

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMBROCIO NABOR AND AMANDO ROSETE, ACCUSED-APPELLANTS.

G.R. Nos. 77822-23. May 21, 1990

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-77822-23/>

GUTIERREZ, JR., J.:

Before us on appeal is the joint decision of the Regional Trial Court, First Judicial Region, Branch 39, Lingayen, Pangasinan in Criminal Cases Nos. 1376-A and 1377-A convicting the accused-appellants of the crime of murder. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered finding both accused Amando Rosete and Ambrocio Nabor, in both cases, guilty beyond reasonable doubt, of the crime of Murder as charged and therefore, sentences them to suffer the penalty of RECLUSION PERPETUA, in each case, the maximum of which shall not exceed 40 years, with the accessories of the law and to pay the proportionate costs.

"They should indemnify the heirs of the victim, Jean Tandoc, the sum of P30,000.00 also jointly and severally, the heirs of Harry Nicanor, without subsidiary imprisonment in case of insolvency, in both cases. They are further ordered to pay the actual damages incurred by the heirs of the victim Jean Tandoc in the amount of P20,000.00 jointly and severally, and the total sum of P17,390.00 to the heirs of Harry Nicanor, without subsidiary imprisonment in case of insolvency, in both cases. Both accused are ordered jointly and severally to pay moral damages, in the amount of P50,000.00 to the heirs of both victims without subsidiary imprisonment in case of insolvency. No pronouncement as to the claim for damages due to the loss of earning capacity for insufficiency of evidence.

"It appearing that the accused are undergoing preventive imprisonment and during the period of their confinement they manifested voluntarily in writing that they were willing to abide by the rules applicable to detention prisoners, under Art. 29 of the Revised Penal Code, they should be credited with the entire period of their temporary detention." (Rollo, p. 65)

The accused-appellants were charged with the crime of murder in two separate informations, to wit:

Criminal Case No. 1376-A

"That on or about November 22, 1983, in the municipality of Agno, province of Pangasinan, Republic of Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, armed with a gun, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Harry Nicanor, inflicting upon him fatal gunshot wounds which caused his death, to the damage and prejudice of the heirs of Harry Nicanor in the amount of no less than P50,00.00" (RTC Decision, p. 1; Rollo, p. 34)

Criminal Case No. 1377-A

"That on or about November 22, 1983, in the municipality of Agno, province of Pangasinan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring,

confederating and mutually helping one another, with intent to kill, armed with a gun, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Jean R. Tandoc, inflicting upon her fatal gunshot wounds which caused her death, to the damage and prejudice of the heirs of Jean R. Tandoc in the amount of no less than P50,000.00." (RTC, Decision, p. 2; Rollo, p. 35)

The facts for the prosecution as summarized by the Solicitor General are as follows:

"On November 22, 1983, at about 6:00 o'clock in the evening, Janette R. Tandoc, Jean R. Tandoc, Emma Español, Mila Viray and Harry Nicanor went to the municipal town plaza of Agno, Pangasinan to watch the different games being held celebration of the Agno town fiesta. At about 8:00 o'clock that same evening, the group proceeded home. While they were walking along P. Burgos St., the appellants Ambrosio Nabor and Amando Rosete who were then near an acacia tree, fired upon the group hitting Jean Tandoc and Harry Nicanor. Jean Tandoc fell to the ground while Harry Nicanor, although hit, was able to run, reach their house. (TSN, p. 3-4, February 19, 1985)

"Janette Tandoc upon seeing her sister hit and sprawled on the ground shouted for help. A certain Asiong and Godie responded to said cries for help. With the help of Godie, Jean Tandoc was first rushed to a certain Dr. Genaro Sison and thereafter was brought to the Nazareth General Hospital at Dagupan City, but was later transferred to the Pangasinan Provincial Hospital also at Dagupan City where she expired on November 23, 1983. On the other hand, Harry Nicanor was also rushed to the Nazareth General Hospital where he later died on November 29, 1983. (TSN, p. 5-6, February 19, 1985)

