

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEODORO ALCOBER GUERON AND EMILIO MAGNO, DEFENDANTS,
TEODORO ALCOBER GUERON, DEFENDANT-APPELLANT.**

G.R. No. L-29365. March 25, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Court of First Instance of Samar (now Regional Trial Court), an information for "double murder" was filed against TEODORO ALCOBER GUERON and EMILIO MAGNO. Docketed as Criminal Case No. 6996, the information reads:

"That on or about the 7th day of October, 1964, in the Municipality of Sta. Rita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and helping one another with one Jesus Magno alias Osing, who is still at large, with intent to kill, with treachery, evident premeditation, armed with guns and at night time, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Bonifacio Dayoc and Dalmacio Batika with said guns which the accused had conveniently provided themselves for the purpose, thereby inflicting upon said Bonifacio Dayoc and Dalmacio Batika several wounds on the different parts of their bodies which wounds caused their death."

The trial court rendered the following judgment:

"THEREFORE, judgment is hereby rendered finding and declaring the defendants Teodoro Alcober Gueron and Emilio Magno guilty beyond reasonable doubt as principals of the crime of double murder as charged, with one aggravating and no mitigating circumstance attending; and convicts each one of them to RECLUSION PERPETUA, with the accessory penalties, indemnify, jointly and severally, the heirs of Bonifacio Dayoc ten thousand pesos, and those of Dalmacio Batika also ten thousand pesos, and pay the costs."

Only Teodoro Alcober Gueron appealed. Pending appeal he has been confined at the New Bilibid Prisons.

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

"On August 9, 1964, the spouses Bonifacio Dayoc and Purificacion Comillor were in barrio Cabacungan, Sta. Rita, Samar, to witness the cockfight and to buy salted fish (pp. 65, 66, t.s.n., Rojas). There, Bonifacio met Emilio Magno, who was from Burauen, Leyte, and was told that he was going to organize a 'gang' composed of youngsters from Bagolibas, Cabacungan, Pagsulhugan and Crossing (p. 66, t.s.n., Rojas). Bonifacio replied that Emilio was just a newcomer in the place and a member of his family had just died and yet he was stirring up trouble (p. 66, t.s.n., Rojas). Emilio retorted, 'I know you are Borenes (p. 66, t.s.n., Rojas). I am not Borenes, but I am Bonifacio. Don't call me Borenes,' answered Bonifacio (p. 66, t.s.n., Rojas). Emilio rejoined, 'Let us know each other,' and extended his hand to shake Bonifacio's as he repeated, 'Let us know each other, Borenes' (p. 66, t.s.n., Rojas). Bonifacio reiterated, 'I am not Borenes, I am Bonifacio' and said, 'Let us consume the whole tuba' (p. 66, t.s.n., Rojas). After finishing his drink, Bonifacio struck Emilio with his glass

hitting him on the face (p. 66, t.s.n., Rojas). Then he went up the table and kicked Emilio on the head who thus fell flat on the face (pp. 66, t.s.n., Rojas). Bonifacio ordered Emilio to get up and fight, but the latter did not; instead, he ran home and got a bolo (p. 66, t.s.n., Rojas). Bonifacio in turn got his own (p. 66, t.s.n., Rojas). Emilio struck Bonifacio but did not hit him; Bonifacio retaliated (p. 67, t.s.n., Rojas). Then Emilio ran home and did not leave his house anymore (p. 67, t.s.n., Rojas). Because Emilio refused to come down, Bonifacio went home with his wife (p. 67, t.s.n., Rojas).

"In the morning of October 7, 1964, Teodoro Gueron came to the house of Bonifacio Dayoc to sell him coconuts and to borrow P60 from him (p. 67, t.s.n., Rojas). Because Bonifacio had not yet received his salary, he told Teodoro to meet him in the evening at sitio Crossing as he might be able to get his pay from Almendras Enterprises, where he was working, and give him the money (p. 68, t.s.n., Rojas). The next morning, somebody informed Bonifacio's wife that her husband (Bonifacio) was dead on the road (p. 68, t.s.n., Rojas). When she went to the place to verify, she found him lying lifeless (p. 68, t.s.n., Rojas). Upon inquiring from his companion what happened to both of them, Dalmacio Batika told her they were shot by Teodoro Gueron, Jesus Magno and Emilio Magno the night before (p. 68, t. s.n., Rojas).

