

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS
AGUEDO NARTEA, ET AL., DEFENDANTS. ACUEDO NARTEA,
DOMINGO NAETEA, AND POTENCIANO NASTEA, APPELLANTS.**

G.R. No. 48811. October 23, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

The three above-named appellants, who are brothers, together with their cousin Jesus Nartea, were accused and convicted of murder in the Court of First Instance of Leyte and sentenced; Domingo Nartea and Potenciano Nartea, to reclusioTi perpettta; Aguedo Nartea, to an indeterminate penalty or from fourteen years, eight months, and one day to twenty years of reclusion temporal; the three accused were also sentenced jointly and severally to indemnify the heirs of the deceased Benito Graban in the sum of P2,000 and to pay three- fourths of the costs; and Jesus Nartea, being a minor of fifteen, was ordered confined in Welfareville until he reaches the age of majority. The latter did not appeal.

At about eight o'clock in the morning of September 26, 1940, Benito Graban, an old man of about seventy years, received four bolo wounds: one on the back in the lumbar region, eight inches long; one on the left hand, amputating or wounding all the fingers except the thumb; one on the right wrist; and one at the left inguinal region. The aggression took place in the house of his nephew Benedicto Naagas in the sitio of Tangnan, barrio of Bislig, Carigara, Leyte. At that time Gaudiosa Balais, wife of Benedicto Naagas, and Fernanda (alias Alexandra) Canete, common-law wife of Benito Graban, were present in the house.

Within about an hour Sergeant of Police Benito Arintok arrived at the scene in response to the report made by Gaudiosa Balais, who had run to the municipal building immediately after the wounding. Sergeant Arintok found Benito Graban lying flat on the ground behind the kitchen, and interrogated him as follows:

"Q. What is your name?—A. Benito Graban.

"Q. Who wounded you?—A. Didoy Nartea, Igoy Nartea, Potin Nartea, Jesus Nartea.

"Q. How do you feel due to your wounds, will you die?—A. I do not know this.

"Q. Why were you wounded?—A. I am art guilty for any, I just keep looking for my means of living as I am too old."

On the way to the municipal building, the Justice of the Peace Rufino A. Astorga met the sergeant of police and the wounded man, and the latter was also by him interrogated as follows:

"P. ¿Cual es la gracia de usted?—R. Benito Gtaten.

"P. ¿Quien le hirio a usted?—R. Potin, Igoy, Iddy.

"P. ¿Cuantos hirieron a usted?—R. Cuatro.

"P. ¿Por que le hirieron a usted?—R. No se, yo no tengo culpa.

"P. ¿Con que motivo?—R. No me di cuenta.

"P. ¿Donde le hirieron a usted?—R. En la casa de Benedicto Naagas.

"P. ¿Usted podra sobrevivir o morir usted?—R. No se, no puedo precisar.

It is not disputed that Didoy or Idoy is the pet name for Aguedo; Igoy, for Domingo; and Potin, for Potencismo.

In the evening of the same day Benito Graban died of hemorrhage.

It is also an undisputed fact that two days before, that is to say, on September 24, 1940, Edefonso (also referred to as Alfonso) Nartea, appellants' father, was killed by Fidel Naagas, brother of Benedicto Naagas and nephew of Benito Graban. Porfirio Graban, another nephew of Benito, was accused together with Fidel Naagas of the killing of appellants' father.

The trial court found from the testimony of Gaudiosa Balais and one Potenciana Dandan, another eyewitness, and from the declarations of the deceased hereinbefore transcribed that the four accused, including Jesus Nartea, were the ones who inflicted the wounds above mentioned upon Benito Graban in the following manner:

"* * * Domingo Nartea entro en la calda de la casita y pregunto por Benedicto Naagas, a lo que Gaudiosa contesta que no estaba; Benito pregunto a su vez que es lo que querian, y Aguedo replico que aquella visita no tenia por objeto invitarles a una fiesta sino para una pelea, e inmediatamente Domingo descargo un tajo e, Benito mientras este se encontraba lentado en uno de los peldaños de la escalera que se dirige a la pieza que sirve de dormitorio y sala; a consecuencia del tajo, Benito se cayo al suelo y, al incorporarse, se echo a correr hacia una ventana de la pieza que la familia utiliza como comedor y cocina perseguido por Aguedo Nartea y, antes de saltar por dicha ventana, recibio de este un tajo en la espalda, y, en el momenta de saltar por la ventana con una de las piernas ya fuera del pasamano, Potendano que ya estaba al otro lado de dicha ventana le recibio con un pinchazo en la ingle y, estando ya sentado en tierra al otro lado de la ventana con las manos tevanladas diciendo que se rendta, recibio un tajo del acusado Jesus Nartea."

