

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO EXTRA ALIAS HANDING, DEFENDANT-APPELLANT.*G.R. No. L-29205. July 30, 1976*

Ponente: ANTONIO, J.

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Appeal from the judgment of the Court of First Instance of Batangas in its Criminal Case No. 2466, dated March 23, 1968, the dispositive portion of which reads:

“WHEREFORE, the Court finds Gerardo Extra alias Handing in Criminal Case No. 2466 guilty beyond reasonable doubt of murder with treachery as the qualifying circumstance and pursuant to Article 248 of the Revised Penal Code sentences him to undergo RECLUSION PERPETUA, to indemnify the heirs of Leovigildo Saligao in the sum of P6,000.00, with no subsidiary imprisonment in case of insolvency, to pay the costs and to suffer all the accessories of the law. * * * * *

The facts as found by the trial court are as follows: At about 7:00 o'clock in the evening of June 25, 1965, Leovigildo Saligao, Barrio Captain of Putingbuhangin, San Juan, Batangas, appeared at the PC Detachment Station at Puntingbuhangin, San Juan, Batangas, seeking help from Sgt. Iglesias, Detachment Commander thereat, because according to him appellant Gerardo Extra alias Handing for no valid reason at all was threatening him with a firearm (carbine). Acceding to his request, Sgt. Leonardo Iglesias, Cpl. Inocentes Rabanilla, Sgt. Regalado and Cpl. Jose Pelayo accompanied Barrio Captain Saligao and proceeded to Putingbuhangin with Barrio Captain Saligao on the lead indicating the way. According to Cpl. Rabanilla, their purpose was to inquire from the appellant his motives in threatening Saligao and possibly to settle their differences, if any. Cpl. Rabanilla brought with him an automatic rifle, while Sgt. Iglesias had a carbine and a pistol and Cpl. Pelayo also a caliber .30 carbine. Barrio Captain Saligao was then unarmed. At first, they went to the house of Atanacio Extra, the father of appellant, at Putingbuhangin arriving there at about 9:00 o'clock in the evening. Upon arriving at the place, they engaged in conversation with Atanacio for about two (2) hours. In the meantime, Saligao requested Atanacio to send for Gerardo, in order that their misunderstanding, if any, can be settled in the presence of the constabulary authorities. Atanacio then requested Porfirio Aguila, his companion, to fetch his son, Gerardo Extra, whose house was only five (5) meters away. After a few minutes, Porfirio Aguila returned, only to inform them that Gerardo Extra was not in his house. Upon realizing the futility of contacting Gerardo Extra and because of the plea of Atanacio Extra that Saligao should forgive his son for whatever he has done, Saligao informed the group that he was going home, while the soldiers decided to return to the PC station at Barrio Buhaynasapa. They left the yard of Atanacio Extra with Barrio Captain Saligao walking ahead illuminating now and then their path by means of his flashlight. As they were leaving the yard of Atanacio, Cpl. Rabanilla heard Saligao shout: “There is Gerardo Extra!”. At the moment, Cpl. Rabanilla saw, in the direction where the light of the flashlight of Saligao was focused, appellant Gerardo Extra about six (6) meters away, aiming a carbine at them and seeking cover behind a coconut tree. From that position, appellant fired at the group, hitting with the first volley Barrio Captain Saligao. Immediately, the constabulary soldiers took a prone position, fired warning shots in the air, and shouted at the appellant that they were police authorities. This was met by four (4) more gunshots from the appellant and the

constabulary soldiers then returned the fire. After the firing ceased and upon finding that appellant had already escaped, they went to the aid of Leovigildo Saligao who was seriously wounded. They called for civilians to get a hammock in order that they could bring Saligao to the road, from which place they could bring him to the nearest medical clinic. In the meantime, they searched for appellant within the area surrounding the place where the shooting took place, but to no avail. When they found his wife they inquired for appellant's whereabouts but she claimed that she did not know where he was. They then carried Saligao to the clinic of Dr. Lasig at Lipa City for emergency treatment. Saligao was then in a very serious condition. It was inside the clinic at about midnight that the ante-mortem statement" (Exhibit "D") of Saligao, who was already gasping for breath, was taken by Pat. Tranquilino Sanchez in the presence of Pat. Apolonio Sadsad of the San Juan Police Force. In that statement, Saligao indicated that appellant Gerardo Extra was the person who shot him with an automatic carbine that night. The ante-mortem statement was thumbmarked by Saligao with his blood in the presence of Sixto Razon and Pedro B. Saligao. The afore-mentioned statement is quoted as follows:

"Tanong — Ano ang pangalan mo at taga saan ka?

