

MANUEL OLONDRIZ, JR. AND CLARO MEDINA, JR., PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND THE HON. INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 63438. July 15, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

By a vote of 4 to 1,[1] a Division of Five of the Court of Appeals affirmed in toto, on January 16, 1982, the judgment of the Court of First Instance of Sorsogon, convicting Manuel Olondriz, Jr. and Claro Medina, Jr. of homicide, the dispositive portion of the judgment reading as follows:

"Accordingly, judgment is hereby rendered finding both the accused Manuel Olondriz, Jr. and Claro Medina, Jr. guilty beyond reasonable doubt of the crime of Homicide and sentencing each of them to suffer the indeterminate sentence of Eight (8) Years and One (1) Day of prision mayor, as minimum, and Thirteen (13) years of reclusion temporal, as maximum, and to indemnify, in solidum, the heirs of the deceased Doroteo Guab in the sum of P12,000.00 and to pay the costs."

By a vote of 3 to 1, the accused-appellants' motion for reconsideration was denied on February 28, 1983.[2]

The case has been brought to this Court by the convicted defendants on an appeal by certiorari.

Both the Trial and Appellate Courts ruled that the State had established beyond reasonable doubt the truth of the material facts set forth in the amended information dated March 18, 1968, to wit:

"* * * that on or about the 8th day of March, 1968, in the Municipality of Juban, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, * * * Manuel Olondriz, Jr., armed with a Pistol Caliber .45 and Claro Medina, Jr., armed with a firearm of unknown caliber, conspiring, confederating and mutually helping one another, without any just motive and with intent to kill, did then and there willfully, unlawfully and feloniously shoot one Doroteo Guab several times inflicting upon the latter the following injuries to wit: gunshot wound, through and through, left forearm; gunshot wound, grazed left thigh; gunshot wound, penetrating left hypochondrium with perforation left kidney, small intestines omentum, which injuries caused the death of said Doroteo Guab."

It is clear from the decision under review that the conviction of petitioners Olondriz and Medina rests mainly on the testimony of the prosecution's principal witness, Federico Grajo, and the ante mortem declaration of the deceased, Doroteo Guab.

Grajo's testimony is summarized in the Trial Court's decision as follows:

"* * * that on March 8, 1968 at about 6:00 to 7:00 o'clock in the evening he was in the house of his Tio Ponso near the crossing of the Juban-Sorsogon road in the company of his friend Doroteo Guab; at about 7:00 o'clock he and Doroteo Guab went to the house of the former in the poblacion where they took their supper; that after eating they went to the store of Mr. Gomez near the crossing at the Bulan-Sorsogon road to buy cigarettes; that as they intended to buy cigarettes on credit they did not immediately approach the store but waited for the

people to leave it; that they were not able to buy on credit because while they were still waiting for people to leave, Manuel Olondriz, Jr. arrived together with Claro Medina * * *.

What happened next, as may be gathered from the ensuing testimony of Grajo which is quoted verbatim by the Trial Judge, is as follows: that Olondriz asked him (Grajo) if he was drunk; on receiving a negative answer, Olondriz pulled out a "nickel-plated gun" from his side; frightened, Grajo stepped back to a distance of about 3 meters; Olondriz turned to Doroteo Guab and said to him. "It is a very long time that we were looking for you. If in Jagusara you were not able to escape you are a dead man long time already"; Olondriz then told Guab to draw his gun but Guab replied that he had none; Olondriz said, "Although you will not pull something, I will shoot you," whereupon Guab rose from the "alcantaria" where he was seated and attempted to escape but Olondriz shot him three times; Olondriz' companion, Claro Medina, also shot Doroteo Guab.

