

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOAQUIN GIL, DEFENDANT AND APPELLANT.*G.R. No. 4704. April 26, 1909*

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4704/>**CARSON, J.:**

The information filed in this case charges the accused, Joaquin Gil, with the crime of assassination, in that on the 27th day of December, 1907, in the city of Iloilo, he entered the office of Benito Lopez, governor of the Province of Iloilo, and then and there treacherously (con alevosia) and with deliberate premeditation fired four shots from a loaded revolver at the said Governor Benito Lopez, who was at the time engaged in the execution of the duties of his office as governor, and inflicted upon him four wounds from the effects of one or all of which he died on the 20th day of January, 1908.

It was conclusively proven that on the morning of the 27th of December, 1907, the accused entered the office of Governor Lopez, who was at that time alone in his office, engaged in the transaction of public business; that a short time thereafter four pistol shots were fired in the office, that a few moments later Lopez ran from the room in a wounded condition, pursued by the accused with a smoking revolver in his hand; and that Lopez died twenty-four days later as a result of the wounds received on that occasion. Gil, the accused, testifying in his own behalf, stated that he went to the government building on the morning in question for the purpose of taking out a license to keep in his possession a revolver; that learning that the governor was unoccupied he entered his office, took a few steps toward the governor who was seated at his roll-top desk, at the same time drawing the revolver from its holster, and with the pistol lying in his outstretched hand addressed to the governor the question: "May I?" (Se puede?); that the governor glanced up at him, with a "fierce" look on his face, and resumed his work at his desk; that nothing more was said or done for a considerable space of time, not less than five minutes, when the governor raised his head and said: "What do you want?" that he (Gil) then approached the desk where the governor was seated and told him that he had come to ask for the favor of a license for the revolver; that the governor forthwith, and without the slightest provocation on Gil's part, answered in an insulting manner, upbraiding Gil for his temerity in seeking a favor of a man whom he had denounced to higher authority, and wound up his insulting and abusive tirade by calling Gil an infeliz ("miserable creature," or as translated by counsel for defense "coward") and an hijo de puta (son of a whore); that he, Gil, then fell into a fit of ungovernable rage, which was the more intense because it is true that he was born out of lawful wedlock, and the governor having reached for the revolver, a struggle ensued during which the shots were fired, but that he, Gil, had so completely lost control of himself and was so filled with rage and indignation by the aspersions on his own and his mother's name and reputation, that he could not remember whether he himself had fired the shots which wounded the governor, or whether the pistol had been discharged accidentally in the course of the struggle for its possession.

The prosecution, on the other hand, insists that the shooting was the result of a deliberate, willful and premeditated plan; that Gil went to the government building on the morning, in question, not for the purpose of

securing a license, but with intent to kill his enemy, the provincial governor, incited thereto by intense hatred and animosity, which had been engendered by bitter personal and political quarrels; that his pretense of securing a license was a mere pretext adopted for the purpose of securing admission to the office of the governor, while the latter was alone; that when he entered the office the governor was seated, not at the desk as alleged by the accused, but at the end of a long table, where he was engaged in writing an official indorsement; that the accused crossed the room to a point about half way down the length of the table, where he stopped and immediately commenced firing at the governor, who being unarmed arose from his seat, and attempted to escape into the adjoining office, the accused pursuing him into a corridor connecting the two offices.

If the account of what occurred in the office of the deceased governor on the morning of the 27th of December, 1907, as told by the accused when testifying in his own behalf, be accepted as true, this testimony, taken together with the other evidence of record not in conflict therewith, would leave no room for doubt of his guilt of the crime of unlawfully taking the life of Benito Lopez, deceased, the commission of the crime being marked with certain extenuating circumstances, but unmarked either by "treachery" (alevosia) or "deliberate premeditation" (premeditacion conocida) as charged in the information; and as the slayer was alone with his victim when the fatal shots were fired no eyewitness could be called to the stand to contradict the testimony of the accused as to what occurred in the office from the time he entered until the explosion of the pistol shots attracted the attention of the other occupants of the building. In our opinion, however, the ante-mortem statement of the deceased, taken together with the other evidence of record, conclusively establishes not only the falsity in all its essential details of the account of the tragedy given by the accused, but also the fact that the crime was committed with treachery (alevosia) and deliberate premeditation (premeditacion conocida).

The dying declaration of the wounded man is set out in full in the following extract from the testimony of the fiscal of the Province of Iloilo (translated from the original Spanish), which was fully corroborated by the testimony of the justice of the peace of Iloilo:

"Q. Did you see Governor Lopez on the 20th of January, 1908? If so, where?-A. Yes, sir, at the Mission Hospital.

