

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANCHEZ NEPOMUCENO, DEFENDANT-APPELLANT.

G.R. No. L-41412. May 27, 1985

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PER CURIAM:

This case involves an automatic review of the death penalty imposed by the Circuit Criminal Court, 7th Judicial District at Pasig, Rizal in Criminal Case No. CCC-VII-1361, on appellant Nepomuceno for murder under Article 248 of the Revised Penal Code, as charged in the following information filed on June 22, 1973:

"That on or about January 9, 1972, in the municipality of Tanza, province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the accused Sanchez Nepomuceno together with Antonio Nepomuceno who is still at large, both of them being armed with unlicensed firearms, conspiring and confederating together, and mutually helping one another, with intent to kill, with evident premeditation and treachery, did then and there, wilfully, unlawfully and feloniously, suddenly attack, shoot and fire at Rolando Arayata inflicting upon him multiple gunshot wounds on different parts of his body and as a result thereof he died immediately thereafter.

"With the aggravating circumstance that the crime was committed in the presence of public officials while in the performance of their official functions" (p. 2, rec.).

After trial, following a plea of not guilty upon arraignment on November 19, 1973, the circuit criminal court, in a decision promulgated on December 27, 1974, sentenced appellant Nepomuceno for murder to death, to indemnify the heirs of the victim in the amount of P12,000.00, as well as to pay moral damages in the amount of P5,000.00 and another P5,000.00 as exemplary damages, and the costs (p. 18, rec.).

The case for the prosecution as competently presented by the Solicitor General reads thus:

"On January 9, 1972, the municipality of Tanza, Cavite was holding its election for barrio captain and other barrio officials. The election precincts were located in the Tanza Elementary School building in Tanza, Cavite. Among the candidates was the accused Sanchez Nepomuceno, a re-electionist for the position of barrio captain of Biwas, Tanza, Cavite [pp. 47, 53-54, tsn, Dec. 3, 1973; pp. 3-4, 12, 31--32, tsn, May 5, 1974].

"On said date, January 9, 1972, Asuncion Paras Arayata, married and resident of Sulok, Biwas, Tanza, Cavite [pp. 36, 71, tsn, Dec. 3, 1973], was brought along by her sister Angustia Paras to Tanza Elementary School because the latter wanted to vote in the said local elections. However, Asuncion did not vote because she was not yet a voter then [pp. 37-38, 57-58, tsn, id]. Upon arrival at the said school building at around 1:45 p.m. of that same day, Angustia tried to locate her name in the list of voters, but she could not find it. She was then told by the election officials that they would look for her name. Hence, both sisters Angustia and Asuncion tarried for a while at the porch of the said school building. They intended to go to the market to buy some household necessities after Angustia shall have voted [pp. 37, 56, 58-61, 64, tsn, id]. At that time Rosalinda Arayata, Sonny Arayata and her sister Consolacion Arayata were also at the porch of the said school building [pp. 58, 68, tsn, Jan. 15, 1974]. One David dela Cruz, an apprentice-technician and resident of Tanza, Cavite, was also in the said school building, helping people cast their votes [pp. 3-4, tsn, Feb. 25, 1974].

"At about 1:45 p.m. of that same day, January 9, 1972, David dela Cruz saw Antonio Nepomuceno holding Rolando Arayata by the shoulder and leading him out [akbay-akbay] of the precinct. A commotion then broke out and David saw Antonio Nepomuceno box Rolando Arayata who fell down [p. 97, tsn, Dec. 3, 1973; pp. 7-9, 16, tsn, Feb. 25, 1974]. Soon thereafter, shots rung inside the said school building [p. 9, tsn, Feb. 25, 1975; p. 65, tsn, Dec. 3, 1973; p. 59, tsn, Jan. 15, 1974]. Asuncion and Angustia who were then talking on the porch of the said school building heard the shots [pp. 65-66, tsn, Dec. 3, 1973]. Rosalinda who was also on the same porch heard two successive shots [p. 59, tsn, Jan. 15, 1974]. Asuncion saw the accused Sancho Nepomuceno and the latter's nephew Antonio Nepomuceno [p. 48, tsn, Dec. 3, 1973] shoot her cousin-in-law Rolando Arayata [p. 51, tsn, id], who was then lying [pp. 39-44, 67-68, 82-83, tsn, id], with the use of short firearms. Sancho fired from behind Rolando while Antonio was somewhere at the head of the said victim when he [Antonio] shot him. Both Sancho and Antonio fired from a distance of more or less one meter. Asuncion was only about ten meters away from the said assailants at the time. She knew that Rolando was hit by the gunshots because there was blood flowing from his [Rolando's] body [pp. 39-44, 67-68, 82-83, tsn, id].

