

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALUSTIANO ROXAS Y SONER, DEFENDANT-APPELLANT.***G.R. No. L-32912. October 29, 1976*

Ponente: ANTONIO, J.

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Appeal from the judgment of the Court of First Instance of Batangas in Criminal Case No. 2885, convicting appellant Salustiano Roxas y Soner of the crime of Murder, imposing upon him the penalty of reclusion perpetua, and ordering him to indemnify the heirs of Antero M. Guerra in the sum of P12,000, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The record reveals the following facts:

Antero Guerra, a 43-year old bachelor employed at the Ibaan Rural Bank, Inc., lived in the house of his brother in the Poblacion of Ibaan, Batangas. Antero Guerra attended a basketball game in the evening of June 21, 1969 at the town plaza. This was only about 150 meters from his house. Between the hours of 11:20 and 11:30 o'clock, as Antero Guerra was walking home from the basketball game and as he was in front of his house, he was shot from behind. He was immediately taken to the Batangas Provincial Hospital but died before arrival thereat. Death was attributed to severe shock and severe internal and external hemorrhage due to two (2) gunshot wounds at the back of the body of the deceased, which penetrated the body, described in the autopsy report of the Municipal Health Officer of Ibaan, Dr. Macario A. Medrano, as follows:

"1. WOUND, GUN-SHOT, THRU AND THRU - Back, Right with powder burns - Entrance oblong about 4 mm. in diameter at the lateral edge of the spinal column at the level of the 3rd inter-space, directed forward, slightly to the left piercing the lung (Upper lobe Rt.) and portion of the aorta, emerging at the level of the 4th interspace just lateral to the sternum. (Exit about 9 mm. in diameter.)

2. WOUND, GUN-SHOT, THRU AND THRU - Back, Right with powder burns - Entrance oblong about 4 mm. in diameter at the level of the 3rd inter-space, just medial to the edge of the Rt. scapula, directed forward, piercing the upper lobe of the right lung, emerging at the front chest (Right) 2nd inter-space at the Rt. mid-clavicular line. (Exit diameter about 9 mm. in diameter)."

On the witness stand, Dr. Medrano testified that he found powder burns around the wounds of the deceased, indicating the proximity of the gun of the assailant to the victim at the time the shots were fired. According to Dr. Medrano, both wounds, especially Wound No. 1, which pierced the lung and aorta of the deceased and caused severe hemorrhage, were fatal. The local police, led by Chief Manuel M. Aguila, arrived at the scene of the crime that same night and conducted an investigation of the case. On the basis of their initial findings, the police authorities took appellant from his house that same night, but after questioning him he was released. Police Sgt. Arsenio C. Perez recovered two (2) damaged sports trophies and a package of cotton materials at the crime scene.

On June 28, 1969, the Chief of Police filed the criminal complaint for Murder against Salustiano Roxas and Rodoifo Guerra with the Municipal Court of Ibaan. On the basis of his preliminary examination of Paterno and

Victorino Guerra, the said court ordered the issuance of the corresponding warrant of arrest, and pursuant thereto, Roxas was arrested in his house in Barrio Dayapan, Ibaan and detained at the municipal jail. On July 1, 1969, he was investigated by Sgt. Arsenio C. Perez, during which investigation he gave a statement which he affirmed under oath before the Municipal Judge.[1] Rodolfo Guerra likewise gave to the police a written statement on June 22, 1969,[2] admitting ownership of a passenger jeepney which he claimed was hired by the deceased Antero Guerra for P150.00 but which amount had remained unpaid. These facts are undisputed.

The prosecution witnesses, namely: Victorino Guerra, a nephew of the deceased and who at the time was living with him, and Paterno Guerra, another nephew of the victim, positively identified appellant as the assailant of the deceased.

Victorino Guerra testified that he was on the ground floor of their house, having just arrived from the basketball game, and was about to close the door when he heard a shot coming from the outside. Peeping through the door, he saw his uncle Antero about to enter the gate, carrying a basketball trophy in both hands while another was tucked under his armpit. About a meter, more or less, behind him was appellant Salustiano Roxas holding a gun with its barrel aimed at Antero. After the second gun report, Antero collapsed on the cemented portion of the road. Appellant Salustiano Roxas then ran away towards the South. Victorino, upon going to the succor of his uncle, found his cousin, Paterno, already there. He brought his wounded uncle to the provincial hospital in a jeep, but the latter died before arrival at the hospital. According to Victorino, his uncle had previously hired a jeepney owned by Rodolfo Guerra for P150.00 in connection with the wedding of his (Victorino's) brother. The conductor of the jeepney was Salustiano Roxas. In the morning of June 21, 1969, while he (Victorino) was in his office, he received a phone call from Rodolfo Guerra directing him to tell his uncle Antero to pay the rental of the jeep, otherwise something would happen.