A written statement given by Doroteo Guab on March 11, 1968, 3 days after he had been shot, identified the petitioners as his assailants.[3] According to the Trial Court, "while * * * (the statement) may not be considered as a dying declaration, it may still be admitted on the ground that it forms part of the *res gestae*." [4]

On the other hand, the evidence given by Manuel Olondriz, Jr. in his own defense, as recounted by the Court *a quo*, presided by Judge Rustico de los Reyes, is to the following effect:

(H)e denies the information because on March 8, 1968, he was sick. His sickness began in their house at Juban, Sorsogon at about 5:00 to 5:30 in the afternoon. Then Claro Medina Jr., another accused in this case. came. Claro was asking for his other brother, 'Boy,' Edgardo. He told him that he does not know Edgardo's whereabouts as when he arrived from the farm, Edgardo was not in the house anymore. When Claro arrived, Manuel, Jr. was reading the newspaper. Then he began to feel a severe headache. He was worried because he felt the same sickness before, so he let Claro Medina accompany him to Dr. Valesa whose house was two houses away. (TSN, Jan. 14, 1976, pp. 49-51).

"When passing the house of Ricardo Gonzales, also a neighbor, and only one house away from the Olondriz home, Ricardo, who was at home at that time called for him to take a snack. But he told Ricardo that he could not go to Ricardo's house because he was feeling very bad, so he had to go to Dr. Valesa's house. Upon hearing that Ricardo approach. Claro Medina was with him at that lime and Ricardo held his hands and he placed himself between him and Claro Medina and they proceeded to Dr. Yalesa's house. (TSN. Jan. 4. 1976, pp. 52-54).

"When they reached the house of Dr. Yalesa, they came upon Mrs. Valesa. Ricardo Gonzales asked if Dr. Valesa was in. The wife of Dr. Valesa said that he would arrive because he was not there yet. When he arrived at the house of Dr. Valesa, the wife made him lie down in a certain place, so he sat on a chair and rested his elbows on a table.

"During this time, Claro Medina and Ricardo Gonzales were beside him. After a short time, Dr. Valesa arrived and he took his blood pressure. He told Manuel not to move, as he was going to inject him and he was actually injected by Dr. Valesa. Then he fell asleep. He returned home the following morning, which is March 9, 1968. (TSN, Jan. 14, 1976, pp. 54-56)"

As already intimated, the trial court accorded superior credit to the testimony of Federico Grajo. In the Court's view —

"Being straightforward, clear and convincing the testimony of Federico Grajo coupled with the undisputed facts, suffice to convict the accused of the crime charged and the conspiratorial manner in its commission. He positively identified the assailants and specified the motive as enmity rooted in politics; Exhibit "D" bolstered the evidence or the identification of the accused; and against these, the alibi theory of the accused must fail."

Judge de los Reyes explained why he deemed Grajo to be a trustworthy witness despite his reputation in the community as a drug addict. In his decision, he said that —

"* * * (he) took pains in scanning the voluminous records, over and over, trying to locate for an indication that in testifying before the Court, witness Federico Grajo was under the influence of drugs; the Court found none. The Court also tried to find out if his perception of the event of March 8, 1968 and those before and after 'as he narrated them, was 'affected by drugs'; The Court also found none, and the defense failed to show any . . . To the contrary his testimony impresses belief. In a barrage of searching questions under cross--examination by the respective counsel for the two accused, Federico did not flinch nor flounder, his answers reiterated the matters he testified to in his direct testimony; and a drug addict as he was, added more details which, were he not telling the truth, would have unmasked him as an incredible witness." (italics supplied)