Sagot — Leovigildo Saligao, taga Putingbuhangin, San Juan, Batangas.

T.— Bakit ka may sugat sa iyong katawan?

S.— Binaril ako ni Gerardo Extra alias Handing.

T.— Bakit ka binaril ni Gerardo Extra?

S.— Hindi ko po alam.

T.— Anong klaseng baril ang ibinaril sa iyo?

S.— Automatic carbine po.

T.— Saan lugar nangyari ang bagay na ito at anong oras nang mangyari?

S.— Sa Likod po ng bahay ni Gerardo Extra at ang oras ay humigit kumulang sa alas 9:30 ng gabi, ika 25 ng Hunyo, 1965.

T.— Sino ang mga nakakita nang ikaw ay barilin?

S.— Sina Sgt. Leonardo Iglesias, Cpl. Inocentes Rabanilla at si Cpl. Jose Pelayo po.

T. — Ikamamatay mo ba ang sugat mong iyan?

S.— Opo."

Early in the following morning, the constabulary soldiers reported the incident to the San Juan Police authorities. Cpl. Rabanilla and Sgt. Iglesias were the first to be investigated by PC Sgt. Jesus B. Brigola in the presence of Deputy Chief of Police Vicente C. Peradilla. Leovigildo Saligao died as a consequence of his wounds on July 4, 1965.

Post-mortem examination of the cadaver of the victim performed by Dr. Constantino A. Nuñez, Medico-Legal Officer of the NBI, revealed the following injuries:

"Fairly developed, fairly nourished, with marked pallor of the integuments.

Wound, gunshot, sutured:

Entrance wound:

Location — mammary region, right, just below the nipple, 9.5 cms. from anterior median line, 120.5 cms. from right heel.

Size and shape: 0.6 x 0.7 cm., slightly oval.

Description and involvement: healing, infected, with scab formation, perforating the right thoracic cavity and fracturing along its course the 5th rib with inward displacement of bony spicules, perforating lower medial border of middle lobe right lung, perforating upper medial border of lower lobe right lung, perforating and fracturing comminutely the body of the thoracic vertebra between the 9th and 10th with outward displacement of bony spicules, penetrating left thoracic cavity, lacerating the medial border, lower lobe of left lung, perforating the left posterior chest wall by fracturing comminutely the 10th rib with outward displacement of bony spicules.

Exit wound — infrascapular region, left, 8.0 cms. from posterior median line, 119.0 cms. from left heel, measuring 2.0 x 1.0 cms. healing infected and sutured.

Hemothorax: Left, 360 cc; right, 300 cc.

Right pleura showed suppurative pleuritis characterized by frank pleural exudates causing adhesion of the visceral and parietal layers, extensive.

Lungs showed patchy areas of focal consolidation, multilobular bilateral, which appears granular, poorly delineated.

Pressure on cut sections exuded suppurative secretions. Intervening parenchyma hyperemic and edematous.

Spleen enlarged, soft, and congested.

Brain and other visceral organs pale.

Heart contains dark fluid blood.

Stomach contains a small amount of yellowish liquid material.

CAUSE OF DEATH: Bronchopneumonia secondary to a gunshot wound of the chest, thru and thru.

REMARKS: Tracheostomy wound, sutured; thoracotomy wound, right side along anterior axillary line, thru the 7th intercostal space.”

