

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO CLAMOR Y SANTIAGO, ACCUSED-APPELLANT.

G.R. No. 82708. July 01, 1991

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-82708/>

FELICIANO, J.:

Gregorio Clamor appeals from a Decision of the Regional Trial Court of Caloocan City which imposed upon him the penalty of reclusion perpetua for the murder of Ricardo Rivera.

The information filed against appellant and John Doe, the true name, real identity and present whereabouts of the latter being still unknown, read as follows:

"That on or about the 27th day of March 1981, in Caloocan, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused without any justifiable cause, with deliberate intent to kill and with treachery and evident premeditation, conspiring together and mutually helping one another, did then and there wilfully, unlawfully and feloniously shoot one Ricardo Rivera, with a gun of unknown caliber, several times on the different vital parts of the body, thereby inflicting serious physical injuries upon the latter, which injuries caused his death at the Quezon City General Hospital.

Contrary to law."^[1]

Appellant entered a plea of not guilty on arraignment. The prosecution and the defense thereafter went to trial and adduced their respective evidence. Since John Doe remained at large and unidentified, the case as against him was archived for future disposition. On 28 August 1987, the trial court rendered a decision with the following dispositive portion:

"IN VIEW OF ALL THE FOREGOING, the Court finds accused Gregorio Clamor y Santiago GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Art. 248 of the Revised Penal Code and sentences him to suffer the penalty of RECLUSION PERPETUA (LIFE IMPRISONMENT) with the accessories provided by law, indemnify the heirs of the deceased Ricardo Rivera in the amount of P50,000.00 as death indemnity, and the further sum of P12,700.00 as actual damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

This case shall remain pending as regards the other accused listed in the information whose identity is not yet known.

SO ORDERED."^[2]

The present appeal assigns the following errors:

1. The lower court erred in appreciating the alleged dying declaration of the deceased.
2. The lower court erred in giving credence to the testimonies of witnesses Inocencio Arellano and Eulogio Rivera.

3. The lower court erred in finding the accused guilty beyond reasonable doubt.[3]

The trial court found the following facts to have been established:

"On March 27, 1981 at about 7:30 p.m., Ricardo Rivera with companion Jaime Pascual was walking along Deparo, Caloocan City on their way to Bagumbong. Upon reaching a place thereat near the school and store of Aling Maring, a motorcycle with two (2) persons riding tandem passed by towards Novaliches. As the motorcycle passed Ricardo Rivera and companion, the rider behind the one driving the motorcycle shot Ricardo Rivera. The two (2) persons then fled towards Novaliches. Momentarily, for reasons only known to them and apparently to make certain that Ricardo Rivera was dead, they turned back the motorcycle, ran towards Ricardo Rivera and shot him again after alighting from the motorcycle. The two (2) shots found their marks at the back of victim Ricardo Rivera. The victim fell down mortally wounded. Inocencio Arellano, who was then at the store of Aling Maring buying cigarettes and Eulogio Rivera, brother of the victim who was then on his way home to Bagumbong and after hearing shots, both responded to help him. Eulogio Rivera placed the victim in a tricycle and rushed him to the Quezon City General Hospital. Fortunately, Inocencio Arellano witnessed the whole incident as the place of the crime was lighted. He saw and recognized the person who shot the victim as he positively pointed to accused Gregorio Clamor as the killer. Eulogio Rivera was also positive and certain that he saw and recognized the person at the back seat of the motorcycle as the accused Gregorio Clamor, the compadre of his deceased brother, Ricardo Rivera. Upon arrival at the Quezon City General Hospital, report of the incident was made by telephone to the Caloocan City Police Headquarters. Pat. Arsenio Alilam was assigned as investigator. He rushed to the hospital where he found the victim mortally wounded. He then took an ante mortem statement of the victim in question and answer method in the presence of Det. Cesar Salting. Attending Physician Dr. Alberto Vergara and the victim's brother Eulogio Rivera. x x x"[4]

Appellant first assails the statement given by the deceased Ricardo Rivera, the text of which is quoted below:

"8:45 P.M. 27 March 1981 QCGH

T - Ano ang iyong pangalan at ibang bagay na maaaring pagkilanlan sa iyong pagkatao?

