

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL PAMA, ACCUSED-APPELLANT.*G.R. Nos. 90297-98. December 11, 1992*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-90297-98/>**DAVIDE, JR., J.:**

At around 10:30 o'clock in the evening of 2 October 1985, two (2) successive bursts of gunfire rang from the ground floor of the Market Square Building in Iloilo City. The several persons within the area scampered to safety. After a few seconds, another burst of gunfire was heard; thereupon, three (3) unidentified males were seen darting from the said building into the adjacent J.M. Basa Street. Minutes later, responding elements of the Iloilo Integrated National Police (INP) arrived at the Market Square Building only to find two (2) men, one of whom was already dead and the other seriously wounded and in critical condition; the latter asked the approaching lawmen to rush him to a hospital. The first, who sustained a gunshot wound on his right face and on his right thigh and was sprawled in a pool of his own blood at the building's doorway, was identified as Joji Nograles. The second victim, who was brought to the St. Paul's Hospital where he subsequently succumbed to two (2) gunshot wounds, was Cesar Habaradas. The policemen commenced their search for the suspects, one of whom was reported to have run towards the pier along Muelle Loney Street. Bystanders recounted to the pursuing lawmen that this suspect, upon reaching the pier, dove into the river below.

Meanwhile, at the nearby compound of the Iloilo Drydock and Engineering Company (IDECO) located across the Iloilo River, security guards Anselmo Garocho and Rodolfo Bolao of the Royal Protective and Janitorial Services, Inc. (RPJSI), who were then conversing at their post, noticed an unidentified man walk by. The man, barefoot and with only his pants on, was soaking wet. When accosted by the guards, he introduced himself as Noel Pama and alleged that he was held up by three (3) men at a gasoline station along Muelle Loney Street. After being divested of his wallet, money, wristwatch, necklace, shirt and shoes, he jumped into the nearby river to escape from the holduppers who were about to kill him. The guards reported this incident to the police authorities. After some time, policemen led by Sgt. Ronaldo Porras arrived at the compound. They took Pama to the police headquarters. Pama was accompanied by his mother who had arrived shortly after he called her by phone.

A few days later, after the appropriate preliminary investigation was conducted, Noel Pama, hereinafter referred to as the appellant, was charged with the killing of Nograles and Habaradas in two (2) separate Informations for Murder filed with the Regional Trial Court (RTC) of Iloilo. The first Information was filed on 7 October 1985, docketed therein as Criminal Case No. 19409, and raffled off to Branch 33 of said court.[1] The second was filed on 11 October 1985, docketed as Criminal Case No. 19418 and raffled off to Branch 32 of the same court.[2]

On 8 November 1985, following a Motion to Consolidate Cases filed by the prosecution, Judge Felino A. Garcia (Branch 32) issued an Order to consolidate Criminal Case No. 19418 with Criminal Case No. 19409 in Branch 33 subject to the conformity of Judge Sixto R. Guanzon of the said branch.[3] The latter agreed to the condition.

Consequently, both informations were amended to include two (2) other accused, Leonardo Lava, Jr. and Robert

Ignalaga. The accusatory portions of both Amended Informations which were filed on 18 November 1985, read as follows:

CRIMINAL CASE NO. 19409:

X X X

"That on or about the 2nd day of October, 1985, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with guns respectively, conspiring and confederating among themselves, working together and helping one another, with deliberate intent, with evident premeditation, treachery and with a decided purpose to kill, did then and there wilfully, unlawfully and criminally shoot and hit Joji Nograles with the said gun (sic), with which the accused was (sic) provided at the time, thereby causing upon the said Joji Nograles gunshot wound (sic) on vital parts of his body, which caused his death few (sic) moments thereafter.

CONTRARY TO LAW."[4]

CRIMINAL CASE NO. 19418:

X X X

"That on or about the 2nd day of October, 1985, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with guns respectively, conspiring and confederating among themselves, working together and helping one another, with evident premeditation, treachery and with a decided purpose to kill, did then and there wilfully, unlawfully and criminally shoot and hit Cesar Habaradas with the said gun (sic), with which the accused were provided at the time, thereby causing upon the said Cesar Habaradas gunshot wounds on vital parts of his body which caused his death few (sic) hours thereafter.

