

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUISITO ISRAEL Y VILLANUEVA, ACCUSED-APPELLANT.

G.R. No. 97027. March 11, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellant Luisito Israel was charged with and convicted of the crime of Murder before the Regional Trial Court of Manila, Branch 149.[1] The antecedent facts are as follows:

Spent up by the celebration on the night of 31 December 1987, Jose Dimacali, Jr. fell asleep on a bench in front of his house at No. 925-H Asuncion St., Tondo, Manila. At about 4:00 o'clock in the morning of 1 January 1988, accused-appellant Luisito Israel alias "Sitong" (hereunder referred to as Israel) together with three (3) male companions went to the house of Dimacali, Jr. and surrounded the latter who was sound asleep on the bench and totally oblivious of the people who surrounded him. With a butcher's knife of about one and a half (1-1/2) feet long which he was holding, Israel stabbed Dimacali, Jr. on the neck and chest.

After stabbing the victim, Israel and his companions fled. Seriously wounded, Dimacali, Jr. staggered into their house to seek help from his parents who were roused from sleep by his entrance. Seeing his son wounded and drenched in his own blood, Jose Dimacali, Sr. immediately approached the victim and the latter clung on to his father. When asked by his father as to the identity of the person who stabbed him, the victim replied "Si Sitong, may kasama siya." When further asked who the companions of Sitong were, the victim's answer was no longer clear and intelligible.

Carrying his wounded son outside their house, Jose Dimacali, Sr. shouted in anguish and anger asking who were the companions of the person who stabbed his son, causing several people to gather in the area. With the help of a relative, the victim was rushed by his mother to the Jose Reyes Memorial Hospital while the victim's father stayed behind hoping to find "Sitong" and his companions. On the way to the hospital, the victim died.

An autopsy of the body of the victim was performed by Dr. Marcial Cenido, Medico-Legal Officer of the Western Police District. The victim was found to have sustained stab wounds on the neck, left chest and upper chest. The wounds on the neck and left chest were found to be fatal and caused the death of the victim.[2] According to the findings of the Medico-Legal Officer, the wounds could have been caused by a pointed single bladed weapon inflicted while the victim was lying down.[3]

On 7 January 1988, Jose Dimacali, Sr. reported the incident to the Western Police District and executed a sworn statement naming therein accused-appellant Luisito Israel alias "Sitong" as one of the suspects.

An information dated 14 October 1988 was filed against Israel charging him with Murder, committed as follows:

"That on or about January 1, 1988, in the City of Manila, Philippines, the said accused, conspi-ring and confederating together with others whose true names, identities and present whereabouts are still unknown and helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully,

unlawfully and feloniously attack, assault and use personal violence upon the person of one JOSE DIMACALI, JR. Y CLEMENTE, by then and there stabbing the latter with a bladed weapon hitting him on the left chest and neck, thereby inflicting upon him stab wounds which were necessarily fatal and which caused the death of the said JOSE DIMACALI, JR. Y CLEMENTE, thereafter.

Contrary to law."[4]

In the evening of 18 October 1988, Israel went to the house of Jose Dimacali, Sr. shouting invectives and challenging the latter for accusing him of killing the victim. Passing through the back door of their house, Jose Dimacali, Sr. went to report to the police authorities the presence and actions of Israel. Israel was arrested by the police authorities.

Upon arraignment, Israel entered a plea of not guilty. At the trial, the prosecution presented Clarita Sampang Pelayo, Remedios Italiano, Leonardo Pelayo and the father of the victim, Jose Dimacali, Sr., as witnesses. The defense presented accused Israel and Alberto Turiaga as witnesses.