"At about 9:30 o'clock in the evening of October 7, 1964, while Antonio Beron, who was employed as scaler at the logging camp of F.M. Cojuanco Enterprises in Guintigian, was afoot on the way home to barrio Bagolibas, Santa Rita, Samar, he heard two gun reports after reaching sitio Crossing (pp. 27, 28, 29, 30, 31, t.s.n., Rojas). He continued walking, wondering whether somebody was hunting (p. 31, t.s.n., Rojas). A little later, he met two persons walking hurriedly, whom he recognized to be Teodoro Gueron, and Jesus Magno, when he focused his flashlight at them the former trying to conceal something, (pp. 31, 34, 35, 36, 37, t.s.n., Rojas; Exhibit F, p. 51, rec.). Teodoro Gueron was a former employee of the logging company where he worked, and Jesus Magno was his friend (pp. 31, 37, t.s.n., Rojas). When he asked where they came from, neither of them answered him but kept on walking hurriedly (p. 32, t.s.n., Rojas; Exhibit F, p. 51, rec.) Early next morning, Beron's mother-in-law Valentina Ronda, told him two persons had been shot near Bagolibas, Sta. Rita, Samar and when he asked who they were, she answered it was Bonifacio Dayoc and Dalmacio Batika (p. 33, t.s.n., Rojas). After a hurried breakfast, Beron repaired to the place and found Bonifacio dead being covered with a piece of cloth by his wife (p. 33, t.s.n., Rojas). When he inquired about Dalmacio, he was told he was at his house where he was lying wounded (p. 33, t.s.n., Rojas).

"In the evening of October 7, 1964, after her husband, Jesus Q. Batika, Sr., a teacher in barrio Bagolibas, Sta. Rita, Samar, had returned home from school where he prepared the questions to be given during an examination, his wife, Eustaquia A. Batika, also a teacher in the same school, heard the barking of dogs in front of their house (pp. 5, 6, 18, 19, t. s.n., Rojas). When she opened the window and focused a flashlight toward the road, Eustaquia saw Emilio Magno, whom she knew since about a year before because he used to pass by in going to sitio Crossing, wearing a red shirt, black pants and a hat, and carrying a gun in his right hand running (pp. 19, 21, 24, 25. t.s.n.,). At once, she closed the window because she became afraid when she saw the gun (p. 19, t.s.n., Rojas). While already in bed, Eustaquia told her husband that she saw Emilio Magno pass by with a gun and that while he was away she heard two gun reports, faintly coming from the junction of the town of Basey, but her husband told her not to mind it (p. 6, 7, 12, 20, t.s.n., Rojas). Then they thought of his son and her stepson Dalmacio Batika, whose house was about 30 meters away from theirs, if he was at home, and surmised that he was out because they could not hear him coughing (pp. 7, 20, t.s.n., Rojas). Afterwards both fell asleep (pp. 7, 21, t.s.n., Rojas).

"Early in the morning of the next day, October 8, 1964, while the spouses Bernardo Rama and Pacita Rama were on the way to the farm owned by Jesus Batika, Sr., to plant rice, they found his son Dalmacio on the side of the highway lying on his left side, wounded and bleeding (pp. 46, 47, 59, 60, 61, t.s.n., Rojas). When Bernardo asked what happened to him, Dalmacio replied that he and Bonifacio Dayoc were shot the night before by Teodoro Gueron, Emilio Magno and Jesus Magno (pp. 48, 49, 60, t.s.n., Rojas). Bernardo saw Bonifacio about 25 meters away already dead and bathed in his own blood (pp. 50, 51, t.s.n., Rojas). Dalmacio

then requested the spouses to inform his father of what had befallen him (pp. 47, 62, t.s.n., Rojas).