Counsel de oficio, in a carefully prepared brief, assigns and discusses with earnestness and ingenuity the following alleged errors:

"1. The lower court erred in admitting Exhibit E as part of the res gestce.

"2. The lower court erred in not finding that appellants Potenciano Nartea and Domingo Nartea did not participate in the fight between appellant Aguedo Nartea and the deceased Benito Graban.

"3. The lower court erred in not finding that appellant Aguedo Nartea acted in self-defense in his fight with the deceased Benito Graban."

First. The trial court found that the manifestations made by the deceased to Sergeant of Police Arintok regarding the identity of the persons who wounded him were spontaneous and were neither inspired by a desire for revenge nor suggested by any person, it appearing that the said policeman was the first to succor the wounded man. Counsel de oficio argues, however, that more than one hour had elapsed after the fight when Arintok took the statements of the deceased and that, therefore, the declarations in question cannot be considered spontaneous. As an indication that the said declarations were the result of reflection, counsel points to the statement of the deceased that he was not guilty of anything, thus showing a desire on his part to exculpate himself.

The term "res gestæ" comprehends a situation which presents a startling or unusual occurrence sufficient to produce a spontaneous and instinctive reaction, during which interval certain statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content. Whether a declaration is a part of the res gestæ depends upon whether the declaration was the facts talking through the party or the party talking about the facts. (20 Am. Jur., Evidence, sec. 662, pp. 553, 556.) While as a general rule the declaration sought to be proved as part of the res gestæ must be contemporaneous with the event established as the

principal act, no fixed time from the main occurrence can be arbitrarily set in order to determine what shall be part of the *res gestæ*. The factual situation in each instance will set its own pattern of time in this respect. (*Id.*, sec. 669; see also Moran, *Law of Evidence*, revised and enlarged edition, pp, 295-296.) "The marked trend of decisions is to extend, rather than narrow, the scope of the doctrine admitting declarations as part of the *res gestæ*. Whether specific statements are admissible as part of the *res gestæ* is a matter within the sound discretion of the trial court, the determination of which is ordinarily conclusive upon appeal, in the absence of a clear abuse of discretion." (20 *Am. Jur.*, sec. 663, p. 557.)

We are not persuaded that the trial court erred in admitting the declarations in question as part of the *res gestæ*. It is not disputed that the sergeant of police was the first to talk to Benito Graban after the latter had been severely wounded and while he was still lying helpless at the place where he was left by his aggressors. The fact that, when asked why he was wounded, he replied he was not guilty of anything, meaning that he had not done anything wrong to his assailants, does not necessarily show that his declaration was not spontaneous but was the result of reflection and deliberation. In his situation, when the life-sustaining blood was painfully and irretrievably gushing out of his body, he had no reason nor occasion to excogitate excuses of his own conduct. He had no reason to fear of being prosecuted for what they had done to him; he had more reason to fear of losing his life than of anything else, although hope, springing eternal in the human breast, made him say he did not know whether he would survive or perish. But as a matter of fact he expired a few hours later. His declaration, therefore, to the sergeant of police to the effect that he had not done anything wrong to his aggressors, was consistent with the truth and did not militate against its spontaneity. He repeated the same statement to the justice of the peace when the latter asked him the same question, saying, "I do not know; I am not to blame," after he had pronounced the pet names of those who wounded him.

We, therefore, sustain the admission by the trial court of the declarations in question as part of the *res gestæ*, and consequently overrule appellants' first assignment of error.

Second. The second and third assignments of error refer to the credibility of the witnesses. Appellants' theory In the court below, which their counsel urges with vehemence before this Court, is that Aguedo Nartea alone inflicted the mortal wounds on Benito Graban after the latter had furiously but futilely attacked the former with a bolo without any provocation whatsoever; and that the other three accused were at that time in the house of one Luciana Faraor, about one-half kilometer distant from the scene of the fight. To sustain that theory appellants Aguedo and Domingo Nartea testified and also called as witnesses Vicente Makabenta, Luciana Famor, and Rufino Graban. The latter is a brother of the deceased.