Clarita Sampang Pelayo, a neighbor of both the victim and the accused, testified that she happened to be passing by the house of the victim when the stabbing incident occurred, and that at about 12:30 o'clock in the morning of 1 January 1988, her four (4) sons, between the ages of fifteen (15) to twenty-two (22) years old, asked permission to go out in their neighborhood, assuring her of their return as soon as they were ready to sleep. However, at about 4:00 o'clock in the morning, Clarita discovered that her sons had failed to return home, thus, she went out to search for them. Taking a short route to the place where her sons went for a drinking spree, she passed by the house of the victim which was well lighted. At a distance of about five (5) to six (6) arm's length, she saw the victim sleeping on a bench surrounded by Israel and three (3) male companions. Israel was holding a butcher's knife of about 1-1/2 feet long and he stabbed Dimacali, Jr. twice. Alarmed by what she witnessed, Clarita started screaming and ran back to her house forgetting her original intention to search for her sons.[5]

Remedios Italiano, another neighbor whose house is situated across the house of the victim, testified that at about 4:00 o'clock in the morning of 1 January 1988 while she was taking out the assorted candies she was selling in a stall in front of her house, she saw the victim sleeping on a bench in front of their house while Israel and his three (3) companions were standing around him. While Dimacali was asleep, Israel stabbed the victim with a butcher's knife three (3) times. Out of fear, Italiano immediately went inside her house closing the door behind her. From outside, she heard a woman scream, followed by the voice of her neighbor Jose Dimacali, Sr. shouting in anger.[6]

Jose Dimacali, Sr. testified that between 4:00 to 4:30 o'clock in the morning of 1 January 1988, he was awakened by his wife who was roused from sleep when their son Jose Dimacali, Jr. staggered inside their house wounded and covered with blood. Immediately, Jose Dimacali, Sr. went to help his son who clung to him. When he asked their son the name of the person who stabbed him, the victim said "Si Sitong. May kasama siya." When further asked who the companions of Sitong were, the victim's answer was no longer clear for blood was already oozing from his nose and mouth.[7]

Leonardo Pelayo, who lives in the same neighborhood where both the victim and Israel resided, testified to having seen Israel in the neighborhood at about 10:00 to 10:30 in the evening of 31 December 1987; that while he was buying some cigarettes in a variety store, he saw the accused having a drinking spree with his companions. Between 11:00 to 12:00 o'clock midnight of that same date, Pelayo again saw Israel walking towards the direction of the house of his parents.[8]

For his defense, accused Israel claimed that in October 1987 until March 1988, he was employed as "caretaker-kapatas" in the construction of a six-door apartment owned by his brother-in-law, Jose Ballesteros, in

sitio Anos, Los Banos, Laguna; that while employed as "caretaker-kapatas," he stayed at the apartment being constructed and only came to Manila four (4) times for the purpose of getting money from his sister-in-law to buy the materials they needed for the construction. His wife and children regularly visited him at the construction site. His family spent Christmas and New Year with him in Los Banos.

Israel claimed that on 31 December 1987, he reported to work at the construction site together with Alberto Turiaga and other workers; that with the exception of himself and Turiaga, all the workers left the site at about 5:00 o'clock in the afternoon to celebrate the New Year with their respective families. He and Turiaga spent the night at the site.

Israel declared that when he returned to Manila on 4 March 1988, he learned from his wife that he was being implicated in the killing of Jose Dimacali, Jr. Immediately, he went to the residence of Jose Dimacali, Sr. and in front of the house of the latter, he shouted "Bakit ninyo ako pinagbibintangan sa pagkamatay ng anak mo, Peping." When nobody responded, he left the place; however, about half a meter away from the house of Jose Dimacali, Sr., four (4) policemen arrested him.[9]

To corroborate accused Israel's claim of alibi, the defense presented Alberto Turiaga who testified that he worked with Israel in the construction of an apartment in Los Banos, Laguna; and that on 31 December 1987, he and Israel were left at the site where they spent the New Year.[10]

Based on the evidence presented by both parties, the court a quo rendered a decision dated 18 May 1989, convicting herein accused-appellant Israel of the crime of murder. The dispositive part of the judgment reads as follows:

"WHEREFORE, judgment is hereby rendered finding the Accused LUISITO ISRAEL guilty beyond reasonable doubt, as principal, for the crime of 'Murder' defined in and penalized by Article 248, paragraph 1 of the Revised Penal Code, attended by the aggravating circumstance of evident premeditation and hereby imposes on said Accused the Penalty of Reclusion Perpetua with all the accessory penalties of the law and hereby condemns the said Accused to pay to the heirs of the deceased the amount of P5,000.00 as actual damages and the amount of P30,000.00 by way of moral and exemplary damages and to pay the costs of suit. The period during which the Accused was detained during the pendency of this case shall be credited to him provided that he agreed in writing to abide by and comply strictly with the rules and regulations of the City Jail.

