

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORO LANZA, DEFENDANT-APPELLANT.

G.R. No. L-31782. December 14, 1979

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the decision of the Court of First Instance of Zamboanga del Norte in Criminal Case No. 4626, finding appellant Teodoro Lanza guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua, with the accessories of the law; to indemnify the lawful heirs of the deceased in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; to pay the widow of said deceased the sum of P2,000.00 as moral damages and P500.00 as hospital and burial expenses; and to pay the costs.

In a complaint filed by the Acting Chief of Police of Dipolog, Zamboanga del Norte, dated October 10, 1966, appellant Teodoro Lanza was charged with the crime of Murder, as follows:

"That on or during the 8th day of October, 1966, at around 1:00 A.M. at the Poblacion, Dipolog, Zamboanga del Norte, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused armed with a knife, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and wound therewith one LEONARDO ZAMORAS at the back and as a result of which the said Leonardo Zamoras died a few days later.

"ALL CONTRARY TO LAW, with the qualifying circumstance of evident premeditation and the generic aggravating circumstance of nighttime." (CFI Record, p. 1).

Thereafter, or on February 8, 1967, the Provincial Fiscal of Zamboanga del Norte filed the corresponding Information against herein appellant, who was subsequently arraigned on May 2, 1967. He entered a plea of not guilty.

The prosecution's primary evidence against herein appellant is the ante mortem statement of the victim (Exhibit "A"), taken by Cpl. Fortunato Salaveria on October 8, 1966 at the North General Clinic of Dipolog, Zamboanga del Norte, which reads as follows:

"Q. What is your name?

A. Leonardo Zamoras, 34 years old, married and a resident of Galas, Dipolog, Zamboanga del Norte.

Q. What happened to you?

A. I was stabbed.

Q. Who stabbed you?

A. I was stabbed by a person who followed me from the Municipal Building.

Q. In what particular place were you stabbed?

A. At the Shell gasoline station.

Q. Do you know the person who stabbed you?

A. I can recognize him by face.

Q. If I present the person to you can you recognize him? I am presenting to you Teodoro Lanza; is he the very person who stabbed you last night, October 7, 1966?

A. Yes, sir.

Q. Did you have any misunderstanding prior to the incident?

A. None, sir.

Q. What must have been the motive of stabbing you, then?

A. I believe he resented (it) when I accidentally stepped on the shoulder of his wife who happened to be lying on the concrete floor of the Municipal Building.

Q. How many times did he stab you?

A. Only once.

Q. Do you think you will survive as a result of your wounds?

A. It all depends." (CFI Record, pp. 166-168).

Fortunato Salaveria, Police Sergeant of the Dipolog Police Force, testified that at around 10:00 o'clock in the morning of October 8, 1966, he was ordered by the Acting Chief of Police, Ciriaco Gonzales, to take the ante mortem statement of one Leonardo Zamoras, who had been stabbed and was then at the North General Clinic at Torno, Dipolog, Zamboanga del Norte. Upon arrival at the aforesaid clinic, he found Leonardo Zamoras in critical condition. He then took the ante mortem statement of Leonardo Zamoras (Exhibits "A", "A-1" and "A-2") by writing in longhand the questions and answers of the victim. This was done in the presence of several persons, including Jose Zamoras, brother of the victim. Afterwards, Leonardo Zamoras affixed his left and right thumbmarks on the ante mortem statement. He affirmed that all the answers therein were given by Leonardo Zamoras. P.G. Sales, a nurse at the clinic signed the statement as a witness to its execution (Exhibit "A-8").

Salaveria further testified that while taking the victim's statement, he called up the Chief of Police and requested him to bring the accused to the clinic for identification by the victim; that at that time Teodoro Lanza was already being detained at the municipal jail of Dipolog as a suspect in the stabbing; that when appellant was brought in front of the victim, the latter identified him as the very same person who stabbed him.

On cross examination, this witness stated that when he arrived at the clinic, the victim was still alive and lying in bed, with his eyes closed; that he called the victim by name, identified himself and when the latter agreed, he took the statement in the presence of several relatives of the victim.