His Honor's explanation is quite perplexing. It implies that he had had the opportunity to observe the demeanor of the witness "as he narrated" the events of March 8, 1968 so as to arrive had at the conclusion that he was not "affected by drugs" at that time, and also to reach the other conclusion that under cross-examination "Federico did not flinch nor flounder." The fact, however, is that Judge de los Reyes never heard the testimony of any of the witnesses. The record shows that the case was successively tried by three (3) judges who preceded him in this case, namely, Judges Ubaldo Y. Arcangel, Jorge S. Imperial and Feliciano S. Gonzales, and that, indeed, the trial was ended during the incumbency of Judge Gonzales. It was left to Judge de los Reyes to write the verdict on the basis of the bare record. And it is difficult to perceive how the assiduous examination of that record could disclose to the judge, as he expected, indications that when Grajo testified, he "was under the influence of drugs." Judge de los Reyes' findings therefore will bear some scrutiny. Ordinarily, this Court will not interfere with the Trial Court's findings and conclusions on the credibility of witnesses in deference to the rule that the latter tribunal having had the opportunity to observe the demeanor and conduct of the witnesses while testifying, is in a better position to properly gauge their credibility. The Court has, however, excepted from this rule cases where as here the testimonies of witnesses were heard by one judge but another judge wrote the decision. Thus, in *People vs. Omega*,^[5] it was held:

"This rule however, is inapplicable to the present case, because while it was the late Judge Ambrosio T. Dollete who heard the testimony of Guillermo Ilaya it was Judge Tito V. Tizon who subsequently penned the decision, when he took over the case and terminated the proceedings. The reason for the rule does not exist in this case."

And in *People vs. Salas*^[6] the Court said:

"We make the cogent and pertinent observation that the rule that conclusions of the trial court on the matter of the evaluation of the truth of declarations of witnesses carry great weight and command favorable consideration, finds no application in the case at bar. For it was Judge Jesus S. Ruiz, who heard the testimony of the two alleged eyewitnesses, but it was Judge Manuel Lopez Enage who presided the later portion of the trial and subsequently penned the judgment of conviction."

Now, a review of the evidence including Federico Grajo's testimony, discloses several serious flaws.

When Federico Grajo and Doroteo Guab went to the store where the shooting transpired, to buy cigarettes, there were admittedly other people there. There were in other words other witnesses available to the prosecution to prove exactly what happened. Yet the only witness presented by the prosecution was a confirmed drug addict, Federico Grajo. The logical inference is that the other persons in the store did not see what Federico claims to have seen. There is every cause to assess Grajo's testimony with great caution.

Grajo testified that he saw the actual shooting of the victim by both petitioners Olondriz and Medina in the evening of March 8, 1968, and that he recognized them because of the illumination from the lamp attached to the

electric post at the scene. His statement, however, is belied by:

- (a) Generoso Higuít, lineman of the local electric company, who declared that there was no electric lamp post in the vicinity;
- (b) two (2) policemen, Salvador Grefaldeo[7] and Noe Aviles,[8] who corroborated Higuít's testimony on the matter; and
- (c) the victim himself who told the police investigators, when he was brought to the hospital after the shooting, that "he could not recognize the persons who shot him because it was very dark." [9]

His statement in Court that the deceased, Doroteo Guab, was sitting on the "alcantaria" when the shooting occurred and that at that time he (Grajo) was about five (5) meters away from the store in which that "alcantaria" was to be found, is in stark contradiction to his declaration in his affidavit (Exh. "C") that he was seated beside Guab on the "alcantaria" when the shooting took place.[10]

When the police officers arrived at the scene of the crime that evening, Grajo did not report to them what he claims to have seen, i.e. that Guab had been shot by the petitioners. It was only a day later, after he had conferred with Doroteo Guab at the hospital[11] that he gave a statement pointing to the petitioners as the persons who had shot Doroteo Guab.[12]

Equally damaging to Federico Grajo's testimony is that of his own father, Leoncio Grajo. Leoncio declared that between 7:00 to 8:00 o'clock in the evening of March 8, 1968 (i.e., at about the time of the shooting), his son Federico was in their house, sleeping, having earlier been put to bed by their caretaker on his instruction because Federico was then drunk. Leoncio's declarations are corroborated by two (2) other witnesses: Antonio Ayende, who stated that he had brought Federico to his home when he saw him very drunk in front of his (Ayende's) house; and Generoso Higuít, who had helped Ayende bring Federico to his home when he met them on the road while making his rounds as an electric lineman.

