

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENEROSO ALEGRIA, ACCUSED-APPELLANT.***G.R. No. L-40392. August 18, 1978*

Ponente: AQUINO, J.

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Generoso Alegria appealed from the decision of the Court of First Instance of Iloilo, convicting him of murder, sentencing him to reclusion perpetua and ordering him to pay an indemnity of P12,000 to the heirs of the deceased Bienvenido Alegria (Criminal Case No. 3121).

There is no question as to the corpus delicti. At around six o'clock in the evening of March 10, 1972 Bienvenido Alegria was feloniously shot to death in Sitio Guibungan, Barrio Tigbauan, Cabatuan, Iloilo. He sustained six small lacerated wounds on the chest below his right nipple and two small lacerated wounds on the left of his spinal column. He died due to the shock and hemorrhage resulting from his wounds (Exh. A).

Who shot the victim? Although the Constabulary and police authorities at Cabatuan were informed of the killing and repaired to the scene of the crime, they did not make any crime report and no complaint was filed with the municipal court. It was only about twenty months later or on November 15, 1973 that the victim's widow, Teresa Aural, and one Teodorico Comprendio executed statements before Sergeant Josue Solinap of the Constabulary unit stationed at Santa Barbara, Iloilo. The statements were sworn to before the municipal judge of Cabatuan. They declared therein that they witnessed the shooting of Bienvenido Alegria by his first cousin, Generoso Alegria (Exh. 1 and 2).

On the basis of those statements and after due preliminary investigation, an assistant provincial fiscal filed an information for murder against Generoso Alegria on December 13, 1973.

Teresa Aural (she was thirty-eight years old in 1974) testified that between five-thirty and six-thirty in the evening of March 10, 1972 her husband was pasturing his carabao near their house located at Sitio Guibungan. She called him three times at the top of her voice and told him to go home because supper was ready. She descended from the house in order to meet him. When she was already on the ground, Generoso Alegria (apparently alerted by the call made by Teresa) suddenly materialized. He came from the well, passed by her and, on seeing Bienvenido, shot him with a shotgun called pugakhang. Her husband fell on the rice paddy.

Bienvenido was shot after he had tethered his carabao at the communal corral (an expedient designed to obviate cattle rustling) which was across the creek near the house of the barrio captain, Cesareo Lampareo. That house was about one hundred meters away from Bienvenido's house. Bienvenido had left the corral and was walking on the hill about fifty meters away from his house.

Teresa Aural shouted for help. The barrio captain and his son came in response to her appeal for help. His son reported the shooting to the Constabulary unit at Cabatuan. Two Constabulary soldiers named Soldevilla and Narciso (Marqueso) talked with Teresa. She told them that her husband was shot by Generoso Alegria. She was

not taken to the Constabulary headquarters for investigation. So, she was not able to sign any statement immediately after the shooting.

Teresa's testimony was corroborated by Teodorico Comprendio, a fifty-six year old farmer, residing at Barrio Talanghawan, who had allegedly known Generoso since childhood and knew him to be Bienvenido's first cousin. Comprendio's barrio is about two kilometers away from Barrio Tigbauan. He testified that in the afternoon of March 10, 1972 he attended the fiesta at Barrio Pungtod. On his way home he passed Sitio Guibuangan.

While in that place, he saw Generoso at a distance of five meters running toward his (Generoso's) house and then coming out of it and running downhill toward a well. Generoso was carrying a homemade shotgun. When Generoso espied Bienvenido on his way home, Generoso shot him. Comprendio was about fifty meters away from Generoso and about three arms' length behind Teresa Aureal when he saw Generoso firing at Bienvenido.

After the shooting, Generoso fled. Comprendio confirmed Teresa's testimony that she shouted for help. He said that he approached her and advised her to call for the barrio captain. Later, when two Constabulary soldiers appeared, Comprendio told them that Generoso had shot Bienvenido. The soldiers brought the remains of Generoso to the poblacion.

Lampareo, the barrio captain, was at his house in the evening of March 10, 1972. At around six o'clock, he heard a shout for help. He went out of his house and hastened to the place where the call for help had originated. He found Teresa Aureal and Comprendio in the ricefield near Bienvenido's body.

Prior to the shooting, Bienvenido and Generoso were not on speaking terms. In April, 1971 they had an altercation at the corral because of the failure of Generoso to return a roll of wire which he had borrowed from Bienvenido and which Generoso had used in fencing the dance hall in the school on the occasion of the barrio fiesta. The two had also some misunderstanding about the theft of Generoso's carabao which he had bought for P300.

Teresa Aureal explained that there was a delay in the filing of the charge because at the time her husband was killed she was pregnant and her children were small. At first, she was afraid that if she denounced Generoso to the authorities, she might be killed. As already noted, her statement was not taken by the peace officers immediately after the killing of her husband although she had informed the two Constabulary soldiers that Generoso had shot him.

Appellant Generoso Alegria, fifty-six years old in 1976, a widower, farmer and, like the victim, a resident of Sitio Guibuangan, denied that he had borrowed a roll of wire from Bienvenido Alegria and that he had quarrelled with him over the loss of his carabao. He said that his carabao was lost in 1973 but Bienvenido was killed in 1972.