CONTRARY TO LAW."[5]

On 19 November 1985, Judge Sixto R. Guanzon issued the orders for the arrest of accused Leonardo Lava, Jr. and Robert Ignalaga.[6] Both accused could not, however, be found and have thus remained at large.

Upon arraignment on 21 November 1985, appellant, assisted by counsel, entered a plea of not guilty. Thereafter, the appellant moved for a separate trial; the trial court issued on 23 December 1985 an order granting the said motion considering that the appellant's two (2) co-accused remained at large. A joint trial of both cases was also ordered.[7]

At the joint trial on the merits, the prosecution presented as its witnesses Patrolman (Pat.) Zarex Celis, Pat. Eliseo Villavicencio, Sgt. Ronaldo Porras, Pfc. Gregorio M. Gopeteo, Jose Regacho, Dr. Tito Doromal, Anselmo Garocho, Suzette Nograles Ravena, and Efrain Habaradas. Appellant took the witness stand in his defense and denied involvement in the deaths of Nograles and Habaradas. He likewise presented Sgt. Mariano Palmes, Police Capt. Luena Layador and Leonisa Pama as his witnesses.

On 17 March 1989, the trial court promulgated separate decisions in the two (2) cases, both dated 22 February 1989, finding the appellant guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 19409[8] and of the lesser crime of Homicide in Criminal Case No. 19418.[9] The dispositive portions of the decisions read as follows:

CRIMINAL CASE NO. 19409:

"WHEREFORE, premises considered, this court finds the accused guilty of murder beyond reasonable doubt and hereby sentences the accused to suffer the penalty of reclusion perpetua.

The accused is hereby ordered to pay the heirs of Joji Nograles the sum of P35,450.00 representing expenses for the coffin, tomb, mass, food and miscellaneous expenses during the burial, during (sic) the wake, burial clothing, and attorney's fees.

The accused is hereby ordered to indemnify the heirs of Joji Nograles the sum of P30,000.00.

SO ORDERED."[10]

CRIMINAL CASE NO. 19418:

"WHEREFORE, premises considered, this court finds the accused guilty of homicide beyond reasonable doubt, and applying the Indeterminate Sentence Law, hereby sentences the accused to suffer the penalty of eight (8) years and one (1) day of prision mayor as minimum to sixteen (16) years of reclusion temporal as maximum.

The accused is hereby ordered to pay the heirs of the deceased Cesar Habaradas the sum of P26,450.00 representing expenses for the coffin, tomb, mass, food during the burial, attorney's fees and other miscellaneous expenses.

The accused is hereby ordered to indemnify the heirs of Cesar Habaradas the sum of P30,000.00.

SO ORDERED."[11]

The evidence for the prosecution upon which the decisions are based is succinctly summarized in the Appellee's Brief as follows:

"Prosecution witness Jose Regacho testified that at around 10:00 o'clock in the evening of October 2, 1985, he and a friend left Mila's Refreshment and Beer House located at Hoskyn's Compound along Guancho Street, Iloilo City and proceeded to Irong-Irong Restaurant which is on top of the Market Square Building. This restaurant has two entrances or doors, one fronting J.M. Basa Street within the Taheebo store and the other on the side of Freedom Grandstand (pp. 3-5 TSN Regalado January 15, 1987). The sidewalk along J.M. Basa St. leads to a passageway or alley about 15 arms length long and one and one-half arms-length wide. After or at the end of this passageway or alley are stores and the stairway leading to the offices (Exhibit "K-2") and an open space where by turning to the left one can find the stairway leading to the restaurant (marked during the hearing as Exh: "K-1" - pp. 7-13 Ibid.). As they were near the open space, Regacho saw a person of about 5'8" or 5'9" in height, 'mestizo', with curly hair, who was later identified as Joji Nograles (one of the deceased), talking to a female child about 6-7 years old. The witness likewise saw two women near the door beside the Freedom Grandstand (p. 14, Ibid.). Then he saw three persons briskly walking towards the tall, curly-haired 'mestizo' (Nograles). Suddenly, one of the three men whom he identified in court as appellant (p. 23, Ibid.) shot Nograles. Regacho and his companion turned around and started running away along the passageway. As they were running away, Regacho heard another shot. Upon reaching the outside portion of the alley they heard two more successive shots. He identified the person who fired the first shot as the appellant (p. 22, Ibid.) since he was familiar with the faces of the three persons as he had already seen them on several occasions at Irong-Irong Restaurant prior to October 2, 1985.

