

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMINGOL HANASAN Y NUÑEZ ALIAS JOSE N. LITERAL,
DEFENDANT-APPELLANT.**

G.R. No. L-25989. September 30, 1969

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PER CURIAM:

This is an automatic review of criminal case 80837 of the Court of First Instance of Manila, Branch VIII.

It was sometime in the middle part of 1964 that Armingol Hanasan y Nuñez met Guillermo Literal. The relations between the two thereafter became so close that Literal went to live with Hanasan in January 1965 in the latter's house at Manga Avenue, Sta. Mesa, Manila, where he worked as a helper in the latter's business of buying and selling appliances. In time Hanasan succeeded in prevailing upon Literal to insure himself for P10,000 with the Philippine American Life Insurance Company, making Hanasan - who then assumed the name Jose N. Literal and represented himself as the younger brother of Guillermo Literal - the principal beneficiary thereof. On March 5, 1965 the corresponding application was accomplished and thumbmarked by Guillermo Literal who was illiterate.[1] The life insurance policy was approved and issued that same day, March 5. Hanasan thereafter waited for the opportune time to poison Guillermo Literal with arsenic. The opportunity presented itself on March 25, 1965. His own narration of the events that transpired on March 25 and thereafter, contained in his sworn extrajudicial confession given to the National Bureau of Investigation on December 8, 1965, is as follows:

"Q: How did you give the arsenic poison?

"A: Early that day sir, GUILLERMO went to Santa Mesa market and bought around ten (10) 'Galungong' fish and fruits. He made the galungong into 'paksiw.' This time my mind was made up that I will poison him (GUILLERMO) already. Because I did not want REBECCA to take the poison accidentally, I asked her to go to our neighbors and play there. When our dinner was ready, the table was set already, i.e., the rice and 'paksiw na galungong' were already on the table I poured the arsenic solution on his plate of rice and also on the paksiw. I told GUILLERMO that I did not like or feel like eating galungong that day and I only took fried eggs.

"Q: How were you able to pour the arsenic solution on the plate of GUILLERMO and on the paksiw without his seeing you?

"A: When I asked him to get water to drink, he stood and when his back was turned I poured the solution on his plate and on the galungong.

"Q: Did you see if GUILLERMO consumed his rice and the 'paksiw na galungong'?

"A: About three-fourths (3/4) of his plate of rice and around six (6) of the galungong sir.

"Q: How about the sauce of the paksiw?

"A: He drank part of it sir.

"Q: How long did it take before the effects of arsenic poison showed on GUILLERMO?

"A: After we finished eating sir, it must be more than an hour when he started vomitting, he complained of dizziness and after a little later sir he started having loose bowels sir.

"Q: What did you do with the remainder of the 'paksiw na galungong'?

"A: I threw it away sir, including the rice left in GUILLERMO's plate.

"Q: What did you do when GUILLERMO started showing signs of the effect of arsenic poison-ing?

"A: Nothing sir, I just watched him and when he asked for hot water in a bottle to be placed over his stomach I gave it to him.

"Q: Did you not bring him immediately to a doc-tor or to a hospital?

"A: I am not sure of the date and time sir. But I think I brought him (GUILLERMO) to a doctor the same afternoon March 25, 1965.

"Q: Are you sure it was on the 25th of March that you brought GUILLERMO to see a doctor?

"A: I am not sure of the dates anymore sir, but I remember bringing him to a doctor sir.

"Q: From the time you gave the poison, i.e., lunchtime March 25, 1965, up to the time you brought GUILLERMO to a doctor, what have you done to alleviate his sickness or suffer-ings?

"A: Nothing sir. When GUILLERMO asked me to heat water for him to take a bath and I did. He asked me for medicine but I told him there was none. He asked me to get him a doctor and I went to Dra. LIGAYA C. SANTOS but she was not home at that time as I was inform-ed she was in school.

"Q: Did you ever bring GUILLERMO to a doctor?

