

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUILLERMO PUTIAN, ALIAS GUIRMO, ACCUSED-APPELLANT.

G.R. No. L-33049. November 29, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Guillermo Putian appealed from the decision of the Court of First Instance of Misamis Occidental, finding him guilty of murder, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Teodulo Panimdim in the sum of twelve thousand pesos (Criminal Case No. 6762).

The peculiarity of this case is that no eyewitness was presented to testify on the assault which resulted in the victim's death (See *People vs. Dahino*, 88 Phil. 789 as to murder proven by circumstantial evidence).

The prosecution presented only two witnesses: (1) The doctor who treated the victim at the hospital and who testified on the nature of his wound and the cause of his death (Exh. A) and (2) the policeman who arrested the accused and seized from him the dagger allegedly used in the stabbing (Exh. B) and who took down the victim's ante-mortem statement identifying "Guirmo" Putian as his assailant (Exh. C).

On the other hand, the accused did not testify in his own behalf. The defense presented only one witness. He testified that appellant Putian was in the dance hall when the victim was stabbed outside that hall.

Hence, in this appeal our task is to determine whether the prosecution's evidence establishes appellant's guilt beyond reasonable doubt and, if so, whether the offense is murder or homicide. Those are the two issues raised by the appellant in his eight-page brief.

Appellant Putian admits that on November 22, 1969 while Teodulo Panimdim was attending a dance at Barrio Tabo-o, Ji-menez, Misamis Occidental, he (Panimdim) was stabbed in the left groin. As a result of that assault, Panimdim died five days later at the provincial hospital (p. 3, brief). The question is: Did Putian stab Panimdim?

According to the prosecution, in the evening of that day, November 22, while Patrolman Arturo Yap was passing Barrio Tabo-o, he noticed a commotion at the back of the dance hall in that barrio. He was informed that someone had been stabbed. He looked for the culprit. He found Guillermo Putian behind the municipal building with a dagger and scabbard in his possession (B and B-1). Yap investigated Putian. The latter denied that he stabbed Panimdim. Yap arrested Putian and surrendered him to Jesus Gomomit, the guard at the municipal hall.

Patrolman Yap then repaired to the clinic of Doctor Saceda where the victim, Teodulo Panimdim, alias Doling, was brought for treatment. At the clinic, Yap wrote on a piece of paper the victim's declaration which is reproduced below (Exh. C):

"ANTIMORTEM Nov. 22, 1969

"Name of Victim - Teodolo Padimdim

(should be Panimdim)

Age - 21 single

Place - Palilan, Jimenez

Who stabbed you? - Guirmo Puti-an

Where? - Outside the dancing hall of Tabo-o

Why? - None

What time? - 11:30 P.M.

Do you think you can suffer your wound? - Yes

Who is your companion? - Meguil Quilo, Victorino Padimdim

Who is the companion of Guirmo? - I don't know their names because they are plenty

Can you sign your name in this antimortem? - Yes

Statement taken by Pat. Yap.

Sgd. Teodulo Panimdim

TEODULO PADIMDIM

"Sign in the presence of

1. Victorino Panimdim
2. Ben Ybalane
3. Miguel Quilo

Witnesses"

When that statement was taken, Panimdim was in a sitting position. Patrolman Yap advised him to go to a hospital for treatment. Panimdim stood up, flexed his muscles and said that there was nothing to worry about because the wound was small. Without anybody's help, he put on his undershirt, pants and shirt. He went to his house without anyone's assistance.

Yap explained that Panimdim mentioned only a person named Guirmo and that he, Yap, was the one who added the surname Putian in the statement, Exhibit C. He clarified that he wrote that surname because he knew of no other person called Guirmo in that locality except Guirmo Putian, an alleged gambler (22 tsn).

On November 23, one day after the stabbing, the victim was brought to the hospital. An operation was performed on him. He died in the hospital on November 27, or five days after he was assaulted (Exh. D). The attending physician certified that the victim had a stab wound in the left groin which penetrated the abdomen and punctured the large intestine. Death was due to "toxemia secondary to general peritonitis" (Exh. A). The doctor testified that the stab wound could have been caused by the two-bladed dagger (punyal), Exhibit B.

The slender evidence for the defense consists merely of the meager testimony of Anacleto Taporco, 54, the assistant provincial board secretary and former candidate for mayor, who claimed to be a friend of Panimdim and a close friend of Putian. Taporco declared that in the evening of November 22, 1969 he was in the barrio dance hall together with appellant Putian, Olimpio Sito and Ramon Gimeno. Panimdim was also there.

Taporco said that Panimdim, 21, asked his permission to box Rogelio Opos. Taporco allegedly advised Panimdim not to do so because boxing Opos would cause trouble in the dance hall. Panimdim obeyed him but sometime later Panimdim again asked Taporco that he be allowed to box Opos. Taporco dissuaded Panimdim and took him outside the dance hall.