At about the same time, about 10:30 p.m., Pat. Darex (sic) Celis of the Iloilo INP was waiting for Maj. Norberto Plagata near the Freedom Grandstand when he heard two successive gunshots from the direction of the ground floor of the Market Square Building which was about 36 feet away (pp. 8-10, TSN Celis, 10 July 1986). The shots came from the entrance leading to the restaurant. He then saw a man lying on the ground at the entrance of Market Square Building beside Freedom Grandstand and one person running with a limp towards the stairs of Irong-Irong Restaurant. People scampered about. He heard another two successive shots. After a while he saw the limping man ran (sic) out of the exit of the building facing Freedom Grandstand. He met the limping man who turned out to be Cesar Habaradas (pp. 11-12, Ibid.) and turned him over to his

companion so that he could proceed to investigate the shooting since a police car had appeared. Pat. Celis learned and gathered that the suspect ran towards the exit facing J.M. Basa Street. One of the suspects went to the pier at Muelle Loney, the other to the direction of Gaisano and Aldeguer and the third ran along J.M. Basa St. (pp. 13-15, Ibid.). Pat. Celis with other policemen pursued the man who ran towards Muelle Loney. They asked the bystanders, who told them that they saw a running man jump into the water. The police searched the tugboats and barges. On a tugboat they found a pair of tennis shoes which they turned over to the Homicide Section (pp. 14-16, Ibid.). They returned to the scene of the crime and continued investigating. After a while, they were informed through their radio to proceed to RETRASCO Compound because a person there was arrested by the security guard. His companion proceeded to the Retrasco Compound. When the patrol car returned Celis (sic) informed him (sic) that a person, barefoot and wet, wearing only maong pants, was arrested. So Pat. Celis returned to headquarters and there saw the person and conducted a body search on him and found P320.00 cash on the left back pocket of his pants. He made appellant try on the tennis shoes and saw that they made a snug fit. The cash was returned to appellant (pp. 20-22, Ibid.).

Pat. Eliseo Villavicencio of the Iloilo INP also heard the gunfire at about 10:30 p.m. of October 2, 1985 as he was travelling along Mapa St., Iloilo City on board a patrol jeep with other members of INP (sic) Iloilo. As soon as they heard the gunfire coming from the direction of J.M. Basa St., they quickly proceeded to that place. On the way, they heard two more shots. They parked at Photo Magic and ran towards the Freedom Grandstand (pp. 3-5, TSN Villavicencio, August 28, 1986). Pat. Villavicencio was approached by a limping man (Cesar Habaradas) who said, 'Bring me to the hospital, I was shot. I am seriously wounded.' He took the wounded man to their jeep and sped toward St. Paul's Hospital. As they were approaching the gate of the hospital, the wounded man who was on the arms of Pat. Villavicencio uttered that he had a companion who was also shot. Asked who shot him, Cesar Habaradas breathing heavily and blood flowing from his chest, replied that Junior Lava and Noel Pama shot him. Habaradas also said that his companion was left behind at the Market Square Building. Pat. Villavicencio returned to the area and there saw a man lying on his stomach near the side of the entrance of the Market Square Building. That man was Joji Nograles. He was already dead (pp. 5-8, Ibid.). He was brought to the Porras Funeral Homes where the following day October 3, 1985, Dr. Tito Doromal (Medico Legal Officer of the Iloilo Integrated National Police) conducted an autopsy on the body which had bullet wounds on the right face and right thigh. The bullet wound on the right face was fatal. The bullet entered the face just below the cheekbone (sic) travelling backward, slightly upward and penetrating the second cervical vertebral (sic) and lacerating the spinal cord. The deformed slug was extracted from the spinal canal. Around the entrance wound are gunpowder burns around 8 by 7 centimeters in diameter (TSN Feb. 12, 1988 pp. 6-9).

