

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO BAGUIO Y TAMPOS @ “BEBOT” [;& JOHN DOE @ “BOYING,” PETER DOE @ “ARNEL,” RICHARD DOE @ “BADOY,” ETC.], ACCUSED-APPELLANT.

G.R. No. 76585. April 30, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Alfredo Paulino y Austria, 33 years of age, was assaulted and stabbed by several men in front of his house at Barangay Gulod, Quezon City, in the night of March 31, 1981. He died at about noon time of the following day. The autopsy disclosed twenty-three (23) stab wounds on his person, eleven (11) of which had in all probability been inflicted by a pointed instrument or instruments such as an ice pick, and twelve (12), by partially pointed, single-bladed weapons.[1] He was a businessman, and was also the Barangay Tanod and Pook Leader of his Barangay. He was survived by his widow, Lidovina Vallefias, and five (5) children.

As she was later to testify in Court,[2] the widow, Lidovina, and her husband were conversing with a certain Benny in front of their house at about 10 o'clock in the evening of March 31, 1981, when a group of about nine or ten people passed by. Among the group she recognized Rodolfo Baguio y Tampos a.k.a. "Bebot," with whom her husband, as Barangay Tanod, had earlier had some unpleasant dealings because the latter suspected "Bebot" and another person known to her as "Frankie," as responsible for some thievery in the neighborhood; and when a certain Dr. Narciso lost his watch, it was found in the possession of "Bebot," who had then been constrained to return it. As these persons were passing by, Lidovina went inside her house to get some money to buy cigarettes. While inside, she heard her husband cry out, "Aray ko po!" She rushed out and saw her husband sprawled on the ground while "Bebot" and his companions were stabbing him with pointed weapons. She saw "Bebot" himself thrust his weapon at her husband twice. Then the assailants fled.

Lidovina went to her husband, Alfredo, and helped him to his feet. In a weak voice, with blood soaking his clothing, he said, "Kung ako ay bibigyan pa ng Diyos ng pangalawang buhay, hindi maaaring hindi mananagot si Bebot at Frankie." This statement he made several times. Two neighbors, Ismael Milan and a Mr. Sinucuban, helped her bring Alfredo to the hospital. Alfredo died in the surgery room.

She gave a written statement to the police on April 1, 1981. In the middle of August, 1981, she was called to the police headquarters where, from among five persons made to line up before her, she picked out Rodolfo Baguio.

An information charging Rodolfo Baguio y Tampos, and "John Doe @ 'Boying,' Peter Doe @ 'Arnel,' Richard Doe @ 'Badoy,' and several John Does * * * whose true names and whereabouts * * * (had) not yet been ascertained," as co-conspirators in the crime of murder, "with treachery and abuse of superior strength," was thereafter filed with the Regional Trial Court of Quezon City, docketed as Criminal Case No. Q-17059. One of

the identified assailants, "Frankie," whose real name is Francisco Pinili, was indicted for the same crime in the Juvenile & Domestic Relations Court of Quezon City, on account of his being a minor at the time, the case being docketed as JDRC Case QF-81-106.

Only Baguio was arraigned and tried before the Regional Trial Court. His co-conspirators, as far as the record shows, were never arrested.

Apart from the evidence given by the victim's wife and the medico-legal officer of the NBI who performed the post-mortem examination,[3] the Prosecution also presented the testimony of the police officer who investigated the case, Pat. Restituto de Leon. He declared that it was he who took down the written statements of the widow and of Baguio, the latter's statement being marked as Exhibit "C," and that prior to questioning the latter, he had advised him, in Tagalog, of his constitutional rights to remain silent, to have the assistance of counsel, and that his statement may be used for or against him.[4]