Basilisa Luna Vda. de Zamoras, widow of the victim, testified for the prosecution, stating that in the morning of October 8, 1966, while she was in her house, she was informed by her brother-in-law, Artemio Zamoras, that her husband was at the North General Clinic. When she went to the clinic, she found her husband lying on the bed. He was feverish and his clothes were bloody and he had a wound on the back. She likewise identified the shirt worn by her husband on the night of the incident, showing the hole (Exhibit "C") allegedly caused by the stab wound.

Jose Zamoras, brother of the deceased, corroborated policeman Salaveria's testimony, stating that he stayed in the North General Clinic until the following day and was present when Cpl. Salaveria took the ante mortem statement of his brother; that while the statement was being taken, he was about one-half meter from Cpl. Salaveria and Leonardo Zamoras; that when asked who stabbed him, Leonardo Zamoras pointed to Teodoro Lanza, who was present; that at that time, the condition of his brother was "not so serious"; that the ante mortem statement was taken at around 10:00 o'clock in the morning of October 8, 1966, and his brother died on October 9, 1966, at about 3:00 o'clock in the afternoon.

When asked whether his brother was asked each of the questions appearing on the ante mortem statement and whether his brother answered the same, this witness replied in the affirmative.

On cross examination, he stated that his brother could not talk from 1:00 o'clock dawn until he was given dextrose that morning; that at around 9:00 o'clock his brother could already talk a little; and that when their sister, Elma Zamoras, inquired as to who was responsible for his wound, he answered that it was a man who had followed him from the municipal building.

Dr. Jose Noriega, the surgeon who attended to the victim, testified that the latter was in a state of shock when admitted to the hospital at about 1:40 a.m. on October 8, 1966; that the victim was able to say that he was stabbed and to indicate the painful part of his body, but thereafter he remained incoherent until his condition was gradually improved by blood transfusion and the administration of medical remedies; that his blood pressure was revived and returned to normal only at about 1:00 o'clock in the afternoon of the same day; that because of such improvement he was immediately operated upon; that in the course of the four-hour operation, it was found that there were fatal injuries on the left kidney and fatal injuries on the great vessels of the mesentery; that the victim died twenty four hours after surgery due to secondary hemorrhage or cerebral embolism; and that he issued a certificate as to the cause of death of Leonardo Zamoras.

Ciriaco D. Gonzales, Acting Chief of Police of Dipolog, confirmed the fact that although appellant denied having stabbed Leonardo Zamoras, he nevertheless admitted to him that he followed the victim along Rizal Avenue when his wife complained to him that the victim had stepped on her while she was lying on the floor of the municipal building. Appellant, however, explained that he was not able to overtake the deceased.

He further testified that shortly before 1:00 o'clock in the afternoon of October 8, 1966, Cpl. Salaveria informed him by telephone that the victim was conscious and could talk. Consequently, he brought the accused to the clinic for identification by the victim. When they arrived in the hospital there were several civilians. He also saw Cpl. Salaveria, Cpl. Calibo and Pat. Limbaga in the premises. He declared that the victim recognized him. When he asked the victim whether he could identify his assailant, the latter answered in the affirmative. He then brought the appellant inside the room, and in the presence of all the people present the victim pointed to the appellant as the person who had stabbed him. This witness likewise confirmed that Cpl. Salaveria asked the questions and the victim, Leonardo Zamoras, gave the answers appearing in the ante mortem statement, and that they both spoke in Cebuano, which was translated into the English language by Cpl. Salaveria. Further, he attested to the fact that the thumbmarks appearing on the statement were those of Leonardo Zamoras, and that he was present when the same were affixed.