"Rosalinda Arayata, after hearing the two successive shots, glanced to her left and saw the body of her cousin Rolando Arayata, lying down leftward, his left side pinned by his body. She saw the accused Sancho Nepomuceno and Antonio Nepomuceno pointing their guns at the body of Rolando [pp. 59-60, tsn, Jan. 15, 1974]. Thereafter, she again heard many shots. She saw both Sancho and Antonio firing shots with their short firearms at Rolando [pp. 60-62, tsn, id]. She then shouted: 'Si Rolly pinatay!' [p. 85, tsn, Dec. 3, 1973]. She had known both Sancho and Antonio for more than 20 years before the said shooting incident because they were her neighbors [pp. 48-59, tsn, id].

"After they shot the victim, Antonio Nepomuceno and Sancho Nepomuceno went down from the said school building. Antonio took a tricycle and proceeded towards Biwas, Tanza, Cavite. Rosalinda pulled her father and they boarded a tricycle to follow Antonio Nepomuceno. But as they were boarding the tricycle, she saw Sancho Nepomuceno approach and talk to a man wearing a PC uniform just across the street from the said school building [pp. 64-65, 74, 77, tsn, Jan. 15, 1974]. After, however, reaching the curve towards Biwas, Tanza, Cavite, Antonio Nepomuceno stopped the tricycle he was riding and boarded a car. Rosalinda and her father no longer followed him [pp. 63-64, tsn, id]. Instead, she and her father proceeded to the house of her uncle Ariston Arayata who was the father of the victim and told her uncle that Sancho Nepomuceno and Antonio Nepomuceno shot Rolando and that Sancho was at the Tanza Elementary School premises while Antonio had already left for Biwas or Hulugan, Tanza, Cavite [pp. 65-66, 86-87, 90, tsn, id].

"In the meantime, sisters Asuncion and Angustia left the school building and went home. They no longer proceeded to the market, as they intended earlier, to buy their household necessities [pp. 45-46, 73-74, 93, tsn, Dec. 3, 1973]. As they were about to leave the school premises, they saw some policemen who approached the wounded victim. They did not talk to the policemen because they were in a hurry to go home [pp. 45-75, 79, tsn, id].

"Sgt. Eufracio Figueroa of the Tanza Police Force, together with Pat. Matic and Pat. Arasad, went to the scene of the shooting upon learning of the incident that same afternoon [pp. 42-46, tsn, Jan. 21, 1974]. Raymundo Arayata was also there at the scene of the crime. And while walking around the porch of the said school building, Raymundo found one bullet slug which he identified later as the one place(d) inside the envelop Exhibit 'C-4' [pp. 32-34, tsn, id]. He gave the slug to his uncle, Ariston Arayata, who placed it in a separate bottle [pp. 12, 34, tsn, id]. Also, while Sgt. Figueroa and his companions were securing the scene of the shooting that same afternoon, someone handed to him an empty shell (basyo) which he placed in his pocket. He then interviewed several persons at the scene of the crime, among them being Daniel dela Cruz and Ernesto Alcantara [pp. 48, 50, 52-53, 56, tsn, id]. Later, he brought Daniel dela Cruz and Asuncion Paras Arayata to the municipal building where he took their respective written statements [Exhibit 'G'; pp. 45-49, tsn, Dec. 3, 1973; pp. 10-11, 32-35, tsn, Feb. 25, 1974].