The bullet wound on the thigh was located on (sic) the middle of the thigh and the direction was backward and upward. The slug that was extracted was deformed suggesting the (sic) bullet hit hard (sic) object and then, deflected, goes (sic) upward.

Cesar Habaradas also succumbed to gunshot wound (sic) at St. Paul's Hospital that same night and was brought to Porras Funeral Home where he was also autopsied by Dr. Doromal on Oct. 3, 1985 (pp. 10-27, TSN Feb. 12, 1986).

Pat. Villavicencio saw Patrolman Tony Frias and Rico Arcones. He told the latter about the man he brought to the hospital. He went with Rico Arcones to the police station where they were informed about the man arrested at the Iloilo Drydock and Engineering Company (IDECO). The man was later brought to the station and identified as Noel Pama. Pat. Villavicencio told the investigator that Noel Pama was named by Cesar Habaradas as one of those who shot him (pp. 9-11, Ibid.).

Anselmo Garocho, Jr., security guard of the Royal Protective and Janitorial Services Inc., was posted together with another Security Guard, Rodolfo Bolao, at Post No. 4 of the IDECO on that evening of October 2, 1985. At around 10:30 p.m., they saw a man coming from the river. The man was wet, shirtless and barefoot, wearing trousers only. They took the man, who gave his name as Noel Pama, into custody. Pama claimed that he was held up at Muelle Loney where his watch and necklace were taken by the holduppers. He jumped into

the river to avoid getting stabbed. Pama used the guardhouse phone to contact his mother, after which Garocho phoned the police. Per police instruction, the security guards held Pama while waiting for the police to arrive (pp. 20-27, TSN Garocho, March 18, 1986).

Sgt. Ronaldo Porras, who was one of the patrol policemen to come, likewise testified, corroborating the testimonies of the other police witnesses (pp. 3-19 TSN Porras, 18 March 1986).

Suzette Nograles Ravena, older sister of Joji Nograles, testified on the damages and expenses incurred on account of her brother's death (pp. 2-8, TSN Ravena, February 27, 1987)."[12]

Upon the other hand, the evidence for the appellant, as summarized in the Appellee's Brief, is as follows:

"The defense presented the testimony of appellant Noel Pama who denied participation in the killings, averring that in the evening of October 2, 1985 he was at Kweba Club drinking with his friend Jojo Sorongon. At about 10:45 p.m. he went out to buy cigarettes outside where it was cheaper. Outside, he felt the urge to vomit so he ran towards the gasoline station and there threw up. At that moment, from his back someone announced 'hold-up'. He was held-up by three men who got his wristwatch and his necklace. They brought him to the side of Muelle Loney where they stripped him of his shirt and Hush Puppies shoes. One said 'Tiruha na lang ina' (shoot him). When he heard that, he jumped into the water and swam 100 to 120 meters to the other side. On the riverbank he asked the security guards for help, telling them he had been held-up. He called his mother by phone. She arrived, even before the police came. The police brought him to the Station and placed him in jail. He was investigated the next morning and a paraffin cast was taken of his hands (pp. 3-21, TSN Pama April 12, 1988).

Leonisa Pama, mother of appellant, testified that she went to IDECO after being summoned by her son at about 10:30 p.m. of October 2, 1985. After a while the police arrived and arrested her son upon the suspicion that he was involved in the killing that evening. Earlier that afternoon, she gave her son, who asked for money, P300.00 in order to entertain his friend Jojo Sorongon. The police, who searched his (sic) son took his wallet with P150.00 on (sic) it. The following day October 3, 1985 the wallet with P150.00 was returned to appellant. Noel told her he was with a woman when he was held-up (pp. 3-24, TSN Pama, Sept. 7, 1988).

Sgt. Mariano Palmes of the PC Crime Laboratory testified that pursuant to the request for casting made by the Station Commander of the Iloilo Police Station he made a paraffin test on the appellant and also on the victims Joji Nograles and Cesar Habaradas. The cast was indorsed to Camp Crame Quezon City for examination. The Report he later received showed that the three casts taken yielded all negative results (pp. 2-23, TSN Palmes Aug. 11, 1987).