Vicente Limbaga, formerly municipal policeman of Dipolog, Zamboanga del Norte, testified that he served in such capacity up to October 21, 1967; that at about 1:30 in the early morning of October 9, 1966, Leonardo Zamoras arrived at the municipal building where he was detailed as guard and reported to him about the disappearance of his (Leonardo Zamoras') car; that after making such report, Leonardo Zamoras went down to the ground floor of the municipal building; that not long after, he heard a commotion and immediately went

downstairs and found many people lying on the floor of the municipal building because it was the town fiesta of Dipolog; that when he inquired what was the cause of the commotion one Luisa, the wife of Teodoro Lanza, told him that a certain short and stocky man passed by and stepped on her foot while she was lying on the floor, and he tried to hold her shoulder and signalled her to go to a room with him and thus caused the commotion. When he asked her why she did not report the matter to him so the person could be investigated, she answered: "Well, anyway, all would be known later because my husband followed him." Not long after, Teodoro Lanza returned and he observed that Lanza appeared restless, kept moving from one place to another, continued whispering something to his wife, could not sleep and repeatedly went to the comfort room. Afterwards, he received a report that Leonardo Zamoras had been stabbed near the Shell gasoline station. Suspecting that Teodoro Lanza had something to do with the stabbing, he took Lanza into his office. He recorded the incident in the police blotter and conducted an investigation of the accused. The accused was again investigated by the Acting Chief of Police.

The defense presented in evidence the testimonies of Pat. Edgardo Maginsay and accused Teodoro Lanza, as well as various documentary evidence.

Pat. Edgardo Maginsay of the Dipolog Police Force testified that since February 1966, he has been the custodian of the police blotter of the Dipolog Police Force; that he was the one who recorded the entries in the police blotter for October 8, 1966; that said entries were made from the records of the night blotter, which was in the care of the building guard; and that therefore, the entries in the night blotter and of the police blotter are the same.

Appellant Teodoro Lanza alleged that on the night in question he was sleeping, together with his family, inside the municipal building of Dipolog, his livelihood being that of a "feriante" and he was there to maintain the shooting gallery and some gambling devices inside the plaza where the "feria" was being held. He declared that after midnight, he was awakened by two policemen and brought to the office of the Chief of Police where he was asked whether he had gone out of the building or not. When he replied that he had not, he was brought and confined inside the municipal jail. Later the following morning he was investigated by the police sergeant after which he was brought to the hospital by the Chief of Police and one Pat. Centino. He was taken inside the operating room, presented before a wounded man for identification, but the latter, whose eyes were closed, could not identify him. After staying inside the operating room for half an hour, he was returned to the municipal building.

In his brief, appellant stated that the alleged ante mortem statement could not have been given by the victim as he was not in a position at the time of the alleged confrontation either to talk to the investigators or to identify his alleged assailant, and assuming that the ante mortem statement is genuine, the same is inadmissible as evidence of a dying declaration because at the time of its execution, the victim had expectations or hopes of recovery. Appellant makes capital of the testimony of Dr. Jose Noriega that from 8:00 o'clock in the morning to 12:00 noon of October 8, 1966, the victim was still bleeding and in a state of shock; the declaration of the widow, Basilia Luna Vda. de Zamoras, that her husband could not talk to her while he was on the hospital bed; and the statement of Jose Zamoras that upon seeing his brother he called his name but the latter did not answer.

These arguments are not supported by the record. Counsel for the appellant cited portions of testimonies out of context of the entire declarations. Thus, while Dr. Jose Noriega admitted that the witness was "semi-conscious" at the time of his admission, he was positive that the victim was able to tell him that he was stabbed. He even complained of pain on the abdomen. He likewise stated that the condition of the victim improved to such a degree that he was strong enough after the blood transfusion to be operated on at around noontime of the same day.^[1] As testified to by the other witness, he was able to talk by mid-morning. Thus, his brother, Jose Zamoras, testified that he was able to talk intelligently some hours before the operation, although in the beginning he could not. He testified on cross examination as follows:

"Q. Up to 9:00 o'clock of the same day, October 8, the same condition -- could not still talk?