SO ORDERED." [11]

Seeking a reversal of his conviction, accused-appellant Israel claims that the court a quo erred in finding him guilty of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt and in rejecting his defense of alibi. The trial court, according to the accused-appellant, should not have given probative value to the alleged dying declaration of the victim and the unreliable testimonies of the eyewitnesses.[12]

We find no merit in this appeal.

As a rule, a dying declaration is hearsay and is inadmissible as evidence. In order that a dying declaration may be admissible as evidence, four (4) requisites must concur, namely: that the declaration must concern the cause and surrounding circumstances of the declarant's death; that at the time the declaration was made, the declarant was under a consciousness of an impending death; that the declarant is competent as a witness; and that the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.[13]

In the present case, the declaration made by the victim to his father before he died that it was the accused who stabbed him, is not admissible as evidence. The prosecution failed to prove that the victim was conscious of an

impending death when he made such utterance. To quote the testimony of Jose Dimacali, Sr. -

"xxx xxx xxx

ATTY. MENESES III:

How did you come to know that your son was stabbed that day?

WITNESS:

My son was able to enter our house and my wife was awakened and I was also awakened by my wife and when I stood up, my son met me and embraced me, sir.

ATTY. MENESES III:

After you woke up and you were embraced by your son, what did you do, Mr. Witness?

WITNESS:

I asked him who stabbed him, sir. My son answered 'Sinaksak ako ni Sitong. May kasama siya.' (I was stabbed by 'Sitong' and he had a companion.)

ATTY. MENESES III:

When you saw your son that morning, could you please describe how he looks (sic) like at that time?

WITNESS:

When I saw him that morning, sir, he was bloodied all over and that was when I asked him what happened to him.

ATTY. MENESES III:

What did you do after you saw him bloodied?

WITNESS:

I brought him outside of the house because he could not walk already and then when (sic) were outside the house I kept on shouting, sir.

ATTY. MENESES III:

What were you shouting, Mr. Witness?

WITNESS:

I was shouting 'Kung sino ang pumatay na kasama ng anak ko,' sir.

xxx xxx xxx"[14]

However, the declaration of the victim as conveyed to his father may be treated as part of the *res gestae*.^[15] All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story; or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances.^[16]

The only defense raised by the accused before the trial court was alibi. Alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because of its easy fabrication without much opportunity at checking or rebutting it. In the present case, it cannot prevail over the

positive identification of the accused-appellant by the witnesses. To validly establish alibi as a defense, accused must show that he was at some other place for such a period of time and that it was impossible for him to have been at the place where the crime was committed at the time of its commission.[17] It is unavailing as a defense where there is an affirmative evidence of the presence of the accused at the scene of the crime at the time of its commission, or where there is a positive identification of the accused as the perpetrator of the offense, as well as where there is an ante mortem statement received in evidence either as a dying declaration or as part of the *res gestae*. [18]

Accused-appellant Israel was positively identified as the one who stabbed the victim on 1 January 1988 by no less than two (2) eyewitnesses. The night immediately before the incident occurred, Israel was seen in their neighborhood in the company of several individuals having a drinking spree in one of the variety stores in the area. The victim had made a declaration before he died that Israel was his assailant. Israel's claim that it was not possible for him to have committed the crime because he was in Los Baños when the victim was killed cannot prevail over the ante mortem statement of the victim, specifically singling him (Israel) out as the assailant and the positive identification by the two (2) eyewitnesses, which is further corroborated by the testimony of Leonardo Pelayo who testified that he saw the accused in their neighborhood just a few hours before the incident occurred.

There is motive on the part of Israel in killing the victim. Sometime in August 1983, Israel and Dimacali, Jr. had an altercation. As a result, the victim stabbed Israel. A complaint was filed by Israel against the victim before the Office of the Barangay Captain. Although Israel had agreed to an amicable settlement,[19] it is not farfetched that, after the incident, he bore a grudge against the victim.