"The cadaver of the deceased Rolando Arayata was brought to his father's house where it was embalmed by

Petronilo Cenizal of the Funeraria Cenizal. Cenizal sutured the wounds and took off the carotid artery. He found two slugs, one on the left palm and the other at the back of the body, and he gave them to the father of the deceased, Ariston Arayata, who placed them in a bottle [pp. 2-3, tsn, Feb. 11, 1974; pp. 9-10, tsn, Jan. 21, 1974]. Ariston Arayata gave the two slugs as well as the empty shell and the first slug previously recovered to PC Sgt. Dadural on January 11, 1972 when the PC soldier came to his house [pp. 12-13, 62-63, tsn, Jan. 21, 1974]. The PC subsequently turned over the empty shell and slugs to Police Sgt. Figueroa who later filed the criminal complaint in this case with the municipal court [pp. 60-62, tsn, id]. The same shell and slugs were later turned over by Pro-vincial Fiscal Narciso Salcedo to the NBI for ballistic examination [p. 15, tsn, Dec. 10, 1974].

"In the meantime, that same afternoon of January 9, 1972, Asuncion Paras Arayata arrived at their house almost simultaneously as her husband also arrived thereat. He told her that he came from the municipal building. Asuncion and her husband talked at home about the killing of Rolando Arayata. After they had rested, the couple proceeded to the municipal building to report what they saw about the shooting incident [pp. 87-91, tsn, Dec. 3, 1973]. In the case of Rosalinda Arayata, after she had arrived at their house that same afternoon, a policeman went there and inquired about the residence of Ernesto Alcantara who, according to the said policeman, saw the shooting from the beginning to the end. The said policeman did not interview her about the shooting incident on the said occasion [pp. 68, 95, tsn, Jan. 15, 1974].

"Dr. Hernando Pulido, physician and rural health officer of Tanza, Cavite [pp. 6-9, tsn, Dec. 3, 1973], was called by the deceased's family to their house in the afternoon of January 9, 1972 where he saw the deceased Rolando Arayata with blood and already dead [p. 13, tsn, id]. He informed the family that an autopsy was necessary but he was told by them that they would refer the case to the NBI. Hence, he did not perform an autopsy. In stead, he examined the cadaver and made a sketch of the location and number of the wounds he found thereon [Exhibit 'B']. Thereafter, he prepared the corresponding death certificate of the deceased Rolando Arayata [Exhibit 'A'; pp. 14-20, tsn, id]. He stated that the cause of death was severe hemorrhage and shock [Exhibit 'A'; p. 31, tsn, id]. The gunshot wounds he found on the body of the deceased were as follows:

"Gunshot Wound No. 1 — located on the anterior middle part of the left shoulder, which is an entrance wound;

"Gunshot Wound No. 2 — found along the lower border of the scapula, also along the horizontal imaginary line of the neck, right side;

"Gunshot Wound No. 3 — located at the back, right side of the body, just below the right scapula;

"Gunshot Wound No. 4 — an entrance wound, located along the middle part of the back, at the level of the hip;

"Gunshot Wound No. 5 — located on the anterior area just below the right cubital area;

"Gunshot Wound No. 6 — (located just) thru and thru wound, located on the left palm' [pp. 22-24, tsn, id; see Exhibit 'B'].

"Dr. Roberto Garcia, medico-legal officer of the NBI, subsequently conducted a postmortem examination of the body of the deceased Rolando Arayata as identified by the latter's father Ariston Arayata. He had an NBI photographer take the pictures of the cadaver under his supervision. He also prepared a diagram showing the important exit and entrance wounds he found on the cadaver as well as their respective locations (Exhibit 'E-1') [pp. 3-9, 20, tsn, Jan. 15, 1974]. As shown in his necropsy report Exhibit 'E' and its diagram Exhibit 'E-1', the first set of gunshot wounds Nos. 1 to 4 were entrance wounds, while the second set of gunshot wounds Nos. 5 to 8 were their corresponding exit wounds Exhibits 'F-3', 'F-3-A' to 'F-3-D'; Exhibits 'F-1', 'F-1-A' to 'F-1-D'; 'F-6'; pp. 20-21, tsn, id]. Dr. Garcia noted that gunshot wounds Nos. 1 to 4 punctured vital organs of the deceased's body, such as the right and left lungs, the aorta and the lobes of the lungs, which caused 'very immediate' death [pp. 43-44, tsn, id]. He also stated that the lacerated wound on the forehead of the deceased must have been caused by a forcible contact with a hard object like a gun [p. 46, tsn, id]. Based on gunshot wounds sustained by the victim,