"Q. At what hour of the day did you see him?-A. I saw him between 7 and 8, or perhaps a little later.

"Q. In which part of the Mission Hospital did you see Governor Lopez?-A. In the room where they placed him and where Governor Lopez was lying in bed.

"Q. In what physical condition was Governor Lopez at the time you saw him?-A. We noticed that his breathing was so labored that it seemed to me that he was in a dying condition.

"Q. Who were in the room at the time?-A. I went in twice, the last time to get his testimony-I, Captain Lewis, Colonel La Garde, I, Arsenio Jimenez, the justice of the peace, a sick American woman, and Doctor Hall-those are the persons whom I saw.

"Q. What conversation did you have with Governor Lopez at that time, if any?

"(I object to that, as immaterial and irrelevant.

"Overruled.

"Exception.)

"A. I asked him if he was convinced that he would die and whether he had any hopes of living.

"Q. What was the first question you asked Governor Lopez?-A. 'Are you convinced that you are going to die, and have you no hopes of living?' He answered 'Yes.'

"Q. Was there any other conversation?-A. Yes, sir, I then asked him: 'Was there any provocation on your part against Gil?' 'None' I then asked him, 'Did you insult him?' He answered, 'Not at all.' I then finally asked him, 'How did it happen?' He answered, 'Gil came in and fired at once.' In view of the fact that he had almost said the last word, and was breathing in more labored fashion, and that he bade us 'good by,' we could not proceed [to question him] because we thought he was dying.

"Q. Was this testimony put in writing?-A. No; because we had sent for a stenographer as we had been told that he could only live a few minutes, and the stenographer did not arrive.

" (I object because it is not an answer to the question.

"It is not sustained.

"Exception.)

"A. We had sent for a stenographer but, in view of the fact that he was long in coming and the physicians had told us that in all probability he would not live more than 2 to 5 minutes, as soon as the justice of the peace arrived, we entered the room in order to take the testimony."

As will be seen, the dying declaration of the wounded man flatly contradicts the testimony of the accused as to the alleged provocation and insult;-the chief bulwark of the defense against the evidence of the prosecution tending to prove the existence of deliberate premeditation; and it as flatly contradicts the statement of the accused, that he did not fire the fatal shots for some five minutes after he entered the office and not until a wordy quarrel had arisen during which his opponent had full opportunity to assume an attitude of defense, of which he availed himself;-the chief bulwark of the defense against the evidence of the prosecution tending to prove that the accused committed the crime with "treachery" (alevosia), in that he opened fire on his unarmed and defenseless victim without giving him time or opportunity to offer resistance. But it must be admitted, as claimed by the counsel for the defense, that the account of what occurred, as given by the dying man, is so meager and incomplete that, in itself, and if it were not corroborated by other evidence of record, as will hereinafter appear, it would be by no means sufficient to sustain a finding of the falsity of the account given by the accused.

The trial court found that it was conclusively established by the testimony of the witnesses who saw the accused enter the governor's office and later heard the shots fired, that the shooting took place within a few moments after the entry of the accused, the interval not being more than long enough to give the accused time to walk from the door to the point at the side of the table from which, as claimed by the prosecution, the other evidence in the record shows the accused fired at least one shot. There appears to be some uncertainty in the testimony of some of the witnesses as to the precise duration of this interval of time, but we think that the weight of the evidence fully sustains this finding of the trial court and corroborates the truth and accuracy of the ante-mortem statement, while it conclusively demonstrates the falsity of the testimony of the accused in this regard.

We think, too, that there can be no reasonable doubt of the falsity of the statement of the accused that when he entered the office the governor was seated, writing, at a roll-top desk which stood in one corner of the office, the truth being that he was seated at the end of the long table mentioned in the following extract from the testimony of Captain Lewis, who examined the office immediately after the shooting:

"Q. You may examine this plan and state if it represents accurately the governor's and secretary's office in the provincial building at Iloilo?-A. I can not say if it is exact because I have not measured it, but as far as I know it is correct. I have been in the governor's office a number of times and I noted the different pieces of furniture on the day the governor was shot; they appeared that day as they are here on this map.

"Q. The table at the point A in the governor's office-I will ask you if it occupied the same relative position as is represented on this map, on the 27th day of December, 1907?-A. Yes, sir.

"Q. The desk C in the governor's office-I will ask you if it occupied the same relative position as is designated on this plan, on the 27th day of December, 1907?-A. It did.

"Q. In the secretary's office the desk at the point P, designated as the secretary's desk-I will ask you if that desk occupied the same relative position in the secretary's office as is designated on this plan, on the 27th of December, 1907?-A. It did.