Paterno Guerra, on the other hand, related that at about 11:15 o'clock, while he was on his way home from the basketball game, he saw his uncle Antero walking ahead, carrying a basketball trophy in his hand and another under his armpit. Soon, Salustiano Roxas joined Antero and the two walked side by side and it was then that he heard Salustiano tell Antero "Pay your indebtedness of P150.00 new or something will happen", to which remark Antero replied: "Not now. Tomorrow as I have no money now." Upon reaching his house, which was four (4) meters away from Antero's and as he was entering his gate, he heard all of a sudden a gun report. As he turned towards the direction where the sound came from, he saw appellant Salustiano Roxas behind the deceased holding a gun with its muzzle pointed towards the back of the victim. About a second later, he heard another shot and immediately Salustiano ran away. The victim fell on the ground. Upon approaching his uncle, he inquired why and by whom he was shot and the latter, who could hardly speak, muttered "Saloy Conductor". He remained with his uncle until Victorino Guerra arrived, whereupon, he went to fetch a doctor. Upon his return with Dr. Melecio Macatangay, he was informed that the victim has already been taken to the Batangas Provincial Hospital. He recalled that two nights before the incident, or on June 19, 1969, at about 9:00 o'clock in the evening while drinking beer inside a restaurant of one Mrs. de Leon in the Poblacion, he saw appellant Salustiano Roxas, together with Rodolfo Guerra, the alleged jeepney owner. The two were talking near the gate of the restaurant and he allegedly overheard Rodolfo Guerra telling Salustiano Roxas "Basta pag hindi agad binayaran ka ni Tero (Antero) ay tirahin na ninyo."

Appellant denied that he shot the victim Antero Guerra. He declared that at about 11:30 o'clock that evening of June 21, 1969, when the victim was shot, he was sleeping in his house in Barrio Dayapan, as he was tired from a trip which he made earlier that day to the airport in Rizal province, as conductor of the jeep of Eustaquie Vergel. This jeep, which was driven by one Ernesto Benitez, was hired by someone from Barrio Malainin to bring him to the airport in order to board a plane bound for Davao. They left Ibaan for the airport at about 1:00 o'clock in the

afternoon, returning to his home at about 8:00 o'clock in the evening of the same day. He testified that he was awakened by his wife that night when Sgt. Arsenio C. Perez and his men arrived at his house. Sgt. Perez asked him to dress up and go with them to town. When he inquired why he was going with them, they replied that he should just go with them. When they arrived at the municipal building, they insisted that he killed Antero Guerra and even threatened to hang him if he would not admit his guilt. He, however, was adamant in his denial and even told them to do anything they wanted to do with him. He was brought back to his house at about 8:00 o'clock the following morning. One week later, he was again taken by the police for investigation. He was brought to the municipal building and upon arrival thereat he was immediately placed inside a cell. After he was maltreated, the police were finally able to force him to sign a statement. He was later brought by one Pepe Fortus to the Batangas Provincial Hospital for treatment. He was transferred to the Provincial Jail and there, on July 3, 1969, he gave a voluntary statement,[3] in the presence of T/Sgt. Pedro Belardo of the Constabulary, to the effect that he signed a statement before the police investigator because of the maltreatment he had received from them.

Another witness for the defense, Eustaquio Vergel, testified that he and not his son-in-law Rodolfo Guerra was the owner of the jeep which was hired by Antero Guerra on June 14, 1969. To support his claim, he presented Registration Certificate No. 721982 (1969).[4] He declared that he and his family lived in Barrio Balanga, Ibaan, which is about five (5) kilometers from the house of Rodolfo which was situated in Barrio Lapulapu of the same municipality.

Rudolfo Guerra, who was charged with the offense jointly with appellant, denied his presence in the restaurant of Mrs. de Leon in the evening of June 19, 1969, asserting that after coming home from work at about 6:00 o'clock in the afternoon he did not leave his home until the following morning. He admitted having telephoned Antero at the latter's office on June 19, 1969 about the request of his father-in-law to collect the payment for the use of the jeep. In that conversation, Antero promised to pay the following day. When Antero failed to make good his promise, he called Victorino Guerra by phone on the 21st of June but denied that he ever threatened Victorino that something would happen to Antero if he did not pay.

On the basis of the foregoing testimony of the two eyewitnesses, appellant was convicted while his co-accused, Rodolfo Guerra, was acquitted for insufficiency of evidence by the trial court.