Afterwards, Taporco was allegedly informed that there was trouble. When he tried to find out what the trouble was, he was informed that it was already patched up. During that interval, Putian never left the dance hall.

The trial court, in convicting Putian, regarded Panimdim's ante-mortem statement as part of the *res gestae*. Obviously, it did not give to that statement the probative value of a dying declaration because the declarant at the time he made the statement was not under a consciousness of an impending death (See sec. 31, Rule 130, Rules of Court; *People vs. Saliling*, L-27974, February 27, 1976, 69 SCRA 427).

The trial court did not give any credence to Putian's alibi. It noted that he did not take the witness stand to refute Panimdim's declaration naming Putian as his assailant. The trial court surmised that through Putian's machinations some witnesses listed in the information did not testify for the prosecution.

Appellant Putian challenges the trial court's ruling that Panimdim's ante-mortem statement was part of the *res gestae* as envisaged in Rule 130 of the Rules of Court which provides:

"SEC. 36. Part of the *res gestae*.- Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as a part of the *res gestae*."

The *res gestae* rule embraces (a) spontaneous exclamations and (b) verbal acts (5 Moran's Comments on the Rules of Court, 1970 Ed., p. 362). The trial court admitted Panimdim's statement as a spontaneous statement made after the commission of a felony (*People vs. Talledo and Timbreza*, 85 Phil. 533).

Appellant Putian contends that Panimdim's statement was not spontaneous because it was "made several hours after the incident". He claims that the requisite that the declarant gave the statement before he had time to devise or contrive was not present in this case. Appellant further contends that because the statement is in narrative form, it is not the statement contemplated in the rule.

On the other hand, the Solicitor General points out that the statement was in question-and-answer form and that Panimdim's answers were spontaneous, candid, straightforward, direct, brief, concise, natural and devoid of any design or deliberation. He argues that the fact that Patrolman Yap added the surname Putian to the name "Guirmo", which was mentioned by the victim, did not destroy the probative value of the statement because the appellant could have shown that there were other person in the locality named Guirmo but he failed to do so.

The Solicitor General cites the ruling that a declaration made by a person immediately after being wounded, pointing out or naming his assailant may be considered as part of the *res gestae* and is admissible in evidence (*People vs. Alfaro*, 83 Phil. 85; *People vs. Ananias*, 96 Phil. 979).

We hold that the trial court did not err in characterizing Panimdim's statement as a part of the *res gestae* and as proving beyond reasonable doubt that Putian inflicted upon him the stab wound that caused his death five days

later in the hospital.

"Although a declaration does not appear to have been made by the declarant under the expectation of a sure and im-pending death, and, for that reason, is not admissible as a dying declaration, yet if such declaration was made at the time of, or immediately after, the commission of the crime, or at a time when the exciting influence of the startling occurrence still con-tinued in the declarant's mind, it is admissible as a part of the res gestae" (5 Moran's Comments on the Rules of Court, 1970 Ed. pp. 373-4, citing *People vs. Palamos*, 49 Phil. 601; *People vs. Portento*, 48 Phil. 971; *People vs. Reyes*, 52 Phil. 538).

Panimdim's statement was given sometime after the stabbing while he was undergoing treatment at a medical clinic. He had no time to concoct a falsehood or to fabricate a malicious charge against Putian (See *People vs. Ner*, L-25504, July 31, 1969, 28 SCRA 1151, 1161-2). No motive has been shown as to why he would frame up Putian.

Appellant's alternative contention that treachery was not proven and, therefore, he can be convicted only of homicide is meritorious. The evidence for the prosecution does not show the manner in which the wound was inflicted. Hence, the crime impu-table to appellant Putian is homicide (*People vs. Ramolete*, L-28108, March 27, 1974, 56 SCRA 66,80).

As correctly observed by the Solicitor General, the trial court erred in appreciating the aggravating circumstance of nighttime. Nocturnity is not aggravating in this case because it was not purposely sought by the offender to facilitate the commission of the crime.

The trial court's decision is modified. Appellant Putian is convicted of homicide. As the commission of the crime was not attended by any modifying circumstances, he is sentenced to an indeterminate penalty of ten (10) years of prison mayor as minimum to fifteen (15) years of reclusion temporal medium as maximum. The indemnity of P12,000 fixed by the trial court is affirmed. Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., concur. Even if he have some as to whether or not Exhibit C may be considered as part of the res gestae because of the seeming serenity and coolness of the deceased when the same was allegedly prepared, he believes that on the whole circumstantial evidence in the used suffices for the conviction of the appellant.

Antonio, J., no part.

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