"Q. I will ask you if the desk R in the secretary's office occupied the same relative position as it does on this plan-on the 27th of December, 1907?-A. Yes, sir, it did.

"Q. And the desk S, did it occupy the same relative position on the 27th of December, 1907?-A. It did.

"Q. When you returned to the governor's office or when you went to the governor's office on the 27th of December, 1907, state whether or not you observed anything on and about the table A. If so, what?-A. There was a blotter at the end of the table where the circle marked D and on top of the blotter there was an indorsement, or communication that had two indorsements on it, and a little farther up on the blotter in front of the chair was the envelope that had been opened on the end, addressed to the Honorable Governor of Iloilo Province; a little nearer the chair was a scratch pad lying down with a sheet something similar to the size of regular legal size typewriting paper-had part of an indorsement written on it-with ink, in the governor's handwriting and as I read it-it was in Spanish, and as I read it-'Respectfully returned to the Executive Secretary of the Philippine Islands, inviting his attention to the preceding indorsement' with the date of December 27, 1907, at the top; the pen was lying down about the center of this piece of paper as if dropped, judging from the drop of ink under the point of the pen to the right at the margin of the sheet of paper which he was writing on-partly on the sheet and partly on the blotter; there were other pieces of paper lying around and other correspondence that had not been opened.

"Q. State whether or not when you made that examination there was a chair near the end of this desk at the point marked D.-A. Yes, sir; facing the desk, inclined to the left of the position of a man sitting-as if some one had gotten up and passed to the left.

"Q. What, if anything, did you find or observe upon the desk C?-A. There were some books lying on top of each end of the desk and in the center there was a straw hat that I recognized as being that of the governor by seeing the name written inside of the sweat band; it was a telescope hat, and on top of it there was a paper case; roller-top desk, and sitting at the back of it was a revolving office chair."

That at least one shot was fired at the deceased as he was in the act of rising from his seat at the end of the long table appears from the foregoing extract from the testimony of Captain Lewis, read together with the following extract from the testimony of Capt. Charles Gearhardt, of the United States Army, which was fully corroborated by the testimony of Captain Lewis (both of these witnesses being men of long experience in handling firearms) and by the testimony of Mr. T. L. Wilson, treasurer of the province, who with Captain Lewis carefully examined the position of the bullet mentioned in Captain Gearhardt's testimony, before it was extracted from the wall of the office in which it was imbedded:

"A. I will state that I first examined the hole and found that the bullet had entered not squarely into the wall but at an angle, and it is plain to be seen by examining it by this magnifying glass that a part of the mortar of the wall has come away and that the right-hand edge of it has crumbled somewhat. Examining the bullet you find that it has mushroomed some, but it just fits-this bullet was handed to me as the one taken out of the hole in the wall-and setting it in and holding it in place it fits very well; to determine the angle by the bullet from an examination by the eye and using the magnifying glass and setting in the pencil which I have in my hand I determined the angle to be about as I have it here now. I also verified this angle afterward, and by setting the bullet in and aiming that pencil so that by having the pencil in place as I have indicated and following its trace back through the air as it naturally would have gone I determined that, within narrow limits, to the best of my

judgment, the pistol was held by some one standing about in this position.

"MR. BLANCHARD (interrupting). About the center of the south side of the table marked A.

"THE WITNESS (continuing). The actual position held by the party firing the pistol would depend considerably upon his height, for this line I have traced simply traces for one of about my height.

"MR. BLANCHARD. I would suggest that the attention of Captain Gearhardt be called to the defendant as to his size,

"THE WITNESS (after standing up alongside of defendant). The shoulders are almost the same.

"A. (continued.) Within limits, due to judgment and opinion, I should say that that is the path that the bullet went over when it entered the wall-right over about here.

"Q. If a man were sitting in that chair-the chair marked D-at the time the bullet was fired from the position you have indicated, and the bullet should pass through the right shoulder of the man, coming out at the back, in what position in your opinion, would be the man shot?-A. I should say that the man was not sitting in the chair at the time he was shot; he was in the act of rising or had partially risen."

Four shots were fired, all of which took effect in the body of the deceased, and if the testimony of these witnesses be accepted as correct (and the trial judge so accepted it after a personal examination of the relative positions of the table, chair, and the hole in the wall with the bullet placed therein as it was found immediately after the shooting), there can be no reasonable doubt that at least one shot was fired while the governor was in the act of rising from his seat at the end of the table and before he had an opportunity to take any measures to defend himself.