S - Ricardo Rivera y Arellano, 35 years old, M, Farmer, Native and resident of Bo. Bagumbong, Caloocan, Metro Manila.

T - Ano ang dahilan bakit ka narito sa hospital ng Quezon City?

S - Pinagbabaril po ako.

T - Kilala mo ba ang bumaril sa iyo?

S - Opo.

T - Sino and bumaril sa iyo kung kilala mo?

S - Si Gregorio Clamor na taga Bagumbong, Caloocan City.

T - Anong dahilan bakit ka pinagbabaril?

S - Galit sa akin iyang si Gregorio Clamor.

T - Kailan at saan nangyari ito?

S - Kanina alas 7:00 ng gabi sa Bo. Bagumbong, ika 27 ng Marso 1981, habang pauwi kami ni Jaime Pascual galing sa presinto ng Urduja.

T - Ikamamatay mo ba ang mga sugat na natamo mo?

S - Sa palagay ko po.

(SGD). RICARDO RIVERA

Statement taken by Det. Alilam and signed in the presence of Det. C. Salting, Attending Physician Dr. Alberto Vergara. Brought in at about 8:30 p.m., 27 March 1981."[5]

The trial court characterized and accepted the above statement as a dying declaration under Section 31 of Rule 130 of the Revised Rules of Court which reads as follows:

"Sec. 31. Dying declaration. -- 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."

The trial court said:

"Let us discuss first the ante mortem statement of the deceased Ricardo Rivera when he was at the Quezon City General Hospital lying mortally wounded and at the point of death. Questions were asked of him by the investigator:

T: Kilala mo ba ang bumaril sa iyo?

S: Opo.

T: Sino ang bumaril sa iyo kung kilala mo?

S: Si Gregorio Clamor na taga Bagumbong, Caloocan City x x x

T: Ikamamatay mo ba ang mga sugat na natamo mo?

S: Sa palagay ko po.

x x x x x x x x'

This portion of the ante mortem statement is the most telling evidence presented by the prosecution. Its analysis (Exhibit 'A') would reveal that it must have been obvious to the victim Ricardo Rivera that death was fast approaching because of the mortal wounds which he must have surely felt.

Ante mortem statements are exceptions to the hearsay rule. Section 31, Rule 130 of the Revised Rules of Court provides x x x.

All the elements of a dying declaration as an exception to the hearsay rule were all present in the instant case. The dying declaration of the victim Ricardo Rivera should be considered as such for when the victim gave his statement he was in a serious condition and at the point of death. In his statement Exhibit 'A' the victim positively identified the accused Gregorio Clamor as the one who shot him. It is to be observed that when the victim made this statement he was conscious that he was about to meet his creator as to vanish from his mind any attempt to tell lies and his only comforting consideration then is to enjoy peace and serenity of conscience was to tell the truth. There is a saying that "Truth lies on the lips of dying men."

x x x x x x x x"[6]

Appellant's contention is that the deceased Ricardo Rivera was not in a physical and mental condition to have intelligently given the question and answer statement recorded by Detective Arsenio Alilam of the Caloocan Police Department and (allegedly) signed by the deceased at about 11:00 p.m. on the same evening that he was shot. Appellant seeks to base his contention here on the testimony of Dr. Salvador, NBI Medico-Legal Officer, on cross-examination that the bullet wounds sustained by the deceased would have put the latter in deep trauma and shock within two (2) to five (5) hours after the shooting. Since Ricardo Rivera was shot at about 7:30 p.m. in the evening and the statement taken at about 11:00 p.m. in the same evening, appellant claims by that time. Ricardo

Rivera could not have understood the questions put to him and given sensible answers thereto.