"A: I brought him later that afternoon to the house of Dra. LIGAYA SANTOS.

"Q: Now, tell us, when for the first time did you bring GUILLERMO to Dra. SANTOS?

"A: Late in the afternoon of March 25, 1965 sir.

"Q: What did you tell Dra. SANTOS when you ac-companied GUILLERMO there?

"A: I told her that he has been having loose bowel movements after taking those 'galungong' fish sir.

"Q: Did you not inform Dra. SANTOS about the ar-senic solution you poured in the food of GUI-LLERMO?

"A: No sir.

"Q: What medicine was given by Dra. SANTOS?

"A: She prescribed some tablets sir which I bought at the drugstore and gave to GUILLERMO to take.

"Q: Did you give GUILLERMO a second dose of the arsenic solution?

"A: No more sir, I just gave him that one dose on his rice and viand that lunchtime of March 25, 1965.

"Q: After giving GUILLERMO those tablets prescribed by Dra. SANTOS, did his condition improve, i.e., did his vomitting and loose bowel movements stop?

"A. No sir, it continued.

"Q: Did you bring him again to the doctor when GUILLERMO's vomitting and loose bowel movements

persisted?

"A: No more sir.

"Q: Did you not bring GUILLERMO to the hospital when his condition was getting worse?

"A: No sir, because GUILLERMO said the medicine is just enough and he will just finish it and see the outcome.

"Q: Was GUILLERMO able to consume all the medicine prescribed by Dra. SANTOS?

"A: No sir because he died at about 4:00 or 5:00 in the morning of March 27, 1965."

On December 10, 1965 Hanasan was charged with murder before the Court of First Instance of Manila, committed, in the language of the information, as follows:

"That on or about the 25th day of March, 1965, in the City of Manila, Philippines, the said accused, with intent to kill, treachery and evident premeditation, in consideration of a prize and with cruelty, by deliberately and inhumanly augmenting the suffering of the victim, with grave abuse of confidence, employing craft or fraud and by means of poison, did then and there wilfully, unlawfully and feloniously administer and/or give arsenic solution mixed with rice and 'paksiw na galung-gong' to one Guillermo Lital, thereby inflicting upon the said Guillermo Lital internal physical injuries which were the direct and immediate cause of his death immediately thereafter."

Upon arraignment, the accused, duly assisted by counsel de parte, voluntarily pleaded guilty to the abovequoted indictment. Despite this voluntary plea of guilty, the trial court nevertheless received evidence relative to the aggravating and mitigating circumstances attendant in the commission of the crime. The trial court, thereafter rendered judgment finding the accused guilty beyond reasonable doubt of murder by means of poison, with the aggravating circumstances of evident premeditation and abuse of confidence, and the mitigating circumstance of voluntary plea of guilty, and consequently sentenced him to the extreme penalty of death, with the accessory penalties provided by law, to indemnify the heirs of the deceased in the amount of P10,000 and to pay the costs.

The automatic elevation of this case to us for review is pursuant to section 9 of Rule 122 of the Rules of Court.

The appellant poses two issues, formulated by him as follows:

"The lower court erred in finding that Guillermo Lital died from arsenic poisoning; and

"The lower court erred in discounting the mitigating circumstance of voluntary surrender and appreciating only the plea of guilty, thereby failing to offset the two aggravating circumstances of evident premeditation and abuse of confidence."

1. Upon the first issue, the proof of record is indubitable that the effective cause of the victim's death was arsenic poisoning. In his statement, exhibit A, given under oath to the NBI, the appellant admitted that he poured arsenic solution on the rice and paksiw na galunggong that the deceased ate for lunch on March 25, 1965; that the deceased consumed about three-fourths of the poisoned food; and that after an hour, the deceased complained of nausea and then vomited and suffered from loose bowels. This is part of his narration:

"Q: Will you explain to us now why arsenic was found in the remains of GUILLERMO?

