

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GUERRERO ALMEDA ALIAS ARTE,;
DEFENDANT-APPELLANT.**

G.R. No. L-37748. September 02, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

About 9:00 in the morning of October 5, 1969, Florentino Navalta, 62 years old, was inside the restaurant of accused-appellant Guerrero Almeda alias Arte, waiting for the pansit he had ordered to eat. Just then, Victoriano Taroma passed by and Navalta invited him to share the pansit he had ordered. While thus waiting, Florentino Navalta sat on a bench and later rested his back on it, placing his hat over his face. Few minutes later, accused Guerrero Almeda, alias Arte, arrived and, without saying a word, gave a fist blow on the stomach of Florentino. Thereafter, Almeda grabbed a piece of wood, 1½ x 2 inches thick and two arms length long, from a corner of the restaurant and hit Florentino on the stomach. Victoriano Taroma tried to pacify the accused but the latter faced and threatened to strike him with the piece of wood he was holding Almeda continued to hit the stomach of Florentino until Sion Almeda, mother of accused, went out and called the policeman at the police outpost.

Policeman Benjamin Vicente arrived and requested farmers Arsenio Comba and one Tolentino to help bring the victim Florentino Navalta home as the latter was moaning, very weak and could not walk. The two placed Navalta inside a push cart and brought him to the house of his son-in-law, Ruben Acierto.

Florentino Navalta told his son-in-law, Ruben Acierto that he was maltreated by Arte Almeda. Acierto went to fetch Dr. Quines in his clinic but the doctor was out and, upon returning home, saw his father-in-law sleeping. Upon waking up in the evening, he complained of pains in his stomach and that he could not urinate. Two days after, or on or about 3:00 in the afternoon of October 7, 1969, Florentino's wife, Ana Morales and Ruben Acierto brought the victim to Bayombong Hospital. He was very weak and in a very serious condition. He could hardly talk, was hard of breathing and even uttered: "I will die with this." Ana Morales asked her husband, Florentino why he was maltreated. Florentino only say that he did not notice the arrival of Arte Almeda. Ana Morales called for Philippine Constabulary soldiers to investigate the matter. PC soldier Leonardo M. Castro arrived and upon seeing that Florentino was about to die he took down the latter's statement by questions and answers (Exhibits C & C-1).

The ante mortem statement reads:

"1. Q What is your name?

A Florentino Navalta.

2. Q From where are you?

A Bintawan, Villaverde, Nueva Vizcaya.

3. Q Who injured you?

A Arte Almeda, sir.

4. Q From where is he?

A Bintawan, Villaverde, Nueva Vizcaya.

5. Q Who were the persons that saw Arte Almeda mauled you?

A Victoriano Taroma, sir.

6. Q What did Arte Almeda do to you?

A He mauled me, sir.

7. Q What time and date did he maul you?

A Around 9:00 A.M., 5 Oct. 1969, sir.

8. Q Do you have anything more to say in this statement?

A None, sir.

9. Q Are you willing to sign your statement?

A Yes, sir."

(Thumb mark - Florentino Navalta) Affiant"

The taking down of the above statement was witnessed by Dr. Jose M. Esteves and one J. A. Macalcad of the provincial hospital.

At about 3:35 in the afternoon of the same day, or about 30 minutes after his admission at the hospital, Florentino Navalta died. An autopsy was performed on his body, at about 9:00 in the evening, and the report is as follows:

"External Examinations:

x x x x x x x x

Thorax: Chest, contusion with abrasion, linear, 4½ inches long, level of the 6th rib, horizontally placed, right chest, 1½ inches width.

x x x x x x x x

Extremities:

1. Contusion with ecchymosis, left arm, anterior aspect, lower 3rd, measuring 1½ inches by 2 inches.
2. Abrasion with contusion, left forearm, anterior aspect, 1½ inches, width, 2 inches long.
3. Ecchymosis, right forearm, measuring in diameter about 2 inches.
4. Ecchymosis, left costal arch, on posterior axillary line.

Internal Examination:

x x x x x x x x

Thorax: Upon opening of the abdomen, the presence of sero-sanguinopurulent fluid was revealed in the

abdominal cavity amounting to about 1,000 cc. The mesentery was severely contused, massive severe contusion was noted in the small intestines duodenum, jejunum and ilium. The same condition was noted in the large intestines.

x x x x x x x x

Cause of Death:

Massive contusion, severe, mesentery, small and large intestines. Paralytic ileus. Shock, severe, secondary."

As a consequence, Guerrero Almeda, alias Arte, was charged with murder in an information filed by the provin-cial fiscal of Nueva Vizcaya alleging that "with treachery and evident premeditation, and with intent to kill (he) attacked, assaulted and used personal violence upon one Florentino Navalta by giving fistic blows and pounding the stomach of victim Florentino Navalta with a piece of wood while the latter was lying on a bench with his face covered by a hat, inflicting upon him serious injuries which directly caused the death of said Florentino Navalta as a consequence thereof."