The principal difficulty with appellant's argument is that it places excessive reliance upon the precise time when the ante mortem statement was, in appellant's view, taken down and signed. In the first place, appellant did not challenge the genuineness of Ricardo Rivera's signature on the statement. In the second place, the signed statement, which was taken in longhand, itself recorded the time it was supposed to have been made; 8:45 p.m. on 27 March 1981 or about an hour and fifteen (15) minutes after the victim was shot earlier in the evening. Det. Alilam himself did estimate himself that the statement was taken about 11:00 p.m. that evening.[7] It was clear from his statement, however, that Det. Alilam's sense of the timing and sequence of events that evening in the hospital was rather impressionistic. For Det. Alilam also testified that Ricardo Rivera died several hours after his statement was taken down in the presence of Det. Salting, and that Ricardo Rivera died at about 11:00 p.m. that evening. One thing appears clear: Det. Alilam testified that the statement was taken down not long after the deceased was brought to the hospital; indeed, the attending physician had not yet begun to examine the victim personally though a nurse had begun to attend to him.[8] The entry of "8:45 p.m." on the statement of Ricardo Rivera having been made in the regular course of official police business, the Court is bound to presume that that time was correctly recorded.[9] That presumption was not overcome by the impressionistic estimate given by Det. Alilam on cross-examination that the ante-mortem statement was taken at about 11:00 p.m. Finally, while Det. Alilam had failed to have either Det. Salting or Dr. Vergara sign the statement as witnesses thereto, appellant has neither alleged nor proved that Det. Alilam had deliberately fabricated the whole ante-mortem declaration to falsely accuse an innocent man.

Thus, the Court believes that the trial court properly admitted and took account of the ante-mortem statement of Ricardo Rivera. We consider that that statement complied with the requirements of a dying declaration, to wit?

- "(a) that the declaration must concern the cause and surrounding circumstances of the declarant's death;
- (b) that at the time the declaration was made, the declarant was under the consciousness of an impending death;
- (c) that the declarant is competent as a witness; and
- (d) that the declaration is offered in a criminal case wherein the declarant's death is the subject of inquiry." [10]

While the gunshot wounds inflicted on Ricardo Rivera did not immediately cause his death, he had anticipated the onset of death while giving his statement. When asked whether he believed he was mortally wounded, Ricardo Rivera answered "(S)a palagay ko po." There is here sufficient indication that he believed that death would shortly -- in a matter of hours -- take him away. We also agree with the trial court that the statement of Ricardo Rivera naming appellant as the gunman who had shot him was part of the *res gestae*, admissible as a separate exception to the hearsay rule.[11]

After the trial court had rendered its decision sentencing appellant for the crime of murder, two (2) of the prosecution witnesses apparently executed affidavits in which they retract testimony given by them: Gregorio Rivera, father of the victim Ricardo Rivera; and Inocencio Arellano, uncle of the victim.[12] Gregorio Rivera had testified only in respect of hospital and funeral expenses incurred by the family of Ricardo Rivera. His affidavit of retraction, where he makes statements to the effect that appellant Gregorio Clamor knew nothing about the murder of Ricardo Rivera and that Ricardo was unconscious when he arrived at the hospital, is clearly worthless. Inocencio Arellano had, as prosecution witness, identified appellant as the gunman, riding on the backseat of the motorcycle, who had shot Ricardo Rivera as the motorcycle zoomed past him. The retraction affidavit of Inocencio Arellano, where he denied that he had seen appellant Gregorio Clamor shoot the victim, cannot, however, be given effect to absolve appellant from any participation in the killing of Ricardo Rivera. The

well-settled rule is summarized in *Reano, et al. v. Court of Appeals*[13] in the following terms:

"1. The Court has looked with disfavor upon retraction of testimonies previously given in court. Thus, the Court has ruled against the grant of a new trial on the basis of a retraction by a witness. The rationale for the rule is obvious:

Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it may later be repudiated. So courts are wary or reluctant to allow a new trial based on retracted testimony.

However, when aside from the testimonies of the retracting witness or witnesses there is no other evidence to support a judgment of conviction, a new trial may be granted.

2. Where a witness testifies for the prosecution and retracts his or her testimony and subsequently testifies for the defense, the test in determining which testimony to believe is one of comparison coupled with the application of the general rules in evidence, as enunciated in *People v. Ubina* [97 Phil. 515 (1955)], where the Court said:

The testimony of Ruben Francisco for the prosecution is claimed to be unworthy of credit because later on he testified for the defense, declaring that all he had stated against the defendants is not true. . .

