

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMENEGILDO BARBOSA AND RUBEN BARBOSA,
DEFENDANTS-APPELLANTS.***G.R. No. L-39779. November 07, 1978*

Ponente: AQUINO, J.

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This is a murder case. According to the prosecution, late in the evening of June 30, 1972, when Francisco Ballolong, his wife Anselma Calope and their children were already in bed, their neighbors and relatives, Ruben Barbosa (the barrio captain), his wife Elvira Calope (Anselma's cousin) and his mother Nemesia Borja (Anselma's aunt), went to the yard of their house located at Barrio Benben, La Paz, Abra. Francisco's house was around thirty meters away from the houses of Ruben and Nemesia. Roberto Taronas house was in the same neighborhood.

Ruben and Elvira asked Francisco (their Manong Ikko) to go down because they wanted to tell him something. When Francisco did not answer, Nemesia also called him. Needing that call, Francisco went down, followed by his wife and two sons, Nestor and Benjamin.

After a brief conversation between Francisco and the three callers, Francisco told Ruben that they should continue their talk on the following day because the latter was drunk. Ruben tapped or patted Francisco on the back, as if he was pushing the latter, and then Ruben and his two companions ran away.

As Francisco turned around to go back to his house, Hermenegildo Barbosa, the father of Ruben, who was just seven or ten meters away, suddenly fired at Francisco with a shotgun. Francisco fell on the ground. His two sons rushed to his side and pulled him to a darker and lower place.

Just before Hermenegildo fired at Francisco, his wife Anselma saw Hermenegildo and Ruben, together with their neighbors, Serafin Bicera and Alfredo Quirido (Querido), holding firearms. Anselma and her sons saw Hermenegildo firing at Francisco. Benjamin heard Hermenegildo telling his companions: "You, what are you doing? You give him" (meaning shoot Francisco). Other shots were fired at Francisco.

Soon thereafter, the neighbors approached Francisco Ballolong, who said to one of them, a certain Ricardo Todiño: "Nephew, if ever I will not survive, there is no other one who shot me except the old man Herming" (referring to Hermenegildo Barbosa). Ricardo Todiño, together with Roberto Taronas and the other neighbors, brought Francisco to the hospital in Bangued.

In the hospital, Sergeant Ireneo Obra of the Abra Constabulary Command, who had responded to an emergency call, took down Francisco's antemortem statement (Exh. C) just before the latter died at about three o'clock in the early morning of July 1, 1972. Present during the taking of the antemortem statement was Ricardo Todiño who confirmed that the victim had made the following dying declaration (translation of the original in Ilocano):

"QUESTION: What is your name?

"ANSWER: Francisco Ballolong.

"Q. Who shot you?

"A. Hermenegildo Barbosa.

"Q. From where is this Hermenegildo Barbosa? - A. From Benben, La Paz, Abra.

"Q. Why did he shoot you? - A. I do not know of any reason, sir.

"Q. What time? - A. I do not know, sir.

"Q. Are you going to die with your wound? - A. Yes, sir.

"Q. Are you going to sign? - A. I cannot sign. I will have it by my thumbmark.

HIS BLOOD THUMBMARK
FRANCISCO BALLOLONG"

The necropsy report disclosed that the fifty-year-old victim (the father of ten children) sustained seven gunshot wounds in the abdomen (lumbar and hypochondriac regions) and on the left forearm. The wounds in the left hypochondrium and right lumbar region penetrated the colon, ileum, mesentery and kidney, causing profuse internal hemorrhage. Two pellets were recovered in the abdomen.

On July 19, 1972, Franklin M. Javier, an agent of the National Bureau of Investigation (NBI), after due investigation, filed a complaint for murder in the Court of First Instance of Abra against Hermenegildo Barbosa, Ruben Barbosa, Serafin Bicera and Alfredo Quirido (Criminal Case No. 252). Quirido and Bicera were arrested only on July 9 and September 23, 1974, respectively, or after the trial of Hermenegildo Barbosa and Ruben Barbosa was finished (pp. 302 and 319, Record).

The shooting had a political motivation. Francisco Ballolong was an adherent of the faction of former Mayor Severo Afos, while the Barbosas were followers of the incumbent, Mayor Andres Bernos. According to Benjamin Ballolong, whenever Ruben Barbosa got drunk, he would challenge his father (Francisco) to a fight.