"The spouses Jesus Batica, Sr. and Eustaquia A. Batica had just awakened when Bernardo and his wife arrived at their house telling them that Dalmacio was in the farm; that he told Bernardo and his wife to inform them that he was shot by Teodoro Gueron, Jesus Magno and Emilio Magno; that he could not walk by himself alone, hence he should be fetched; and that Bonifacio Dayoc was in the same place (pp. 8, 12, 21, 51, 59, 64, t.s.n., Rojas).

"Jesus, Sr. lost no time in ordering his son, Jesus, Jr. to get a hammock and, together with him, Romeo Badaña, Jesus Yerro, Dominador Armada, Francisco Yerro, a rural policeman and other, repaired to the place where Dalmacio was (pp. 8, 22, t.s.n., Rojas). After placing him on the hammock, they brought him to his (Dalmacio's) house where his brother Jesus, Jr., the barrio captain, took his statement in writing, which was recorded by his own father, Jesus, Sr. in the typewriter (pp. 9, 10, 22, 23, 62, 63, t.s.n., Rojas; Exhibits A, A-1, pp. 3, 47, rec.), as follows:

"Q. What happened to you?

A.

Teddy (Teodoro Alcober), Osing (Jesus Magno) and his brother Eming (Emilio Magno) shot me.

Q. Who was with you when you were shot at?

A. Boning (Bonifacio Dayoc).

Q. What was your position when you were together?

A. We were breast to breast. I was at his right side.

Q. Where was the one who shot you?

A. Above the road at the through cut at the avocado plantation.

Q. How far to you?

A. More or less five brazas.

Q. Do you know that Boning is dead?

A. No.

Q. Did you notice if Boning was hit when you were fired at?

A. I did not.

Q. Why did you know the one who shot you?

A.

Because when we were flashlighted at I focused my flashlight at them.

Q. What happened to your flashlight?

A. I did not know the moment I was hit on my thighs.

Q. Where else were you hit?

A. At my left arm and at my back.

Q. Why were you there at our rice plantation?

A. Because I managed to crawl slowly.

Q. Why did you not go home?

A. I could not resist due to my wounds.

Q. Do you have personal grudges with those who shot you?

A. None.

Q. On what side were the ones who shot you?

A. On our left side, near our avocado plantation.

"Q. What time were you shot?

A. About 10:00 o'clock in the evening, October 7, 1964.

Q. Where did you come from?

A. From Crossing at Madi Tarcing.

Q. What did you do in your Madi Tarcing?

A. I paid my debt.

Q. You only reached Crossing?

A. No.

Q. Where else did you go?

A. We went to Landing, drew our salary with Boning.

Q. What time did you go to Landing?

A. About 4:00 o'clock in the afternoon, October 7, 1964.

Q. Do you have any grudge with those persons who shot you?

Q. Did you quarrel with them? during your trip?

A. None.

Q. You and Boning, did you not quarrel?

A. None.

Q. Will you die of your wounds?

A. I cannot ascertain.

Q. What do you feel of your wounds?

A. I feel weak and I am thirsty.

Q. Can you sign these, your answers?

A. Yes, sir." (Exhibit A-1, p. 47, rec.)

"Afterwards they brought him to the provincial hospital in Tacloban, where he expired at 9:20 o'clock in the morning of the next day, October 8, 1964 (Exhibit D, p. 19, rec.; Exhibit E-1, p. 50, rec.). Cause of death was toxemia and shock due to multiple gunshot wounds (Exhibits D, D-1, p. 19, rec.)

"According to the autopsy report, the cause of Bonifacio Dayoc's death was severe internal hemorrhage due to the injury of the right auricle of the heart (Exhibits B, B-1, pp. 15, 16, rec.; Exhibit C, p. 15, rec.)." (Brief, pp. 2-9.)

The appellant claims that:

"I. THE LOWER COURT ERRED IN ADMITTING THE AFFIDAVIT OF DALMACIO BATICA AS PART OF THE RES GESTAE.

"II. THE LOWER COURT ERRED IN RESOLVING DOUBTS AGAINST THE ACCUSED.

"III. THE LOWER COURT ERRED IN CONSIDERING THE AGGRAVATING CIRCUMSTANCE OF NIGHT TIME AGAINST THE ACCUSED."