The theory of the defense that Francisco's previous testimony is false, as he subsequently declared it to be so, is as illogical as it is dangerous. Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement (Rule 123, section 91); not that a previous testimony is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e., that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one. Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. If Francisco says that when he testified for the prosecution he was paid P700, what can prevent the court from presuming that subsequently he testified for the defense because the defendants also paid him to testify for them? The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized -- in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth." [14] (Citations omitted; underscoring in the original)

The Court has examined the testimony given by Arellano before the trial court and the retraction affidavit later executed by him. The testimony of Arellano before the trial court was forthright, clear and positive. Arellano had recognized appellant Clamor as the rider mounted behind the man driving the motorcycle when the two (2) returned, after having passed and shot Ricardo Rivera, and the rear rider dismounted, shot Ricardo again, remounted the motorcycle and the two (2) riders sped off.[15] Upon the other hand, in his affidavit, Arellano stated that he did not see the shooting of Ricardo that he did not remember who had first brought up the name of appellant Clamor as a possible suspect due to an earlier dispute Clamor had with Ricardo concerning some farm animals owned by Clamor.[16] We do not believe that this simple, blanket denial warrants rejection of the

detailed testimony of Arellano, testimony that he had clung to throughout cross-examination. Finally, we must note that the decision of the trial court did not rest exclusively on the testimony of Arellano: there was the dying declaration of Ricardo and the equally positive identification in court of appellant as the killer by Eulogio Rivera, a brother of the victim.

Appellant raised as his principal defense that at the time Ricardo Rivera was shot, he (appellant) was in Pajo (or Maypajo), Meycauayan, Bulacan. He testified that as early as 9:00 o'clock in the morning of 27 March 1981, he left his residence at MBA Subdivision in Bagumbong, Caloocan City for Pajo, Meycauayan, Bulacan at the invitation and in the company of several friends. It took them at least two (2) hours to reach their destination because instead of taking a bus or jeepney, they decided to go to Pajo on foot. There, the group ate lunch at the house of one Rody. Later, they transferred to the place of one Kiko, also in Pajo, where they finished two (2) bottles of gin. At 4:00 o'clock in the afternoon, they proceeded to the house of a third friend, one Taruk, still in Pajo, to eat watermelons and then drank beer afterwards. They were, appellant claims, in Pajo practically the whole day and evening leaving at about 10:00 o'clock in the evening. They returned to Caloocan City again by foot arriving thereat at 12:00 o'clock midnight. It was not until the following morning that Gregorio Clamor learned about the death of Ricardo Rivera; stories about Gregorio's alleged participation in the crime came to his knowledge only on 29 March 1981. He then sought the assistance of his uncle who volunteered to accompany him to the headquarters of the Caloocan City Police for investigation. Appellant gave a written statement before the police investigator and was made to undergo a paraffin test.[17]

The defense of alibi, however, cannot overcome the dying declaration of the victim and the testimonies of the prosecution witnesses[18] which uniformly pointed to appellant as the person mounted on the back of the motor-cycle who fired at Ricardo Rivera. Further, appellant had not sufficiently demonstrated that it was physically impossible for him to be in Caloocan City at any time during the day assuming he was indeed in Pajo, Meycauayan, Bulacan and was to come from that place. Appellant made it a point to stress that he and his companions had gone on foot all the while. Public motor transportation was, of course, available. Even if he had opted to walk, he himself had testified that he could have reached Caloocan City from Pajo, Meycauayan, Bulacan in approximately two (2) hours or even less.

The finding in the Chemistry Report[19] prepared by the Forensic Chemistry Section of the National Bureau of Investigation (NBI), that nitrates were not found in the hands of appellant, is not conclusive evidence that appellant did not fire a gun at the victim. The Court notes that the paraffin test was conducted by the NBI on 30 March 1981 at 5:00 o'clock in the afternoon while the shooting incident occurred in the night of 27 March 1981. As testified to by the NBI Forensic Chemist on cross-examination, there are many factors that could cause the disappearance of nitrates or gunpowder residue, e.g., perspiration and washing of the hands.[20] It cannot be discounted that after the lapse of more than two (2) days, the powder residues, if any, had been washed away.

