

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BARTOLOME JABEGUERO, DEFENDANT-APPELLANT.***G.R. No. 61078. October 24, 1983*

Ponente: RELOVA, J.

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Appeal by Bartolome Jabeguero upon his conviction by the then Court of First Instance of Samar in Criminal Case No. 1024 for the crime of murder qualified by treachery. He was sentenced "to suffer the penalty of RECLUSION PERPETUA, with the accessories of the law; to indemnify the heirs of the deceased Valentin Niedo in the amount of P12,000.00; and to pay one-third of the costs." His co-accused, Miguel Jabeguero and Sofronio Latorre were acquitted on ground of reasonable doubt.

The People's evidence shows that about 4:00 in the afternoon of September 24, 1975 Valentin Niedo was walking along the street in Patong, barrio Estaka, Catbalogan, Samar. Following him, about seven meters away, was his sister, Dominga Niedo Orral, age 42. When Valentin was about ten meters away from the house of appellant Bartolome Jabeguero, the latter, who was at the window of his house, fired a shot at Valentin who sustained wounds on his face, neck and face, caused by pellets (small shot leads used in shotgun), two of which found its exit at the back causing ruptures of his innominate artery and apex of the right lung. (Exhibit "F")

The shooting was witnessed by Dominga Orral who also saw Miguel Jabeguero and Sofronio Latorre standing near the appellant at the time. Thereafter, the assailant, Miguel Jabeguero and Sofronio Latorre jumped out of the house and ran towards the seashore.

Ernesto Balasbas, a Barangay Councilman, was at the seashore at the time and, upon hearing the shot, immediately rushed towards the place. He saw Valentin Niedo near the basketball court, about to fall. He ran towards Valentin and inquired who shot him. Valentin answered, "Tome Jabeguero."

Valentin Niedo was carried to a motor boat to be transported to the hospital but, on the way, he died.

Appellant's defense is alibi. He claims that at about 9:00 that morning of September 24, 1975 he was at the seashore of Barangay Estaka Buri waiting for transportation to Mercedes, Catbalogan to attend the town fiesta. He was not able to get water transportation but was able to take a passenger jeepney, arriving at the house of one Donato Pantaleon at about 11:00 in the morning. He stayed in the house of Pantaleon the whole day and left the place late afternoon. He then passed by the house of one Loloy Pantaleon who invited him to drink, after which he visited Simplicio Magallanes. After having drunk three bottles of beer, a man with a gun came and asked: "Are you Miguel Jabeguero? And I told him, no, I am Tome, Bartolome Jabeguero, I am not Miguel. I have a brother Miguel but I do not know where he is now. He is under medical treatment." (tsn., pp. 231-232, April 28, 1981 hearing) Thereafter, the man brought him outside the house and then to the stockade at Maulong where he was maltreated and suspected of having killed Valentin Niedo.

Coming to this Court, appellant claims that the lower court "erred in giving credence to the testimonies of the

prosecution witnesses which were biased, improbable and contrary to the physical facts; and, in convicting" him.

Appellant argues that the eye-witness, Dominga Niedo Orral, a sister of the victim, would not have seen appellant and his companions inside the house through an opening because she noticed the place only after the shot was fired and "it was highly improbable for her to see who among the three fired the shotgun x x x that only one (1) shot was fired which caused the death of her brother Valentin Niedo, which should have been fired at an angle to the right of the victim x x x and that these were contradicted by Dr. Berbietta Macopia Pilpa x x x who testified that the injuries sustained by the victim were the result of two gunshots, and that the assailant was in front of the victim." (pp. 2-3, appellant's brief). Further, appellant claims that considering the injuries sustained by the victim it was improbable for him to have still talked, muchless seen who among the three fired the shotgun.

We are not persuaded. There was Dominga Niedo Orral who positively identified herein appellant as the one who shot her brother. She testified thus:

"Q And what time did you leave the house of Bartolome Papauran together with your brother Valentin Niedo to go home?

A At around 4:00.

Q While you were on your way from the house of Bartolome Papauran was there any unusual incident that happened?

A Yes, sir.

Q What was that incident that happened?

A Valentin Niedo was shot.

Q By whom?

A Bartolome Jabeguero.

Q Where was Valentin Niedo particularly at the time when he was shot by Bartolome Jabeguero?

A He was on the street walking.

Q And where was Bartolome Jabeguero at the time that he shot Valentin Niedo?

A He was inside his house.

Q Now, how did you know that it was Bartolome Jabeguero who shot Valentin Niedo when he was inside his house?

A Because I saw him holding the gun.

Q Now, at the time that Valentin Niedo was shot at by Bartolome Jabeguero, how far were you to Valentin Niedo?

A Seven (7) meters.

Q And where were you particularly in relation to Valentin Niedo at the time when Valentin Niedo was shot by Bartolome Jabeguero?

A I was at his back because I was following him.

Q From Valentin Niedo to Bartolome Jabeguero at the time that the latter shot the former, what was the distance?

A Around ten (10) meters.

Q And how about from your place where you were standing to Bartolome Jabeguero, how far was it at that time that Valentin Niedo was shot by Bartolome Jabeguero?

A Maybe fourteen (14) meters.

Q You said that when Bartolome Jabeguero shot Valentin Niedo he was inside his house. Where particularly inside his house at the time when he shot Valentin Niedo?

A Near the window.

Q Was it near or by the window?