According to Chief of Police Daniel B. Mendoza, he came to learn of the shooting of Saligao at around 4:00 o'clock in the early morning of June 26, 1965. Upon receiving the information, he went to the scene of the incident. He found empty shells of Garand rifle on the ground. He looked for Gerardo Extra in his house but he was not there, neither was he in the house of his father nor in the house of any of his relatives. He also noted that the house of Extra was deserted. His search for Gerardo Extra in Puting-kahoy and in Tikalan lasted up to 11:00 o'clock in the following morning, when he returned to the poblacion to investigate the persons who were present during the shooting. On the basis of his investigation, he filed with the Municipal Court of San Juan, Batangas, on June 26, 1965, a complaint for “Frustrated Murder with Direct Assault Upon an Agent of a Person in Authority” against Gerardo Extra alias Handing. This complaint was supported by the ante-mortem statement of Saligao and the sworn statements of Francisco Mendoza, Sgt. Leonardo Iglesias and Cpl. Inocentes Rabanilla. Armed with the warrant of arrest which was issued on the same date, he searched for appellant as far south as Quezon province, and as far north as Quezon City, but to no avail. It was only on January 7, 1967 when appellant was taken into custody by the police authorities.

The defense of appellant is alibi, based on his own testimony, his father's (Atanacio Extra) and that of Primo Bosa. According to Atanacio Extra, Barrio Captain Saligao was looking for his son on two occasions before the incident, the first at about 9:00 o'clock in the morning of June 25, 1965, and again at 3:00 o'clock in the afternoon of the same day when Saligao went to his house inquiring whether “Pareng Handing” (Gerardo Extra) had already returned. It was for this reason that at about 4:00 o'clock in the afternoon of that day he told his son to leave because Saligao told him that he would kill him. When Saligao came to his house, together with the PC soldiers on the night of June 25, 1965, he claimed that he was surprised to find the soldiers surrounding his house looking

for his son. It was on that occasion when he was talking with one Vizmanos at the ricemill about 120 yards from his house that he heard the sound of gunfire. After the firing ceased, he together with Vizmanos, Gregorio and Hospicio Manimtim, all carrying lighted torches, went back to his house. The following morning, when the Chief of Police arrived, he learned that Saligao was shot but he did not inquire from the Chief of Police whether Saligao was dead or not.

Appellant, who claimed to be a cattle dealer, testified that after he was informed by his father in the afternoon of June 25, 1965 that Saligao was armed and was looking for him, he left their barrio for Rosario, Batangas because he feared that Saligao would harm him, as the latter was jealous of him because of his purported intimacy with a woman named "Maring". He declared that he spent the whole night of June 25, 1965 in the house of Rosy Aguirre in Batangas, Batangas, together with one Primo Bosa, in order to sell about ten (10) heads of cattle at the cattle market of Rosario. The following day his wife came to inform him that a shooting incident took place in Putingbuhangin and that he was being mentioned as the principal suspect. Upon receiving this information, he left Batangas for Lobo in the afternoon of June 26, 1965 and stayed in the house of Felipe Aguirre at Barrio Maybanga for about a week. He surrendered to the Provincial Governor of Batangas on January 6, 1967. Primo Bosa, a farmer of Barrio Antipolo, Rosario, Batangas, attempted to corroborate the presence of appellant in the house of Rosy Aguirre at Kumintang, Batangas, Batangas in the night of June 25, 1965.

Appellant contends in this appeal that his identification as the assailant of the deceased is "open to very serious doubts and not entirely free from suspicion" because of (1) the non-presentation of the flashlight as well as the empty shells as evidence; (2) the failure of the other PC soldiers to corroborate Cpl. Rabanilla's testimony; (3) the admission of Rabanilla that "the person who fired at their group was behind the coconut trunk lying down on his belly"; and (4) the suddenness of the attack which makes "the identification of the attacker * * * practically nil or impossible".

