

JESUS GERALDO AND AMADO ARIATE, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 173608. November 20, 2008

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-173608/>

CARPIO MORALES, J.:

Petitioners Jesus Geraldo and Amado Ariate were, by Information dated December 23, 2002 filed on December 27, 2002 before the Regional Trial Court of Surigao del Sur, charged with Homicide allegedly committed as follows:

x x x [O]n the 1[st] day of July, 2002 at about 3:00 o'clock early morning, more or less, at Sitio Tinago, Barangay Bunga, municipality of Lanuza, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and mutually helping one another, armed with xxx handguns and with intent to kill, did, then and there, willfully, unlawfully and feloniously sho[o]t one ARTHUR U.[1] RONQUILLO, thereby hitting and inflicting upon the latter wounds described hereunder:

POINT OF ENTRY:

1. Right lumbar area
2. Right iliac area

POINT OF EXIT

1. Left lateral area of abdomen
2. Right hypogastric area

which wounds have caused the instantaneous death of said ARTHUR U. RONQUILLO, to the damage and prejudice of his heirs in the following amount:

P50,000.00 - as life indemnity of the victim;
10,000.00 - as moral damages;
10,000.00 - as exemplary damages; and
40,000.00 - as actual damages.

CONTRARY TO LAW.[2]

At 3:00 a.m. of July 1, 2002, his wife, daughter Mirasol, and son Arnel, among other persons, on being informed of the shooting of Arthur Ronquillo (the victim), repaired to where he was, not far from his residence, and found him lying on his side and wounded. Although gasping for breath, he was able to utter to Mirasol, within the hearing distance of Arnel, that he was shot by Badjing[3] and Amado.

Petitioners who were suspected to be the "Badjing" and "Amado" responsible for the shooting of the victim were subjected to paraffin tests at the Philippine National Police (PNP) Crime Laboratory in Butuan City. In the PNP Chemistry Report No. C-002-2002-SDS,[4] the following data are reflected:

x x x x

TIME AND DATE RECEIVED

:

1105H 03 July 2002

REQUESTING PARTY/UNIT

:

Chief of Police

Lanuza Police Station

Lanuza, Surigao del Sur

SPECIMEN SUBMITTED

:

Paraffin casts taken from the left and the right hands of the following named living persons:

A = Jesus Geraldo Jr. alias Bajing

B = Amado Ariate

/x/x/x/ /x/x/x/

PURPOSE OF LABORATORY EXAMINATION

To determine the presence of gunpowder residue, Nitrates. /x/x/x/

FINDINGS:

Qualitative examination conducted on specimens A and B gave NEGATIVE results for powder residue, Nitrates. /x/x/x/

CONCLUSION:

Specimens A and B do not reveal the presence of gunpowder residue, Nitrates. /x/x/x/

REMARKS:

The original copy of this report is retained in this laboratory for future reference.

TIME AND DATE COMPLETED:

1700H 03 July 2002

x x x x (Underscoring supplied)

In a document dated July 1, 2002 and denominated as "Affidavit"[5] which was subscribed and sworn to before Clerk of Court II Manuel A. Balasa, Sr. on July 26, 2002, the victim's son Arnel gave a statement in a question and answer style that herein petitioners Jesus Geraldo and Amado Ariate were the ones who shot his father.

In another document dated July 4, 2002 also denominated as "Affidavit"[6] which was subscribed and sworn to also before the same Clerk of Court II Balasa on July 26, 2002, Mirasol also gave a statement in a question and answer style that her father uttered that herein petitioners shot him.

At the witness stand, Mirasol echoed her father's declaration that "Badjing" and "Amado" shot him. Arnel substantially corroborated Mirasol's statement.[7]

Upon the other hand, petitioners gave their side of the case as follows:

Petitioner Ariate, a barangay tanod of Bunga, declared that Barangay Kagawad Omboy Roz (Roz) woke him up at 3:00 a.m. of July 1, 2002 and informed him that the victim was shot. He and Roz thus borrowed a tricycle, proceeded to the crime scene and, along with others, brought the victim to the hospital where he was pronounced dead on arrival. Ariate submitted himself to a paraffin test and tested negative for gunpowder residue/nitrates.[8]

Petitioner Geraldo declared that he slept in his house located also in Barangay Bunga, Lanuza at 9:30 p.m. of June 30, 2002 and woke up at 4:00 a.m. the following day. At 6:30 a.m., on seeing many people in the vicinity of the 45-meter away house of one Josita Bongabong where the victim's body was found, he inquired and learned that the victim was shot. Policemen subsequently went to his house and advised him to take a paraffin test. He obliged and was tested at the PNP Crime Laboratory and was found negative for gunpowder residue/nitrates.[9]

In the course of the testimony of Ariate, his counsel presented the PNP Chemistry Report reflecting the negative results of the paraffin test on him and Geraldo. The trial court restrained the presentation of the document, however, as reflected in the following transcript of stenographic notes taken on March 21, 2003:

x x x x

Q

I am showing to you [Ariate] a copy of the result of the paraffin test attached to the record of this case.