A. He could talk already but not yet clear.

Q. Do you mean to say he will just murmur?

A. Yes, sir.

* * * * *

Q. At 9:30 o'clock, October 8, 1966, what happened right in the bedroom of the deceased?

A. Leonardo Zamoras was still lying in bed but could talk.

Q. Do you mean to say he could just talk by him self, nobody asking?

A. No, after he was asked.

Q. How do you know that at 9:30 o'clock, October 8, 1966, he talked?

A. Because we asked him some questions,

Q. Who asked the deceased some questions?

A. My sister, Elma Zamoras.

Q. What was the statement (sic) asked?

A. My sister inquired as to who was the person responsible for his wound.

Q. What was his answer?

A. He answered that (it was) the man following him from the municipal building.

Q. There was no name mentioned?

A. No name mentioned.

Q. And that was in a harsh voice?

A. In a natural voice."[2]

Likewise, the testimony of the widow, Basilia Luna Vda. de Zamoras to the effect that her husband did not talk to her on October 8, 1966, does not necessarily preclude the possibility that at some other time that day the deceased was able to reveal to the police investigators the identity of his assailant. In fact, this witness stated on cross examination that on October 8, 1966, her husband could talk to other persons.[3]

In addition, it will be recalled that when the ante mortem statement was taken by Cpl. Salaveria, there were several persons present, including relatives of the victim, as well as the Acting Chief of Police who brought appellant from the jail to the bedside of the victim. These police officers positively declared that they were present when the victim pointed to appellant as his assailant. No possible motive has been advanced why these witnesses should falsely incriminate the appellant.

The next question that arises centers on the admissibility of the ante mortem statement as a dying declaration so as to constitute an exception to the hearsay rule. An ante mortem statement is a declaration made by a victim of a homicide while about to die, and without any hope of recovery, concerning the facts and circumstances under which the fatal injury was inflicted, and offered in evidence at the trial of the person charged with having caused the death of the declarant.[4]

In order that a dying declaration may be admissible in evidence, four (4) requisites must concur, to wit: (1) it must concern the crime and the surrounding circumstances of the declarant's death; (2) at the time it was made, the declarant was under a consciousness of an impending death; (3) the declarant was competent as a witness at the time the same was executed; and (4) the declaration is offered in a criminal case for homicide, murder or parricide in which the declarant was the victim.[5]

It is imperative, for a dying declaration to be admissible, that the same had been made under a consciousness of impending death.[6] This is so because dying declarations, made when the declarant had no more hope of recovery, are admissible by reason of necessity and trustworthiness. Necessity because the declarant's death renders impossible his taking the witness stand, and it often happens that there is no other satisfactory evidence as to the cause of his death; and trustworthiness because the declaration is made in extremity and every motive of falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. "A situation so solemn and so awful as to be considered by the law as creating an obligation equal to that which is imposed by a positive oath in a court of justice."[7]

The fact that death of the declarant did indeed occur shortly after the declaration was made is not sufficient to render the declaration admissible, absent the requisite proof that the victim was under the consciousness of impending death at the time the declaration was made, and he had no more hope of recovery. A belief in the mind of the declarant, at the time the declarations are made, that death is near is indispensable to the admission of such statements as dying declarations. Where the text of the declaration shows that the deceased himself was in doubt as to whether he would die or not, the dying declaration is not admissible.[8]

In the instant case, the victim, when asked whether he believed he was going to die as a result of his injuries, replied: "It all depends." Also, it appears from the records that his condition had progressively improved from the time he was admitted to the time the statement was taken by the police so much so that a short time thereafter he was considered strong enough to undergo an operation. Under these circumstances, it can be concluded that the deceased was, himself, hesitant to accept the fact of his impending death and entertained hopes of recovery, obviously depending on the result of the scheduled operation and further medical treatment.

Notwithstanding the fact, however, that the victim's statement may not be admitted as a dying declaration, it is nevertheless admissible as part of the *res gestae* against herein appellant in *People v. Tumulip*,[9] this Court held that the positive identification of the accused by the victim, made a few hours after he had been shot and while suffering from the agonies of his injuries, although not an *ante mortem* declaration, may, however, be considered as part of the *res gestae*, for it was made almost immediately after the startling occurrence.

