

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REFUGIO DEVARAS, FELIPE LADOY AND ENRIQUE SALVE,
DEFENDANTS, ENRIQUE SALVE, DEFENDANT-APPELLANT.**

G.R. No. L-25165. February 27, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

The accused in this case, Refugio Devaras, Felipe Ladoy and Enrique Salve, were prosecuted for and convicted of the crime of robbery with homicide by Branch IV of the Court of First Instance of Leyte, Tacloban City. The first two, Devaras and Ladoy, had in their favor two mitigating circumstances of voluntary surrender and lack of instruction and were sentenced to suffer an indeterminate penalty of six years to one day of prision mayor and fourteen years, eight months and one day of reclusion temporal. As no mitigating circumstance was found to exist to call for a punishment less severe, Enrique Salve was meted out the penalty of reclusion perpetua. He is the sole appellant. In the lower court, his defense was that of alibi, his allegation being that he left Tacloban, Leyte two days before the crime was committed and that he was already in Manila at such time. The lower court did not lend credence to his defense, relying instead on the positive identification of the widow, the sole eyewitness, as well as a statement of the victim given the next morning which, while not amounting to an ante mortem declaration, in its opinion, was considered as part of the *res gestae*. There appears to be in this appeal less of an insistence on the alibi, but he would deny that there was proof beyond reasonable doubt, specifically assailing likewise the admissibility of the statement of the deceased as part of the *res gestae*. He is not successful, however, in demonstrating that his conviction is not warranted. We cannot reverse.

The widow, Marcellana Delloro, testified that around 10:00 o'clock in the evening of March 24, 1963, while she and her husband, Aniceto Gaspay, were lying in bed in their house at Cansamada, Dagami, Leyte, they heard appellant Enrique Salve calling out from the outside asking for a light for their cigarettes.[1] Her husband opened the door at the lower basement, apparently not suspecting anything as appellant was related to him, being the first cousin of his wife, the witness. Upon the door being opened by the deceased, the accused, Felipe Ladoy, "hacked him with a long bolo on the head." [2] Then, according to her testimony, "Enrique Salve and Refugio Devaras followed and they helped each other in wounding my husband, the three of them." [3] When asked what instrument was used in inflicting such wounds, this was her answer: "The three of them were using bolos." [4] Specifically, the other injuries sustained by the deceased were on the abdominal region and his upper arm. [5] They then pointed their bolos at the witness, searched her body and were able to get the amount of P625. 00 in cash from a belt tied to her waist, [6] Not satisfied, they likewise took away a suitcase containing a Bulova watch valued at P70.00, clothes belonging to the couple, as well as two towels. All-in-all, the monetary loss sustained by them amounted to P855.00. The next morning, according to her, a patrolman, Servillano Ramulte, investigated the matter, but as the victim was already in a serious condition about to be taken to the hospital, all that they could get from him, as mentioned earlier, was a statement which he could not even sign wherein he mentioned that appellant was, along with Felipe Ladoy and Refugio Devaras, responsible for the robbery as well as the wounds

received by him. The victim died the next day, March 26, 1963. She could identify all the accused as there was at that time "a lamparilla", a kerosene lamp, at their window with enough light to enable her to see who were the perpetrators, all of whom she had known for sometime.[7]

Her testimony was not shaken on cross-examination, the counsel for the accused limiting himself at the most to the absence of any ill-will between the couple and his clients and ascertaining how the victims could have accumulated P625.00 in cash.[8] There was likewise an effort to discredit the statement of the deceased as he was alleged at that time to be "too weak and in a very serious condition, * * *".[9] A line of questioning sought to elicit in greater detail how the crime was committed, her memory being tested as to the attendant circumstances. When specifically asked as to how she came to believe that the accused had robbery in mind, this was her answer: "I already thought that they would rob me inasmuch as my husband was already down and helpless, and there was no misunderstanding between my husband and the intruders." [10] She likewise explained that she was not vocal in her protest when they were searching her, as at the time she "was already weak." [11] Moreover, she "was afraid of them." [12] She emphasized, though, that she "shouted when they were striking my husband and that was the time I asked for help." [13]

On the other hand, appellant Enrique Salve opened his testimony with the denial of the declaration of the widow, Marcellana Delloro, that on March 24, 1963 at about 10:00 in the evening, he went to their house, inflicted the wounds on her husband, and that he was one of the three accused who robbed the couple. He said it was not true because he "was not there." [14] He would impress on the court that as far back as March 22, 1963, he "was here in Tacloban City." [15] When queried as to why he was there in Tacloban City, his reply was that he "was leaving for Manila." Then he stated further that he arrived at the waiting shed of the pier in Tacloban City at about 10:30 o'clock in the morning looking for a certain Leo Acosta who promised that he would secure a pass for him to enable him to travel as a passenger. [16] He did find the friend who took him to the boat, the General de Jesus, where another man whose family name he had forgotten, called Doming, did secure such a pass, after which he was told to load his things in the boat. [17] After being assigned a cot beside that of Doming, the next thing he knew, as he fell asleep soon afterwards, was that he was at sea between Tacloban and Manila. [18] The first port of call was Catbalogan, and from there the boat went to its way to Manila where he did arrive on March 24, 1963, at about 8:00 o'clock in the evening. [19]