The defense of alibi was put forth by the accused, "Bebot" Baguio. His testimony is to the effect that at the time of the killing, he was at work as a house painter at an apartment at Mauban Street, Bonifacio, Balintawak, and that he worked overtime on that day, until midnight in fact; that he was informed of the killing by his wife when he reached home after work but he did not mind it much, although the victim was a friend whom he saw quite often, because stabbings were an ordinary occurrence in their neighborhood; that thereafter he continued reporting for work as usual. He denied having had a hand in the slaying of Alfredo Paulino, or having signed the statement, Exhibit C, presented to the Court by Pat. de Leon, supra, alleging that while it was true that he had been interrogated by the police on August 9, 1981 and had furnished the information appearing in said Exhibit C, the investigation was for a case of "robbery-snatching," and not for the killing of Alfredo Paulino. He also denied having any enemies in the locality.[5]

Baguio also offered the testimony of his helper, Rodolfo Pabica, in an attempt to substantiate his alibi.

The Trial Court rendered judgment on January 3, 1985 rejecting Baguio's alibi and declaring the evidence of the prosecution to have established beyond reasonable doubt the commission by Baguio of the crime of murder qualified by treachery and attended by the aggravating circumstances of premeditation and abuse of superior strength. It sentenced the accused "to reclusion perpetua or life imprisonment and to indemnify the heirs of Alfredo Paulino in the amount of P12,000.00 and to pay the costs." [6]

Baguio appealed and in this Court pleads for the reversal of the Trial Court's verdict because seriously flawed, according to him, by the following errors:

- 1) it is based on ante-mortem statements of the victim, Alfredo Paulino, which do not qualify as a dying declaration;
- 2) the testimony of his witness, Rodolfo Pabica, was rejected merely because of his delayed appearance as a witness;
- 3) it used against him his written statement under police investigation, in violation of his rights under the Constitution.

The first issue relates to the utterances made by the victim, Alfredo Paulino, shortly after having received his numerous wounds and while walking to the hospital, with the assistance of his wife and friends, viz.: "Kung ako ay bibigyan pa ng Diyos ng pangalawang buhay, hindi maaaring hindi mananagot si Bebot at Frankie."

The appellant argues that the utterance could not have been made, much less repeated, in view of the number and gravity of the decedent's wounds. The argument is mere conjecture. It cannot be sustained in the face of the

positive evidence that despite the fatal character of his injuries, the deceased was still alive during the time that he was being brought to the hospital, and that in truth he died only at about 11 o'clock in the morning of the following day, and the equally positive testimony that the statement was indeed made, not once, but several times.

The appellant also expresses doubt as to whether Alfredo Paulino was "under the consciousness of impending death" at the time he uttered the statement, "Kung ako ay bibigyan pa ng Diyos ng pangalawang buhay...," this being one of the requisites in order that the statement may be admitted as an exception to the hearsay rule, as a dying declaration.[7] The statement itself would appear to be the best proof of this fact. It opens with the hope that God might somehow give him a second life. But surely, that wish for a second life expressed by the deceased cannot but indicate his awareness that his first life was draining away with the blood flowing from his many and grievous wounds.[8] This being so, and it appearing that the other requisites of the decedent's statement as a dying declaration are present, i.e., the statement concerned the crime and surrounding circumstances of the declarant's death; the declarant was otherwise competent as a witness; and the declaration was offered in a criminal case the subject of which was the declarant's killing,[9] the admission and appreciation thereof by the Trial Court in the assessment of the appellant's guilt can hardly be faulted.

In any case, even if the declaration in question be somehow still refused admission as a dying declaration, there can be no question about its admissibility as part of the *res gestae*,[10] another equally well known exception to the hearsay rule, i.e., a statement made while a startling occurrence is taking place, or immediately prior or subsequent thereto, descriptive of the occurrence itself, which is admissible in proof of said occurrence.[11] It is difficult to imagine an occurrence more startling than a sudden attack by several armed men, and the infliction by them of numerous stab wounds, on the declarant. This being the case, it is reasonable to assume that statements made by the victim immediately after the unexpected attack and in relation thereto must have been drawn from him almost involuntarily, under the exciting influence of the shocking event, with neither time nor opportunity to deliberate thereon.[12] In such a situation, as has very often been said with no little accuracy, it is the event speaking through the declarant, not the declarant speaking of the event, his statements being "the reflex product of immediate sensual impressions, unaided by retrospective mental action, * * * pure emanations of the occurrence itself." [13]