Dr. Garcia opined that the assailant must have been standing directly towards the victim, holding the gun with his right hand, while the victim had his back against the said assailant when the latter fired the gun at the said victim who was then lying on his left side [pp. 13-16, tsn, id]. He stated that it was probable that more than one .45 caliber firearms caused the gunshot wounds sustained by the deceased [pp. 18, 20, tsn, id]. He added that, from the average diameter of the said gunshot wounds, it was possible that they were caused by .45 caliber bullets [pp. 17-18, tsn, id].

"Felicisimo S. Lunasco, supervising ballisticsian of the NBI, conducted a ballistic examination of the empty shell Exhibit 'C-1' and the four slugs Exhibits 'C-2' to 'C-4' which were turned over to him by Provincial Fiscal Narciso Salcedo. Mr. Lunasco found that the evidence shell Exhibit 'C-1' was a .45 caliber fired shell and possessed the characteristics of shells fired from a .45 caliber automatic pistol Exhibit 'C' [pp. 15-16, tsn, Dec. 10, 1973]. Upon subjecting the evidence or jacketed slugs Exhibits 'C-2' to 'C-4' to a comparative examination, using photo-micrographs of the same to visualize clearly their characteristic individual lines and stations (Exhibits 'C-2-A' to 'C-4-A'; 'C-2-B' to 'C-2-D'; 'C-2-B-1' to 'C-3-B-1'; 'C-2-A-1' to 'C-4-A-1') [pp. 16-24, tsn, id], he found that the slugs Exhibits 'C-2' to 'C-4' were .45 caliber jacketed bullets and possessed the 'class characteristics' showing that they were fired thru the barrel of a .45 caliber cold-type firearm [Exhibit 'C'; pp. 24-25, tsn, id].

"Ariston Arayata stated that he paid the Cenizal Funeraria the amount of P860.44 for the embalming and funeral arrangements it rendered to his deceased son Rolando Arayata [p. 45, tsn, Feb. 25, 1974; Exhibit 'I-1']. The remains of his deceased son lay in state at his house for five days, and during the said wake, he spent P3,500.00 for food and other items. His deceased son was buried on January 13, 1972 in the Tanza Roman Catholic Cemetery. He spent P40.00 for the cemetery services. And for the 9th prayer-day or katapusan, he also spent P500.00. All in all, Ariston Arayata spent a total of P4,900.00 [pp. 42-53, tsn, id].

"Mrs. Norma Arayata, the widow of the deceased Rolando Arayata, testified that they have only one child, Roy Roger Arayata, who was born on October 10, 1971 in Tanza, Cavite [Exhibit 'K'; p. 57, tsn, id]. She stated that her husband was a tool keeper and helper at Panamita, Kawit, Cavite, earning P6.00 a day, and that he was then 23 years old, a high school graduate, and was in good health at the time of his untimely death. She further declared that everytime she remembered the death of her husband, she could not sleep nor eat [pp. 57-63, tsn, id]" (p. 126, rec.).

The appellant now imputes the following assignment of errors:

1. The circuit criminal court erred in giving credence to the testimonies of prosecution witnesses Asuncion Paras Arayata and Rosalinda Arayata, both cousins of the victim, Rolando Arayata, and solely based on those testimonies — in finding appellant Sancho Nepomuceno guilty of murder as charged and sentencing him to death;
2. The said court a quo erred in failing to judiciously hold that reasonable doubt obtains in the evidence on record which need and should thereby, inevitably warrant an imperative finding of acquittal for appellant from the offense of murder as charged; and
3. The presiding judge of the same court had manifested his bias and prejudice against the defense and in favor of the prosecution in the course of the proceedings/trial of the case and as could be ostensibly gleaned in his decision, and therefore, erred in failing to accord and afford such norm/degree of juristic impartiality expected of him under our laws and judicial system to the detriment and impairment of the fundamental constitutional and statutory rights of the appellant (p. 112, rec.).