"A: Because sir, two days before GUILLERMO died I mixed arsenic in the food of GUILLERMO.

"Q: What food?

"A: His rice sir and the 'paksiw na galunggong.'

"Q: When did you give arsenic to GUILLERMO?

"A: Lunchtime sir of March 25, 1965.

"Q: Where?

"A: In the dining room of our house there at 682 Manga Avenue, Sta. Mesa, Manila."

During the trial, the appellant, through counsel, affirmed his extrajudicial confession, exh. A, thus:

"A TTY. RAZON:

"Your Honor. Whatever it is in the confession, we already admitted that."

The appellant now claims that what he poured on the rice and fish of Guillermo Literal on March 25, 1965 was mere water, quot-ing that part of his extrajudicial confession which states that "It was the water from this bottle that I poured on the plate of rice of Guillermo and on the 'paksiw na galungong' that lunchtime of March 25, 1965." But the appellant conveniently omitted to men-tion his admission that he added lye to make the arsenic more soluble and the resulting solution more potent. Thus he stated:

"Q: We are showing you this bottle, a 200 cc bot-tle with the cover marked 'Lady's Choice,' half filled with water and about 1/5 of white precipitation. Have you seen this bottle be-fore?

"A: That is the bottle of arsenic sir. The white substance on the buttom [sic] sir is the arse-nic and the liquid is water. It was the water from this bottle that I poured on the plate of rice of GUILLERMO and on the 'paksiw na ga-lungong' that lunchtime of March 25, 1965.

"Q: Do you mean to tell us that the liquid in this bottle is water only?

"A: No sir, I added a little quantity to [sic] LYE there sir to make the arsenic more soluble and the solution more potent." (emphasis sup-plied)

Dr. Lorenzo A. Sunico of the NBI, whose competence as a toxicologist was admitted by the appellant,[2] testified that arse-nic oxide is soluble in lye,[3] a strongly alkaline substance used in cleaning and in making soap.[4]

That the cause of death of the victim was arsenic poisoning was confirmed by the toxicology report[5] of said Dr. Sunico which recites that the right pelvic bone taken as a specimen from the ex-humed remains of the deceased was found positive for traces of arsenic, In his extrajudicial confession, the appellant gave his ex-press conformity to the foregoing findings:

"Q: Are you aware that the NBI exhumed the re-mains of GUILLERMO?

"A. Yes, sir.

"Q. Do you know the reason why?

"A. For laboratory examination sir to determine the presence of poison sir.

"Q: We are showing you this document - Toxicology Report No. T-65-826, with the following FINDINGS: 'spectrographic examination of the right pelvic bone after ashing gave POSI-TIVE RESULT for traces of ARSENIC.' This is the result of the general toxicological exa-mination of the remains of GUILLERMO LI-TERAL. Do you believe this toxicological re-port which you just read?

"A: Yes, sir, I do.

"Q: And you are also aware that the specimens mentioned in this report were taken from the remains of the late GUILLERMO whom you claimed and insured as your brother?

"A: Yes, sir."

The mention of "gastro-enteritis" in the death certificate[6] as the cause of death cannot avail the accused any as the certificate itself recites that the informant on the matters stated there-in was no other than the appellant himself. He was not expected to, as in fact he did not, disclose that the victim died of arsenic poisoning administered by him. Instead he reported that the deceased died from natural causes. Indeed, the appellant misled the physician who treated the victim as to the real cause of the latter's ailment by informing her that the deceased was suffering merely from loose bowel movement,[7] and did not inform her that he had administered arsenic solution to the said deceased.[8]

2. Upon the second issue, we agree with the court a quo that the mitigating circumstance of voluntary surrender cannot legally be credited in favor of the appellant.