Capt. Luen Layador, Asst. Chief of the Chemistry Branch, PC Crime Laboratory, Camp Crame, testified that she conducted the test on the castings made by Sgt. Palmes. All the casting (sic) showed negative results for gunpowder residues. She examined the cotton swabbings from the barrel of the .22 Caliber Magnum Smith and Wesson revolver brought by Sgt. Palmes and found the same to be positive for gunpowder residues -- indicating that it had recently been fired. The negative findings on the paraffin cast of appellant's hand means (sic) that appellant had not fired a gun (pp. 3-19, TSN Layador, March 8, 1988)."[13]

The judgment of conviction for Murder in Criminal Case No. 19409 is anchored principally on the trial court's findings that a conspiracy existed among the appellant, who was positively identified by Jose Regacho, and his co-accused, and that the crime was committed with treachery -- a qualifying circumstance properly alleged in the information. While the trial court admitted that there was no evidence to show who among the three (3) assailants actually fired the fatal shots, the appellant is nevertheless liable for the death of Joji Nograles because conspiracy was established; hence, the act of any one of the three (3) is the act of all. It also declared that the existence of treachery was proved through the testimony of Jose Regacho to the effect that Joji Nograles, who was then talking to a 6-7 year old girl, was suddenly approached by the three (3) assailants and fired at; the victim did not expect

the attack; thus, he could not have put up an effective defense. Appellant and his companions insured the consummation of the killing without risk to themselves. The court a quo, however, ruled that evident premeditation, which is also alleged in the information as a qualifying circumstance, was not proven as no evidence was offered to show that the appellant had ample time to meditate and reflect upon the impending deed.

The trial court rejected the appellant's defense of alibi because he was positively identified by witness Jose Regacho and was unable to prove that he was at some other place at the time the victims were shot and that it was also impossible for him to have been at the place of the incident at that time. The presence of the appellant at the scene of the crime was likewise inferred by the trial court from the declaration of Cesar Habaradas, the other victim, that he (Habaradas) was shot by the appellant and Junior Lava. The trial court admitted this declaration as part of the *res gestae* in this case to prove that both deceased were together, and as a dying declaration in Criminal Case No. 19418 where the victim is Cesar Habaradas.

The trial court likewise discarded appellant's story that he was held up and divested of his wallet, money, shirt, wristwatch, shoes and necklace, and that he jumped into the Iloilo river and swam to the other side when one of the holduppers threatened to kill him. Such story is belied by the fact that when he was brought to the police headquarters, the appellant had his wallet with him which contained P150.00; moreover, the policemen who bodily searched him found P320.00 in the left back pocket of his pants. As to his defense that he could not have fired a gun because he was negative for gunpowder residues, the court, invoking its finding of conspiracy, declared such result to be irrelevant.

The judgment of conviction for the lesser offense of homicide in Criminal Case No. 19418 is based on the same findings and conclusion as in Criminal Case No. 19409 except that it overruled the prosecution's insistence on the presence of the qualifying circumstances of treachery and evident premeditation and instead placed greater reliance on the declaration of the victim, Cesar Habaradas. The trial court admitted and considered the same as a dying declaration under Section 37, Rule 130 of the Rules of Court.

Unable to accept both verdicts, appellant filed a Notice of Appeal on 20 March 1989 wherein he manifested his intention to appeal the decisions to the Court of Appeals.[14] Considering the penalty of reclusion perpetua imposed in what the trial court considered as the more serious offense (in Criminal Case No 19409), the appeal should have been interposed directly to this Court.[15] However, the trial court, guided only by the Notice of Appeal, erroneously forwarded the records of both cases to the Court of Appeals[16] which, in turn, properly forwarded the same to this Court.[17] We accepted the appeal in our Resolution of 30 October 1989.[18]

In his Appellant's Brief filed on 10 January 1990, appellant contends that the trial court:

- "1. X X X ERRED WHEN IT ACCEPTED THE TESTIMONY OF A BIASED AND SURPRISE WITNESS AS AGAINST THE TESTIMONY OF AN EXPERT WITNESS.
2. X X X ERRED WHEN IT TOTALLY ACCEPTED CIRCUMSTANTIAL EVIDENCE IN CONVICTING THE ACCUSED.
3. X X X SERIOUSLY ERRED WHEN IT TOTALLY DISCARDED THE SCIENTIFIC FINDINGS OF AN EXPERT WITNESS, HENCE, THE FINDINGS OF FACTS AND THE LAW THAT WAS MADE APPLICABLE WERE NOT IN CONSONANCE WITH THE EVIDENCE."[19]