WE do not find merit in appellant's averments and We do not see any reason to disturb the findings of the lower court.

The spontaneous, clear and positive statements of the following witnesses indubitably point to the appellant as the killer of the victim:

Witness Asuncion Paras Arayata thus testified —

"Q - What was that unusual incident that you witnessed?

A - The killing of Rolando Ara-yata by Sancho Nepomuceno, and by Antonio Nepomuceno, sir.

Q - Will you tell the court what you actually saw?

A -

I saw that Rolando U. Arayata was being fired upon by Sancho Nepomuceno and Antonio Nepomuceno, sir" (pp. 38 & 39, TSN, Dec. 3, 1973).

Said Asuncion Arayata further stated —

"Q - Who was that cousin of yours who shouted?

A - She was Rosie Arayata, sir.

Q - What did she shout, in particular?

A - She just said, 'Si Rolly pinatay'" (p. 85, TSN, Dec. 3, 1973).

Another eyewitness, Rosalinda Arayata, declared —

"Q - Aside from your cousin Rolando Arayata, who was lying on his left side, who else did you see, if any?

A - I saw Sancho Nepomuceno and Antonio Nepomuceno.

Q - What were they doing when you saw them?

A - I saw them with their guns.

Q - What were they doing with the guns?

A - Pointing to the body of Rolando.

Q -

What else happened after that?

A - I heard many consecutive shots afterwards.

Q - Did you see where those shots were directed?

A - Yes, sir.

Q - Where?

A - The shots were directed towards the body of Rolando.

Q -

Who were firing the shots directed towards Rolando?

A - Both of them.

Q - To whom do you refer?

A - Antonio Nepomuceno and Sancho Nepomuceno" (pp. 421 & 422, TSN, Jan. 15, 1974).

Appellant now assails the credibility of the aforementioned witnesses upon whose unwavering statements the lower court anchored its judgment of conviction, merely because they happen to be related to the victim. They were eye-witnesses to the crime committed by appellant. The credibility of their testimony remains unimpaired.

Appellant Sancho Nepomuceno was a man to reckon with in barrio Biwas. It was then natural and realistic that only close relatives of Rolando Arayata would dare testify against him.

WE have thus consistently ruled in the following cases:

"Time and again this Tribunal has stated that the findings of the trial court on the credibility of witnesses are not to be disturbed for the trial judge is in a better position to appreciate the same, having seen and heard the witnesses themselves and observed their behaviour and manner of testifying during the trial, unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; in the case at bar, there is no such showing. The rule is so, because as rightly said, the opportunity to observe the demeanor and appearance of witnesses in many instances is the very touchstone of credibility" (People vs. Renegado, L-27031, May. 31, 1974, 57 SCRA 289).

"The case hinges on the credibility of witnesses and, as in such cases, the trial court's opinion as to which of them should be believed is entitled to great respect. The trial judge who heard the witnesses testify and had occasion to observe their demeanor on the stand was of the opinion that those of the prosecution witnesses were the ones that deserve credence. We have examined the records with great care and We find nothing which might justify our taking a different view. As the trial court said, the witnesses for the prosecution, Francisco Casio, Jr. and Bayani Lugto testified in a very categorical, straightforward, spontaneous and frank manner and were consistent throughout despite the rigid cross-examination to which they were subjected" (People vs. Barros, L-34249, May 3, 1983, 122 SCRA 41).

In *People vs. Ruiz* (L-33604-05, October 30, 1979, 93 SCRA 758), We declared:

"In order to discredit Libertad, the accused Jesus G. Ruiz brands her as a biased witness because of her relationship with the victim. The fact that Libertad is the sister of the deceased Sgt. Bito does not necessarily make her a biased witness. The prevailing jurisprudence on the matter is that mere relationship of the prosecution witnesses to the victim does not necessarily vitiate their otherwise credible testimonies nor does it impair their positive and clear testimonies."