The issue is one of credibility. Appellant contends that the delay of five (5) days of the two prosecution witnesses in giving their written statements render their testimony highly doubtful. This contention is obviously without merit. It will be recalled that immediately after the shooting in the evening of June 21, 1969, both Victorino and Paterno stated that they told Chief of Police Manuel M. Aguila that appellant was the one who shot the deceased. This is confirmed by the testimony of Police Sgt. Arsenio C. Perez, who declared that as early as 2:00 o'clock in the early morning of June 22, 1969, Paterno told him that the assailant of the deceased was the conductor of the jeep. When he urged Paterno and Victorino to execute immediately their affidavits in connection with the incident, these two told him that due to the fact that their deceased uncle was a bachelor, without any family to attend to his burial, they decided to give their statements after the wake. It was obviously because of the information given by Victorino and Paterno Guerra to Sgt. Perez that in the early dawn of Jun. 22, 1969, the police authorities went directly to the house of appellant and invited him to go with them to the Poblacion for questioning. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness, if such delay is satisfactorily explained.[5] Victorino and Paterno could not have been mistaken about their identification of appellant, having known the latter for sometime. Since it is uncontroverted in the record that the area where the incident occurred was illumined by a mercury lamp, it is not improbable that the two eyewitnesses were able to sufficiently recognize the assailant of their uncle. It is further argued that Paterno's testimony should not be given full faith and credit since even the court a quo did not accept his testimony that two

days earlier, Rodolfo Guerra told appellant that if Antero does not pay they should hit him. The circumstance that the trial court disregarded the portion of the testimony of Paterno Guerra concerning the alleged instructions made by Rodolfo Guerra to appellant, because it was improbable that Rodolfo would have instructed his confederate in loud voice, does not detract from the credibility of this witness as regards the other aspects of his testimony. It is perfectly reasonable to believe the testimony of a witness with respect to some facts, and disbelieve it with respect to other facts.[6] Neither is the relationship of Victorino and Paterno to the deceased sufficient to render their testimony doubtful nor enough to discredit their credibility. The credibility of witnesses cannot be assailed as prejudiced simply because of their close relation to the victim. For it is not to be lightly supposed that the relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they know to be innocent.[7]

Finally, appellant argues that the statement of Paterno that upon approaching his wounded uncle he inquired why he was shot and by whom reveals that he could not have seen the latter's assailant. It must be noted that said declarant was then emotionally upset. According to him, immediately upon witnessing such a shocking incident, he was scared and confused. Understandably, under such circumstances he could not be expected to act with perfect equanimity. The relative weight that the trial judges assigns to the testimony of witnesses must be accepted by this Court, unless patently and clearly inconsistent with the evidence on record. There is no question that the trial judge's proximate contact with witnesses places him, compared with Appellate Justices, in more competent position to ascertain the truth in the testimony.[8] "Moreover, there is nothing in the record from which we could reasonably deduce or infer that the prosecution witnesses were actuated by improper motives. The absence of any improper motive for the principal witnesses for the prosecution to make a false imputation strengthens the credibility of said witnesses and discredits the alibi relied upon by the appellant.[9] The defense of alibi interposed by appellant is the weakest of defenses, especially in this case where it lacks corroboration. It is worthless, in the face of positive identification by the prosecution witnesses.[10] Considering that the appellant lives only three (3) kilometers away from the scene of the incident, it is not improbable that he could have committed the crime charged and then returned to his place of abode to free himself of suspicion. Alibi, to be convincing, must preclude any doubt that the accused could have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[11] As indicated by the Solicitor General, appellant is not without reason or motive to harm the deceased. Since the very evidence of the defense admits the fact that the deceased failed to pay the jeep rental despite his promise to do so, appellant being conductor of the jeep whose earnings he was dependent on, it was naturally his concern that said amount should be promptly paid. We find no reason, therefore, to interfere with the conclusions of the trial court concerning the credibility of the witnesses, there being no showing that said court overlooked some facts of substance and value that, if considered, would affect the result of the case.

The attack on the deceased was accomplished with treachery. It took place at a time when the victim could not have anticipated what his assailant was going to do. The shooting was from behind and it was sudden and unexpected.[12]

WHEREFORE, in view of the foregoing, the judgment appealed from, being in accordance with law and the evidence, is hereby AFFIRMED.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Exhibit "D", Records, p. 94.

[2] Exhibit "E", Ibid., p. 137.

[3] Exhibit "1" (S. Roxas), Ibid., p. 138.

[4] Exhibit "2", Ibid., p. 139.

[5] People v. Lao Wan Sing, 18 SCRA 1076; People v. Sampang, 16 SCRA 531.

[6] People v. Li Bun Juan, et al., 17 SCRA 934.

[7] People v. Fetalvero, 1 SCRA 1089; People v. Valera, 116 Phil. 59; People v. Asmawil, 13 SCRA 497; People v. Villalba, 17 SCRA 948.

[8] People v. Berdida, 17 SCRA 520.

[9] People v. Corpus, et al., 107 Phil. 14; People v. Valera, supra, 62, citing U.S.v. Pajarillo, 19 Phil. 238; People v. De Otero, 51 Phil. 201; People v. Imam Sawah, et al., L-15333, June 29, 1962.

[10] People v. Vicente, 28 SCRA 247; People v. Salip, 30 SCRA 389; People v. Gande, 31 SCRA 347.

[11] People v. Argana, 10 SCRA 311.

[12] People v. Curiano, 9 SCRA 323; People v. Pantoja, 25 SCRA 468; People v. Acabado, 26 SCRA 727; People v. Vacal, 27 SCRA 24; People v. Vicente, supra.

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