It must be remembered that Cpl. Rabanilla, at the time he made recognition of appellant, was only about six (6) meters away from the latter and was able to recognize him because the beam of the flashlight being held by the barrio captain (Saligao) was then focused upon the face of the appellant. At that precise moment, the barrio captain was also able to recognize him because he exclaimed: "There is Gerardo Extra!". At that time, appellant was then in the act of seeking cover behind a coconut tree, and from his vantage point, fired at the group of Saligao mortally hitting with the first volley the said barrio captain. It cannot be denied that appellant was familiar and known to both the barrio captain and Cpl. Rabanilla and certainly they could not possibly have been mistaken as to his identity. Shortly prior to the shooting, Cpl. Rabanilla saw appellant hanging by the rear steps of a jeepney and he had to persuade him to desist from so doing. As regards Saligao, he is a barriomate of appellant and it was precisely upon his complaint that the constabulary soldiers went to Barrio Putingbuhangin to look for the appellant.

We are convinced that both Rabanilla and Saligao were able to recognize appellant under the circumstances mentioned above. For a person may be recognized by means of his face, height, movement and the shape of his body by someone who is familiar with his features.[1] In a previous case, this Court held that the testimony of a witness that he was able to recognize the assailant from the flash of the shots that were fired by him because he was only one (1) meter away from the said assailant while the latter was continuously firing shots at the victim is not necessarily incredible.[2] In *People v. Francisco*,[3] this Court observed that a participant in a crime could be recognized by persons who know him by the light of a match struck to light a cigarette. It is not even necessary that "the movements and appearances of a person be so marked, peculiar, or unusual for people who know him well enough to readily identify him." [4]

The identification of appellant is further enhanced by the fact that immediately the following day, Cpl. Rabanilla

and Sgt. Iglesias executed sworn statements before the municipal judge of San Juan, Batangas, narrating in detail the circumstances under which they recognized the appellant. The early revelation by the said prosecution witnesses of the identity of appellant as the assailant, which led to the immediate filing of the criminal charge, in the absence of any improper motive, shows spontaneity and sincerity.[5]

The circumstance that the flashlight was not presented at the trial is of no moment. The existence of said flashlight was never questioned by the defense at the trial. It must be recalled that from the records of the preliminary investigation, the sworn statements of Sgt. Iglesias and Cpl. Rabanilla in said investigation clearly and categorically indicated that they were able to recognize Gerardo Extra because of the flashlight carried by Barrio Captain Saligao. If there was any doubt of the existence of such flashlight, certainly the defense could have raised that question then, but it could not do so for the first time on appeal.

Neither can We attach much importance to the fact that the appellant remained unscathed in spite of the number of shots fired by the PC soldiers. It must be recalled that the soldiers were caught by surprise by the sudden gunfire from the appellant. Considering the fact that the place of appellant was dark, as Saligao had already fallen to the ground with his flashlight after the initial burst of fire, and the circumstance that appellant was lying on his belly behind the coconut trees, it is, therefore, not strange that appellant was un-harmed.

Nor can We construe in a manner adverse to the prosecution the failure of the State to call on Sgt. Iglesias to corroborate the testimony of Cpl. Rabanilla. As shown by the record, Sgt. Iglesias had executed a sworn statement on June 26, 1965 before the municipal judge, corroborating in detail the identification of appellant made by Rabanilla. The statement of Rabanilla before said municipal judge is, in substance, the same as his testimony in court. Under the circumstances, Iglesias' testimony would be merely corroborative and, therefore, his non-presentation as a witness does not mean suppression of the testimony that is adverse to the prosecution.[6]

On appellant's contention that Exhibit "D" is not an ante-mortem statement and, therefore, should not have been admitted, We declare that whether or not one making a dying declaration was without hope of recovery is a question of fact for the trial court. We are convinced, however, that at the time Saligao executed his declaration (Exhibit "D") at about midnight of June 25, 1965, he was then convinced that he was going to die. He was seriously wounded, the bullet having pierced thru and thru his right chest. He was gasping for breath. Tranquilino Sanchez, who took down this statement of the deceased, declared that he noticed his serious condition. His identification of the appellant as the person who shot him is clear and categorical. The fact that he died days later is of no moment. The admissibility of an ante-mortem declaration is not affected by the fact that the declarant died hours or several days after making his declaration. It is sufficient that he believed himself in imminent danger of death at the time of such declaration.[7] This was clearly explained in *People v. Cord*. [8]