COURT

Is it covered in the Pre-trial Order? You cannot do that. That is why I told you; lay your cards on the table.

ATTY. AUZA

May I ask for the court's reconsideration.

COURT

Denied. I am warning you, all of you.

ATTY. AUZA

With the denial of our motion for reconsideration, I move to tender exclusive evidence. He would have identified this result. The paraffin test, which [forms] part of the affidavit of this witness attached to the record of this case on page 29. May I ask that this will be marked as Exhibit "3" for the defense.

COURT

Mark it. (Marked).[10] (Underscoring supplied)

As shown from the above-quoted transcript of the proceedings, the trial court restrained the presentation of the result of the paraffin tests because the same was not covered in the Pre-trial Order. In the Pre-trial Order,[11] the trial court noted the parties' agreement "that witnesses not listed in this Pre-trial Order shall not be allowed to testify as additional witnesses." Significantly, there was no agreement to disallow the presentation of documents which were not reflected in the Pre-trial Orders. At all events, oddly, the trial court allowed the marking of the PNP Chemistry Report as Exhibit "3."[12]

When petitioner Geraldo's turn to present the same PNP Chemistry Report came, the trial court ruled:

COURT

That is the problem in the Pre-Trial Brief if the exhibits are not stated. I will set aside that Order and in the interest of justice I will allow the accused to submit, next time I will not any more consider exhibits not listed in the Pre-trial Order.[13] (Underscoring supplied)

The version of the defense was in part corroborated by witnesses.

The trial court, passing on the demeanor of prosecution witness-the victim's eight-year old daughter Mirasol, observed:

. . . She talks straightforward, coherent and clear, very intelligent, with child mannerism[s]. While testifying she was criss-crossing her hands, touching anything within her reach, innocent and simple, pressing of[f] and on her stomach but she talks with correct grammar. No doubt, this Court was convinced of her testimony which was corroborated by her brother Arnel Ronquillo.[14]

On the nature and weight of the dying declaration of the victim, the trial court observed:

A dying declaration may be xxx oral or in writing. As a general rule, a dying declaration to be admissible must be made by the declarant while he is conscious of his impending death. However, even if a declarant did not make a statement that he was on the brink of death, the degree and seriousness of the wound and the fact that death supervened shortly afterwards may be considered as substantial evidence that the declaration was made by the victim with full realization that he was in a dying condition; *People vs. Ebrada*, 296 SCRA 353.

Even assuming that the declaration is not admissible as a dying declaration, it is still admissible as part of the *res gestae* since it was made shortly after the startling occurrence and under the influence thereof, hence, under the circumstances, the victim evidently had no opportunity to contrive.[15] (Underscoring supplied)

Finding for the prosecution, the trial court convicted petitioners, disposing as follows:

WHEREFORE, finding the accused JESUS GERALDO y CUBERO and AMADO ARIATE y DIONALDO guilty beyond reasonable doubt of the crime of Homicide penalized under Article 249 of the Revised Penal Code and with the presence of one (1) aggravating circumstance of night time and applying the Indeterminate Sentence Law, the maximum term of which could be properly imposed under the rules of said code and the minimum which shall be within the range of the penalty next lower to that prescribe[d] by the code for the offense, hereby sentences each to suffer the penalty of TEN (10) YEARS and ONE (1) DAY of Prision Mayor minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Reclusion Temporal maximum as maximum, with all the accessory penalties provided for by law. To pay the heirs of the victim the amount of P50,000.00 as life indemnity, P100,000.00 as moral damages and P20,000.00 as exemplary damages. The claim for actual damages is denied, there being no evidence to support the same.

The bail bond put up by the accused Jesus Geraldo and Amado Ariate are ordered cancelled and to pay the cost.

