

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN BALBAS, DEFENDANT-APPELLANT.***G.R. No. L-47686. June 24, 1983*

Ponente: RELOVA, J.

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Appeal from the decision of the Court of First Instance of Ilocos Norte, Branch IV, finding Benjamin Balbas guilty beyond reasonable doubt of the crime of murder and sentencing him "to suffer the penalty of Reclusion Perpetua (30 years); and the accessory penalties of the law; to indemnify the heirs of the victim in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency (par. 3, Art. 39, RPC, as amended by RA No. 5465; PP v. Abelardo Subido, G.R. No. L-21734, Sept. 5, 1975); and to pay the costs of the proceedings."

Evidence for the prosecution was summarized by the Solicitor General in his brief as follows:

"In the afternoon of December 21, 1970, Florencio Yamongan and his son, Ferdinand, were plowing their ricefield in Bo. Lang-ayan, Currima, Ilocos Norte. Accused Benjamin Balbas, whose residence was only about 150 meters away from said ricefield, subsequently arrived thereat and confronted Florencio Yamongan as to why he bought the piece of land which was then mortgaged with him (Accused) and which he was also interested in buying. Accused spoke harshly to Florencio Yamongan but the latter answered him calmly (pp. 32-35 & 42 t.s.n., Sept. 17, 1977). It was then getting dark and unsuspecting that his father was in any danger, Ferdinand Yamongan went home leaving his father and accused still engaged in a conversation (pp. 37, 38 & 40, t.s.n., Ibid).

"At about 7:00 [o'clock] in the evening of that same day, a 'Farinas' passenger bus coming from Laoag City bound southward for Manila was travelling along the national highway passing through Barrio Lang-ayan, Currima, Ilocos Norte, when Ernesto Arellano, a driver, who was then standing at the doorway of said bus, saw a person lying at the roadside. Thinking that the person was a victim of a 'hit and run' driver, he asked the driver of the bus to stop. The driver obliged and Ernesto Arellano alighted and went near the person. He was followed by the driver and one Atty. Saucio allegedly of the National Bureau of Investigation. Focusing his flashlight on the person, Ernesto Arellano noticed that the latter was bleeding and instinctively he asked him what happened. The person told him that he was shot and identified accused, Benjamin Balbas as his assailant. Ernesto Arellano in turn noted the name of the accused on the back of his ticket. After he had named his assailant, the wounded man asked Ernesto Arellano to carry him because he was feeling 'numbed' but the latter told him to wait even as he assured him (the victim) that he would tell the owner of the house nearby to bring some help. Ernesto Arellano and his companions then boarded the bus and they forthwith proceeded to said house which was only about 250 meters away from the place where the wounded man was. After Ernesto Arellano had informed the owner of the house about the incident, the bus continued its trip southward stopping briefly at a nearby police outpost in Barrio Gaang of that same municipality, where Ernesto Arellano reported the incident to the police authorities (pp. 2-6, 14-17, t.s.n., March 20, 1973).

"Upon receiving this report, Oscar Reynon, a police corporal who was then the officer-in-charge of the police outpost, caused the information to be immediately relayed to the Municipal Building (pp. 16-17, t.s.n., July 3, 1973), and the same was thereafter relayed to the Municipal Mayor, Cirilo Quilala.

"The mayor who was then taking his supper at his residence was informed of the incident through the local telephone and he and a certain Pablo Bumanglag of the Philippine Constabulary at once rode in his (Mayor Quilala) jeep. They proceeded to the Gaang Police outpost and fetched the policemen stationed thereat. From said outpost, Mayor Quilala together with his companions, hurriedly drove to the scene of the crime. They reached the place in a few minutes and they found that the wounded man was Florencio Yamongan. He was then lying on his back about a meter from the edge of the road in the vicinity of his ricefield, and near him was a carabao and a sled which, presumably, belonged to him (pp. 119-121, 129, 130 & 133, t.s.n., Oct. 23, 1976). Wasting no time, the mayor and his companions approached the victim and asked him what happened and the latter told them that he was shot by Benjamin Balbas. Thereupon, Mayor Quilala told his policemen to get the statement of the victim while he went to inform the barrio captain who was the victim's relative, about the incident (pp. 122 & 123, t.s.n., Ibid.). Complying with the mayor's order, Oscar Reynon took the victim's dying declaration in writing but as the latter was already very weak and could no longer sign his name, the former just had the victim thumbmarked the writing with his blood (pp. 5-7, t.s.n., July 3, 1973, Exh. 'C' p. 204, Rec).