In support of his first assigned error, appellant impugns the credibility of Jose Regacho who testified only upon the invitation of the father of Joji Nograles; prior to the trial, Regacho did not furnish the policemen with any sworn statement. Neither was he investigated by the latter regarding the incident. Appellant thus avers that the bare allegation that he fired a gun cannot outweigh the finding made by an expert witness that he (appellant) was

negative for gunpowder residue. Hence, the inevitable conclusion is that he never fired a gun.

As to the second assigned error, appellant jumps to the conclusion that the respective testimonies of Garocho, Villavicencio, Celiz and Porras constitute circumstantial evidence which is not sufficient to support his conviction. Quoting Moran,[20] he alleges that "[B]efore a conviction can be had upon circumstantial evidence, the circumstances proven, should constitute an UNBROKEN CHAIN which leads to one fair and reasonable conclusion which points to the defendant to the exclusion of others, as the guilty persons (sic)."[21]

Anent the last assigned error, appellant insists that the trial court committed a serious error in not considering in his favor the negative results of the paraffin test. Since he was found negative for gunpowder residue -- thus strongly indicating that he never fired a gun -- he could not have shot Nograles or Habaradas. Furthermore, no documentary or oral evidence was presented by the prosecution to refute the evidence brought forth by the expert witness, Capt. Layador -- the Forensic Chemist of the PC Crime Laboratory.

The appeal is unmeritorious.

1. The first assigned error involves the credibility of witness Jose Regacho. Deeply embedded in our jurisprudence is the rule that when the issue of credibility of a witness is concerned, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witness himself and observed his deportment and manner of testifying during trial, unless certain facts of substance and value have been plainly overlooked which, if considered, might affect the result of the case.[22] The trial court gave full faith and credit to Regacho's testimony. We find nothing in the record to compel Us to do otherwise. That Regacho came from nowhere, was not listed as a prosecution witness, did not submit himself to an investigation by any police authority and did not furnish any sworn statement, do not diminish or impair his credibility at all or place his testimony under suspicion. The natural reticence of most people to get involved in a criminal case is of judicial notice.[23] It is likewise settled that the prosecution is not precluded from calling as a witness a person who was not listed as such in the information.[24] There is as well no law which requires that the testimony of a prosecution witness should first be reduced in writing.[25] Besides, the defense counsel failed during cross-examination to dent the testimony of Regacho or create doubt as to his motive. Moreover, appellant did not offer any credible evidence to show any ulterior or improper motive which may have moved Regacho to testify against him. Where there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or falsely implicate him in the heinous crime, said testimony is worthy of full faith and credit.[26]

2. It is not true that appellant's convictions are based on circumstantial evidence. On the contrary, such convictions were based primarily on the positive identification by Regacho and the declaration of Cesar Habaradas which was admitted as a dying declaration in Criminal Case No. 19418 and as part of the *res gestae* in Criminal Case No. 19409. The circumstantial evidence presented served only to strengthen further the already formidable evidence stacked against him. Be that as it may, even if We are to assume that the convictions were based solely on circumstantial evidence, such evidence would, nevertheless, still be sufficient to support the same. Section 4, Rule 133 of the Rules of Court provides:

"SEC. 4. Circumstantial evidence, when sufficient. -- Circumstantial evidence is sufficient for conviction if:

- a) There is more than one circumstance;
- b) The facts from which the inferences are derived are proven; and
- c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