"We have no decisions in this state declaring the meaning of the phrase 'a dying person,' in section 1870 of the Code of Civil Procedure. It does not mean that in order to make such declaration admissible the person making it must be at the time in the act of expiring, or in the final death struggle. It is seldom that a human being in that stage of dissolution is capable of making any statement whatsoever in the nature of a connected or reliable narrative or account of a past transaction. To admit such declarations only when made by a person in that condition would practically exclude them altogether, or render them useless for any purpose. We think the intention of the codifiers was to express, as clearly and comprehensively as was compatible with the necessary brevity, the rule on the subject of the admissibility of dying declarations as it had pre-vi-ously existed. By this rule it was not necessary that the person should be at the time in the throes of death, or that he should die immediately, or within any specified time thereafter, in order to give the declaration probative force. 1 Greenleaf on Ev. S 158; Roscoe, Crim. Ev. P. 37 (8th Ed.) 61; 21 Cyc. 978; State v. Nash, 7 Iowa, 381; Hall v. Commonwealth, 89 Va. 177, 15 S.E. 517; Swisher v. Commonwealth, 26 Grat. (Va.) 963, 971, 21 Am. Dec. 330; State v. Reed, 53 Kan. 773, 37 Pac. 174, 42 Am. St. Rep. 322; State vs. Kilgore, 70 Mo. 553; State v.

Tilghman, 33 N. C. 513. It was considered that the belief that a fatal wound had been received, and that death was about to ensue therefrom, would deter such person from uttering a willful untruth about its cause, if not as effectively as would the sanction of an oath, reinforced by the earthly penalty for its violation, at least sufficiently to justify its admission as evidence of the facts recounted. Where a person has been fatally wounded, is in sore distress therefrom, and believes that he will not recover, and is soon about to die, his statement, made in this belief, relating to the cause of his injury is admissible, if it appears that he subsequently died from the direct effects of the wound, although he may have revived after making the statement, or may have lived a considerable time thereafter, and may have again begun to hope for recovery. Such person is to be deemed 'a dying person' within the meaning of the statute from the time the wound is received until death results from the injury, and his statement during that period, made in view of death and with the belief that it is near at hand, may be proven to establish the cause of death. In the present case, the evidence shows that this wound was necessarily fatal, and that his dissolution therefrom was in progress continuously from the beginning to the close. The remarkable thing is that he lived so long in such a condition. He was never on the road to recovery, as appellant contends, but was constantly on the brink of death from a recurrence of hemorrhage. He believed his death imminent at the time he made the statement. The fact that he and others may have afterwards entertained a false hope of recovery could not have affected the solemnity or veracity of his statement, nor have made him other than a dying person, in the sense of the statute, at the time the statement was made."

It is contended, however, that the deceased Leovigildo Saligao was jealous of appellant Gerardo Extra, as the former suspected the latter of trying to steal "Maring", his "para-mour", and, therefore, "his declaration might have been influenced by the passion of anger and vengeance * * *". But this statement rests only on the uncorroborated assertion of the appellant. It is based on mere conjectures. No direct evidence has been submitted to show the purported re-relationship of Saligao with this woman. According to the appellant, he was merely passing by the house of this woman who is merely identified as "Maring" (her real name not having been shown) and only talked with her on the street when he greeted her as he passed by. Under such palpably innocent circumstances, even assuming that Saligao had relations with that woman, how could it be rationally concluded that the barrio captain, on the basis thereof, suspected appellant of "stealing the love of his paramour"?