SO ORDERED.[16] (Underscoring supplied)

The Court of Appeals, by Decision of June 30, 2006,[17] affirmed with modification the trial court's decision. It found that the trial court erred in appreciating nocturnity as an aggravating circumstance. And it reduced the award of moral damages[18] to P50,000, and deleted the award of exemplary damages. Thus the Court of Appeals disposed:

WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED save for the modification of the penalty imposed. Accordingly, accused-appellants are each hereby sentenced to suffer an indeterminate penalty of Eight (8) years, Five (5) Months and One (1) Day of prision mayor medium as minimum, to Seventeen (17) Years and Four (4) Months of reclusion temporal medium as maximum, with all accessory penalties provided by law, and to jointly and solidarily pay the heirs of the victim the amount of

P50,000.00 as indemnity and P50,000.00 as moral damages.

SO ORDERED.[19] (*Italics in the original*)

Hence, the present Petition[20] raising the following issues:

I

WHETHER OR NOT THE IDENTIT[IES] OF THE ACCUSED-APPELLANTS AS THE ALLEGED ASSAILANT HAS BEEN ADEQUATELY ESTABLISHED AS PER EVIDENCE ON RECORD?

II

WHETHER OR NOT THE IDENTIT[IES] OF THE ACCUSED-APPELLANTS HAD BEEN ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT?[21] (*EMPHASIS AND UNDERSCORING SUPPLIED*)

Petitioners argue:

With due respect, herein petitioners disagree with the holding of the Honorable Court of Appeals that "It is not necessary that the victim further identify that "Badjing" was in fact Jesus Geraldo or that "Amado" was Amado Ariate" because, [so petitioners contend], it is the obligation of the prosecution to establish with moral certainty that indeed the persons they identified as the as the assailant of Arthur O. Ronquillo were really the ones who perpetrated the crime.

Admittedly, prosecution witnesses were able to identify positively herein petitioners as the alleged assailant[s] of Arthur O. Ronquillo. But said identification is based on the assumption that they were the very same "BADJING AMADO" and/or "BADJING AND AMADO" referred to by their deceased father in his dying declaration.

What the Honorable Court of Appeals failed to consider is that, just because the victim declared that it was "BADJING AMADO" and/or "BADJING AND AMADO" who shot him does not necessarily follow that herein petitioners were really the perpetrators in the absence of proof that the "BADJING" referred to by him is Jesus Geraldo and that the "AMADO" is Amado Ariate. It would have been a different story had the prosecution witnesses [been] eyewitnesses because proof that the "BADJING AMADO" and/or "BADJING AND AMADO" referred to by the victim and the persons identified by the prosecution witnesses are the same is unnecessary.

Herein petitioners believe, that even assuming that there are no other "BADJING" or "AMADO" in the barangay, still it does not follow that the person[s] referred to by the dying declarant as his assailant were Jesus Geraldo alias "BADJING" and Amado Ariate alias "AMADO". Although, it is inconceivable how the Honorable Court of Appeals arrived at the said conclusion that there are no other "BADJING AMADO" and/or "BADJING AND AMADO" in the barangay absent any proof to that effect from the prosecution.[22] (*Underscoring in the original*)

The petition is impressed with merit.

The trial court relied on the dying declaration of the victim as recounted by his daughter Mirasol and corroborated by his son Arnel.

A dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.[23]

There is no dispute that the victim's utterance to his children related to the identities of his assailants. As for the victim's consciousness of impending death, it is not necessary to prove that he stated that he was at the brink of death; it suffices that, judging from the nature and extent of his injuries, the seriousness of his condition was so apparent to him that it may safely be inferred that such ante mortem declaration was made under consciousness of an impending death.[24] The location of the victim's two gunshot wounds, his gasping for breath, and his eventual death before arriving at the hospital meet this requirement.[25]

It has not been established, however, that the victim would have been competent to testify had he survived the attack. There is no showing that he had the opportunity to see his assailant. Among other things, there is no indication whether he was shot in front, the post-mortem examination report having merely stated that the points of entry of the wounds were at the "right lumbar area" and the "right iliac area." [26] "Lumbar" may refer to "the loins" or "the group of vertebrae lying between the thoracic vertebrae and the sacrum," [27] or to "the region of the abdomen lying on either side of the umbilical region and above the corresponding inguinal." [28] "Iliac" relates to the "ilium," which is "one of the three bones composing either lateral half of the pelvis being in man broad and expanded above and narrower below where it joins with the ischium and pubis to form part of the acetabulum." [29]