"It is well-settled that as an exception to the hearsay rule, such evidence must comply with these requisites, an occurrence both startling and unusual in character and an utterance made before the declarant could have any opportunity for falsification or distortion, one moreover limited to such event as the immediate attending circumstances."[10]

Briefly stated, the spontaneous declaration must have been made while the nervous excitement caused by the startling occurrence was still working on the declarant's mind. This may be a short time after the incident or some hours later, as long as the influence of the startling occurrence still persists. What is important is that the declarant must have had no opportunity to devise or contrive anything contrary to the real facts that occurred. What the law distrusts is not afterspeech but afterthought.[11]

"There are no limits of time within which the *res gestae* can be arbitrarily confined. These limits vary in fact with each particular case. The acts or declarations are not required to be contemporaneous with the primary fact, but they must be so connected with it as to make the act or declaration and the main fact practically inseparable, or be generated by an excited feeling which extends, without break or letdown, from the moment

of the event they illustrate. In other words, if the acts or declarations sprang out of the principal transaction, tend to explain it, were voluntary and spontaneous, and were made at a time so near it as to preclude the idea of deliberate design, they may be regarded as contemporaneous in point of time, and are admissible." [12]

The clement of time is, therefore, not controlling, but merely of importance, on the question of spontaneity. [13]

The general rule is that where declarations are unconsciously associated with and related to the homicidal deed even though separated from it by a short time, they are evidence of the character of the deed and a part of the *res gestae*. No inflexible rule as to the length of the interval between the act of killing and the act or declaration of the person killed can be formulated; in such matter, the facts of each case stand alone and must speak for themselves. [14]

From the circumstances of the case, the victim could not have had time to concoct or devise a story different from what actually transpired, and his narration, at the first opportunity, of the incident and his identification of his assailant must be considered as part of the startling occurrence, the influence of which was still working on his mind. Moreover, it is significant that the victim did not name a specific person, as his assailant was a person not familiar to him, but merely described him as the one who followed him from the municipal building after an altercation which arose when he (victim) accidentally stepped on appellant's wife while she lay on the floor of the municipal building. Appellant has failed to advance any reason or motive why the victim, who did not know him prior to the incident, would identify him as the perpetrator of the offense if this were not true. It must be recalled that there were many persons sleeping in the municipal building and yet he was singled out by the police, as a consequence of the series of events that transpired, starting from the commotion that ensued when the victim accidentally stepped on appellant's wife and appellant's suspicious actuations after he returned to the municipal building. It was shortly after appellant's return that the police received information of the stabbing of the victim.

The lower court found that the crime was committed with the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation, offset by the mitigating circumstance of passion and obfuscation, hence it imposed upon the herein appellant the penalty of reclusion perpetua, among others. We find no proof that evident premeditation and treachery accompanied the commission of the crime.

Evident premeditation could not have existed because immediately after the commotion caused by the accidental stepping on his wife, the appellant followed the victim and stabbed him. As the trial court observed, the Shell gasoline station where the victim was stabbed was "not far from the municipal building", [15] and, in the few minutes it took to follow and overtake the victim, the appellant could not have had sufficient opportunity to meditate upon and determine the killing. It is settled that where a previous incident preceded the assault, evident premeditation is not present, [16] and that in the absence of reflection and persistence of criminal intent, said circumstance cannot be appreciated. [17]

Similarly, treachery cannot be appreciated against the herein accused because there is no showing whatsoever that the mode of attack employed by him was calculated to insure the commission of the crime without risk to himself, arising from any defense that the victim may put up. As a matter of fact, the mode of attack is not known at all, there being no eyewitness to the stabbing incident. [18] Treachery must be shown by convincing evidence, [19] and the same degree of proof to dispel reasonable doubt is required before any conclusion may be reached respecting its attendance, whether as a qualifying or an aggravating circumstance, in a criminal case. [20] Moreover, consistent with the finding that the killing was not premeditated, there can be no treachery in the instant case because the decision to attack was arrived at on the spur of the moment. [21]

In addition, the factual circumstances obtaining in the case indicate that the victim knew that he was being followed from the municipal building. Thus, he was able to state in the ante mortem statement that the person who

stabbed him was the one who had followed him from the municipal building. This being the case, and considering that he was well aware of the previous altercation between them, the victim must have been on his guard and aware that the appellant meant him harm.