The defense put one witness on the stand to corroborate the testimony of the accused as to the insulting language addressed to him, and this witness swore that from an adjoining office he heard the governor make use of the word *infeliz* ("contemptible creature" or "coward") and immediately thereafter the movement of a chair being pushed back and the explosion of the pistol shot, but that he did not hear the governor make use of the words *hijo de puta*. The prosecution offered a number of witnesses who, at the time of the shooting, were in the same office with the witness for the defense and in other offices adjoining the governor's office, and the testimony on this point tends strongly to prove that if the insulting language quoted by the accused was used at all, it was used in a voice so low that it could not be heard by anyone in the adjoining offices, although these offices were connected with the governor's office by open doors and windows through which the human voice could readily be heard, the passage of sound being impeded merely by light screens intended to cut off the view from one office to the other. This testimony of itself is of course not sufficient to sustain a finding that such language was not in fact used; but, taken together with the positive denial contained in the ante-mortem statement, and keeping in mind the proven falsity of other essential details of the testimony of the accused, the proof that shots were fired almost immediately after the accused entered the office, and the fact that the witness who claims to have heard the word *infeliz* did not hear the words *hijo de puta*, although he says that the governor was speaking in an "altered" (excited) tone of voice; we think that the trial court properly found that no such series of insults had been directed to the accused by the deceased as were claimed by him, and that beyond a reasonable doubt, the words *hijo de puta* were not used at all; and this conclusion is confirmed by the consideration of the inherent improbability of his testimony in this regard, for it is difficult to believe that Governor Lopez, if he were in his right senses, would, without provocation, hurl such deadly insults at his enemy while that enemy was standing before him with a loaded revolver in his outstretched hand.

Thus far we have limited ourselves to a review of the evidence which tends to corroborate the wounded man's dying declaration that his assailant entered his office and without provocation immediately (*en seguida*) began

firing upon him, and to contradict the testimony of the accused as to what occurred in the office at the time when the shooting took place. We shall now proceed to summarize the great mass of testimony which in our opinion tends directly to establish the contention of the prosecution that the crime was the result of a deliberately premeditated plan.

This witness, Anastasio Pefias, testified that he overheard the accused, just before he entered the government building, tell his carromato driver to wait for him, but if he heard shots to drive home at once. Commenting on the testimony of this witness, the trial judge says, "it is denied by the accused and strenuously attacked by his counsel" but "in the opinion of the court it is true," and "the court believes this witness told the truth." We find nothing in the record which would justify us in doubting the truth of the testimony of this witness or the correctness of the findings of the trial judge in that regard.

Ramon Lopez, a brother of the deceased, who rushed into the office immediately after the shots were fired and found the accused and his brother alone in the corridor running round the building, swore that when he came up to them, and before he snatched the revolver from the accused, he asked what was the matter (*que esta pasando?*), whereupon the accused exclaimed: "For some time past I have wanted to kill you-I have wanted to kill you!" (*Hacia ya tiempo que queria matarte-yo queria matarte.*)

Jose Santiago, secretary of the provincial board of Iloilo, to whom the accused in his testimony referred as his personal friend before the incident took place, swore that after the accused had been arrested and taken to the provincial jail in the lower part of the government building, he (the witness) was directed by the provincial treasurer to go to see the accused and find out if he needed anything, and that when he found the accused in his cell, he asked him what had happened, to which the accused replied: "I had thought this thing out already." (*Ya tenia eso pensado.*)

Captain Lewis testified that, some little time after the shooting, the accused in his cell stated to him (in the language of the witness), "that Governor Lopez had been instrumental through his brothers in trying to get a woman by the name of Paz Buenaflor to make certain allegations against him in the Court of First Instance, since he had married the daughter of Angel Corteza, in Molo" (about two weeks prior to the shooting), "and for that reason he stood under the abuse of the governor as long as he could, and that he told his *mujer* (I interpreted that for his wife) the night before, that he was going to see the governor the following morning and have a settlement."

The accused vehemently denied having made the statements testified to by Captain Lewis, Santiago and Ramon Lopez, and swore that he could not have made such statements, because, while he was politically opposed to Governor Lopez, their personal relations had been friendly and he had harbored no such feelings of hatred and animosity toward Lopez prior to the shooting as those statements would indicate. We are convinced, however, that whatever friendly personal relations may have at one time existed, those relations must have been strained to the breaking point by the intensely bitter and acrimonious political quarrel which gave rise to the formal charges against Governor Lopez of official misconduct, bribery, and other criminal offenses which were submitted by the accused to higher authority and pressed by him in the official investigation which followed, during the month prior to the shooting; and it is hardly credible that such friendly personal relations could have survived the filing of these charges by the accused; and that the differences between the accused and Governor Lopez were not wholly impersonal and limited to political issues is made very clear by the testimony of the father-in-law of the accused, who was called as a witness for the defense, and swore that about a month before the shooting and a short time prior to the marriage of the accused with the daughter of the witness, Governor Lopez tried to get the witness not to consent to the marriage, telling him that Gil was a bad man and reminding him of Gil's "mother's antecedents."