In a more recent decision, We reiterated that "the relationship of Dominga with the victim does not discredit her testimony. Well settled is the rule that when there is no showing of improper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. 'On the contrary, their natural interest in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for, otherwise, the latter would thereby gain immunity [*People vs. Alcantara, et al.*, 33 SCRA 812]" (*People vs. Jabeguero*, L-61078, Oct. 24, 1983, 125 SCRA 149).

In *People vs. Ibasan, Sr.* (L-61652, June 22, 1984, 129 SCRA 714), We restated that "anent the alleged relationship of a prosecution eyewitness to the deceased's father, We reiterate the oft-repeated rule that relationship of witnesses does not necessarily affect credibility (*People vs. Ruiz*, 93 SCRA 739; *People vs. Puesce*, 8 SCRA 130). Relationship to the victim by itself, does not prove that a witness is prejudiced and biased when, as in this case, said testimony is not only clear and natural, but is corroborated substantially by the other findings of the trial court. There is moreover the absence of an improper motive actuating the witness to testify falsely against the accused."

While appellant harps on the altered or tampered testimony of prosecution witness Daniel dela Cruz given during the trial, the fact still remains that in his original written statements given immediately after the incident before Sgt. Eufracio Figueroa (pp. 495-496, TSN, Feb. 25, 1974), said witness, when asked in Pilipino where accused Nepomuceno pointed the gun he was holding, spontaneously answered thus: "Kay Rolando Arayata." It must be noted that before witness dela Cruz finally appeared to testify, he had to be arrested after his failure to appear in spite of due notice, had to serve a ten-day imprisonment for contempt of court and had to be impeached after turning into a hostile witness. Such altered testimony of the same witness can never out-weigh the formidable testimonies of the two principal witnesses. In *People vs. Borja* (L-54114, June 28, 1983, 123 SCRA 158), We declared thus:

"Neither is appellant's attempt to show discrepancy between the state witnesses affidavits and their testimony in court of any avail. The infirmities of sworn statements, arising out of their notorious incompleteness are all too well known to be virtually taken judicial notice of. The credibility of the eyewitnesses which is the subject of the main assignment of error (second assignment) is thus not affected at all by the circumstance just pointed out."

Even as it appears that the modified statements of witness Daniel dela Cruz do not fully corroborate the testimonies of the two principal eyewitnesses, the latter's testimonies, standing alone, solidly buttress the judgment of conviction. This conclusion finds support in the case of *People vs. Oquino* (L-37483, June 24, 1983, 122 SCRA 805) where We emphasized that "even assuming that the testimony of the principal eyewitness was not properly corroborated by the other prosecution witnesses, it is still sufficient to warrant the conviction of the accused, since it is also well-settled that 'the testimony of a single witness which satisfies the court in a given case, is sufficient to convict.'"

On Appellant's claim that he was inside the precinct (classroom) when the victim was shot at the porch of the school building, We find such allegation a very shallow defense of alibi. For, Asuncion and Rosalinda Arayata

and even Daniel dela Cruz positively testified to the fact that when the shooting occurred, accused-appellant was in the porch with the victim. These three witnesses who have known the appellant for years would not be mistaken in identifying him on first sight and pinpointing the exact place where he was. Although witness dela Cruz, for one reason or another, had a change of mind with respect to appellant's holding a gun, he nevertheless confirmed the fact that appellant was at the porch with the victim (p. 84, TSN, Feb. 25, 1974).

The reaction of the lower court to appellant's demeanor immediately after the victim was shot and felled, appears very logical, and hence, merits Our conformity and elicits further reaction on Our part.

On the accused's questioned behaviour, the following testimony is patently revealing:

"Q - When you saw Rolando Arayata lying on the porch with blood, what did you do, if you did anything?

A -

I walked out of the building and reported to the Sergeant of the P.C. who was assigned there" (pp. 7-8, TSN, May 6, 1974).