Bonifacio Tauro testified that a week before the assassination of Francisco Ballolong he heard Ruben Barbosa telling his companions during a drinking spree at Barrio Karkariskis that, if Francisco Ballolong and other specified persons would make any mistake or do anything wrong, they should be castigated ("Pakpakenyo idan"). NBI Agent Javier testified that, after due investigation, he found that Ruben Barbosa conspired with Bicera and Quirido to kill Ballolong (31 tsn March 15, 1973).

In his defense, Hermenegildo Barbosa, a fifty-eight-year old farmer, testified that on the night of June 30, 1972, he heard a gunshot while he was in his house. His son Ruben, his wife Nemesia, and his daughter-in-law Elvira Calope went to the house of their neighbor, Roberto Tarona, in order to find out the cause of the gunshot. Hermenegildo took his gun, left it under his house and stationed himself in a place where he could hear and observe what was happening in Tarona's house. Hermenegildo noticed that Francisco Ballolong had also gone to the yard of Tarona's house. (Hermenegildo was a sponsor at Francisco's wedding.)

While in that place, Francisco allegedly insulted Ruben Barbosa (thirty-five years old in 1972) by saying that there was no barrio captain and no justice. At that juncture, there was another gunshot and Francisco fell on the ground. Francisco said: "What are you doing, my sons?" His son Benjamin aimed his gun at Ruben Barbosa who ran away. Benjamin shot Ruben but missed. Elvira and Nemesia also fled and were fired upon by Francisco's other sons, Nestor, Isabelo and Antonio.

Hermenegildo returned to his house. There he conversed with his son, Ruben. They directed their neighbor, Serafin Bicera (Ruben's second cousin), to go to the poblacion and report the incident to the authorities. The chief

of police went to Barrio Benben and conducted an investigation. Hermenegildo informed him of what had happened. There was no written report of the investigation. In the morning of July 1, 1972, or several hours after the shooting of Francisco, there was a rumor that Hermenegildo was the killer.

So, Hermenegildo conferred with the chief of police and repeated his version of the incident but his statement was not reduced to writing. On the following day, July 2, he went to the office of the provincial commander at Bangued for a paraffin test. As there were no facilities in that office for such a test, he was referred to the branch office of the NBI at Vigan, Ilocos Sur, where he was subjected to a paraffin test on July 3. The result was negative.

Ruben Barbosa's testimony dovetails in salient particulars with his father's version. Ruben declared that Francisco Ballolong was shot while the latter was in the yard of Taron's house after he (Francisco) had taunted Ruben by saying "no barrio captain, no justice". After Francisco was shot, Ruben went to his father's house and found the latter holding a twelve-gauge rifle.

It is evident that even Hermenegildo Barbosa's version does not exclude the possibility that he was one of the assailants of Francisco Ballolong. The trial court found the prosecution's evidence more credible than the story of Hermenegildo and his son, Ruben. It regarded Francisco's antemortem declaration as conclusive against Hermenegildo.

The trial court convicted him of murder, sentenced him to life imprisonment, and ordered him to indemnify the heirs of Francisco Ballolong in the sum of six thousand pesos plus five thousand pesos as consequential and moral damages. It convicted Ruben Barbosa as an accomplice, sentenced him to an indeterminate penalty of eight years of prison mayor, as minimum, to fourteen years, eight months and one day of reclusion temporal, as maximum, and ordered him to pay an indemnity of six thousand pesos to the heirs of Francisco Ballolong plus two thousand five hundred pesos as consequential damages.

The two accused appealed. They contend that the trial court erred (1) in relying on the victim's dying declaration, (2) in ignoring the testimony of the chief of police, (3) in disregarding the result of the paraffin test, and (4) in convicting Ruben Barbosa as an accomplice.

It is contended that the victim's dying declaration has no probative value because there is no proof that Francisco Ballolong knew that Hermenegildo was one of his assailants. Appellants' counsel theorizes that Francisco pointed to Hermenegildo as his assailant because he was influenced by some persons to make that imputation, or Francisco was motivated by hatred or ill will, or that was merely his opinion or conjecture. Hence, according to the appellants, one requisite of a dying declaration, which is that the declarant should be a competent witness, is lacking (See *People vs. Saliling*, L-27974, February 27, 1976, 69 SCRA 427, 438).

We are not inclined to sustain appellants' theories. It is a fact that, shortly before Francisco Ballolong was shot, he was talking with Ruben Barbosa in the presence of his (the victim's) wife, Anselma, and his two sons, Benjamin and Nestor. Those three persons saw Hermenegildo Barbosa, who was just around ten meters away, firing at Francisco. The wounds inflicted upon Francisco were found in the abdominal region. That means that he was facing his assailants.