He pleaded an alibi which was corroborated by Maria Celendro and Rafael Vales, a resident of Pavia, Iloilo. He said that in the evening of March 10, 1972, when Bienvenido was shot, he (Generoso) cooked viands in the house of Maria Celendro as there was a fiesta in Barrio Pungtod (which is adjacent to Sitio Guibuangan, the scene of the crime, the two places being separated only by a river). He started cooking for Maria Celendro on the preceding day. He slept in her house on the night of March 10, 1972 and returned to his home in the morning of the following day, March 11.

In the evening of March 10, Romero Verdun came to the house with the information that Bienvenido was shot (or was shot dead, according to Maria Celendro's testimony). On hearing that information, Generoso did not leave the house to verify the veracity of that information. He said that he could not abandon his cooking chores. He instructed Rafael Vales to make the verification and to inform him (Generoso) whether Bienvenido was in a serious condition.

On arriving home in the morning of March 11, 1972, he asked his children as to what happened to Bienvenido. He was told that Bienvenido was dead. He testified that he went to the scene of the crime but, upon being pressed by his counsel, he changed that testimony and declared that he went to the house of the victim (44-45 tsn May 20, 1976). Teresa Aureal allegedly informed him that she did not know who killed Bienvenido. Generoso and the members of his family attended the funeral.

Generoso testified that, according to his information, Bienvenido was shot by Crispin Aureal, the elder brother of Teresa or the brother-in-law of Bienvenido, because, after the two had stolen a carabao, Bienvenido supposedly struck its leg and buttock with a bolo and the carabao ran away.

At the preliminary investigation, Generoso told the fiscal that Teresa's accusation against him was false. He allegedly confronted Teresa and Lampareo, the barrio captain, and asked them why they had implicated him. He said that Lampareo was angry with him because he did not comply with the requirement that he should keep his carabao in the common corral.

He declared that he came to know the witness, Comprendio, for the first time in court; that, according to his relatives, Comprendio was a resident of Lambunao, and that Comprendio left Lambunao and went to Barrio Talanghawan because his work was to testify falsely in court, as in the case of a certain Sergio Manzo.

Generoso affirmed that he was in good terms with Bienvenido. He used to cut the hair of Bienvenido and his children. He even slept in Bienvenido's house. A curious incident occurred while Generoso was under direct examination. While he was testifying that he went to see Teresa Aureal and that he told her: "Teresa, why can you afford to accuse me of this crime (which) I did not commit, I swear before God", the witness raised his right hand and at the same time cried aloud. He broke down. The trial court declared a recess for three minutes. When Generoso resumed his testimony, he said that Teresa told him that she was instructed to file an accusation against him.

Juanito Tabares, a Cabatuan policeman, testifying as a defense witness, declared that he (not Narciso nor Marqueso) was the companion of Constabulary Sergeant Soldevilla, when the latter went to Sitio Guibuangan to investigate the shooting. Tabares said that he was the one who fetched the rural physician who conducted the autopsy. Tabares said that he was not able to ascertain the identity of the gunwielder who shot the victim. He did not investigate Teresa Aureal.

Another defense witness, Patrolman Rufino Tormon of Cabatuan, who was assigned on March 11, 1972 to investigate the killing, also failed to find out the identity of the killer. Teresa Aureal allegedly informed him that the suspects were the brothers, Romeo and Gerardo Nono, but after he picked them up for investigation, they denied having perpetrated the killing.

Appellant Alegria contends that the trial court erred in giving credence to the testimonies of Teresa Aureal and Comprendio, in disregarding the evidence pointing to his innocence, and in disbelieving his alibi. All these contentions may be boiled down to the issue of whether the prosecution's evidence establishes appellant's guilt beyond reasonable doubt.

The trial court reasoned out that the testimonies of the widow and Comprendio should be believed because they had no reason to testify falsely against the accused. He had no misunderstanding with the two prosecution witnesses. The trial court regarded as unnatural the conduct of the accused in not bothering to go to the scene of the crime when he was informed that his first cousin was shot (according to his testimony) or was killed, according to Maria Celendro. His failure to do so signified that he had "a guilty conscience".

As to appellant's alibi, the trial court concluded that even if it were true that he was in the house of Maria

Celendro in the evening of March 10, 1972, that circumstance could not have precluded him from committing the crime and thereafter returning to the house. Moreover, the accused was positively identified by the two prosecution witnesses. It may also be observed that it is not credible that he would still be cooking food in the evening of the day of the fiesta and that he would be sleeping in Maria Celendro's house after the fiesta had ended, considering that he could have easily returned to his own habitation.

We have painstakingly evaluated the evidence in order to find out if there is any circumstance which casts doubt on his guilt. We find that the trial court did not err in holding him responsible for the death of Bienvenido Alegria.

The delay in the filing of the charge was satisfactorily explained by the widow in her affidavit. For reasons not found in the record, the Constabulary and police authorities in Cabatuan did not exert utmost efforts in apprehending the killer of Bienvenido Alegria. The widow had to solicit the assistance of the Constabulary detachment at Santa Barbara in order that the killing could be properly investigated. It was the office of the provincial fiscal (not the chief of police of Cabatuan nor the municipal court of that town) that brought the appellant to the bar of justice.

The killing was properly characterized as murder qualified by treachery (alevosia) since a deliberate surprise attack was made upon the unarmed victim without any risk to the assailant. There being no mitigating nor aggravating circumstances, reclusion perpetua was correctly meted out to the appellant (Arts. 14[16], 64[1] and 248, Revised Penal Code).

WHEREFORE, the lower court's judgment is affirmed. Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Concepcion, Jr., J., did not take part.

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