"Shortly thereafter, Mayor Quilala together with the barrio captain returned to the scene of the crime and the victim was forthwith carried to the mayor's jeep in order that he may be rushed to the hospital. The jeep had travelled only about half a kilometer when the victim expired. Before he died he asked the mayor to help his family.

"The victim's body was brought back to Bo. Lang-ayan and thereafter, Mayor Quilala caused somebody to tell the Rural Health Officer to conduct an autopsy on the cadaver (pp. 137, 138, 139, 142, t.s.n., October 23, 1974; p. 86, t.s.n., Dec. 10, 1973). The mayor also ordered his policemen to look for Benjamin Balbas but the latter was nowhere to be found in his residence. The police authorities continued their search the following day extending the same to Badoc, Ilocos Norte, where accused's parent's were residing but they failed to locate the accused. Finally, on December 24, 1970, accused accompanied by a friend gave himself up to the local authorities of Currimaop (pp. 8-12, t.s.n., July 3, 1973) and then and there executed a sworn statement before the Municipal Mayor denying any participation in the murder of Florencio Yamongan (Exh. 'F.' 'F-2,' Folder of Exhibits for the Prosecution).

"Meanwhile, an autopsy was performed on the body of the victim that same night and it was found that the cause of his death was shock due to hemorrhage as a result of multiple gunshot wounds. The victim sustained four (4) gunshot wounds which pierced his body through and through and the trajectory of the bullets which all entered at his back was semi-vertical going upwards. The heart was not hit, and for this reason the medico-legal examiner logically deducted that the victim did not die immediately (pp. 6-16, t.s.n., Oct. 5, 1971, Exhs. 'A' & 'B' pp. 171 & 203, Rec. found in Folder of Exhibits for the Prosecution)."

The defense is alibi. Appellant claims that he was with the deceased Yamongan at about four o'clock in the afternoon of December 21, 1970, following which he went home to attend to his wife, who, according to his brother-in-law, Teddy Villoriente, was then bleeding. He then fetched old man Bianco Rodriguez, a quack doctor, to treat his wife. After Mang Bianco had attended to his wife, he escorted the former up the road and after seeing him off, appellant returned to his house to prepare their supper. They were eating when his brother-in-law Teddy arrived and informed him that somebody was shot somewhere east of his house. He did not go to the scene of the shooting for fear that he might be suspected as the perpetrator of the crime. He was in the house of his in-laws across the street about eight o'clock in the evening when Mayor Quilala arrived and ordered his men to arrest and maul him. Afraid that he might be maltreated, he escaped to the town of Pinili, Ilocos Sur to seek the advice of Fiscal Cabie who told him to surrender to the Philippine Constabulary in Laoag City. He followed the advice of the fiscal but then there was no PC officer who would investigate him in the headquarters. On December 24, 1970, he surrendered to the authorities in Currimaop where he was immediately accosted by Mayor Quilala who, in the presence of other municipal authorities, pistol-whipped him. When he was investigated by the local authorities, he gave his statement in writing denying having anything to do with the death of Florencio

Yamongan.

The testimony of herein appellant was corroborated by his close relatives.

The trial court did not believe the witnesses for the defense and accepted the version of the prosecution. Hence, its aforementioned decision convicting herein appellant Benjamin Balbas.

The appeal hinges on the sufficiency or insufficiency of the evidence to establish that appellant was the assailant of Florencio Yamongan.

After going over the voluminous transcript of stenographic notes and the exhibits introduced in evidence. We find ourselves fully in agreement with the conclusions reached by the trial judge in his decision. We are satisfied that appellant's guilt has been duly established.