"On November 28, 1983, Harry Nicanor gave his ante-mortem statement to Patrolman Marcelo Paragas, where he declared, among others, that Ambrosio Nabor and Amando Rosete were the persons who shot him while he was in the company of Mila Viray, Jeannette Tandoc, Jean Tandoc and Emma Español. (Exhibit "A", p. 8, Records; see also p. 4. Decision RTC, July 29, 1986; TSN, February 20, 1985)

"Moreover, while still in the Hospital Harry Nicanor was able to talk to his mother (Trinidad Nicanor) where he told her "Mando is a traitor and Ambros is a snake" obviously referring to the appellants Amando Rosete and Ambrosio Nabor. (TSN, p. 5-6, March 7, 1985)

"Further, Perpetuo Nicanor (brother of Harry Nicanor) testified that he together with his mother Trinidad, a certain Hector Batalla and another Prudencio Narito brought Harry Nicanor to the Nazareth General Hospital. While in the hospital, Harry told him the following words, "be careful because Ando Rosete and Ambros Nabor may go after you and you will be the next. (TSN, p. 4, March 12, 1985)

"Jean Tandoc likewise declared in her Ante-mortem statement taken by Patrolman Credo at the Pangasinan Provincial Hospital, Dagupan City on November 23, 1983, that she was shot by two (2) persons she did not recognize. One is smaller than the other and they were wearing jackets. (TSN, p. 4-7, April 25, 1985, Exhibit 1, Records)

"The incident happened at a place about 30 meters away from the municipal hall and at a time when there was moonlight. (p. 21, Decision, July 29, 1986)

"Dr. Otto Raguindin, Senior Resident Physician of the Pangasinan Provincial Hospital Department of Surgery, Dagupan City who examined and operated on Harry Nicanor stated that said victim died on November 29, 1983. And, according to his findings as embodied in the medical certificate (Exhibit "H") he issued on March 12, 1985, Harry Nicanor suffered the following:

"a) A gunshot wound with point of entry about one centimeter in diameter with contusion collar at the level of the thoracic vertebrae.

"b) Fatal wounds in the small and large intestines and the liver.

"c) Severe hemorrhage and fulminary infection and the primary cause of death was hemorrhagic shock."

"Dr. Otto Raguindin likewise said he attended to the injuries of Jean Tandoc and conducted the surgical operation on her. He declared that the victim died in the operating room on November 23, 1983, while undergoing operation. He further declared that as embodied in the medical certificate he issued (Exhibit "I"), Jean Tandoc suffered the following:

"a) A gunshot wound with the point of entry about one centimeter in diameter with contusion collar right buttocks, penetrating the abdomen, lacerating the right ovary and fallopian tube, tangentially lacerating the mid portion of the ascending colon. It also penetrated the right lobe of the liver thru and thru, the mid portion of the right diaphragm, the lobes of the right lung and the right clanicle.

"b) A gunshot wound with a point of entry of one centimeter in diameter with contusion collar hitting the mid-portion of the T-9 posteriorly with metallic vertebral canal transecting the spinal cord.

"c) Bleeding of the lung and intra-abdominal cavities. (TSN, pp. 8-9, March 14, 1985;" (Brief for the Appellee, pp. 4-9; Rollo, pp. 149-154)

The accused-appellants, on the other hand, present the following "Statement of Facts":

"That on the night of November 22, 1983 in the Municipality of Agno, Pangasinan the two victims Harry Nicanor and Jean Tandoc were gunned down on Burgos Street on their way home. They came from the town plaza with three other companions, namely: Janette Tandoc, Mila Viray and Emma Español when the shooting took place and about (80) meters away from the municipal building which was being manned by two policemen. Earlier the victims with their companions came from (sic) the town plaza where they watched games and amusements being shown thereat as it was the eve of the town fiesta of Agno.