Under those circumstances, it is reasonable to assume that he, like his wife and sons, saw in a flash Hermenegildo Barbosa firing his shotgun. That is the most rational explanation as to why Francisco specified in his dying declaration that he was shot by Hermenegildo. He had personal knowledge that his assassin was Hermenegildo.

At any rate, even if the dying declaration were discarded, the testimonies of the eyewitnesses, Benjamin Ballolong and Anselma Calope-Ballolong, are sufficient to convict Hermenegildo.

Appellants' second contention is that, from the testimony of the chief of police and the sketch of the scene of the crime made by him (Exh. 3), it may be inferred that the victim was shot from a place near his house and not from the place near the house of Hermenegildo Barbosa and that, therefore, it was impossible for the latter to have fired the fatal shots.

That contention is vague and indecisive. The truth is that the victim's house was only around thirty-five meters away from Hermenegildo's house (4 tsn August 21, 1973). The victim was shot when he was in his yard, around seven meters away from his house, and the assailants were about ten meters from him (Exh. M). Hermenegildo's house was around fifteen meters away from the scene of the shooting (9 tsn February 11, 1974).

The sketch prepared by the chief of police is at variance with the sketch prepared by Constabulary Sergeants Ardaniel and Tubadeza and Corporal Semanero (Exh. M). The chief of police declared that a policeman found a gun two meters east of the spot where the victim was shot. But that gun was not presented in evidence.

The chief of police admitted that he indicated in his sketch the spot where the assailants stood merely on the basis of calculation or inference. He investigated appellant Ruben Barbosa who was unable to enlighten him on the identity of the assailants. He did not investigate any other persons when he prepared the sketch (62 tsn February 11, 1974). We hold that the trial court did not err in ignoring the sketch made by the chief of police which was not the result of a thorough and meticulous investigation.

The appellants also contend that the trial court erred in disregarding the negative result of the paraffin test made on Hermenegildo Barbosa. It should be stressed that the shooting was perpetrated at about eleven-thirty in the evening of June 30, 1972 and that the paraffin test was made three days later or at nine o'clock in the morning of July 3 after the powder burns could have been obliterated.

NBI Agent Javier testified that the negative result of a paraffin test is not conclusive that the person on whom the test was made never fired the gun used in the killing. That is why in spite of the fact that the NBI was aware of the negative result of the paraffin test, as certified by its senior chemist, its agent at Vigan, Ilocos Sur, nevertheless, filed the complaint for murder against Hermenegildo.

The crime committed by Hermenegildo Barbosa is murder qualified by treachery (*alevosia*). The accused, in making a deliberate surprise assault upon the victim at night, after his son, wife and daughter-in-law had asked the latter to come out of his residence, employed a mode of execution which insured the killing without risk to himself. There being no other attending circumstances (treachery absorbed nocturnity), the penalty of reclusion perpetua should be imposed upon appellant Hermenegildo Barbosa (Arts. 14[16] and 248, Revised Penal Code).

The Solicitor General agrees with appellants' last contention that Ruben Barbosa should not be regarded as an accomplice and that he should be acquitted. We hold that that contention has no merit. Ruben employed craft and fraud in luring out the victim from his house so that he could be killed. One does not have to be very intuitive to sense that Ruben's gesture of patting the victim on the back was a prearranged signal and cue to the assailants hovering in the unlighted place nearby that the person whom he had touched in the back was their target or quarry.

The trial court correctly held that Ruben's conduct showed that he cooperated with his father and with the other gunmen in assassinating Francisco Ballolong, as contemplated in article 18 of the Revised Penal Code.

WHEREFORE, the trial court's judgment is affirmed with the modifications (1) that the penalty imposed on Hermenegildo Barbosa should be denominated reclusion perpetua which automatically carries with it the corresponding accessory penalties; (2) that the indeterminate penalty to be served by Ruben Barbosa is five (5) years of prision correccional maximum, as minimum, to twelve (12) years and one (1) day of reclusion temporal,

minimum, as maximum, (3) that the civil liability imposed on Hermenegildo Barbosa should be increased to twelve thousand pesos, and (4) that Ruben Barbosa, as an accomplice, is solidarily liable for one-half of the said amount or six thousand pesos, as his quota, and he is subsidiarily liable for the other half, in case his father is insolvent (Arts. 109 and 110, Revised Penal Code). Costs against the appellants.

SO ORDERED.

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

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