The concordant combination and cumulative effect of the following circumstances produced conviction beyond

reasonable doubt: (a) appellant was seen with two (2) others at the Market Square Building; (b) the three (3) walked briskly towards Joji Nograles; (c) one of them (identified by Regacho as the appellant) shot Nograles; (d) this first shot was followed by another shot although Regacho was unable to see who fired it; (e) two (2) other successive shots were later heard; (f) a limping man, identified later as Cesar Habaradas, ran out of the exit of the Market Square Building facing the Freedom Grandstand; (g) Cesar Habaradas had sustained gunshot wounds; (h) nearing the gate of the hospital where he was brought, Habaradas declared that he was shot by the appellant and Junior Lava, and that a companion of his who was also shot was left behind at the Market Square Building; (i) returning to the said building, Pat. Villavicencio saw Joji Nograles, who was already dead; (j) on the basis of the information that one of the suspects ran towards the pier at Muelle Loney, the policemen proceeded in that direction and were informed that the suspect jumped into the river; (k) on a tugboat which they searched, the policemen found a pair of tennis shoes; (l) meanwhile, across the river at the RETRASCO Compound, a man without any shirt and shoes emerged from the river and was accosted by the security guards; he identified himself as Noel Pama, the appellant herein; (m) at the police headquarters where appellant was brought, he was made to try on the pair of shoes; the same fit snugly.

Furthermore, as correctly ruled by the trial court, conspiracy existed among the three (3) assailants. There is conspiracy when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[27] Direct proof is not essential to prove conspiracy; it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged;[28] it may likewise be deduced from the mode and manner in which the offense was perpetrated.[29] The presence of the appellant and his two (2) companions at the Market Square Building, their simultaneous movement towards and concerted attack on Joji Nograles and Cesar Habaradas and their coordinated escape from the building, reveal nothing less than a joint purpose and design, concerted action and community of interest which establish beyond reasonable doubt the existence of a conspiracy.[30] Accordingly, it does not matter at all if the appellant did not inflict the fatal shots on Nograles and Habaradas. Where conspiracy is established, the act of one is the act of all.[31]

3. That the appellant was found negative for nitrates is beyond question. However, for him to maintain that the negative result of the paraffin test would be sufficient to justify his acquittal is another matter. The absence of nitrates in a suspect's hand is not conclusive proof that he did not fire a gun. In *People vs. Talingdan*,[32] this Court, speaking through Mr. Justice Hugo E. Gutierrez, Jr., ruled:

"Moreover, the defense also presented NBI chemist Rolando Vitug who testified that the paraffin test results of his laboratory examination on the persons of the appellants were found to be negative. This finding, however, is not conclusive to show that a person has not fired a gun. As pointed out by the Court of Appeals, it is possible for a person to fire a gun and yet be negative for the presence of nitrates, as when firing while wearing gloves or by washing the hands afterwards. (*People v. Roallos* 113 SCRA 584 [1982])." (Emphasis supplied)

Defense witness Capt. Layador testified that the kind of paraffin test conducted on the appellant is only 75% reliable in the determination of whether the subject fired a gun. She said that more modern methods for nitrate testing are already in use in other countries. She also revealed that there are several factors which could affect the results of a paraffin test and admitted that even if a person had fired a gun, it is possible that he could be negative for gunpowder residues.[33]

The trial court correctly admitted as a dying declaration the statement made by Cesar Habaradas made to Pat. Villavicencio while they were approaching the gate of the St. Paul's Hospital where the former died at 11:20 o'clock that same evening of the incident,[34] or barely an hour after being shot. Habaradas sustained two (2) bullet wounds on the thoraco-abdominal regions, the first of which was a thru and thru wound with the bullet

cutting the sub-clavicular artery, penetrating thru and thru the upper lobe of the upper lung, exiting at the 4th intercostal space, chipping the upper border of the 5th rib, left para-vertebral area and finally exiting on the skin at the left supero-lateral scapular area. The second was located above the left superior iliac spine with the bullet penetrating and perforating the abdominal cavity; thru and thru the descending colon; stomach; right lobe of the liver; right diaphragm, penetrating the 6th intercostal space, along the right mid-clavicular line; the slug was recovered underneath the skin at the level of the 5th intercostal space. The cause of death was hemorrhage secondary to bullet wounds.[35] Doubtless, Habaradas' declaration is admissible as a dying declaration in Criminal Case No. 19418, where he is the victim, because (a) it was made under consciousness of an impending death; (b) the declaration referred to the cause and surrounding circumstances of the declarant's injury and impending death; and (c) the declarant was a competent witness.[36] That such declaration was made by the victim under consciousness of an impending death can hardly be doubted for, as a matter of fact, Habaradas died about an hour after making the said declaration.[37] The portion of his declaration relating to his companion -- Joji Nograles -- as having been also shot was likewise properly appreciated as part of the *res gestae* under Section 42, Rule 130 of the Rules of Court in Criminal Case No. 19409.