So that the mitigating circumstance of voluntary surrender may properly be appreciated in favor of an accused, the following requisites must concur: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary.[9] In his extrajudicial confession, exhibit A, the contents of which he unequivocally affirmed at the trial, the appellant stated:

"Q: These information you gave us now is contrary to your denials in your statement of November 18 and 21, 1965 where you denied poisoning GUILLERMO for the P10,000.00 insurance. What made you give this confession to us now?

"A: Last night when I was laying [sic] wide awake at the NBI cell, I came to realize that it would be futile for me to hide these things from the NBI. Earlier, I attempted to escape but I was not able to go far and I was recaptured. Sir, thinking about all these things I realize that the only way I can clear my conscience is to tell you everything and all the wrong deeds I have done in the past. As a matter of fact sir, I will tell you now everything about the death of my niece VIVENCIA HANASAN and that girl ZOSIMA BALLENTOS.

"Q: What is this that you want to tell us about VIVENCIA HANASAN and ZOSIMA BALLENTOS?

"A: About their deaths sir, which is almost similar to the death of REBECCA HERNANDO and GUILLERMO (LITERAL) of which I am also responsible." (underscoring supplied)

At the hearing for the reception of evidence to prove aggravating and mitigating circumstances, the appellant testified:

"Q: Is it not a fact on December 6 you escaped the NBI custody that is why you gave the statement on December 8, 1965?

"A: I do not exactly remember the date but that is true." (underscoring supplied)

It is crystal clear then that the appellant did not surrender voluntarily to a person in authority or to an agent of a person in authority. While he was being investigated under NBI custody regarding the death of one Rebecca Hanasan, he denied in statements he issued on November 13 and 21, 1965 that he poisoned Guillermo Literal. He escaped from NBI custody sometime during the first week of December but was immediately recaptured. It was then while under NBI custody again that, on December 8, 1965, he confessed to sole responsibility for the death of Guillermo Literal. Voluntary surrender was no longer possible as he was already in custody. There is thus no voluntary surrender to speak of since the appellant was in point of fact arrested.[10]

3. The court a quo appreciated the aggravating circumstances of evident premeditation and abuse of confidence against the appellant. Indeed, a searching study of the record compels our concurrence in the court's view.

It was sometime in January 1965 that the thought of insuring the life of Guillermo Literal, with himself as the primary beneficiary thereof, first entered his mind. This thought was translated into a reality on March 5, 1965 when the deceased (Guillermo) was insured by the Philippine American Life Insurance Company for P10,000, through the appellant's initiative and efforts. Then he waited for the opportunity to poison the insured so that he could collect the amount of the insurance policy. This opportunity came on March 25, 1965.

"Q: When did you transfer to Manga Avenue?

"A: Around January 1965 sir. I am not sure of the exact date sir.

"Q: When you transferred to 682 Manga Ave., did GUILLERMO join you immediately?

"A: No sir, after about two (2) weeks later. When for the first time did you think of insuring GUILLERMO?

"A: After he has stayed with me for about two (2) weeks.

"Q: Whose idea was it to have GUILLERMO insured?

"A: He was present when one (1) underwriter came to the house and talked about insurance and he (GUILLERMO) told me what was this (insurance) all about and I explained to him the benefits of insurance until he was convinced to get one for himself.

* * *

"Q: Before this insurance underwriter came to your house, did you have any other agreement with GUILLERMO concerning your identities?

"A: Yes sir. We agreed that his name will be GUILLERMO LITERAL who is my elder brother and that I am JOSE N. LITERAL.

"Q: Why did you change your identities?

"A: Because sir, when I was still in Sta. Ana, I was arrested by MPD men because of my murder case in Masbate where I used the name MANUEL HANASAN and also I have a case in Davao City in which I am charged under my true name ARMINGOL HANASAN. We agreed to use the name LITERAL so that we will not be detected. Because sir I have already posted my bail bond in my case in Masbate that is why I was released but I did not appear in court during the hearing of the case and I know that there will be a war-rant for my arrest.

"Q: Now, going back to this insurance, what happened after your talk with BENJAMIN VERINA, the underwriter?