A By the window.

COURT:

Proceed.

FISCAL:

Q How about Miguel Jabeguero, where was he when Bartolome Jabeguero shot Valentin Niedo?

A He was at the side.

Q Who is this he whom you are referring to?

A Bartolome Jabeguero.

Q Which side of Bartolome Jabeguero was Miguel Jabeguero?

A Left side.

Q How about the other accused, Sofronio Latorre?

A At the other side. I mean behind them. (Ha luyo nira an duha.)

Q Now, how many times did Bartolome Jabeguero fired at Valentin Niedo?

A Once.

Q With what firearm? Do you know, if you know, did Bartolome Jabeguero use in firing Valentin Niedo?

A I don't know, sir.

Q That house of Bartolome Jabeguero, is that a one storey house?

A A one storey house.

Q How high is the flooring of that house to the ground?

A More than one meter.

Q And what happened to x x x I will withdraw the question. Was Valentin Niedo hit when he was fired at by Bartolome Jabeguero?

A Yes, sir.

Q Where was he hit?

A He was hit at the forehead, neck and at the chest.

Q And what happened to Valentin Niedo when he was hit?

A He staggered towards the fence of Menie Magallanes.

Q At the time when Valentin Niedo staggered towards the fence of Menie Magallanes what did you do?

A I ran because I saw them jumped out through the door and I did not anymore embrace Valentin Niedo.

Q You said that you ran because you saw them jumped out of the door. Who jumped out of the door?

A Miguel Jabeguero, Bartolome Jabeguero and Sofronio Latorre." (tsn., pp. 9-14, July 10, 1980 hearing)

The relationship of Dominga with the victim does not discredit her testimony. Well settled is the rule that when there is no showing of improper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. "On the contrary, their natural interest in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for, otherwise, the latter would thereby gain immunity" (People vs. Alcantara, et al., 33 SCRA 812).

With respect to the relative position between assailant and the victim, Dr. Pilpa declared:

"Q And what could have been the relative position of the victim to his assailant at the time he received those injuries?

A The assailant could have been in front of the victim towards the right of the victim." (tsn., p. 53, August 20, 1980 hearing)

Further, Ernesto Balasbas was able to ask Valentin who the assailant was:

"Q Were you able to carry Valentin Niedo to the motor boat which was at the sea?

A Not yet because we just place the victim on the seashore because the motor boat was still on the sea.

Q Now, while you were carrying the body of Valentin Niedo towards the motor boat as Barangay Councilor or first Councilor of your barrio, what did you do?

A When we lifted him, we asked him who shot him.

Q And what was his answer if any?

A He said Tome Jabeguero.

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Q Who is this Tome Jabeguero he mentioned, do you know?

A Yes, sir.

Q If that Tome Jabeguero is now in Court which he referred to, can you point to him?

A Yes, sir.

Q Will you please do so?

A (Witness pointing to the accused Bartolome Jabeguero)." (tsn. pp. 9-11, July 22, 1980 hearing)

The statement made by the victim, Valentin Niedo, pointing to appellant as the one who fired the shot partakes of

the nature of a dying declaration because when he made it his hope for survival was very slim, as in fact, he died minutes after the incident. And, as to whether he could still talk after he was fired at, Dr. Pilpa categorically answered in the affirmative.

"Q You said here in this autopsy report Doctor that the date, time and place of incident is on the way to the Samar Provincial Hospital At about 6:05 p.m., September 24, 1975, assuming Doctor that the deceased survived some time after he was shot by his assailant and considering his death, rather his wounds, could he still talk?

A From the autopsy report made the brain was intact so that the victim could have talked after the incident happened." (tsn. pp. 60-61, August 20, 1980 hearing)

Finally, We take note of the observation and finding of the trial court that appellant went into hiding after the incident:

"There, too, are circumstances extant in the evidence that this defendant Bartolome Jabeguero tried to elude the police authorities after the incident. The uncontradicted testimony of Barrio councilman Ernesto Balasbas shows that when he (Balasbas) with Sgt. Claro and two other PC soldiers whom he and his wife fetched from the Constabulary camp in Maulong, Catbalogan, Samar, went to the house of this accused in Bo. Estaka a few hours after the shooting incident, the wife informed them that the accused was no longer there as he had already gone to Luyo (other side of Bo. Estaka). They took a motorboat and went to the place indicated - to the house of the accused's brother-in-law, Patro - but Bartolome was no longer there either. So the PC soldiers just asked to be brought back to camp. Again, there is the uncontradicted testimony of Constable Raul Luna to the effect that when he went to the house of Simplicio Magallanes the day after the incident, the owner upon his inquiry told him that the accused was not there. But when the sister-in-law of the victim who accompanied him went upstairs, he heard a commotion in the house and when he went up, two persons jumped out of the window; but he found accused Bartolome Jabeguero who locked himself inside a toilet and who attempted to escape. This conduct is certainly incompatible with this accused's innocence." (pp. 3-4, Decision in Crim. Case No. 1024)

The foregoing evidence of the prosecution adds to appellant's guilt beyond reasonable doubt and negates his alibi, a defense that is easy to fabricate. His flight from the scene of the crime is a form of admission by conduct which gives rise to the inference that he committed it (People vs. Molleda, 86 SCRA 667).

WHEREFORE, the judgment of conviction of the lower court is hereby **AFFIRMED** in toto. Costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

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