At all events, even if the victim's dying declaration were admissible in evidence, it must identify the assailant with certainty; otherwise it loses its significance.[30]

In convicting petitioners, the trial court, as stated earlier, relied on the testimony of the victim's daughter Mirasol, which was corroborated by her brother Arnel, that the "Badjing" and "Amado" mentioned by the victim as his assailants are herein petitioners whom they claimed to know because they live in the same barangay.[31] The Court of Appeals believed too the siblings' testimonies, holding that

It is not necessary that the victim further identify that "Badjing" was in fact Jesus Geraldo or that "Amado" was Amado Ariate. There was never an issue as to the identity of the accused. There was no other person known as "Badjing" or "Amado" in their neighborhood or in their barangay. Accused-appellants never presented any proof that a person in their locality had the same aliases or names as they. It is not uncommon that even an eight-year-old child can identify that Jesus Geraldo was known as "Badjing" and that Amado Ariate was "Amado." [32] (Underscoring supplied)

Contrary, however, to the immediately-quoted ruling of the appellate court, it is the prosecution, not petitioners, which had the burden of proving that petitioners were, at the material time, the only ones in the barangay who bore such nicknames or aliases. This, the prosecution failed to discharge.

When there is doubt on the identity of the malefactors, motive is essential for their conviction.[33] The Court notes that in their affidavits supporting the criminal complaint, the victim's wife and children Mirasol and Arnel proffered not knowing any possible motive for petitioners to shoot the victim.[34] At the trial, no evidence of any motive was presented by the prosecution. Petitioners' defense of denial and alibi thus assumes importance.

Specifically with respect to petitioner Ariate, the victim's wife admitted that Ariate accompanied her family in bringing the victim to the hospital.[35] While non-flight does not necessarily indicate innocence, under the circumstances obtaining in the present case, Ariate's spontaneous gesture of immediately extending assistance to the victim after he was advised by the Barangay Kagawad of the victim's fate raises reasonable doubt as to his guilt of the crime charged.[36]

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated June 30, 2006 affirming with modification the Decision of Branch 41 of the Surigao del Sur Regional Trial Court is REVERSED and SET ASIDE. Petitioners Jesus Geraldo and Amado Ariate are ACQUITTED of the charge of Homicide for failure of the prosecution to establish their guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is directed to cause the immediate release

of petitioners unless they are being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] "O" in some parts of the records.

[2] Records, p. 4.

[3] Sometimes spelled "Bajing."

[4] Exhibit "3," records, p. 29.

[5] Id. at 16-17.

[6] Id. at 19-20.

[7] TSN, March 12, 2003, p. 18.

[8] Supra note 4.

[9] Ibid.

[10] TSN, March 21, 2003, p. 7.

[11] Records, pp. 95-96.

[12] Supra note 3.

[13] TSN, April 10, 2003, p. 18.

[14] Records, p. 243.

[15] Id. at 243-244.

[16] Id. at 246.

[17] Penned by Justice Rodrigo F. Lim, Jr. with the concurrence of Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr. CA rollo, pp. 78-91.

[18] Id. at 90.

[19] Id. at 90-91.

[20] Rollo, pp. 3-14.

[21] Id. at 7.

[22] Id. at 9-10.

[23] Vide Rules of Court, Rule 130, Section 37; *People v. Manguera*, G.R. No. 139906, March 5, 2003, 398 SCRA 618, 626-627.

[24] Vide *People v. Macalino*, G.R. No. 79387, August 31, 1989, 177 SCRA 185, 193. Citations omitted.

[25] Vide *id.* at 193: "That his demise came swiftly upon his arrival at the hospital further emphasizes the victim's realization of the hopelessness of his recovery."

[26] Exhibit "A," records, p. 26.

[27] Dictionary.

[28] *Ibid.*

[29] *Ibid.*

[30] Vide *People v. Ador*, G.R. Nos. 140538-39, June 14, 2004, 432 SCRA 1, 21; *People v. Contega*, G.R. No. 133579, May 31, 2000, 332 SCRA 730, 741.

[31] TSN, March 12, 2003, pp. 7, 14, 18-19.

[32] Rollo, p. 25.

[33] Vide *People v. Rapeza*, G.R. No. 169431, April 4, 2007, 520 SCRA 596, 633. Citations omitted.

[34] Records, pp. 13-21.

[35] Vide TSN, April 10, 2003, p. 25.

[36] Vide *Buenaventura v. People*, G.R. No. 148079, June 27, 2006, 493 SCRA 223, 230-231.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.