Appellant admitted having talked to the deceased and his son Ferdinand in the afternoon of December 21, 1970. About seven o'clock in the evening of the same day, Ernesto Arellano, a driver and a resident of barangay Espiritu, Ilocos Norte testified that they were passing barangay Lang-ayan, Currimao, Ilocos Norte when he saw a person bleeding and lying at his back on the side of the road. Hereunder is his testimony on this point

"Q

You said a while ago that you saw a person bleeding and so you asked the driver to stop the bus. Where did you find that person who was bleeding?

A

I went down and directed my flashlight on the person and asked him what happened and he said, "I was shot."

... ..

FISCAL:

Q

Now, when he answered he was shot, did you ask other questions to that person?

A

I asked him if he was bumped by a truck and he said he was shot.

COURT:

Continue.

A

I asked him who shot him, if he knew, and he said I know him. I was Ben Balbas.

Q

Did you ask the name of the injured person?

A

No, sir.

Q

In what particular place did you find this person bleeding?

A

South of the big 'silag' or buri tree.

Q

What municipality is that Silag tree found?

A

Within the town of Currimao, sir.

Q

On what part of the road did you find this person bleeding?

A

He was on the right when you are going south, sir.

Q

How far from the asphalted portion of that road did you find this person?

A

More than one (1) meter from the edge.

Q

What was the position of this person whom you found bleeding when you first saw him?

A

Lying on his back, sir.

Did you examine the body of the person whom you saw bleeding?

A

I saw blood oozing from his breast, sir.

Q

Were you alone when you focused your flashlight to the person whom you saw bleeding by that side of the road?

A

I, my companions followed me, sir.

Q

After this person whom you don't know his name has told you that he was shot by one Ben Balbas, what did you do?

A

The person told us that you carry me because I am feeling 'numb.' And I told him to wait and may (sic) inform the persons in the neighboring house that they would inform the barrio captain to take him. And the owner of the house was Manong Maning.

Q

Were you able to find this Maning in this house?

ATTY. ASUNCION:

May I pray that the witness just answer the question.

A

Yes, sir.

FISCAL:

Q

What did you tell your Manong Maning, if any?

A

I told him to go to the person wounded and that he would inform the barrio captain." (t.s.n., pp. 26-28, March 20, 1973)

Mayor Cirilo Quilala of Currimao, Ilocos Norte, upon being informed of the incident, proceeded to the place where he saw the victim Florencio Yamongan lying on the shoulder of the road. Mayor Quilala testified as follows:

"Q

What was his condition when you saw him?

A

He was serious, sir.

Q

What was he doing when you saw him?

A

He was shouting not exactly very loud but when we asked him with Pat. Oscar Reynon what happened, he told us 'Benjamin Balbas shot me,' sir.

Q

Now, who were your companions Mayor when you proceeded to the place?

A

Pal. Oscar Reynon and Sgt. Pablo Bumanglag of the PC and one policeman whose name I could not remember now, sir.

Q

Were there persons at the place where you found the body of Florencio Yamongan when you arrived?

A

None, sir.

COURT:

Q

When you arrived there and you saw Florencio Yamongan, said Florencio Yamongan told you that he was shot by Benjamin Balbas?

A

Yes, your Honor.

Q

How was he positioned then?

A

He was lying like this, your Honor. (Witness demonstrating the same, inclining his body on the right side with his two hands on his stomach below the belt)

Q

In other words, he was alive when you arrived?

A

Yes, your Honor.

Q

Around what time?

A

More or less 7:00 [o'clock], your Honor.

Q

Of what date?

A

December 21, 1970, your Honor.

FISCAL:

Q

After asking Florencio Yamongan what happened to him and he answered you that he was shot by Benjamin Balbas, what did you do next?

A

I told Oscar Reynon to get his statement and I will call for the Bo. Captain because the house of the Bo. Captain was about 600 meters away from the place, then drove my jeep and went to get the Bo. Captain, sir.

Q

Who is this Oscar Reynon whom you have instructed?