While it is possible that Ramon Lopez, the brother of the deceased, might have been actuated by sentiments of revenge in testifying as he did, no such motives can be attributed to either Lewis or Santiago, and we think the trial court properly declined to believe the vehement denials of the accused, and rightly accepted the testimony of these witnesses as a true and correct relation of the substance of the statements made by him, for there is nothing in the record to justify⁴ the contention of the defense that they deliberately, willfully and maliciously invented these statements; and the meaning and effect of their testimony can not be softened by any suggestion of misunderstanding or mistake.

The fact that the accused, when he entered the provincial building on the morning in question, anticipated the firing of pistol shots, and his admissions that what occurred had been thought out or planned before it took place, and that stung by real or fancied personal wrongs he had told his wife the night before that he would have a settlement with the governor on the following morning; convince us, beyond a reasonable doubt, that his real purpose in seeking admission to the governor's office was not to secure a license for his pistol, but to wreak vengeance on his personal and political enemy; and this conclusion is confirmed by an examination of the evidence of record as to the circumstances under which the pretended application for a license was made, the manner in which he claims to have submitted his application, and his conduct immediately after the shooting took place.

The accused himself admitted on the witness stand that he had owned the pistol in question since the days of the insurrection (six years, more or less) without a license, and that it had been under his immediate control for more than six months prior to the shooting; that on one occasion he had aided a friend in securing such a license from the provincial inspector of Constabulary, and that while he did not know whether the provincial inspector was authorized to grant such licenses without the intervention of the provincial governor, he had made no effort to learn whether this was the fact or not. Even in the absence of evidence to the contrary, it would be difficult to believe that the accused, in good faith, walked into the office of his enemy, and suddenly presented himself before that enemy with his loaded revolver in his extended right hand, merely for the purpose of asking for a license therefor, and this without taking the trouble to inquire whether the license could be obtained from another official who, he had reason to believe, had authority to issue it, and with whom he had no quarrel; and the air of improbability of the story is increased when it is remembered that although he had owned the revolver for many years he did not find it incumbent upon him to make an application for a license until the precise moment when his personal and political quarrel with the deceased was at its height; and that, despite the existence of that quarrel, his alleged desire to obtain the license at that particular time was so great that, although it was necessary for that purpose to ask an official favor of his enemy, he could not await the resolution of superior authority, which was still pending, as to whether his enemy's reelection to office would be affirmed, in view of the charges filed against him.

It also appears from the record, on the testimony of irreproachable witnesses, that immediately after the shooting and before the accused was taken to the provincial jail, he was apparently in a state of tense mental exaltation, and gave vent to cries to those around him which would tend to disclose that he imagined that he had just done a highly patriotic deed, justified by the official misconduct of the man he had shot. Over and over again he exclaimed the words "Justicia! Justicia!" (Justice), declaring that what he had done had been done for Justicia, and that he had no wish or desire to make his escape; in a loud voice he cried: "Down with the tyrant!" (abajo con el tirano!), and declaimed incoherently on the duties of a patriot; and finally, as he went downstairs under arrest, he called to those around him: "Let us see if any of you will follow in my footsteps! (A ver si algunos de ustedes vienen en pos de mi!) Such language, used at such a time and under such circumstances, would seem to be the ravings of a man who had keyed himself to the commission of a desperate act by brooding on some real or fancied political wrong rather than the cries of one who had just slain his enemy in a sudden quarrel precipitated by

unexpected and unprovoked insults.

Other than the testimony of the accused himself, no evidence appears of record which in our opinion tends in anywise to cast a doubt upon the truth and certainty of the findings hereinbefore set out, except only the testimony of the witnesses who swore that on the morning in question, the accused, upon entering the government building, bore himself so as not to give rise to suspicion of anything exceptional or extraordinary in his conduct, and that in conversing with the clerks in the governor's anteroom he indicated some indisposition to go in person to the office of the governor to ask for the license for which he said he had come. We think, however, that, granting that the conduct of the accused was as calm and collected as it was described by the witnesses and that he indicated an apparent unwillingness to approach the governor in person, this conduct, in the light of the other evidence of record, must be taken to be the result of an effort to live up to the requirement of his preconceived plan to gain admission to the office of his known enemy on the pretense of seeking a license for his revolver.