The information alleges that appellant shot Ricardo Rivera with treachery and evident premeditation. The trial court found both treachery and evident premeditation, either one of which would of course qualify the killing to murder.

Treachery was correctly taken into account by the trial court. Appellant was armed with a gun, riding tandem on a motorcycle, suddenly and without warning shot Ricardo Rivera in the back as the motorcycle sped by. Ricardo Rivera was then walking with another man, Jaime Pascual, along the road to Bagumbong, unsuspecting and unarmed. The motorcycle then turned back and returned to where Ricardo lay wounded, and appellant fired at Ricardo once more, again hitting him in the back. Ricardo had no effective opportunity to defend himself and to strike back at the assassin.

Upon the other hand, evident premeditation cannot be said to have been proved. None of the elements of evident Premeditation -- (1) proof of the time when the accused decided to commit the crime; (2) proof of an overt act showing that the accused had clung to his determination to commit the crime; and (3) the lapse of time between the decision and the execution of the crime sufficient to allow the accused to reflect upon the consequences of his acts -- had been established by the prosecution.

Nighttime was similarly erroneously appreciated by the trial court. Towards the end of the Decision, the trial judge observed that the crime had been committed at night and concluded that it was purposely sought not only to assure successful execution of the killing but also to prevent identification or recognition by eyewitnesses. The ordinary rule, however, is that nocturnity is deemed absorbed in treachery and as such is not be appreciated separately.[21]

Appellant may be credited with voluntary surrender. Having learned of the rumor about his participation in the killing of Ricardo Rivera, appellant sought the advice of his uncle and then voluntarily went to the police station for interrogation. He surrendered himself personally to the police authorities and had his hands subjected to a paraffin test to determine the presence of nitrates or gunpowder residue. He was released from detention only upon posting of a bond in the amount of P30,000.00.

WHEREFORE, the Decision of the Regional Trial Court of Caloocan City, Branch 125 in Criminal Case No. 15953(81) is hereby MODIFIED so as to credit appellant Gregorio Clamor with the mitigating circumstance of voluntary surrender. Applying the Indeterminate Sentence Law, appellant Gregorio Clamor is hereby SENTENCED to suffer imprisonment for an indeterminate period ranging from twelve (12) years as minimum to twenty (20) years as maximum. Appellant is ORDERED to indemnify the heirs of the late Ricardo Rivera in the amount of P50,000.00 as moral damages and P12,700.00 as actual damages, and to pay the costs of suit.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Record p. 1.

[2] RTC Decision, p. 19; Record, p. 326.

[3] Brief for the Appellant, p. 4; Rollo, p. 62.

[4] Decision of the Trial Court, 9-10; Record, pp. 317-318.

[5] Records, p. 122.

[6] Decision of the Trial Court, Rollo, pp. 31-32.

[7] TSN, 2 February 1982, pp. 32 and 48.

[8] Id., pp. 29-30.

[9] Section 5 (m) and (q), Rule 131, Revised Rules of Court.

[10] *People v. Nabor*, 185 SCRA 615 (1990); *People v. Saliling*, 69 SCRA 427 (1976); *People v. Sagario*, 14 SCRA 468 (1965).

[11] *People v. Reyes*, 52 Phil. 538 (1928).

[12] The texts of these affidavits are reproduced in Appellant's Brief, pp. 10-13.

[13] 165 SCRA 525 (1988).

[14] 165 SCRA at 530-531. See also *De Guzman v. Intermediate Appellate Court*, 184 SCRA 128 (1990); *People v. Morales*, 113 SCRA 683 (1982).

[15] TSN, 23 March 1982, pp. 21-30.

[16] Affidavit, as quoted in Appellant's Brief, Rollo, p. 70.

[17] TSN, 5 December 1984, pp. 3-22.

[18] *People v. Ebor*, 141 SCRA 282 (1986).

[19] Records, p. 225.

[20] TSN, 12 January 1987, pp. 8-10.

[21] *People vs. Maravilla*, 167 SCRA 645 (1988); *People vs. Bardon*, 165 SCRA 416 (1988).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.