

**PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. SEDAN ALEGARBES,
RICHARD AGBU, RAMIL CESAR, ALVIN UCAB AND DODONG
VEVARES, ACCUSED, SEDAN ALEGARBES, ACCUSED-APPELLANT.**

G.R. No. 77686. May 04, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

At about 9:00 o'clock in the evening of June 30, 1984, Nino Velez left his house at First Street, Nazareth, Cagayan de Oro City. Later, he joined the accused in a drinking session on the lawn of the house of accused Sedan Alegarbés about 250 meters away from Nino's house. At about 11:00 o'clock of the same night Nino returned home, bleeding from multiple wounds and asking for help. He was brought to a nearby hospital but died about two hours thereafter. In the aftermath of the incident, the five accused herein were charged before Branch XXIII of the Regional Trial Court of Cagayan de Oro City[1] with murder qualified by treachery and aggravated by nighttime and abuse of superior strength.[2] Of the five accused, however, only Sedan Alegarbés and Alvin Ucab were apprehended and stood trial. The other co-accused are still at large up to the present.

From the testimony of the prosecution witnesses, Nicolas Velez, Sr.,[3] Nicolas Velez, Jr.,[4] and Rowena Velez,[5] the trial court pieced out the catena of events after the wounded victim arrived at their house and which, by reason of their evidentiary significance, we quote:

"x x x His brother, Nicolas Velez, Jr., heard the call for help so he went out and saw Nino standing already bloody and then fell down (sic). He placed him on his lap and called his sister. Commotion followed and he saw his father Nicolas Velez, Sr. coming out.

"While Nicolas Velez, Jr. was holding his brother, Nino, he asked him as to who stabbed him. He answered Sedan, Richard and others and after that he was not able to talk to him anymore. Upon being asked where he was stabbed he pointed to the house of Sedan near his residence at 1st St., Nazareth.

"Nicolas Velez, Sr. also asked Nino who was bloody, as to who stabbed him. Nino answered that it was Sedan, Richard and others. He was not able to talk to Nino anymore because he was gasping for breath.

"Nino was brought to the hospital. Nicolas Velez, Sr. however did not go with him. He went with the police instead to the house of Sedan. Some people were there but Sedan was not there. While in Sedan's house, he saw blood in (sic) the lawn.

"From the house of Sedan, he went with the policemen to the hospital. The policemen wanted to investigate Nino in the hospital, but he was gasping for breath.

"About 1:00 o'clock in the morning, July 1, 1984, Nino Velez died. Dr. Apolinar Vacalares of the Northern Regional Training Hospital, Cagayan de Oro City made the autopsy. Nino Velez sustained six (6) stab wounds all caused by either knife, bolo or any sharp pointed instruments x x x".[6]

The defense, specifically that of accused Alvin Ucab, denied participation in the criminal act. Ucab alleged that it

was Richard Agbu who killed Nino Velez. On the other hand, Alegarbes put up the defense of alibi, claiming that during the alleged stabbing incident he was in his room with his wife who was laboring in childbirth. The testimonies of these two accused were corroborated by witness Warren Villacorta.

After trial, the court a quo rendered a decision on December 29, 1986 convicting accused Sedan Alegarbes as principal in the crime of murder, qualified by treachery, basing its findings mainly on the antemortem statement of the victim. There being no modifying circumstance, he was sentenced to suffer the penalty of reclusion perpetua "with all the accessory penalties of the law, to pay the heirs of Nino Velez the sum of P30,000.00 which is jurisprudential, the further sum of P1,000.00 and P3,000.00 respectively (sic) as actual damages and P20,000.00 as moral damages which are in accordance with the Civil Code, without subsidiary imprisonment in case of insolvency and to pay proportionate costs of the proceedings", with full credit for his preventive imprisonment. His co-accused, Alvin Ucab, was acquitted on reasonable doubt.[7]

The conviction of accused Alegarbes is before this Court through a notice of appeal inceptively filed on January 19, 1987 erroneously with the Court of Appeals.[8] Appellant contests his conviction, especially because of its basis on the dying declaration of the victim, postulating that the fact that the victim "sustained eight (8) stab wounds two of which were fatal", and the further fact that "the victim had to run the length of 250 meters in distance between his house and the place where the stabbing incident happened",[9] make it highly improbable for the victim to have thereafter uttered even a single word identifying his assailants. This belated and feeble attempt to deny the fact that a declaration in articulo mortis was made by the deceased is adequately countered and refuted by the prosecution's evidence.

Preliminarily, appellant misread the records since the victim suffered only six (6), not eight (8) stab wounds.[10] At any rate, prosecution witness Dr. Apolinar Vacalares who autopsied the victim's body testified that with the wounds sustained by Nino, he could still be conscious and could still communicate and travel because he had still approximately thirty (30) minutes to one (1) hour to live.[11] This medical opinion of Dr. Vacalares was subsequently sustained by the fact that the victim managed on his own power to reach home and lived for about two (2) hours more after the criminal assault. He was stabbed at around 11:00 o'clock in the evening and he died at about 1:00 o'clock the next day.[12]

That the victim did make a dying declaration of the tenor testified to by the prosecution witnesses is further confirmed by the proven actuations of the victim's father on that occasion. As the trial court observed, right after Nicolas Velez, Sr. was told by Nino that it was Sedan, Richard and some others who stabbed him, the father did not even escort Nino to the hospital but forthwith called the police and accompanied the responding policeman to the house of accused Sedan Alegarbes. Had there been no such declaration of the victim, it is not only unlikely but even incredible that Nicolas Velez, Sr. would spontaneously act as he did since he would have had no reason or basis for doing so, nor is there even an intimation that foisting liability on the accused Alegarbes was a mere contrivance of the offended family.