Upon arraignment and trial, the lower court found him guilty as charged and sentenced him "to suffer the penalty of life imprisonment, with the accessories of the law; to indemnify the offended party in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs."(p. 42, Rollo).

Appealing to this Court, appellant Almeda claims that the trial court erred (1) in admitting Exhibit "C" as an exception to the hearsay rule as a dying declaration; (2) in convicting him based on the conflicting testimony of Victoriano Taroma; (3) in not resolving the doubt in his favor and, (4) in appreciating treachery as a qualifying aggravating circumstance.

As held in *People vs. Sagario*, 14 SCRA 468, "there are four (4) requisites which must concur in order that a dying declaration may be admissible, to wit: (a) it must concern the crime and surrounding circumstances of the declarant's death; (b) at the time it was made, the declarant was under a consciousness of an impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for homicide, murder or parricide in which the declarant was the victim."

The first requisite is present in the ante mortem statement of deceased Florentino Navalta. The narration made by him at the hospital in the presence of the attending physician Dr. Jose N. Esteves and one J. A. Macalcad, concerned the cause or circumstance of the declarant's death. They were recital of facts which the deceased would have given as a witness in court, if living. The declarant at the time he was giving the dying declaration was conscious of his impending death, because of his very weak condition, his hard of breathing and his statement that he will die. In fact, he died a few minutes after the statement had been taken.

In the case of *People vs. Rogales*, 6 SCRA 830, it was held that the ante mortem statement made by the victim hours before his death which points to appellant as the one who fired the shots partakes of the nature of a dying declaration because he made it when his hope for survival was very slim and he died hours after the incident. Further, the fact that Florentino Navalta, at the time he gave the dying declaration was competent as a witness is too obvious to warrant further discussion. Finally, said declaration of Navalta was offered as evidence in this criminal case for murder in which he was the victim.

We also consider the fact that after the assault by appellant Guerrero Almeda on the victim Florentino Navalta, the latter told his son-in-law, Ruben Acierto, and his wife, Ana Morales, about it and at that time he was in a bad shape. The circumstance that the appellant was named by the deceased immediately after that incident is a part of the *res gestae* (*People vs. Alban*, 1 SCRA 931).

Not only that. Victoriano Taroma was an eye-witness to the incident. He testified that few minutes after Navalta had rested his back on a bench inside the restaurant, appellant arrived and without warning gave fist blows on the stomach of the victim and, thereafter, grabbed a piece of wood and pounded it on the latter's stomach. At the trial, Taroma identified appellant as the assailant. Although there may be inconsistencies in Taroma's testimony, they refer to minor details which do not affect his credibility. The fact is, appellant was positively identified as the assailant. In short, the trial court did not convict the accused appellant on the basis of the dying declaration or on the testimony of Victoriano Taroma alone. There were the testimonies of Ana Morales, Ruben Acierto and PC soldier Leonardo Castro, which taken together, conclusively show that appellant is guilty beyond reasonable doubt of the crime charged, qualified by treachery because the victim was assaulted in a defenseless situation.

While there is no known reason for the assault by appellant on the deceased, it is a settled doctrine that motive is not essential to conviction when there is no doubt as to the identity of the culprit.

Appellant claims that treachery was erroneously appreciated because the same was not established and was derived only from the affidavit (Exhibits "D" and "D-1") presented by the prosecution. This is not correct. Victoriano Taroma, on the witness stand, affirmed the contents of said affidavit, was cross-examined on them and following which the same was properly offered in evidence.

Against the evidence of the People is the defense of alibi. Purificacion Almeda, the mother of appellant, testified that her son was not in the scene of the crime.

The defense of alibi cannot prevail over the positive identification of prosecution witnesses who, as found by the trial judge, have no reason to testify falsely against appellant. There being no evidence to prove adverse motive behind their testimonies, they should be entitled to full faith and credit.

Finally, We take note of the finding of the trial judge that the Municipal Mayor of Villaverde at the time, the uncle of the accused and the brother of his mother, "could do a lot in controlling the official actuations of his chief of police and the policemen of his police department to ingratiate themselves to him, their employer. Possibly, this accounts for the non-entry of the said incident in the police blotter on the 5th day of October 1969. So much so that the Chief of Police and Pat. Vicente were presented as witnesses for the defense, is to be expected, if not predesigned and preplanned upon the advice of the mayor." (pp. 38-39, Rollo).

WHEREFORE, the judgment appealed from, is hereby AFFIRMED. With costs.

SO ORDERED.

Melencio-Herrera, Plana, and Vasquez, JJ., concur.

Teehankee, (Chairman), in the result.

Gutierrez, Jr., J., no part.

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