own blood in the presence of Wagner Cardenas, the brother of the City Mayor. (Exh. 'C')

Interposing the defense of alibi, the accused corroborated (by) his witnesses, namely, Felix Ponting, and Alfredo Gabucero, portrayed the following scenario: Felix Ponting and Alfredo Gabucero were members of the CAFGU (Civilian Armed Forces Geographical Unit) and accused as member of the Civilian Volunteer Organization (CVO) with station at Barangay Lumapao, Canlaon City. On October 1, 1990, the accused together with his companion Felix Ponting were on duty at the said station from 6:00 o'clock in the evening to 8:00 o'clock that same evening. After their duty at 8:00 o'clock, they went to sleep at the detachment, and were relieved by Alfredo Gabutero, whose duty covered from 8:00 to 9:00 that same evening."^[10]

Prosecution Witnesses Segundina Vergara, mother of the victim, and her son-in-law Jose Lapera both desisted from further prosecution of the case; the former because of the "financial help" extended by the accused to her family, and the latter because Segundina had already "consented to the amicable settlement of the case." This notwithstanding, the Department of Justice found the existence of a prima facie case based on the victim's ante mortem statement."^[11]

The Trial Court's Ruling

The trial court deemed the victim's statement to Police Officer Mangubat, positively identifying Appellant Amaca, a dying declaration sufficient to overcome the latter's defense of alibi. However, due to the voluntary desistance of the victim's mother from further prosecuting the case, the court a quo declined to make a finding on the civil liability of the appellant.

The Issue

In his brief, the appellant filed a lone assignment of error, to wit:

"The trial court erred in finding accused Edelciano Amaca guilty beyond reasonable doubt of the crime of murder on the sole basis of the alleged dying declaration of the victim to Police Officer Bernardo Mangubat."^[12]

The Court's Ruling

The appeal is partially granted. The appellant is guilty only of homicide, not murder, and civil indemnity shall not be awarded to the heirs of the deceased.

Dying Declaration Sufficient to Identify Assailant

A dying declaration is worthy of belief because it is highly unthinkable for one who is aware of his impending death to accuse falsely or even carelessly anyone of being responsible for his foreseeable demise. Indeed, "when a person is at the point of death, every motive for falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth."^[13] This is the rationale for this exception to the hearsay rule under Section 37, Rule 130 of the Rules of Court. The elements of such exception are: (1) the deceased made the declaration conscious of his impending death; (2) the declarant would have been a competent witness had he survived; (3) the declaration concerns the cause and surrounding circumstances of the declarant's death; (4) the declaration is offered in a criminal case where the declarant's death is the subject of inquiry; and (5) the declaration is complete in itself.^[14] All these concur in the present case.

Declarant a Competent Witness

The appellant contends that had he survived, the declarant would not have been a competent witness to identify his assailant. He emphasizes that the victim was shot twice at the back at nighttime and that " x x x the witness/victim based on the foregoing circumstance was not able to see the alleged assailants x x x."^[15] We are not persuaded. True, the victim, Wilson Vergara, was hit at the back by two bullets. But as the prosecution clearly showed by other evidence, Wilson did not lose consciousness upon being shot. In fact, his ante mortem statement clearly indicates that he was able to see and recognize who shot him. In this light, appellant is assailing the credibility, not the competency, of the victim. Competency of a witness to testify requires a minimum ability to observe, record, recollect and recount as well as an understanding of the duty to tell the truth.^[16] Appellant does not dispute that the victim was capable of observing and recounting the occurrences around him; appellant merely questions whether the victim, under the circumstances of this case, could have seen his assailant. In effect, appellant challenges merely the credibility of the victim's ante mortem statement. We hold that the serious nature of the victim's injuries did not affect his credibility as a witness since said injuries, as previously mentioned, did not cause the immediate loss of his ability to perceive and to identify his shooter. The Court had occasion in the past to rule on a similar issue as follows:

" x x x (') The question as to whether a certain act could have been done after receiving a given wound, (') according to Wharton and Stilles (Vol. III, Medical Jurisprudence, p. 212), 'is always one that must be decided upon the merits of a particular case.' They cited a case from Vibert's *Precis de Med. Leg.*, 4th ed., p. 286, where a man after being shot in the chest threw a lamp at his adversary. The lamp started a fire; and to extinguish the fire, the wounded man fetched a pail of water from

the courtyard. When the fire was extinguished, the man lay down in bed and died. Vibert performed the autopsy, and found that the left ventricle of the heart had been perforated by the revolver's bullet. It is evident from the foregoing that Dr. Acosta's assertion that the victim of a gunshot wound would immediately lose consciousness, after infliction of the wound, may not be true in all cases. x x x"^[17]

Appellant also argues that the declarant could not have seen who shot him because "the actual shooting occurred at 7:00 o'clock in the evening."^[18] This statement is bereft of factual basis. The record shows that Police Officer Mangubat was fetched from his house at 7:00 p.m. to investigate the shooting. He was informed that the victim had already been brought to the clinic of Dr. Cardenas.^[19] It may thus be inferred that the shooting occurred sometime before the victim was found, brought to the clinic, and before Mangubat was fetched from his house. Thus, a considerable period of time must have elapsed from the time of the actual shooting until the policeman was fetched from his house around 7:00 p.m. That he was shot way before 7:00 p.m. does not lead to the inference that it was pitch black at the time of the shooting. Indeed, from the foregoing, it is reasonable to assume that the crime was committed before nightfall and that there was sufficient daylight to enable the victim to identify his assailant. At any rate, there are no indicia in the record that lighting conditions made it impossible for declarant to identify his assailant. Ineluctably, the positive assertion of the declarant that he did recognize his shooter has greater persuasive value than the baseless negative speculation of the defense that he did not.

Genuineness of the Dying Declaration

The defense attempts to cast doubt on the genuineness of the dying declaration by suggesting that since "the relationship between CAFGU and the PNP is marred by jealousy, suspicion and general dislike for one another,"^[20] Police Officer Mangubat had enough motive to falsely implicate appellant who was a CAFGU member. The defense also asks: "Why was the alleged dying declaration of the victim merely thumbmark (sic) when in fact he was still coherent, conscious and very capable of writing his name at that time?"^[21] Additionally, the defense questions why Wagner Cardenas who signed the ante mortem statement as witness was not presented as such by the prosecution.^[22]

The foregoing ulterior-motive theory is thoroughly unconvincing. Clearly, it does not destroy the genuineness of the ante mortem statement. Police Officer Mangubat is presumed under the law to have regularly performed his duty. There is nothing in the circumstances surrounding his investigation of the crime which shows any semblance of irregularity or bias, much less an attempt to frame Appellant Amaca. As aptly noted by the trial court, even appellant testified that he had no previous misunderstanding with Police Officer Mangubat and knew no reason why the latter would falsely testify against him.^[23] This dismal failure of the defense to show any ill motive on the part of said police officer adds credence to Mangubat's testimony.^[24]

Moreover, that the declarant attested to his ante mortem statement through his thumbmark in his own blood is sufficient to sustain the genuineness and veracity thereof. This manner of authentication is understandable in view of the necessity