"A: We agreed that GUILLERMO will insure himself with the PhilAmLife for P10,000.00 for a Five year Convertible Non-Participating insurance."

* * *

"Q: Tell us, why did you poison GUILLERMO?

"A: For the money sir. I needed money badly and this was the reason I convinced him to insure himself for P10,000.00 making myself his beneficiary. When the policy was approved I waited for the right opportunity to poison him and March 25, 1965 was it sir."

Obviously the appellant had nurtured, deliberated on, and persisted in, his evil plan to kill the deceased - "for the money," to quote his own words - from the time he broached the subject of life insurance to the latter sometime in January 1965, until he finally poisoned him on March 25, 1965. Undeniably present here is that period of time

sufficient in a judicial sense to afford full opportunity for meditation and reflection and long enough to allow the appellant's conscience to overcome the determination of his will if he had desired to harken to its warnings.[11] Inescapable are the fact that the crime was spawned by cold-blooded scheming, and the tenacious persistence of the appellant in moving forward to its conclusion the accomplishment of the felony.[12]

The aggravating circumstance of abuse of confidence must likewise be appreciated in this case. The appellant befriended Guillermo Literal, and later enticed him to live in his (appellant's) house and help in his buy and sell business as well as in the house-hold chores. By this apparently charitable act of taking a jobless illiterate man into his household and providing him with the necessities of life, the appellant must assuredly have gained the confidence and trust of the deceased who clearly regarded him as benefactor and protector. It was this confidence which enabled the shrewd appellant to deceive the deceased into signing his own death warrant - i.e., taking a life insurance policy for P10,000 and making the appellant the primary beneficiary. It was also this confidence which led the unsuspecting victim to stand up and turn his back in order to comply with the appellant's command to get drinking water, thus affording the appellant the chance to pour the arsenic solution on the deceased's meal of rice and 'paksiw na galung-gong.'" The victim's confidence and trust in the appellant facilitated the commission of the crime, the latter taking advantage of the victim's belief that he would not abuse the confidence reposed in him.[13]

Viewing the record in its entirety, we see no reason to disturb the lower court's finding that the appellant committed the crime of murder by means of poison on the person of Guillermo Literal, attended by the aggravating circumstances of evident pre-meditation and abuse of confidence, only one of which is offset by the mitigating circumstance of voluntary plea of guilty.

The civil indemnity awarded to the heirs of the deceased must be increased to P12,000.[14]

ACCORDINGLY, with the modification that the indemnity to be paid by the appellant to the heirs of Guillermo Literal is increased to P12,000.00, the judgment a quo is affirmed, at appellant's cost.

Concepcion, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

Reyes, JBL, J., on official leave.

Barredo, J., did not take part.

[1] Exhibit A, pp. 1, 2, 4 and 8, Record, pp. 17-24.

[2] p. 8, tsn., January 11, 1966.

[3] p. 9, tsn., Id.

[4] Webster's New World Dictionary, College Edition, p. 876.

[5] Exh. B, Record, p. 28.

[6] Exhibit E, Record, p. 30.

[7] Testimony of Dra. Ligaya T. Santos, p. 11, tsn., Id.

[8] Testimony of the appellant, p. 15, tsn., Id.

[9] Reyes, The Revised Penal Code, 1965 ed., vol. 1, pp. 271-272.

[10] People vs. Conwi, 71 Phil. 595.

[11] People vs. Sarmiento, L-19146, May 31, 1963; People vs. Yturriaga, 86 Phil. 534; U.S. vs. Gil, 13 Phil. 531.

[12] People vs. Gonzales, 76 Phil. 473; People vs. Carillo, 77 Phil. 572.

[13] People vs. Luchico,. 49 Phil. 689; Mariano vs. People, 68 Phil. 724.

[14] People vs. Pantoja, L-18793, October 11, 1968, 25 SCRA 469, 473.

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