Counsel for appellant lays great stress on the testimony of the witness who stated that he heard the deceased make use of the word *infeliz* just before the shooting took place, and the testimony of one of the counsel for the defense, who testified that soon after the shooting, while the accused was yet wild with excitement, the witness caught him by the arm and shook him to bring him to his senses, where-upon the accused exclaimed: "He called me an *infeliz*!"-"Who am I that I should be called an *infeliz* by a governor?" In our opinion, however, this evidence in no way weakens the force of the case made out by the prosecution; and indeed the evidence of the witness who testified that he heard the word *infeliz* used before the shooting, if it is true tends rather to contradict the story of the accused in one of its most essential details, and to confirm the theory of the prosecution as to the manner in which the shooting took place. This witness testified as follows:

"I heard the governor's voice in a somewhat altered tone. * * * After a few moments I heard a word, among other words *infeliz*, and almost in the same act I heard a movement of a chair as if someone were getting up, and at the same moment I heard shots and that was when we began to run."

As we have stated heretofore, this evidence by no means corroborates the testimony of the accused as to the alleged series of insults Reaped upon him by the deceased; and indeed when it is remembered that the accused testified that the exclamation *hijo de puta* immediately followed the use of the word *infeliz*, the fact that this witness for the defense heard the word *infeliz*, and yet did not hear the words *hijo de puta*, a phrase which could not fail to strike the ear of one who heard the word *infeliz* if both were in fact used, strongly corroborates the other evidence of record which tends to prove that the deceased did not make use of the phrase *hijo de puta*; and so far as the apparently self-serving statement of the accused made soon after the shooting, which was introduced by the defense, was admissible at all, it tends to further corroborate this conclusion, for the reference to the use of the word *infeliz* and the failure to refer to the really grave insult at such a time, strongly suggests that the addition of the latter to the language put in the mouth of the deceased by the accused, was an afterthought falsely injected to give an appearance of truth to his story of a sudden outburst of uncontrollable passion.

It will be observed also that the witness for the defense testified that "almost at the same moment" as he heard the word *infeliz* he heard "a movement of a chair as if some one were getting up," and "at the same moment" he heard shots. This testimony fully corroborates the circumstantial evidence introduced by the prosecution, which tends to prove that at least one shot was fired while the deceased was sitting in or rather in the act of rising from his chair, and clearly contradicts the statement of the accused, that all the shots were fired during a struggle with the deceased, after the latter had attempted to take possession of the revolver.

It well might be that Governor Lopez, looking up from his desk where he was engaged in the transaction of public business and wholly unarmed, and suddenly discovering his deadly enemy leveling a pistol at his head, should have exclaimed *infeliz* ("miserable creature," or as translated by counsel for the defense, "coward") as he leaped

to his feet, but proof that he did make use of this particular word, without the additional phrase mentioned by the accused, "almost in the same moment" as the shot was fired, in no wise supports the story told by the accused, nor does it explain, nor justify, nor excuse his murderous assault.

In the light of all the evidence of record, the substance of which is hereinbefore set out, we are satisfied that it is not true, as claimed by the accused, that having gone to the office of the governor merely for the purpose of seeking a license for his revolver, he made use of the revolver in a sudden burst of passion aroused by the unprovoked insults heaped upon him on that occasion; and we are of opinion that the evidence sustains a finding that his real purpose in going to the government building on the morning in question was to take the life of his enemy; that the plan so to do originated in his mind not later than the night before the morning on which the shooting took place; that that plan was persisted in from the early hour at which he left his house until the time when he gained admission to the office of the governor, a period of time long enough to justify us in holding that the crime was committed with deliberate premeditation (*premeditacion conocida*), because, in a judicial sense, it afforded full opportunity for meditation and reflection, and was amply sufficient to allow his conscience to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings; this being the measure of the period of time necessary to justify the inference of deliberate premeditation, as laid down in the case of the *United States vs. Ricafor* (1 Phil. Rep., 173), adopting the rule laid down by the supreme court of Spain in its *sentencia* dated November 10, 1894.

We are satisfied, too, that the crime was committed with treachery (*alevosia*), because the evidence of record leaves no room for doubt that, actuated by the hatred engendered by his personal and political quarrel with his enemy, he sought his enemy alone in his office, and upon securing admission opened fire upon his victim, who was at the moment engaged in the transaction of public business and wholly unarmed, without giving him an opportunity to resist or to defend himself.