A

Pat. Oscar Reynon of Currimao, Ilocos Norte, sir.

Q

Did you see if Oscar Reynon took the statement of Florencio Yamongan?

A

Well, when he began getting the statement, I still saw it, but immediately when he began getting his statement, I drove the jeep and proceeded to the house of the Bo. Captain and after ten minutes, we came back, sir.

Q

When you came back, what transpired next?

A

Oscar Reynon was about to finish the statement and when he finished the statement, he told me, 'sir, this is the statement which is already finished,' so, I told him to get the blood thumbmark, sir.

Q

When Oscar Reynon testified, he presented Exh. 'C' which is the question and answer and at the bottom of Exh. 'C' is a name of Florencio Yamongan with a red thumbmark . . . What is the relation of this Exh. 'C' with that statement which you said you instructed Oscar Reynon to take?

A

This is the statement that Oscar Reynon got during that night, sir.

Q

Now, after Florencio Yamongan has affixed his thumbmark, what transpired next?

A

I told them to bring Florencio Yamongan to the jeep and we proceeded to the hospital, but on our way to the hospital it so happened that he expired and we were not able to bring him to the hospital alive, sir.

Q

And what did you do when Florencio Yamongan died in your jeep as you were going to the hospital?

A

Well, we brought back the patient already, sir. Well, I could not remember where we brought him already but I notified the Rural Health Officer to check and autopsy him, sir." (tsn. pp. 221-227, Oct. 23, 1974 hearing)

The rule on dying declaration is that (1) it is made under consciousness of an impending death; (2) the declaration refers to the cause and surrounding circumstances of the declarant's death; (3) the declarant is a competent witness; and, (4) the declaration is offered in a criminal case wherein the subject of inquiry is the declarant's death (Section 31, Rule 130 of the Rules of Court). And, there are three (3) requisites for the admission of evidence of res gestae, namely: (1) that the principal act, the res gestae, be a startling occurrence; (2) that the statements were made before the declarant had time to contrive or devise; and, (3) that the statements must concern the occurrence in question and its immediately attending circumstances. (People vs. Ricapiaz, 23 SCRA 374). In the case at bar, the deceased Florencio Yamongan made the statements while he was still under the stress of nervous excitement,

if not almost at the point of death. In fact, the statement was uttered few hours before he expired. His statement, therefore, may be considered as a dying declaration or as part of the *res gestae* and, as such, is admissible in evidence. The victim's statement immediately after receiving the wounds naming his assailant is legal evidence, a dying declaration or as part of the *res gestae*.

The question of what motive is sufficient to impel one to commit particular crime is always relative and no fixed norm of conduct can be said to be decisive of every imaginable case, although there is authority to the effect that motive, as distinguished from criminal intent, is not an essential element of a crime, and hence, need not be proven for purposes of conviction, as the same is a mere matter of procedure (*People vs. Diva*, 23 SCRA 337, 345). At any rate, well settled is the rule that motive is not essential to conviction in murder cases when there is no doubt as to the identity of the culprit.

In the case at bar, We agree with the trial court that the identity of appellant Benjamin Balbas as the author of the killing has been fully established. To establish an alibi, it is not enough to prove that the defendant was at some other place when the crime was committed but must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at such time. As found by the trial court, "the lot where the victim and his son Ferdinand were plowing that afternoon of the incident is some 100 meters away from accused's residence and 500 meters from Florence's house. Likewise, the lot mortgaged and possessed by accused and which was also bought by Damian Yamongan is 150 meters from the lot they were then cultivating according to Ferdinand. . . . The body of Florencio was found some 200 meters away from accused's house and by the side of the national road thereat. . . . The prosecution had also proven that victim was shot in cold blood from his back. Four shots found their marks as indicated in the sketch of the human body (Exh. 'B') and described in the autopsy report (Exh. 'A'). Dr. Carpio, as an expert, declared that when Florencio was shot he had still enough time to look back at his assailant as a reflex action as no vital organ of his body was injured and identified herein accused as the author of the shots. . . ."

WHEREFORE, the decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED. With costs against the appellant.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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