Grajo deposed that the gun used by Olondriz was "nickel-plated." The gun submitted to the trial court was dark colored. Grajo stated that "both Olondriz and Medina fired at the victim, yet only one gun was presented to the Court and no proof whatever was given to show that the victim's gunshot wounds were caused by bullets of different caliber. Grajo also testified that Olondriz had fired three (3) shots and he had in fact heard three shots, more or less; this would be consistent with the actual number of wounds inflicted on the victim, but inconsistent with his other statement that Medina had also fired at the deceased.

The prosecution's proof respecting the fatal gun is also debilitated by other circumstances. The prosecution attempted to show that the gun used by petitioner Olondriz was that belonging to his father, Mayor Manuel Olondriz, Sr. The evidence proves the contrary however. The gun had been deposited at the Liwayway Hotel in Manila on February 5, 1968 when Mayor Olondriz checked in. It remained there even after Mayor Olondriz checked out because the office manager holding the key to the safe where the firearm was deposited, was out at that time. The gun was retrieved from the hotel only on March 19, 1968. Therefore, the gun claimed by the prosecution to be in its possession when it filed the amended complaint against the petitioners on March 18, 1968, could not be Mayor Olondriz' gun since it was taken from Mayor Olondriz by some officers of the Philippine Constabulary only on March 20, 1968, as evidenced by the receipt, Exhibit 15-A.

In any event, the evidence further demonstrates that the gun (Exh. "B") allegedly used by petitioner Olondriz to shoot Doroteo Guab was not the actual instrument of the slaying of the victim. Washington Bacud, ballistics expert of the Metropolitan Police Force, Western District, Manila,[13] after conducting an examination of the gun in question and the slugs and shells taken from the scene of the crime, reported that —

"(1) there are no sufficient identical congruent striations revealed on the examination conducted on Exh. "B-7", "H-1" and test bullets (slug) that they had been fired from the firearm Exh. "B";

"(2) Exh. "B-8" had not been discharged within the chamber of the firearm, Exh. "B".

This is conceded by the Trial Court itself. In its decision ii acknowledged that the evidence of the prosecution, "compared with that for the defense, puts in doubt the claim of the prosecution that the gun of Manuel Olondriz, Sr. was the fatal weapon. For the consolidation of the opinions boil down to a variable factor in the sense that in resolving the problem at issue in the examination of the gun, the experts depended on the quantity of congruent striations with the test cartridge in which one may consider a certain quantity as sufficient while in another point of view, the same quantity is not. It cannot, therefore, be logically concluded that the mayor's gun was the one used by his son, although the probability remains." But to convict on this probability can hardly be reasonable. Besides, this Court has ruled that ballistics tests which show that none of the cartridges or bullets found at the scene of the crime and extracted from the victim's body came from guns of the accused may entitle appellants to acquittal based on reasonable doubts.[14]

The other item of proof on which the petitioners' conviction is grounded, as already earlier stated, is the written statement given by Doroteo Guab on March 11, 1968 (Exh. "D"), 3 days after he had been shot, in which he identified the petitioners as his assailants. This the Court admitted not as a dying declaration but as part of the *res gestae*. This was not correct. The statement is not admissible either as a dying declaration or as part of the *res gestae*. And even assuming the contrary, it cannot, in the light of the circumstances related to its execution, be given any weight. Prior to its execution, Doroteo Guab had either refused to answer questions as to the identity of his attackers or had confessed inability to recognize them. According to Pat. Salvador Grefaldeo, when he and his companions arrived at the scene of the shooting, they saw Doroteo Guab lying on the ground on his right side, bleeding. He asked, "What happened?", and Doroteo's answer was, "You have nothing to do about this." [15] A second time Doroteo was asked the same question; he gave the same answer. On the way to the hospital, policeman Arturo Gonzalgo asked Doroteo who shot him; but Guab did not answer. On arrival at the hospital, Doroteo declared that he could not recognize the persons who had shot him because it was very dark, adding that he would not yet die because his wound was "not yet the wound of a man." [16] Considering these antecedents, identification of the petitioners as his assailants three days later cannot but be suspect.