Counsel for the defense urges that the trial court erred in admitting the dying declaration of the deceased governor, on the ground that its admission was in violation of the inalienable right of the accused to be confronted by the witnesses against him, guaranteed by the provisions of section 5 of the Philippine Bill and by the provisions of paragraph 5 [of section 15] of General Orders, No. 58. It must not be forgotten, however, that the guaranties extended by Congress to the people of the Philippine Islands are to be interpreted as meaning what the like provisions meant when Congress made them applicable to these Islands (*Serra vs. Mortiga*, 204 U. S., 470; also reported in 11 Phil. Rep., 762). And in the United States, the constitutional clause providing for the confrontation by the accused with the witnesses for the prosecution, purported merely to adopt the general principle of the hearsay rule, and to secure to the accused the right to cross-examine the infrajudicial witnesses against him, and did not purport to enumerate all of the exceptions and limitations to that principle:

"There were (at the time of the adoption of the Constitution of the United States), a number of well-established exceptions, and there might be others in the future; the Constitution indorsed the general principle (of the hearsay rule), subject to these exceptions; merely naming and describing it sufficiently to indicate the principle intended—just as the brief constitutional sanction for trial by jury did not attempt to enumerate (all) the classes of cases to which that form of trial was appropriate nor the precise procedure involved in it, and has always been construed as not absolute and universal in effect, but as subject to the limitations and unessential variations understood to accompany that institution." (*Greenleaf on Evidence*, Sixteenth Edition, Vol. 1, par. 163 and p. 283; *Campbell vs. State*, 11 Georgia, 374; *State vs. McO'Brien*, 24 Mo., 416; *Robertson vs. Baldwin*, U. S., 17 Sup. 326.)

The American authors of the Philippine Bill and of General Orders, No. 58, must be presumed to have borrowed the provisions of the Constitution of the United States securing to accused persons the right of confrontation and cross-examination of the witnesses against them, subject to the well-established exceptions which have always

been recognized under the rule as laid down by the Constitution of the United States, and it is clear that these provisions were not intended to render inadmissible dying declarations in criminal cases touching the circumstances leading up to the death for which the prosecution is instituted, for such declarations have always been regarded as an exception to the general rule rejecting hearsay evidence, on the general principle, as laid down by Lord Baron Eyre, "That they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. A situation so solemn and so awful as to be considered by the law as creating an obligation equal to that which is imposed by a positive oath in a court of justice." The rule is the same as the rule of the Roman Civil Law, "Morti proximum, sive moribundum, non praesumendum est mentiri, nec esse immemorem salutis aeternae; licet non praesumatur semper dicere verum." (Mascard, De Probat. Concl., 1080; U. S. vs. Montes, 6 Phil. Rep., 443.)

It has been suggested, however, that since a specific exception is found in General Orders, No. 58, to the rule touching the confrontation of witnesses, as therein laid down, the expression of this exception should be taken to exclude all other exceptions. The exception relied upon is as follows :

"Where the testimony of a witness for the prosecution has previously been taken down by question and answer, in the presence of the accused or his counsel, the defense having had an opportunity to cross-examine the witness, the deposition of the latter may be read, upon satisfactory proof to the court that he is dead or insane, or can not with due diligence be found in the Islands."

It is very clear, however, that this express provision for an exception to the general rule, which has not been universally recognized in those jurisdictions where it has not been provided for by express legislation, can by no means be regarded as intended to exclude the various general exceptions to the hearsay rule which have always been recognized despite the existence of constitutional provisions securing the rights of accused persons to be confronted by, and to cross-examine the witnesses for the prosecution.

That the declarant was conscious of his impending death, and that he spoke with the prospect of "almost immediate dissolution" confronting him; that he understood the meaning and effect of his statements; and that he knew he was addressing the law officers of the town and province wherein he lived, and informing them as to the circumstances which led up to his death, are facts which we think are sufficiently established by the evidence of record: and the admissibility of the dying declaration, resting, as it does, exclusively on the ground that the declarant was "in extremis" at the time it was made, is in nowise affected by the failure of the law officers to secure the more formal and detailed statement contemplated in the above-cited provision of General Orders, No. 58, which they might perhaps have been able to obtain had they not been misled by the opinion of the attending surgeons that the wounded man would probably recover.

Counsel for appellant also insist that the evidence of Captain Gearhardt and Captain Lewis as to the probable trajectory of the bullet, which was found in the wall of the office, was inadmissible, on the ground that these witnesses did not properly qualify as experts; and comment at considerable length on the worthless character of the testimony of experts as rendered in judicial investigations generally. We agree with counsel that the admission of this class of testimony, partly because of the want of satisfactory standards of expertness, partly because of its too frequently conflicting and unreliable character, and partly because of its tendency to prolong trials and increase the expense incident thereto, leads to abuses which renders its value as an aid to investigation of truth in courts of justice exceedingly doubtful and problematical. And yet the need for such testimony appears to have justified its continued use, and we can not say that it does not in some cases serve a useful purpose, when its inherent weakness and danger of abuse are kept constantly in mind.