None of the witnesses for the prosecution actually saw Gueron and Magno in the act of shooting Dayoc and Batica. The testimonial evidence in respect of the shooting is purely circumstantial with the exception of Exhibit A - the affidavit of the deceased Dalmacio Batica - which has been reproduced above.

In appreciating Exhibit A, the trial court said:

"It is indeed clear that the statements contained in Exhibits "A", having been given by the victim soon after the incident, at the time when he had not yet the least chance of twisting the truth, especially at the critical condition in which he was then found, informing and describing the manner of assault and naming the assailants, were the facts of the incident. Exhibit "A", therefore, shall be, as it is hereby admitted as part of the declaration of Jesus Batica, Sr., and the statements therein contained as part of the *res gestae*, and valid as proof."

The appellant now claims that it was error for the trial court to regard Exhibit A as part of the *res gestae*. We do not agree.

The hearsay rule excludes evidence that cannot be tested by cross-examination. Exhibit A would normally be classified as hearsay because the one who executed it could not be cross-examined on it during the trial; he was dead. But there are exceptions to the hearsay rule. One of them is that provided in Sec. 36 of Rule 130, Rules of Court as follows:

"Sec. 36. Part of the *res gestae*.— Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as a part of the *res gestae*."

Bearing in mind the circumstances narrated above under which Exhibit A was executed, there can be no doubt that it is admissible in evidence as part of the *res gestae*. (People vs. Portento, 48 Phil. 971 [1924]; People vs. Reyes, 52 Phil. 538 [1928]; People vs. Quianzon, 62 Phil. 162 [1935]; People vs. Reyes, 82 Phil. 563 [1949]; People vs. Mascariñas, 94 Phil. 293 [1954].)

Another exception to the hearsay rule is the dying declaration. Sec. 31 of Rule 130 provides:

"Sec. 31. Dying declaration.— The declaration of a dying person, made under a consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death."

Exhibit A is admissible in evidence as an ante-mortem declaration considering that it was made under consciousness of impending death; the declarant died the next day from the gunshot wounds he sustained. (People vs. Mascariñas, 94 Phil. 293 [1954]; People vs. de Ananias, 96 Phil. 979 [1955]; Cruz vs. People, 71 Phil. 350 [1941]; People vs. Alfaro, 83 Phil. 85 [1949].)

The second assignment of error is but a consequence of the first and does not have to be discussed.

The trial court said that "The assault was with treachery which qualified the killing as double murder, as the means employed by the assailants, with the use of firearm, insured the execution of the assault without risk to themselves from the defense which the victims could have made. In the commission, the presence of the aggravating circumstance of night time is evident, the offenders having taken advantage of the darkness to commit it with greater facility and/or impunity."

The appellant questions the appreciation of nocturnity. We agree for nocturnity is absorbed by alevosia. (People vs. Pardo, 79 Phil. 568 [1947]; People vs. Balagtas, 68 Phil. 675 [1939]; People vs. Ballocanag, 83 Phil. 569 [1949]; People vs. Pengzon, 44 Phil. 224 [1922]; U.S. vs. Buncad, 25 Phil. 530 [1913]; People vs. Alfaro, 83 Phil. 85 [1949]; U.S. vs. Empeinado, 9 Phil. 613 [1908]; People vs. Enot, L-17530, Oct. 30, 1962, 6 SCRA 325).

Two murders were committed which means there must be a penalty for each murder. Absent aggravating and mitigating circumstances, the appropriate penalty is reclusion perpetua for each murder. Moreover, the civil indemnity should be P12,000.00 for each death.

WHEREFORE, the judgment of the trial court convicting the appellant is affirmed but modified in that he shall suffer the penalty of two (2) reclusion perpetua and indemnify the heirs of the two deceased in the amount of Twelve Thousand (P12,000.00) Pesos each. Costs against the appellant.

SO ORDERED.

Fernando, C.J., Concepcion Jr., Guerrero and Escolin, JJ., concur.

Makasiar and De Castro, JJ., no part; submitted brief as Solicitor General and Assistant Solicitor General respectively.

Aquino, J., on sick leave.

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