Moreover, Doroteo's affidavit is inadmissible as evidence. It is not admissible as a dying declaration, and it was not admitted as such by the Trial Court evidently because of Guab's declaration that he did not expect to die, and that indeed he expected to tell everything about the case in court. It was not therefore made by Doroteo Guab under the consciousness of his impending death, which is the primordial requisite for the admissibility of a dying declaration pursuant to Section 31, Rule 130 of the Rules of Court, viz:

"The declaration of a dying person, made under a consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death."

Neither is the statement, Exhibit "D", admissible as part of the *res gestae* in accordance with Section 36 of the same Rule 130, to wit:

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

To be so admissible, it must appear that the statement was made under shock, or stress, or influence of a startling

occurrence, such that as has so often been said, quite accurately, it is the event speaking through the witness and not the witness speaking of the event. The statement is one uttered without reflection, involuntarily, perhaps even without the declarant's awareness of having uttered the same. The statement is, as it were, wrenched or wrung from the declarant by the impact of the startling occurrence. So, where, as in the case of *Doroteo Guab*, statements are made by the person after witnessing or even being a participant in a startling occurrence, under circumstances showing that he was not under shock, not under the influence of the startling event, but in control of himself, in reasonably full possession of his faculties, his statements cannot in any sense be considered a part of the *res gestae*.

On the other hand, petitioners' evidence of their alibi appears to be established by credible witnesses, in contrast to the shaky and suspicious proofs of the prosecution, particularly as regards the identification of the alleged perpetrators of the crime. Admittedly, alibi is an inherently weak defense, but it will, under appropriate circumstances, be duly appreciated as an absolatory cause, as here, where evidence of the identification of the accused is not reliable and the defense of alibi is otherwise adequately proven.[17]

WHEREFORE, the petitioners' guilt not having been proven beyond reasonable doubt, the judgments of the Trial Court and of the Court of Appeals convicting them of the crime with which they are charged are hereby REVERSED, and said petitioners acquitted of the charges against them, with costs de oficio.

SO ORDERED.

Teehankee C.J., Cruz, Paras, and Gancayco, JJ., concur.

[1] CA-G.R. No. 22901-CR: Zosa, J., ponente, Pascual, Busran, B.S. de la Fuente, JJ., concurring; Coquia, J., dissenting.

[2] Resolution of Special First Criminal Cases Division, Intermediate Appellate Court, written by Borromeo, J., with whom concurred Gancayco, J. and Alfonso, Jr., JJ.; Sison, J., dissented.

[3] Exhibit "D"; Rollo.

[4] Page 998, Vol. IV, Records.

[5]76 SCRA 262.

[6] 66 SCRA 126.

[7] TSN, June 24, 1975, pp. 18-25.

[8] TSN, August 28, 1975, pp. 12-24.

[9] TSN, October 28, 1975, p. 28.

[10] Variance between testimony and prior statement renders witness unreliable. *People vs. Salik Magonawad*, 63 SCRA 106.

[11] TSN, August 12, 1970, p. 18.

[12] Where the prosecution witness, immediately after the killing did not inform the authorities that the author of the killing was the accused, this circumstance raised grave doubts as to the veracity of their statement that they saw the accused on the night the crime was committed. *People vs. Cunanan*, 19 SCRA 769.

[13] Graduate in firearms identification from Fort Gordon, Georgia, U.S.A.

[14] *People vs. Tiongson*, 12 SCRA 402.

[15] TSN, June 24, 1975, pp. 18-25.

[16] TSN, Oct. 28, 1975, pp. 27-28.

[17] *People vs. Somontao*, Nos. L-45366-68, 128 SCRA 415 [1984]; *People vs. Gregorio*, No. L-35390, 114 SCRA 696 [1982]; see *People vs. Teaño*, No. L-56356, 128 SCRA 150 [1984].

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