There he left Doming and went to the house of his brother in Tondo where he stayed until July 15, 1964. [20] He informed the lower court that his purpose in going to Manila was to look for work and that he succeeded in getting employment as a jeepney driver plying the Sta. Mesa-Divisoria route. [21] He would attribute his being implicated in the case to the fact that the father of Marcellana Delloro had a grudge against his father for alleged land-grabbing. [22] On cross-examination, he was right away confronted with the fact that while he claimed to have stayed in Manila from March 24, 1963 to July 16, 1964, it would appear from the record that he was arrested on November 19, 1963 in Leyte. On redirect examination, he denied that such was the fact although he admitted that it was in a barrio in Dagami that such arrest was effected. When asked directly by the lower court, he was insistent that from March 24, 1963 to July 16, 1964, he never came back to Leyte. Again private prosecutor did impress on the court that on February 26, 1964 it was clear from the certificate of arraignment that in open court and in the presence of a provincial fiscal, appellant Enrique Salve was informed of the nature of the accusation filed against him and that he pleaded not guilty to the charge. It must also be stated that his being on board the General de Jesus which left Tacloban on March 22, 1963, his cot being beside that of Doming, was corroborated by witness Domingo Cagara who bore that nickname. There was likewise confirmation of his testimony that on Sunday evening, March 24, when the boat docked at the pier of Manila, appellant and this witness alighted together, after which they separated. [23]

As noted at the outset, the lower court chose to accept the version of the prosecution and rejected the alibi set up resulting in the conviction of appellant Enrique Salve. It should be borne in mind likewise that its judgment as to the guilt of the accused was further based on an ante mortem statement of the deceased Aniceto Gaspay[24] which, while not coming within the doctrine of a dying declaration, in the opinion of the lower court, was considered as being part of the *res gestae*. The ante mortem statement[25] was taken by a policeman, Servillano Ramulte, at past 9:00 o'clock the next morning, eleven hours or so after the accident, when the victim was in a jeep to be taken to Tacloban for medical treatment.[26] The other person present was a brother of the deceased, Marcelo Gaspay. At that time, the wounded man was in a hammock inside such jeep in a very weak condition, his color being pale, evidently caused by the loss of blood coming from the two wounds, fatal in character, one at the forehead and the other at the stomach.[27] Only six questions were asked by Ramulte, namely: his name, where he was wounded, why he was wounded, who were the assailants, were they successful in their mission, and the weapon used. His answers in Visayan was that he was Aniceto Gaspay; he was wounded in his house as the result of a robbery; and that his three assailants were Enrique Salve, Felipe Ladoy, and Refugio Devaras, who used their bolos. He could not even sign the statement as he was then in a critical condition. The patrolman and the brother, Marcelo Gaspay, affixed their signatures. On the above evidence, the lower court rendered a judgment of conviction which is now sought to be reviewed on appeal by Enrique Salve.

The defense of alibi is practically abandoned. Instead, his brief would stress on this Court that such a decision, as far as appellant was concerned, is vitiated by a failure of evidence to show his guilt beyond reasonable doubt. So the first, third, and fourth errors could be summarized. The main reliance is on the failure of the two other co-accused, Refugio Devaras and Felipe Ladoy, to mention that appellant Enrique Salve was with them when the crime was committed. It is easy to understand why it should be thus. Of itself, such circumstance could not be the basis for an acquittal. Refugio Devaras would claim self-defense, alleging that without provocation the deceased, then drunk, challenged him to a fight and only when his life was in danger because of the bolo in the hands of the deceased was he compelled to defend himself with his own bolo. Considering his testimony, it is obvious why appellant's name was not even mentioned at all. So it was with the version of the other co-accused, Felipe Ladoy, who informed the court that he himself should not have been accused at all as he only accompanied Refugio Devaras when the latter voluntarily surrendered. At any rate, between the positive testimony as to identification of appellant and the implication to be derived from the failure of the co-accused to mention his name, it cannot be an error for the lower court to rely on the proof offered as to the participation of appellant in the commission of the crime.[28]

The other error assigned is that the lower court should not have considered the declaration as part of the *res gestae*. A majority of this court feels that such a defense is not entirely lacking in merit considering the lapse of time that occurred between commission of the offense and the taking of the statement, namely eleven hours or so. It is to be noted that in many of our decisions where this doctrine of *res gestae* has found acceptance, the imputation of the guilt of the accused was made immediately after the commission of the criminal act.[29] It does not mean, however, that appellant is thus entitled to be absolved of criminal liability. In the first place, the positive identification by the widow is an obstacle too formidable to overcome. Moreover, this Court likewise is of the opinion that what was set forth in Exhibit A as a result of the questioning of the victim by Patrolman Ramulte amounts to a dying declaration, as it is a statement coming from "a seriously wounded person"[30] even if death occurs "hours or days after it was inflicted" if there be showing that it was due to the wound whose gravity did not diminish from the time he made his declaration "until the end came."[31] The principle is thus well-settled that there is no need for proof that the declarant state "that he has given up the hope of life. It is enough if, from the circumstances, it can be inferred with certainty that such must have been his state of mind."[32] Thus "it is sufficient that the circumstances are such as to lead inevitably to the conclusion that at the

time [of such statement] the declarant did not expect to survive the injury from which he actually died." [33] To repeat, its admissibility is not affected by death occurring "hours or days" afterwards. [34]