"The responding policemen found the body of Jean Tandoc sprawled on the road and the policemen rushed her for emergency treatment to a certain Dr. Sison at Agno. In the meantime victim Harry Nicanor was able to walk back home on his own. Both victim were rushed to the Nazareth General Hospital at Dagupan City for confinement and treatment thereat but later Jean Tandoc was transferred to the Pangasinan General Hospital at Dagupan City where she later on expired. Victim Harry Nicanor also expired at the Nazareth General Hospital after a week's confinement thereat.

"Due to the absence of eye-witness to the incident, Pat. Credo, a police investigator of the INP at Agno, Pangasinan rushed to the Pangasinan General Hospital to take down the dying declaration of Jean Tandoc on November 23, 1983 at 2:30 AM in the presence of her own sister Janette Tandoc who was as taking care of her at the Pangasinan General Hospital at Dagupan City with a friend of both sisters Zenaida Nagal. In essence declarant Jean Tandoc stated that she did not recognize their assailants. We quote the question and answer, to wit:

"Question: Did you recognize them?

"Answer: No, sir. (Exh. 1-Dying Declaration of Jean Tandoc).

"Likewise the dying declaration of Harry Nicanor was taken by T/Sgt. Jaime Acerit, Chief Investigator of the PC/INP based at Alaminos, Pangasinan at the Nazareth General Hospital on November 26, 1983. It consists of (3) pages each and every page of which were signed by the declarant Harry Nicanor, Elisa B. Lomboy and Virginia P. Mata who were present when his declaration was taken.

"Essentially also Harry Nicanor cannot recognize his/their assailants. We quote the following questions and answers as follows:

"3. Q - And do you know shot you? (sic)

A - I was not able to recognize them.

"16. Q - If I will show you some persons who might have perpetrated the crime, can you identify him/them?

A - I am not sure if I can identify them, sir. (Exh. 4 - Dying Declaration of Harry Nicanor).

"The two policemen who were on duty on the night of November 22, 1983 on the eve of the first said that the night was dark for there was brown out and they have to use kerosene lamp to illumine their office. Before the shooting they noticed already the presence of the two accused Ambrosio Nabor and Amando Rosete sitting near each other on a Pantranco Bench about (6) meters away from them. They were playing 'dama' or chess and casually glanced at the two who were still there. When the two policemen heard gun shots, they responded to the shooting scene and one of them, Pat. Orilla returned to the police station to get his tricycle to load victim Jean Tandoc for treatment and while maneuvering the tricycle the head lamp focussed on the two who were still there sitting." (At pp. 98-99, Rollo)

During the arraignment, the accused-appellants both entered a plea of "Not Guilty". After a joint trial, the lower court, unconvinced by the version of the defense, rendered a judgment of conviction from which the present appeal was interposed assigning as errors:

I

THAT THE LOWER COURT ERRED IN NOT ACQUITTING BOTH ACCUSED FOR THE CRIME OF DOUBLE MURDER BASED ON THE DYING DECLARATIONS OF BOTH VICTIMS.

II

THAT THE LOWER COURT ERRED IN FAILING TO GIVE DUE WEIGHT AND CREDIT TO THEIR DEFENSE OF ALIBI.

III

THAT FINALLY THE LOWER COURT ERRED IN CONVICTING BOTH ACCUSED BECAUSE THERE WAS IN FACT GRAVE REASONABLE DOUBT ON THE GUILT OF THE ACCUSED. (At p. 99, Rollo)

The pivotal issue in this appeal is whether or not the lower court committed reversible error in giving more weight to the dying declaration of Harry Nicanor coupled with the testimony of an eyewitness presented by the prosecution rather than the dying declaration and alibi presented by the defense.

The prosecution rested its case on the positive identification of the accused given by Janette Tandoc and the dying declaration of Harry Nicanor taken down by Patrolman Marcelo Paragas on November 28, 1983 implicating the accused-appellants as his assailants.