An expert has been defined to be one possessing, in regard to a particular subject or department of human activity,

knowledge not usually acquired by other persons (12 Am. & Eng. Enc. Law, 2d Ed., 424); and under this definition we think that Captain Gearhardt and perhaps Captain Lewis may fairly be classed as experts, as to questions touching the course and effect of bullets shot from small arms at moderate ranges, their long experience in the use of such arms, with the professional obligation imposed upon them to study and familiarize themselves with their use and manipulation as the tools of their trade, having, presumably, given to them a knowledge in such matters not usually acquired by civilians. It is true that the frank admissions by these witnesses of their inability to solve a number of hypothetical problems of a technical nature in the science of ballistics (problems which in the present status of human knowledge on that subject may or may not be capable of satisfactory solution) would indicate that, unlike many more pretentious expert witnesses, there are limitations to the extent of the knowledge they claim to possess; but we think that, under the principles laid down in the following extract from Greenleaf, their capacity as expert witnesses to answer the questions propounded to them as to the probable trajectory of the bullet found in the wall of the office was not affected by such confessed limitations to the extent of their knowledge and to their capacity to answer every question propounded to them by opposing counsel:

"It follows that there are no fixed Classes of expert persons, in one of which a witness finds himself and1 remains permanently. A person may be sufficiently skilled for one question, and totally unqualified for the next. He may be competent to say whether the deceased had gray hair, and incompetent to say what killed him; competent to say whether the deceased was asphyxiated by gas, and incompetent to distinguish between coal gas and water gas; competent to say whether a hatchet was sharp, and incompetent to tell whether a stain upon it was of human blood. The witness may from question to question enter or leave the class of persons fitted to answer. It is desirable to appreciate that expert capacity is a matter wholly relative to the subject of the particular question; that therefore the existence of the capacity arises in theory as a new inquiry from question to question; and that a particular person is not to be thought of as objectively or absolutely an expert, in the sense that he is absolutely a German or a negro or six feet high." (Greenleaf on Evidence, 1st vol., 16th ed., par. 430 (a), p. 523.)

But whatever may be the value which should be given to the expert opinions expressed by these witnesses, and even were we to disregard these opinions altogether, the trajectory of the bullet to which they testified must be taken to have been established to the satisfaction of the trial judge and to ours (so far as it was proper for him to rely upon his own opinion based on the facts proven, rather than on the opinion of expert witnesses) by the ocular examination of the scene of the tragedy made by him at the request of counsel for defense, the facts upon which the experts based their opinions having been submitted to him on that occasion in such manner as to afford him full opportunity to draw his own conclusions without regard to the opinion of the witnesses.

On appeal, as well as in the court below, the conduct of Captain Lewis, and the trustworthiness of his testimony, have been attacked with no little severity, but commenting on these criticisms the trial judge in his decision observes that "Captain Lewis as senior inspector of Constabulary has simply performed his official duty as far as his action has been apparent to this court, and he has merited commendation instead of blame for the faithful performance of his official duty;" and while we agree with counsel for the appellant that Captain Lewis's official position having imposed upon him the duty of securing testimony and otherwise aiding the prosecution, a due regard for the frailties of human nature imposes on us the obligation of scrutinizing his testimony with the utmost care, lest by any chance his interest as a prosecutor might have biased his feelings as a disinterested witness; and while we recognize that, under the circumstances, too much reliance should not be placed on his opinions or his recollection of facts as to which mistake or misunderstanding might lead him astray; nevertheless we find nothing in the record which would justify us in believing that there is any reason to doubt his honesty of intention or the truth or accuracy of his testimony as to facts which mere bias on his part would not be likely to distort.

It appearing from the evidence of record that the accused was guilty, as charged, of unlawfully taking the life of

Benito Lopez, and that the crime was committed with treachery (alevosia) and with deliberate premeditation (premeditacion conocida), and that his victim was engaged in the performance of the functions of his office, as governor of the Province of Iloilo, at the time when the crime was committed, and the commission of the crime not being marked by any extenuating circumstance, the accused was properly convicted of the crime of assassination, and the penalty prescribed by law was properly imposed in its maximum degree. The sentence of death imposed by the trial court should, therefore, be, and is hereby, affirmed, with the costs of this instance against the appellant.

Arellano C. J., Torres, Johnson, and Willard, JJ., concur.

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.