On the defense of alibi, it must be recalled that in order that an alibi as a defense may prosper, the evidence to support it must be clear and convincing as to preclude the possibility of the presence of the accused at the scene of the crime, while the evidence as to his identification must be weak and insufficient. According to Atanacio Extra, he told his son Gerardo, at 4:30 p.m. on June 25, 1965, to go away because Saligao was looking for him, and it was because of this that his son left their barrio. How could we reconcile this with the unrebutted testimony of Cpl. Rabanilla that when they arrived at the house of Atanacio Extra looking for Gerardo Extra, Atanacio sent Porfirio Aguila to fetch Gerardo from his house and after a few minutes, Aguila returned and said that Gerardo had "just left the house"?[9] If it were true that early that afternoon Atanacio knew that appellant had already left their barrio, why should he still send Aguila to fetch Gerardo in his house that night? Is not the statement from Aguila that Gerardo had "just left the house" indicative of the fact that Gerardo only left his house that night and not earlier in the afternoon?

It must be noted also that while appellant claimed that he spent the night of June 25, 1965 in the house of Mrs. Rosy Aguirre at Barrio Kumintang, Batangas, Batangas because he used to sell cattle in said town, he could not produce any license or any document showing that he was really a cattle dealer, much less could he explain his failure to explain the inability of Mrs. Aguirre to corroborate his testimony. If it were true that he left Barrio Putingbuhangin because he was afraid that Saligao would kill him, no explanations had been given why he did not report the purported threat on his life either to the PC detachment at the adjacent barrio of Buhaynasapa while

waiting for a jeep to the poblacion of San Juan, Batangas, or to the police of San Juan, upon arriving at the poblacion, or to the police at Batangas, Batangas, where he was for about two days, or to the police authorities at Lobo, Batangas, where he stayed for about a week after leaving the house of Mrs. Aguirre.

The testimony of Primo Bosa to the effect that he slept with appellant in the night of June 25, 1965 appears to be an afterthought. It is difficult to believe that this witness, living in a barrio near Taysan where fertilizer is sold, would go all the way to Batangas, Batangas to purchase his fertilizer, which is not only much farther but would cost more because of the added cost of transportation. At any rate, upon reaching Batangas, Batangas at about 5:00 o'clock in the afternoon, instead of buying the fertilizer and return to his barrio, he preferred to while away his time in the house of Mrs. Aguirre at Barrio Kumintang for the entire evening of June 25, 1965. His declaration is flawed by inconsistencies. While he pretends to possess an accurate memory of all the events that occurred on June 25, 1965 when he purportedly slept with appellant, he exhibits poor recollection of the details of events that transpired recently.

There is also the admission of appellant that, as early as 11:00 a.m. on June 26, 1965, he learned from his wife that he was suspected of the killing of Saligao. And yet no plausible explanation has been given why he did not bother to appear before any of the governmental authorities in the towns where he reportedly stayed to show his innocence. On the other hand, he eluded the authorities and abandoned his family from June 26, 1965 until January 6, 1967. Unexplained flight of an accused from his native town and family following the commission of the crime, and abandonment of his business, particularly where it is surreptitious, coupled with his failure to communicate to the authorities his whereabouts, has been considered indicative of consciousness of guilt.[10] Indeed, the alibi of appellant "has all the characteristics of a story designed to fit the intended purpose of showing the whereabouts of the defendant to be in a place other than where the crime was committed at the time of its commission." [11]

We find, therefore, that the trial court did not commit any error in finding appellant guilty of the crime of murder. The civil indemnity in favor of the heirs of the deceased should, however, be increased by ordering appellant to indemnify the heirs of Leovigildo Saligao in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency.

WHEREFORE, in view of the foregoing, the judgment appealed from, with the afore-stated modification, is hereby affirmed.

Fernando, (Chairman), Barredo, Aquino, and Martin[*], JJ., concur.

Concepcion Jr., J., is on leave.

[1] People v. Erat, G.R. No. L-2301, July 11, 1949.

[2] People v. Ubiña, 97 Phil. 515, 528.

[3] G.R. No. L-4196, November 29, 1952.

[4] People v. Galamiton, G.R. No. L-6302, August 25, 1954.

[5] Thus, in the sworn statement of Sgt. Leonardo Iglesias on June 26, 1965 before Municipal Judge Maximo R. Aguila of San Juan, Batangas, he stated:

"T. - Sino yaong taong yaon na bumaril kay Barrio Captain Leovigildo Saligao, at pagkatapos ay namaril din sa inyo."