The delay on the part of the eyewitnesses in reporting the incident does not automatically render their testimony as doubtful. The failure to reveal or disclose at once the identity of the accused does not necessarily affect, much less impair the credibility of the witnesses. The initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations due to fear of reprisal are common and have been judicially declared not to affect credibility.[20]

Clarita Sampang agreed to execute an affidavit before the police authorities on 20 October 1988, narrating therein the incident she witnessed on 1 January 1988 involving the accused Israel and Jose Dimacali, Jr., only after the accused was arrested. Remedios Italiano was reticent to testify even after the arrest of the accused. Both eye-witnesses were fearful that the accused might turn against their families in retaliation for their acting as eye-witnesses to the crime for which the accused was being charged. They were apprehensive of putting in jeopardy not only their own lives but the lives of their respective families.

Likewise, the fact that Jose Dimacali, Sr. reported to the police authorities the death of his son five (5) days after the incident occurred should not affect the result of the case. Benumbed and shattered by the brutal death of his son, Jose Dimacali, Sr. explained that he was in no condition then to think of the legalities of reporting the incident to the police authorities.

It was observed by the trial court that both eyewitnesses, Clarita Sampang and Remedios Italiano, were categorical, spontaneous, candid and straightforward in giving their testimonies. However, to discredit the credibility of the eyewitnesses, accused pointed to some contradictions in the testimony of said witnesses. It is true that there were contradictions in the testimony of the eyewitnesses as to the position of the victim when he was stabbed and the number of times he was stabbed. Sampang testified that she saw the accused stab the victim twice while the latter was sleeping on a bench "lying down on the right side," while Italiano claimed that she saw the accused stab the victim three (3) times while the latter was "lying down with his face up."

After a thorough review of the records of the case, we find no cause or reasons to disturb the finding of the trial

court regarding the credibility of the eyewitnesses. The trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying. The impressions of the trial court on the matter are binding upon this Court, unless there appears a grave abuse of discretion or obvious misapprehension of facts, which does not obtain in the case at bench.[21]

The alleged contradictions in the testimony of the eyewitnesses pointed out by Israel refer to minor details and they are not sufficient to overthrow the probative value accorded by the trial court to the testimony of said eye-witnesses. Minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[22] For it is not unusual for two (2) individuals to have different impressions and recollection of what happened, more so when the event involved a killing in cold blood of a defenseless individual in his sleep.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED**, with the sole modification that appellant Israel is ordered to indemnify the heirs of the victim the amount of P50,000.00 in accordance with prevailing jurisprudence.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), shares J. Regalado's view in his separate concurring opinion.

Regalado, J., see concurring and partial separate opinion.

Nocon and Puno, JJ., concur.

[1] Criminal Case No. 88-67578 SCC

[2] Post-Mortem Findings of the Medico Legal Division of the WPD, Records, pp. 16-17

[3] Testimony of Marcial Cenido, TSN of 12 December 1988 hearing, pp. 3-4, p. 10.

[4] Rollo, p. 4

[5] TSN of 12 December 1988 hearing, pp. 12-16

[6] TSN of 30 January 1989 hearing, pp. 2-6

[7] TSN of 6 March 1989 hearing, pp. 5-7

[8] TSN of 17 April 1989 hearing, pp. 3-4

[9] TSN of 6 March 1989 hearing, pp. 68-90

[10] Ibid, pp. 116-121

[11] Rollo, p. 35

[12] Ibid, pp. 70-71

[13] People vs. Lazarte, G.R. No. 89762, 7 August 1991, 200 SCRA 361

[14] Testimony of Jose Dimacali, Sr., TSN of 6 March 1989, pp. 6-7

[15] People vs. Lazarte, *supra*

[16] People vs. Abboc, G.R. No. L-28327, 14 September 1973, 53 SCRA 54

[17] People vs. Devaras, G.R. No. L-48009, 3 February 1992, 205 SCRA 676

[18] People vs. Estera, G.R. No. 101556, 31 March 1992, 207 SCRA 703

[19] Kasunduang Pag-aayos dated 23 August 1983, records, p. 25

[20] People vs. Loveria, G.R. No. 79138, 2 July 1990, 187 SCRA 47

[21] Araneta, Jr. vs. CA, G.R. No. 43527, 3 July 1990, 187 SCRA 123

[22] People vs. Arcega, G.R. No. 96319, 31 March 1992, 207 SCRA 681

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CONCURRING AND PARTIAL SEPARATE OPINION

REGALADO, J.:

I concur. However, on the holding that the identification made by the victim of his assailant is admissible only as part of the *res gestae* but not as a dying declaration, I would like to express a separate opinion.