Also untenable is the appellant's second argument, that the Trial Court disregarded the testimony of Rodolfo Pabica "on the basis of his delayed appearance as witness." Actually, the Trial Court rejected Pabica's evidence not so much because he was tardily presented, but chiefly because he did not impress the Court as a credible witness. He deposed that he was a helper of Rodolfo Baguio and the latter's father; that he started to work with them in March, 1981; that they left their place of work at midnight of March 31, 1981 because they worked overtime; that (contradicting Baguio's testimony that he had continued working as usual even after March 31, 1981) Baguio had not reported for work any more since April 1, 1981 because, according to his father, he was a suspect in a criminal case.

It is exceedingly strange that after Baguio had been charged with the murder of Alfredo Paulino and Pabica informed of it, Pabica never got in touch with Baguio to offer to tell the authorities about their whereabouts at the time of the offense, nor did Baguio ever seek Pabica out to substantiate his alibi. Certainly, it could not have escaped Baguio that his co-workers, his own father and Pabica, were the best witnesses to prove his absence from the scene of the crime at the time of its perpetration. Yet, Baguio never presented his father to testify in support of his alibi. And Pabica's becoming a witness, as he later declared, was pure and simple happenstance: three years or so after the murder, he chanced upon Baguio's mother at a basketball court, and it was then, and only then, that he (Pabica) was asked to testify in Baguio's behalf. This Court is satisfied that the Trial Court was correct in refusing to accord credence to his testimony.

The Court is also satisfied that the appellant's defense of alibi was properly rejected. Aside from the inherent weakness of that defense on account of the ease with which it may be fabricated,[14] it has also been held to be unavailing where, as here, there is affirmative evidence of the presence of the accused at the scene of the crime at the time of its commission, if not indeed his positive identification as the actual perpetrator of the crime by an eyewitness who has not been demonstrated to be other than truthful or possessed of any ill motive against the appellant, as well as by the ante mortem statements of the victim received in evidence either as a dying declaration or as part of the *res gestae*. [15]

There is no need to discuss the third assigned error, which deals with the appellant's admissions, Exhibit C. From all that has been said, it would seem obvious that even without taking account of said Exhibit C, Baguio's conviction can stand upon the other proofs on record, and must perforce be affirmed.

The Trial Court declared that it entertained no doubt and was "morally certain that Rodolfo Baguio was one of those who killed Alfredo Paulino," "in conspiracy with his co-accused who are still at large," and that the crime was "attended by the aggravating circumstances of treachery, premeditation, (and) abuse of superior strength * * *." This Court agrees. The facts demonstrate a deliberate, sudden and unexpected attack on the victim, without any warning and without giving him an opportunity to defend himself or repel the initial assault.[16] Abuse of superior strength may not however be independently appreciated as an aggravating circumstance since it is absorbed in treachery.[17] Similarly, evident premeditation may not be considered against the appellant and his co-accused; for although they all took part in the slaying of Alfredo Paulino and cooperated with each other in such a manner as to show a community of purpose and oneness of criminal intent, there is no adequate evidence that they had planned the crime and had had sufficient time and opportunity to reflect thereon before actually carrying it into effect.[18]

The penalty prescribed for murder by the Revised Penal Code is reclusion temporal maximum to death.[19] There being no mitigating or aggravating circumstance, the penalty should be imposed in its medium period, reclusion perpetua. This is in fact the penalty meted out by the Trial Court.

As regards the indemnity payable to the heirs of Alfredo Paulino, the same should be increased from P12,000.00 to P50,000.00, conformably with current doctrine.