There can be no doubt that, in this criminal case wherein the victim's death is the subject of inquiry, all the requisites for the admissibility of his statements as a dying declaration[13] are present: said statements referred to the cause and surrounding circumstances of his death and he was competent to testify thereto. That he made such declaration under the consciousness of imminent death is confirmed by the serious nature of his wounds as would necessarily engender a belief on his part that he would not survive therefrom,[14] especially where, as in this case, he died around two hours thereafter.[15]

On the foregoing considerations, the admissibility in evidence of the victim's declarations in articulo mortis, as an exception to the hearsay rule, is ineluctably justified.

We have taken into account that the rule on the admissibility of such kind of evidence does not determine its weight and credibility. After its proof and admission as such, its credibility and weight should be determined by the courts under the same rules used in testing the weight and credibility of any other testimonial evidence.[16] Thus, such factors as where the facts narrated by the declarant occurred under circumstances of rapidity and confusion should be considered since the accuracy of the victim's observation of the occurrences could be affected by such unexpected events and disorder and, therefore, he could be mistaken in his narration of the facts.

Expectedly, appellant insists that even granting there was a dying declaration, the same should not be given credence in the light of other circumstances obtaining during the incident. He contends that the victim's observation could have been blurred by intoxication, darkness and the suddenness of the attack.

We have carefully examined the records of this case but we cannot find any evidence that would substantiate appellant's submission. It can even be deduced from the testimony of the defense witnesses that Nino Velez was not intoxicated. Defense witness Warren Villacorta admitted that the victim was with the group of the accused only for a short period of time, arriving just before the stabbing at 11:00 o'clock.[17] Also, accused Alvin Ucab testified that their group of about six to seven persons were drinking only two pocket-size bottles of rum from 9:00 o'clock to 11:00 o'clock that evening.[18] There is no dispute whatsoever that the victim knew the identities of the persons present at the drinking party, having known them for a long time. It is understandable, of course, for accused Sedan Alegarbes not to testify on the incident because it would be inconsistent with his defense of alibi. Nevertheless, his failure to present evidence in support of his aforesaid allegation, which is more in the nature of a theoretical surmise, cannot but seriously undermine his defense.

We have to reject appellant's denial of any participation in the fatal stabbing of the deceased, and accused Ucab's claim that it was only Richard Agbu who was the author of the crime. Significantly and conveniently for purposes of said imputation of the accused, Richard Agbu was never apprehended and is still at large. Moreover, aside from being inherently suspect, such disclaimer is further belied by the physical evidence. Dr. Vacalares categorically declared that the wounds of the victim, particularly the serious ones at the back and at the chest, may have been inflicted simultaneously because said wounds had bled the same amount of blood; therefore, it would be impossible for one person to inflict both.[19]

We also consider the backdrop, as established by the prosecution that there was a standing grudge between the victim and appellant; that on June 11, 1984, appellant and a military man with a gun were looking for the victim;[20] and that on June 26, 1984, appellant and one Victor Ybañez, both armed with bolos, were again looking for the victim.[21]

The invocation by appellant of the enervated defense of alibi is unavailing, not only by reason of its inherent weakness but also because of the circumstances attending the incident. The home of the accused where he claimed to be at the time of the incident is very near the lawn where the victim was stabbed. His allegation that he was at that time with his wife who was in labor does not merit any credence considering that the child was born fourteen days thereafter.[22]

On appellant's assignment of error that the court a quo erred in ordering him to pay the heirs of Nino Velez actual and moral damages,[23] We note with displeasure appellant's failure to even discuss the reason for the same. As the Solicitor General commented, "perhaps, appellant's second error is merely dependent on being acquitted under his first assigned error".[24] At any rate, the records of this case yield sufficient evidence to justify the award of actual damages, P1,000.00 for the hospital and P3,000.00 for the funeral parlor, and moral damages.[25]

WHEREFORE, finding no reversible error on the part of the trial court, the decision appealed from is hereby **AFFIRMED** in toto. [26]

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Hon. Leonardo N. Demecillo, Presiding Judge.

[2] Rollo, 7.

[3] TSN, Feb. 28, 1986, 10-13; March 3, 1986, 8-20.

[4] TSN, March 3, 1986, 39-41; 45-47.

[5] TSN, May 19, 1986, 13-14.

[6] Rollo, 16-17.

[7] Ibid, 25.

[8] Original Record, 476-477.

[9] Appellant's Brief, 3-4; Rollo, 36.

[10] TSN, May 19, 1986, 4.

[11] Ibid, id., 6.

[12] TSN, February 28, 1986, 14.

[13] Sec. 31, Rule 130, Rules of Court.

[14] People vs. Sarabia, et al., 127 SCRA 100 (1984).

[15] See People vs. Brioso, et al., 37 SCRA 336 (1971); People vs. Garcia, 89 SCRA 440 (1979); People vs. Araja, et al., 105 SCRA 133 (1981).

[16] People vs. Aniel, 96 SCRA 199 (1980); People vs. Ola, 152 SCRA 1 (1987).

[17] TSN, June 16, 1986, 110-12.

[18] TSN, August 8, 1986, 20.

[19] TSN, May 19, 1986, 6.

[20] TSN, March 24, 1986, 84-85.

[21] TSN, id., 87-89.

[22] TSN, August 15, 1986, 21.

[23] Appellee's Brief, 12.

[24] Appellee's Brief, 12.

[25] TSN, February 28, 1986, 22-24; TSN, March 3, 1986, 34.

[26] The affirmance of the penalty of reclusion perpetua is in line with the doctrine in People vs. Millora, et al., G.R. Nos. L-38968-70, February 9, 1989, on which the writer has heretofore expressed his dissent.

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