Prefatorily, I agree that the answer of the victim when asked who stabbed him, saying "Si Sitong, may kasama siya," qualifies as part of the *res gestae* and is admissible in evidence as such. However, under the circumstances obtaining during that particular incident, for evidentiary purposes such statement also constitutes a dying declaration or one made in *articulo mortis*.

As lucidly narrated in the ponencia, the victim was set upon and repeatedly stabbed by the accused-appellant and his cohorts who inflicted wounds on his neck, left chest and upper chest, the first two being fatal; that the victim then staggered into their house, drenched with his own blood; that when queried by his father as to the identity of his attacker, he made the statement now in question; that his answer to the next question as to the companions of "Sitong" was unintelligible as he collapsed in the arms of his father; and that when he was then rushed to the hospital, he expired on the way.

There can, therefore, be no question as to the seriousness and gravity of the wounds sustained by the victim and it would be highly improbable, if not incredible, that he was unaware of the mortal nature thereof. In other words, I submit that the victim could not but have known, when he gave his aforequoted answer, that his death was imminent and that he did not entertain any hope of survival.

A declaration is deemed as having been made under the consciousness of impending death in consideration of (1) the words spoken or the statements of the declarant on that occasion, (2) his conduct at the time he made that declaration,[1] and (3) the serious nature of his wounds as would necessarily engender a belief on his part that he would not survive therefrom,[2] especially where he died an hour thereafter.[3]

In admitting a statement spontaneously made after a startling occurrence as part of the *res gestae*, the controlling determinant is the immediacy thereof such that, by reason of the brief interval between the two events, the declarant had no opportunity to contrive.[4] On the other hand, in a dying declaration, the intervening time from the making of the statement to the death of the declarant is immaterial, as long as the declaration was made under the consciousness of impending death[5] and was never retracted.

The requisites for the admissibility of the victim's *ante mortem* statement as part of the *res gestae* and also as a dying declaration are present in this case, hence the same should be admitted under both exceptions to the hearsay

rule.[6] While the admissibility thereof would naturally not be affected whether viewed under either or both considerations the advantage of resting the issue on the aforestated dual bases is that its admission would be invulnerable to a theorized absence of an element of one of said exceptions. This is particularly important in this case, considering that the very identification of the assailant and the accuracy thereof are essentially based on that declaration of the victim.

[1] U.S. vs. Virrey, 37 Phil. 618 (1918).

[2] People vs. Avila, 92 Phil. 805 (1953); People vs. Sarabia, et al., L-27422, January 30, 1984, 127 SCRA 100.

[3] People vs. Briosio, et al., L-28482, January 30, 1971, 37 SCRA 336; People vs. Garcia, L-44364, April 27, 1979, 89 SCRA 440; People vs. Araja, et al., L-24780, June 21, 1981, 105 SCRA 133.

[4] People vs. Siscar, G.R. No. 55649, December 3, 1985, 140 SCRA 316; see also People vs. Abboc, L-28327, September 14, 1973, 53 SCRA 54, and cases cited therein; People vs. Pascual, et al., L-29893, February 23, 1978, 81 SCRA 548.

[5] U.S. vs. Mallari, 29 Phil. 14 (1914); People vs. Devaras, et al., L-25165, February 21, 1971, 37 SCRA 697; People vs. Jacinto, et al., G.R. No. 51908, November 29, 1984, 133 SCRA 499; People vs. Sabio, L-26193, January 27, 1981, 102 SCRA 219.

[6] People vs. Gueron, et al., L-29365, March 25, 1983, 121 SCRA 115; People vs. Balbas, L-47686, June 24, 1983, 122 SCRA 859.

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