One last point. The Trial Court's judgment sentenced Baguio "to reclusion perpetua or life imprisonment, * * *" as if these penalties were one and the same, without any substantial differences existing between them. This is incorrect. The crime of murder is defined and punished by the Revised Penal Code, and within the range of the penalty prescribed therefor, i.e., reclusion temporal maximum to death, is the penalty of reclusion perpetua. The Code does not prescribe the penalty of "life imprisonment" for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special laws. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon; it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as "life imprisonment" which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration. The felony committed by Baguio being one punished under the Revised Penal Code, the proper penalty that should be imposed on him, therefore, is that prescribed by the same Code, reclusion perpetua, not "life imprisonment." [20]

WHEREFORE, except as modified in its dispositive portion to specify the appellant Baguio's penalty to be reclusion perpetua, removing the alternative reference therein to "life imprisonment," and to increase the indemnity payable by him to the heirs of his victim, Alfredo Paulino, from P12,000.00 to P50,000.00, as above indicated, the judgment of the Regional Trial Court subject of the appeal is AFFIRMED in all other respects.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] TSN, April 26, 1983, pp. 2-5; Exhs. F, F-1 and F-2

[2] TSN, Jan. 10, 1982, pp. 1-12

[3] Dr. Alberto N. Reyes; see footnote 1, supra

[4] TSN, Aug. 5, 1982, pp. 3-4

[5] TSN, Feb. 15, 1984, pp. 2-10

[6] Rollo, p. 7

[7] According to Sec. 31, Rule 13, Rules of Court, "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."

[8] See, e.g., *Peo. v. Dinglasa*, G.R. No. 75619, April 3, 1990, and *Peo. v. Nabor*, G.R. Nos. 77822-23, May 21, 1990, to the effect that although declarant did not categorically state that he believed his death to be inevitable, the serious nature of his wounds justify the conclusion that he was conscious of his impending death

[9] Moran, *Comments on the Rules*, 1980 ed., Vol. 5, p. 294, citing *Peo. v. Sagario*, 14 SCRA 468 and *Peo. v. Saliling*, L-27974, Feb. 27, 1976; SEE, also, *Peo. v. Nabor*, supra;

[10] SEE *Peo. v. Laredo*, G.R. Nos. 81249-51, May 14, 1990

[11] Sec. 36, Rule 130, Rules of Court, which deals with the so-called "spontaneous statements" rule, pertinently provides that "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*. * * ."

[12] SEE *Peo. v. Ramillo*, 147 SCRA 109 (1987), *Peo. v. Masangkay*, 155 SCRA 113 (1987)

[13] Moran, *op. cit.*, pp. 347, citing American precedents

[14] SEE *Peo. v. Perante, Jr.*, 143 SCRA 56; *Peo. v. Gapasin*, 145 SCRA 178 (1986); *Peo. v. Acelayado*, 148 SCRA 142 (1987); *Peo. v. Petil*, 149 SCRA 92 (1987); *Peo. v. Aquillano*, 149 SCRA 442 (1987)

[15] SEE *Peo. v. Jusep*, 151 SCRA 248 (1987); *Peo. v. Ocaya*, 144 SCRA 165 (1986); *Peo. v. de Jesus*, 145 SCRA 521 (1986); *Peo. v. Ranilo*, 146 SCRA 258 (1986); *Peo. v. Dava*, 149 SCRA 582 (1987); *Peo. v. Inot*, 150 SCRA 322 (1987); *Peo. v. Santillan*, 157 SCRA 534 (1988); *Peo. v. Sarabia*, 127 SCRA 102 (1984).

[16] Aquino, R., *The Revised Penal Code*, 1976 ed., Vol. 1, pp. 362-367, with voluminous citations

[17] SEE *Peo. v. Centeno*, 172 SCRA 607; *Peo. v. Manzanares*, 177 SCRA 427

[18] Aquino, R., *op. cit.*, pp. 339-340, citing *U.S. v. Lasada*, 21 Phil. 287; SEE *Peo. v. Talla*, G.R. No. 44414, Jan. 18, 1990; *Peo. v. Catubay*, G.R. No. 74065, Feb. 27, 1989; *Peo. v. Ablao*, G.R. No. 69184, March 26, 1990

[19] ART. 248

[20] SEE *Peo. v. Mobe*, 81 SCRA 58; *Peo. v. Pilonos*, 84 SCRA 167; *Peo. v. Sumadic*, 113 SCRA 689

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