S. - Nakilala namin sa pangalang Gerardo Extra alias Handing.

T. - Bakit mo natiyak na si Gerardo Extra alias Handing, and siyang bumaril kay Barrio Capitan Leovigildo Saligao at pagkatapos ay namaril din sa inyo?

S. - Sapagkat si Barrio Capitan Saligao ay may dalang maliwanang na Flashlight na nangunguna sa amin at nasinagan ng ilaw na Flashlight siya bago niya binaril si Capitan Saligao, at bago nabaril ay nakasigaw ng - ito na si GERARDO EXTRA, at biglang binaril si Barrio Capitan Saligao, at pagkatapos kami naman ang inupakan ng baril.

T. - Anong klaseng baril and ibinaril ni Gerardo Extra?

S. - Carbine po, Calibre 30.

T. - Gaano any inyong layo kay Barrio Captain Leovigildo Saligao, noong barilin ni Gerardo Extra?

S. - Humigit kumulang sa kalahating (1/2) dipa.

T. - Sino ang kasama ni Gerardo Extra noong mga oras na yaon?

S. - Wala po, siya lamang.

T. - Mayroon bagang nasugatan ng kayo ay barilin ni Gerardo noong mga oras na yaon?

S. - Mayroon po, at ang nasugatan ay si Barrio Capitan Leovigildo Saligao."

On the same date, Cpl. Inocentes R. Rabanilla also declared in his affidavit before the same Municipal Judge, thus:

"T. - Papaano ninyo natiyak na si Gerardo Extra alias 'Handing' na siya nga ang bumaril kay Kapitan Leovigildo Saligao at pagkatapos namaril din sa inyo?

S. - Sapagkat si Kapitan ay may dalang Flashlight at nangunguna sa amin at nasinagan ng ilaw ng Flashlight siya bago niya binaril si Kapitan Saligao at si Kapitan Saligao din sa pagkakataon na yaon bago nabaril nakasigaw ng 'ITO NA SI GERARDO EXTRA' at biglang binaril si Kapitan del Barrio Leovigildo Saligao at pagkatapos kami naman ang inupakan ng baril.

T. - Ano ang uri ng baril na ginamit ni Gerardo Extra?

S. - Isang Carbine po, Cal. 30.

T. - Gaano ang inyong layo doon kay Kapitan del Barrio na si Leovigildo Saligao ng siya ay barilin ni Gerardo Extra?

S. - Nasa isang dipa humigit kumulang ang layo ko doon kay Kapitan ng siya ay barilin ni Gerardo Extra.

T. - Ilan naman ang layo mo doon kay Gerardo Extra ng barilin niya si Kapitan Leovigildo Saligao at pamarilin kayo pagkatapos tamaan si Kapitan?

S. - Humigit kumulang sa anim (6) na metros po."

[6] *People v. Sigayan, et al.*, 16 SCRA 844; *People v. Cristobal*, 1 SCRA 151; *People v. Escalona*, 1 SCRA 891.

[7] *U.S. v. Gil*, 13 Phil. 530; *U.S. v. Mallari*, 29 Phil. 14; *People v. Dizon*, 44 Phil. 267; *People v. Serrano*, 58 Phil. 699; *People v. Mabasa* 65 Phil. 568; *Cruz v. People*, 71 Phil. 350.

[8] 157 Cal. 562, 108 Pac. 511, 514.

[9] T.s.n., *Leynes*, pp. 14; 31-35.

[10] *People v. Tanchoco*, 76 Phil. 463; *People v. Kamod*, 100 Phil. 476; *People v. Bacsá*, 104 Phil. 141; *People v. Berganio* 110 Phil. 331; *People v. Balongcas*, 1 SCRA 731; *People v. Talumpa*, 3 SCRA 75.

[11] *People v. Casiano*, 9 SCRA 323.

[*] Designated to sit in the Second Division.

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