Considering the foregoing, We hold that due to the absence of any qualifying circumstance, the crime committed is not murder but homicide, defined and penalized under Article 249 of the Revised Penal Code, unattended by any aggravating or mitigating circumstance.

We are not convinced that passion and obfuscation should be appreciated in favor of herein appellant so as to mitigate his criminal liability. The accidental stepping by the victim on appellant's wife was insufficient cause for passion or obfuscation to so affect appellant's reason that he commits a vicious crime as a result thereof. In order for such mitigating circumstance to be appreciated, it is necessary to establish the existence of an act both unlawful and sufficient to produce such a condition of mind that the culprit is precluded from a sober realization of the wrongfulness of the course of action about to be taken.[22]

WHEREFORE, the decision appealed from is modified; appellant Teodoro Lanza is hereby found guilty of the crime of Homicide and sentenced to an indeterminate penalty ranging from EIGHT (8) YEARS and ONE (1) DAY of prison mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum, with the accessory penalties provided by law. The awards of P12,000.00 as civil indemnity, without subsidiary imprisonment, P2,000.00 as moral damages and P500.00 as hospital and burial expenses are hereby affirmed.

SO ORDERED.

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

[1] t.s.n., Hearing on February 26, 1968, p. 43.

[2] t.s.n., Hearing on December 22, 1966, pp. 17-18.

[3] Ibid., p. 7.

[4] 40 Am. Jur. 2d, Sec. 348.

[5] People v. Sagario, L-18659, June 29, 1965, 14 SCRA 468.

[6] People vs. Cortez, L-13968, Oct. 31, 1962, 6 SCRA 408; People v. Rogales, L-17531, Nov. 30, 1962, 6 SCRA 830.

[7] U.S. v. Gil, No. 4704, April 26, 1909, 13 Phil, 530, 549.

[8] People v. Dominguez, L-22474, Nov. 26, 1970, 36 SCRA 59.

[9] L-28451, Oct. 28, 1974, 60 SCRA 303.

[10] People v. Tiongson, L-29569, Oct. 30, 1972, 47 SCRA 279, 285, citing 5 Moran, Comments on the Rules of Court, 1970 edition, p. 360 (1971); People v. Ricaplaza, L-25856, April 29, 1968, 23 SCRA 374.

[11] Vickburg R. Co. v. O'Brien, 199 US 99; State v. Mc Daniel, 47 SE 384 Louisville, etc. R. Co. v. Buck, 19 NE 453; US v. King, 34 Fed. 314; Traveler's Ins. Co. v. Sheppard, 12 E. 18.

[12] 1 Wharton's Criminal Evidence (11th Ed.), pp. 755-756.

[13] 92 C.J.S. 49.

[14] 40 Am. Jur. 2d, 601.

[15] p. 11, CFI Decision.

[16] People v. Sagayno, L-15961-62, Oct. 31, 1963, 9 SCRA 360.

[17] People v. Cadag, L-13830, May 31, 1961, 2 SCRA 388.

[18] People v. Pelago, L-24884, Aug. 31, 1968, 24 SCRA 1027.

[19] People v. De Leon, L-28480-81, Sept. 30, 1971, 41 SCRA 120.

[20] People v. Torejas, L-29935, Jan. 31, 1972, 43 SCRA 158.

[21] Perez v. Court of Appeals, L-13719, March 31, 1961, 13 SCRA 444.

[22] People v. Gervacio, L-21965, Aug. 30, 1968, 24 SCRA 960; People v. Layson, L-25177, Oct. 31, 1969, 30 SCRA 92; People v. Pareja, L-21937, Nov. 29, 1969, 30 SCRA 693.

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