On the dying declaration of Harry Nicanor presented by the prosecution, Patrolman Paragas, an investigator of the 154th PC Company Headquarters in Alaminos, Pangasinan at the time of the subject incident, stated in his testimony in court that he took the ante-mortem statement of the said deceased in Ilocano but translated the same in English when he reduced it to writing with one Hector Batalla and Perpetuo Nicanor as witnesses. The pertinent portion of the said ante-mortem statement on which the declarant affixed his right thumbmark reads:

"I was shot. They are Amando Rosete and Ambrocio Nabor. My companions that time were Mila Viray, Jean Tandoc and Emma Español."

The defense in its attempt to exculpate the accused-appellants from criminal liability presented T/Sgt. Jaime Acerit, also an investigator of the 154th PC Company Headquarters in Alaminos, Pangasinan who declared in

open court that on November 26, 1983 he took down a three-page ante-mortem statement of Harry Nicanor who affixed his signature thereon while he was in a very serious condition at the Nazareth General Hospital. The ante-mortem statement witnessed by one Virginia Mata and one Elisa Lombaya essentially stated that the declarant was not able to recognize his assailants and that he was not sure whether he could identify them.

The trial court, in giving more weight and credence to the dying declaration taken down by Patrolman Paragas made the following observations regarding the authenticity and due execution of the ante-mortem statement gathered by T/Sgt. Acerit, to wit:

"1. T/Sgt. Jaime Acerit under cross-examination admitted that when he went to the hospital to take the statement of Harry Nicanor, the victim was in a very, very serious condition such that he could hardly talk and hear, repeating his questions to him before an answer is given. Under such condition, the alleged Harry Nicanor's statement to T/Sgt. Acerit is unbelievable.

"2. That despite victim's serious condition he was able to write his name or sign the declaration in the presence of the two above-named witnesses and Capt. Vinluan. The alleged signing by the victim is incredible, also under serious condition. If the victim, Harry Nicanor could really still sign the statement consisting of three (3) pages, why were the first two pages left unsigned and only the last page was signed? This omission was not properly explained.

"3. The fact that despite the presence of Capt. Vinluan he was not required to sign the declaration as a witness. Instead he required other persons to sign as witnesses, why? This question remained unanswered.

"4. The fact that the defense did not at all make any attempt to present the two witnesses and/or Capt. Vinluan, who are the proper persons who could have shed light to the taking of the statement. The records yield no explanation for the suppression of their testimonies.

"Thus, the Court is more inclined to give credence and weight to the declaration of victim before Pfc. Paragas where he affixed his right thumbmark as more in consonance with human experience and habits of life than that alleged declaration of the victim where it appears he affixed his signature before T/Sgt. Acerit while lying on bed in a very serious condition. The latter situation is unnatural and repugnant." (At pp. 61-62, Rollo)

We accord due respect to the trial court's finding that as between the two conflicting ante-mortem statements, that which the prosecution had presented is more credible in consonance with the oft-repeated rule that credibility of witnesses is an issue better addressed to the trial court for the conclusions reached by the trial court on the basis of its own assessment are generally not disturbed on appeal in the absence of grave abuse of discretion on the part of the trial judge who has the advantage of actually examining both documentary and testimonial evidence including the demeanor of the witnesses as they present the same. (People v. Danilo Dumpe y Jimenez alias "Isko" et al., G. R. Nos. 80110-11, March 22, 1990; People v. Raffy Cayaan, et al., G. R. No. 78900, March 21, 1990; People v. Pio Cantuba, et al., G.R. No. 79811, March 19, 1990; People v. Rosendo Delgado alias "Nongnong", G.R. No. 79672, February 15, 1990; People v. Benjamin Noguerras y Torres, G.R. No. 76238, January 11, 1990; and People v. Alfredo Marmita, Jr., G.R. No. 75618, December 29, 1989).