Appellant's very casual act of walking away from the scene of the crime and informing the P.C. sergeant who was watching over the elections, is beyond Us. In his capacity as barrio captain of barrio Biwas, he was normally expected to take charge of the situation or better still, to inquire initially into the killing. It was indeed very unnatural and unrealistic for appellant to simply leave the porch where a person known to him lay wounded without seeking urgent medical attention for the victim and looking around for the perpetrators of the crime. As the acknowledged political and executive leader of a barrio, the appellant had the legal and moral responsibility to apprehend and bring to police authorities the alleged offenders. This appellant never did. Contrary to normal human behaviour, appellant acted as if the killing were an ordinary occurrence by nonchalantly turning his back and walking away. But why such unnatural actuation? There can only be one plausible explanation which the presiding Judge of the circuit criminal court aptly observed:

"To buttress the alleged innocence of the accused, the defense made mention of the fact that after the alleged incident, accused Sancho Nepomuceno even talked with a PC enlisted man which should not be the case, if he is really the gunslayer, for the natural thing that he should have done is to flee from the scene of the crime. There is nothing unusual in this case relating to this act of the accused. It should be borne in mind that the PC soldier did not actually see the gunman in the very act of killing, so that his act of approaching the PC soldier immediately after the shooting incident was a master stroke, a clever ploy or a scheme to confuse the authorities because had he run away, then it could be construed that he was the one responsible for the shooting of the victim. Moreover, the first impulse of a peace officer after a shooting incident is to go after the person who tries to disengage himself or sneak away from the crowd. xx xx"

(pp. 19-20, rec.).

What appellant failed to realize is that his deceptive behaviour was too neat to be believed and that such scheme would only create suspicion as it finally did.

The testimony of Medico-Legal Officer Roberto Garcia confirms the fact that when the victim was shot, he was lying on his left side with his back exposed to the assailants. Note that the four entrance wounds were located at different parts of the back. The Solicitor General correctly observed that "based on gunshot wounds sustained by the victim, Dr. Garcia opined that the assailant must have been standing directly towards the victim holding the gun with his right hand, while the victim had his back against the said assailant when the latter fired the gun at the said victim who was then lying on his left side (pp. 13-16, TSN, id.). He stated that it was probable that more than one .45 caliber firearms caused the gunshot wounds sustained by the deceased (pp. 18, 20, tsn, id.)." Even the

supervising ballistics of the NBI testified to the fact that the one slug was fired from a .45 caliber automatic pistol (Exh. "C-1") and the other slugs (Exh. "C-2" to "C-4") were fired from a .45 caliber cold-type firearm (p. 126, rec.).

On Appellant's having surrendered his .22 caliber licensed firearm, We cannot help agreeing to the following observation of the People's counsel:

"The circumstances that appellant surrendered his .22 caliber licensed firearm is inconsequential. The firearm involved in the shooting and killing of Rolando Arayata was a .45 caliber automatic revolver (Exhibit 'E'; pp. 16-25, tsn, Dec. 10, 1973) xx xx There is every reason to believe that appellant Sancho Nepomuceno either threw away his .45 caliber firearm or gave it to Antonio Nepomuceno who then fled from the scene immediately after the shooting incident. That appellant surrendered a .22 caliber firearm could be another ploy to hide his guilt."

As to the motive for the killing, appellant himself admitted that the Parases and the Arayatas were campaigning against him and were siding with the opposing candidate Bernardo Bobadilla. The voting power of the above-named families would certainly affect or decide the fate of either candidate. Appellant's re-election as barrio captain thus became a matter of life and death for which he would, as he did, kill any person who would pose a threat to his political ambition or stand in his way to victory.

However, the required vote for the imposition of the death penalty cannot be obtained.

WHEREFORE, APPELLANT SANCHEZ NEPOMUCENO IS HEREBY SENTENCED TO RECLUSION PERPETUA, TO INDEMNIFY THE HEIRS OF ROLANDO ARAYATA IN THE SUM OF THIRTY THOUSAND (P30,000.00) PESOS AND TO PAY THE COSTS.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Abad Santos, Plana, Gutierrez, Jr., Cuevas, and Alampay, JJ., concur.

Concepcion, Jr., J., on leave.

Melencio-Herrera and Escolin, JJ., for reclusion perpetua and increased indemnity of P30,000.00.

Relova, J., for the imposition of reclusion perpetua only and increase of the indemnity from P12,000.00 to P30,000.00.

De la Fuente, J., reclusion perpetua, as to penalty.

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