A recent decision is likewise in point. Thus: "Judged by the nature and extent of the injury inflicted (deep stab wound on the abdomen, causing his intestines to protrude), Flores could not ignore the seriousness of his condition, and it is safe to infer that the deceased made the declaration under the consciousness of impending death." [35] Appellant's appeal, as noted at the outset, is thus doomed to failure.

WHEREFORE, the decision of the lower court of January 19, 1965 convicting appellant Enrique Salve of the crime of robbery with homicide to reclusion perpetua is affirmed, with the modification that he is likewise ordered to indemnify the heirs of the deceased, Aniceto Gaspay, in the sum of P12,000.00.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., did not take part.

[1] T.s.n., Session of July 21, 1964, p. 11. The transcript reads literally: "Brother-in-law, may we light our cigarette." Evidently, that was a translation for the local term in the dialect of cousin-in-law.

[2] Ibid, p. 12.

[3] Ibid.

[4] Ibid, p. 13.

[5] Ibid, p. 14.

[6] Ibid.

[7] Ibid, p. 18.

[8] T.s.n., Session of August 25, 1964, pp. 3-11.

[9] Ibid, p. 12.

[10] Ibid, p. 19.

[11] Ibid, p. 23.

[12] Ibid.

[13] Ibid.

[14] Ibid, p. 31.

[15] Ibid.

[16] Ibid, pp. 31-32.

[17] Ibid, pp. 32-33.

[18] Ibid, p. 33.

[19] Ibid, pp. 33-34.

[20] Ibid, pp. 34-35.

[21] Ibid, pp. 35-36.

[22] Ibid, p. 36.

[23] Ibid, pp. 37-50.

[24] Exhibit A.

[25] Ibid.

[26] T.s.n., Session of October 12, 1964, pp. 4 and 5.

[27] Ibid, pp. 5 and 6.

[28] People v. Gonzales, 76 Phil. 473 (1946); People v. Borbano, 76 Phil. 702 (1946); People v. Macalindong, 76 Phil. 719 (1946); People v. Solon, 79 Phil. 214 (1947); People v. Lansanas, 82 Phil. 193 (1948); People v. Aribas, 82 Phil. 395 (1948); People v. Osi, 85 Phil. 592 (1950); People v. Antonio, 90 Phil. 269 (1951); People v. Paunil, 103 Phil. 804 (1958); People v. Villanueva, 104 Phil. 450 (1958); People v. Cruz, L-11870, Oct. 16, 1961, 3 SCRA 217; People v. Antonio, L-16547, May 30, 1964, 11 SCRA 260; Grafil v. Feliciano, L-27156, June 30, 1967, 20 SCRA 616.

[29] Cf. United States v. Macuti, 26 Phil. 170 (1913); People v. Quianzon, 62 Phil. 162 (1935); People v. Diokno, 63 Phil. 601 (1936); People v. Talledo, 85 Phil. 533 (1950); People v. Avila, 92 Phil. 805 (1953); People v. Ablan, L-15203, March 29, 1961, 1 SCRA 931; People v. Miranda, L-18508, Feb. 29, 1964, 10 SCRA 385; People v. Sampang, L-15843, March 31, 1966, 16 SCRA 531; People v. Diva, L-22946, April 29, 1968, 23 SCRA 332; People v. Ricaplaza, L-25856, April 29, 1968, 23 SCRA 374.

[30] United States v. Castellan, 12 Phil. 160, 165 (1908).

[31] United States v. Mallari, 29 Phil. 14, 20-21 (1914).

[32] People v. Chan Lin Wat, 50 Phil. 182, 191 (1927).

[33] People v. Ancasan, 53 Phil. 779, 781 (1928). See also People v. Serrano, 58 Phil. 669 (1933).

[34] People v. Mabassa, 65 Phil. 568, 571 (1938).

[35] People v. De Gracia, L-21419, Sept. 29, 1966, 18 SCRA 197, 205. Cf. El Pueblo de Filipinas v. Imson, 80 Phil. 284 (1948); People v. Talledo, 85 Phil. 533 (1950); People v. Alfaro, 83 Phil. 85 (1949); People v. Valdez, 83 Phil. 650 (1949); People v. Munoz, 88 Phil. 482 (1951); People v. Escarro, 89 Phil. 520 (1951); People v. Andia, L-14862, May 31, 1961, 2 SCRA 423; People v. Rogales, L-17531, Nov. 30, 1962, 6 SCRA 830; People v. Sagario, L-18659, June 29, 1965, 14 SCRA 468.

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