Under Rule 130, section 31 of the Rules of Court, a dying declaration, to be admissible in evidence must have the following requisites: (1) the declarant's statement must be made under the consciousness of an impending death; (2) the declaration must refer to the cause and surrounding circumstances of the declarant's death; and (3) the declarant's death is the subject of inquiry in the case wherein the declarant's statement is sought to be admitted. An additional requisite must be that the declarant was a competent witness (see People v. Delfin Bustos, G.R. No. 35745, March 16, 1989 citing People v. Balbas, 122 SCRA 859 [1983] and People v. Sabro, 102 SCRA 218

[1981]).

In the instant case, all the above requisites are present although the declarant did not categorically state that he believed that his death was inevitable at the time he made his ante-mortem statement considering the nature of Harry Nicanor's wounds. For an ante-mortem statement to be admissible as an exception to the hearsay rule, it is enough that the deceased uttered the said statement while suffering from serious wounds which would justify the conclusion that the declarant was conscious of his impending death. (*People v. Laureta, Jr.*, 159 SCRA 256 [1988] citing *People v. Sarabia*, 127 SCRA 100 [1984]; *People v. Aquino*, 133 SCRA 283 [1984])

The ante-mortem statement of Harry Nicanor was corroborated by other evidence on record such as the testimonies of: (1) Trinidad Nicanor, Harry's mother who stated in court that in the hospital her son told her that "Mando (referring to the appellant Amando Rosete) is a traitor and Ambros (referring to the other appellant Ambrosio Nabor) is a snake." (TSN, March 7, 1985, p. 6); and (2) Perpetuo Nicanor, Harry's brother who testified that while his brother was confined at Nazareth General Hospital, the latter cautioned him in the following manner: "Be careful because Amando Rosete and Ambrosio Nabor might go after you next and you will be the next." (TSN, March 12, p. 4)

Anent the dying declaration of Jean Tandoc as recorded by Patrolman Carlos Credo on November 23, 1983 which the accused-appellants claim is inconclusive as to the guilt of the accused-appellants with respect to the declarant's assailants, we affirm the trial court's finding that the description of physical height given in Jean's ante-mortem statement jibes with the actual height of the accused-appellant, one of them being taller than the other.

The most important evidence, however, is the positive testimony of Janette Tandoc pointing to the accused-appellants as the perpetrators of the crime of double murder subject matter of this appeal. Janette was with the two victims before and during the killing. She saw the two accused fire their guns at the victims. She knew both Nabor and Rosete very well and positively identified them as the killers.

Considering that the dying declarations of both victims in the case at bar are admissible in evidence coupled with the fact that there is positive identification of the accused-appellants as the victims assailants, the defense of alibi presented by the said accused-appellants must fail. (*People v. Ebor*, 141 SCRA 282 [1986]) For the defense of alibi to prosper, it must not only be shown that the accused was at some other place at the time of the incident but that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission. (*People v. Vicente Aldeguez*, G.R. No. L-47991, April 3, 1990; *People v. Melchor Besa*, G.R. No. 78899, March 22, 1990; *People v. Jesus Francisco, et al.*, G.R. No. 69580, February 15, 1990; *People v. Teofilo Obando, et al.*, G.R. No. 72742, February 12, 1990) There being no proof of the required physical impossibility of being present at the scene of the crime as the records of this case reveal and their having been positively identified as the killers, the accused-appellants alibi is bereft of merit.

Finally, the records of this case support the conclusion that the accused-appellants acted in concert in the perpetration of the double murder of Harry Nicanor and Jean Tandoc. Both killings were qualified by treachery owing to the fact that the shooting incident was sudden thereby insuring the accused-appellants' commission of the offense without any risk arising from the defense that their victim might make. However, as regards the presence of evident premeditation as found by the trial court, a careful examination of the records shows that the prosecution failed to prove the essential elements thereof. (See *People Francisco, et al.*, supra)

WHEREFORE, IN VIEW OF THE FOREGOING, the trial court's finding that the accused-appellants are GUILTY beyond reasonable doubt as charged and its judgment of conviction in the two criminal cases raised on appeal are hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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.