We also agree with the court that no qualifying circumstances were established in Criminal Case No. 19418, hence appellant could only be held liable for homicide.

Conformably with the current policy of this Court, the indemnity should be increased to P50,000.00 in each case.

WHEREFORE, the challenged decisions in Criminal Case No. 19409 and Criminal Case No. 19418 of Branch 33 of the Regional Trial Court of Iloilo are hereby **AFFIRMED** subject to the modification as to the indemnity, which is hereby increased to P50,000.00 in each case.

Costs against Appellant Noel Pama.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records, Crim. Case No. 19409, 1.

[2] *Id.*, Crim. Case No. 19418, 1.

[3] *Id.*, 12.

[4] *Id.*, Crim. Case No. 19409, *op. cit.*, 15.

[5] Original Records, Crim. Case No. 19418, 13.

[6] *Id.*, Crim. Case No. 19409, 17; *Id.*, Crim. Case No. 19418, 15.

[7] *Id.*, Crim. Case No. 19418, 19.

[8] Original Records, Crim. Case No. 19409, 411-428.

[9] *Id.*, Crim. Case No. 19416, 95-112.

[10] *Id.*, Crim. Case No. 19409, *op. cit.*, 423.

[11] Original Records, Crim. Case No. 19416, 112.

[12] Brief for the Plaintiff-Appellee, 5-12; Rollo, 135-142.

- [13] Brief for the Plaintiff-Appellee, 12-14; Rollo, 142-144.
- [14] Original Records, Crim. Case No. 19409, 429.
- [15] Section 5(2) (d), Article VIII, 1987 Constitution; Section 3(c), Rule 122, Rules of Court; and Section 17 of the Judiciary Act of 1948, as amended.
- [16] Original Records, Crim. Case No. 19409, op. cit., 431.
- [17] Rollo, 2.
- [18] Id., 64.
- [19] Rollo, 69.
- [20] The appellant fails to indicate the particular volume and edition of Moran's book where the quoted portion of the Court of Appeals decision is cited.
- [21] Rollo, 86.
- [22] People vs. Garcia, 89 SCRA 440 [1979]; People vs. Bautista, 92 SCRA 465 [1979]; People vs. Abejuela, 92 SCRA 503 [1979].
- [23] People vs. Pacabes, 137 SCRA 158 [1985]; People vs. Sabellano, 198 SCRA 196 [1991]; People vs. Caraig, 202 SCRA 357 [1991].
- [24] People vs. Manabat, 100 Phil. 603 [1956]; People vs. Bagsican, 6 SCRA 400 [1962]; People vs. Zapatero, 58 SCRA 450 [1974].
- [25] People vs. De Guzman, 194 SCRA 168 [1991].
- [26] People vs. Valera, 90 SCRA 400 [1979], People vs. Angeles, 92 SCRA 432 [1979].
- [27] Article 8, Revised Penal Code.
- [28] People vs. Tiongson, 47 SCRA 243 [1972].
- [29] People vs. Manlangit, 73 SCRA 49 [1976].
- [30] People vs. Lunar, 45 SCRA 119 [1972]; People vs. Custodio, 47 SCRA 289 [1972].
- [31] People vs. Gumayo, 70 SCRA 488 [1976]; People vs. Alonzo, 73 SCRA 483 [1976]; People vs. Maranion, 199 SCRA 421 [1991].
- [32] 171 SCRA 333 [1990].**
- [33] TSN, 8 March 1988, 23-25.
- [34] Exhibit "C" (Autopsy Report on the cadaver of the deceased Cesar Habaradas); Original Records, Crim. Case No. 19418, 66.
- [35] Exhibit "C" (Autopsy Report on the cadaver deceased Cesar Habaradas); Original Records, Crim. Case No. 19418, 66.
- [36] Section 37, Rule 130, Rules of Court; People vs. Balbas, 122 SCRA 859 [1983];
- [37] People vs. Bustos, 171 SCRA 243 [1989].

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