The trial court rejected appellants' version as being inconsistent with the truth. After a careful perusal and analysis of the evidence, we have arrived at the same conclusion. Among the various considerations that persuade us to accept the version of the prosecution and reject that of the defense are the following:

- Benito Graban was about seventy years of age, with poor eyesight. The combativeness inherent in youth, virility, and exuberant life was undoubtedly no longer present in him. He had no motive to attack Aguedo Nartea without provocation, for it was his nephew Fidel Naagas who had killed Aguedo's father two days before. On the other hand, the three appellants were in their twenties, Aguedo, the eldest, being twenty-eight. They were the ones in whom the impulse as well as the motive to fight was present. Their father had just been killed. They were looking for Benedicto, the brother of the killer. In his absence, it was not unnatural for them, in the ugly mood in which they were at that moment, to discharge their fury upon the uncle of their father's killer.
- The story told by Aguedo Nartea does not ring true. He testified that he merely inquired of Gaudiosa Balais in a casual and friendly manner of the whereabouts of her husband Benedicto Naagas, but that Gaudiosa got angry and

asked him whether he wanted to fight; that Benito Graban thereupon intervened, saying: "If you have come for a fight you will get it although I am an old man already," and then and there pulled out his bolo and immediately struck Aguedo with it; that he stepped back towards the yard and exchanged blows with him, slashing his hip and also his hand, and then ran away. We think the trial court was right in not believing such story Aguedo Nartea did not receive a single ' scratch but on the other hand Benito Graban received four serious wounds, including one on the back in the lumbar region, which tallies with the testimony of Gaudiosa Balais that Aguedo inflicted that wound on the back while Benito Graban was running through the kitchen to escape from Domingo's assault. Gaudiosa's testimony that Jesus Nartea inflicted the wound on the right wrist of Benito while the latter was sitting and raising both hands in sign of surrender, is more credible than the testimony of Aguedo, considering that no bolo supposed to belong to Benito was found in the premises by the sergeant of police immediately after the fight, nor was any such weapon presented at the trial by the accused in support of their assertion.

- The statements made by the agonizing wounded man to the sergeant of police and later to the justice of the peace, identifying the appellants and Jesus Nartea as the authors of his wounds, are of decisive weight. If, as the defense would have the Court believe, Domingo, Potenciano, and Jesus Nartea were not present at the scene of the crime, it is not likely that Benito Graban could identify and mention them as coauthors of his wounds. The suggestion is made that he mentioned them out of a desire to take revenge. But if they did not intervene and were not even present at the scene, we see no reason nor occasion for the deceased to take revenge on them, especially on Jesus Nartea, who was only a boy of fifteen and was not a brother but a mere cousin of his coaccused.

- The testimony of Rufino Graban, brother of the deceased, strikes us as being both unnatural and incredible. It is not natural and usual for a man to defend the murderers of his brother. Such behavior is phenomenal, but transparent. He must be either inflexibly honest and truthful, or extraordinarily unscrupulous and mendacious—either an Abel or a Cain. Rufino's testimony does not distinguish him within the first category. He testified that he witnessed the fight between Benito and Aguedo; that he did not see the other accused; that he saw his brother Benito step down from a bench, pull out his bolo, and attack Aguedo without any provocation; that Benito and Aguedo went on moving towards the yard and there Aguedo retaliated; that after Benito had fallen, Aguedo ran away; that he saw Benito had received wounds, one on the hip and another on the left hand; that then he went to the house of his brother Pablo, leaving Benito alone; and that when he and Pablo returned, Benito was no longer there but was already in the municipal building. It will be observed that his story does not account for Benito's wounds in the lumbar region and in the right wrist. Since the house of Pablo Graban, according to the defense's Exhibit 3, was only a short distance from the scene of the crime, and since Benito lay unaided for at least one hour before he was carried to the municipal building, we cannot understand why Rufino and Pablo did not overtake Benito at the place where he lay wounded. On the other hand, Gaudiosa Balais testified that Rufino at that time was fishing in the sea and did not arrive until three o'clock in the afternoon, when Benito was already in the municipal building. We may add that if Rufino Graban were actuated by the sense of justice, and if he really knew that his brother was the aggressor and Aguedo Nartea alone took part in the fight, he should and would have so informed the authorities immediately after he learned that the other three accused— Domingo, Potenciano, and Jesus Nartea— had been arrested. (Aguedo Nartea voluntarily surrendered himself.) But the first time Rufino Graban made the declaration against his own brother and in favor of the accused was during the trial of this case, five months after the crime was committed. Between the contemporaneous and spontaneous declaration of the deceased regarding the identity of his aggressors and the belated and apparently studied declaration made by his brother five months later regarding the same matter, the choice as to which is deserving of credence is not difficult to make.

Before we close, we must pass upon appellants' motion for new trial, based on an alleged newly discovered evidence consisting of the proposed testimony of Fernanda (alias Alejandra) Cañete, common-law wife of the

deceased. A perusal of her affidavit attached to the motion does not convince us that her proposed testimony is of such weight and credibility as probably to change the result of the case. Such testimony if given would only tend to indicate that appellants were able to win over and pervert not only their victim's brother but also his common-law wife. Therefore, said motion is denied.

Finding the sentence appealed from to be in accordance with the facts and the law, we affirm it in toto, with costs. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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