

SECOND DIVISION

[G.R. No. 133579, May 31, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO CONTEGA Y FLORENDO, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

ROGELIO CONTEGA Y FLORENDO was charged before the Regional Trial Court of Iloilo City with robbery with homicide committed on 27 April 1994 against one Isauro Barba after the accused in conspiracy with another unlawfully took away from his victim P1,500.00 and on the same occasion inflicted upon him serious physical injuries which caused his death.^[1]

On 12 December 1997 the trial court found Rogelio Contega guilty as charged and sentenced him to *reclusion perpetua* with the accessory penalties provided by law. In addition, it ordered him to pay the heirs of Isauro Barba civil indemnity of P50,000.00, unearned income of P132,000.00, actual and compensatory damages of P30,000.00, and to pay the costs.^[2]

Isauro, Alberto and Alex, all surnamed Barba, owned the *Los Pescadores Restaurant* located at the second floor of a two (2)-storey building in A. Reyes Avenue, Estancia, Iloilo. Isauro occupied the mezzanine floor. At around 9:00 in the evening of 27 April 1994 Jose Navarro, a waiter at the restaurant, noticed that Isauro Barba did not show up for his dinner. It was his routine to be there at about 7:00 in the evening. Finding his absence a little strange, Jose went to Isauro's room which was lighted but did not find him there so Jose returned to the restaurant, took a flashlight and went to the bodega at the ground floor managed by Isauro. The bodega was dark. Before he could reach the switches near the door his flashlight illuminated the figure of Isauro lying face down on the cement floor. He immediately turned on the lights, shook Isauro's shoulders and asked him what happened. Isauro could only mutter that he was "bumped" by two (2) men.

At that juncture, Jose noted that Isauro's neck was covered with blood which dripped to the floor. He asked Isauro who his assailant was, and Isauro answered, it was "Rogelio," former pakyaw (piece-meal worker) in the *bodega*/restaurant. Then Jose recalled a certain Rogelio Contega who was fired a month before on suspicion of having stolen rice from the warehouse.

Forthwith, Jose went back to the restaurant and informed Chief Cook Rolly, Assistant Cook Jose Patwigas and Secretary Melody Duran of the misfortune of Isauro. Jose requested Melody to make the necessary phone calls, i.e., to the Barba family, to the police and to the doctor. Together with the Chief and Assistant Cooks, Jose went down to the *bodega*. They tried to bring Isauro to the main gate of the *bodega* but they could not find the keys to the gate which Isauro always brought with him.

Aside from the keys, they noticed that Isauro's wallet was also missing.

In the meantime, at around 10:30 in the evening, PO3 Armando Robles received a telephone call concerning the incident at the *Los Pescadores Restaurant*. Accompanied by SPO3 Leopoldo Soldevilla, PO3 Robles hurried to the site. Informed that Isauro was in the warehouse, they proceeded there and met Jose, the Chief Cook, the Assistant Cook and the Secretary. They were all on their way up carrying the body of Isauro. PO3 Robles observed that Isauro's physical condition was critical so they brought him inside the eatery and placed him on top of a table.

A certain Dr. Arellano rushed to the restaurant. He cleaned Isauro's neck that was full of blood, examined the gushing wounds thereof and gave him emergency medical treatment. PO3 Robles asked Isauro about the identity of his assailant and he simply replied it was "Rogelio," a former piece-meal worker in the place. Thereafter, Isauro was brought to the Jesus Colmenares District Hospital in Iloilo where he died at about 2:35 in the afternoon of 28 April 1994.^[3] Eventually his keys were found but not his wallet.

The post-mortem examination of the body of Isauro however was conducted by Dr. Ricardo Jaboneta of the National Bureau of Investigation. His autopsy yielded the following findings:

x x x x Abrasions, linear, 5.3 cms. Oriented medially downwards, subcostal arch, left side along parasternal line.

Contused abrasion; (1) 1.3 x 0.7 cms., right temple; (2) 8.5 x. 3.5 cms., right zygomatic area; (3) 1.3 x 1.0 cms., elbow, right side, medial aspect; (4) 2.0 x 1.5 cms., knee, right side.

Hematoma; (1) 9.0 x. 7.0 cms., left mandibular area; (2) 7.0 x 2.7 cms., upper eyelid, left side; (3) 5.0 x 8.0 cms., penna., left ear.

Wound, punctured; (1) 0.5 cm., forehead, left side, just above lateral end of left eyebrow, directed backwards medially downwards, penetrating subcutaneous tissues and make an approximate depth of 1.0 cm., (2) 0.3 x 0.4 cm., tempore-parietal area, left side, involving third layer of the scalp; (3) 0.2 x 0.2 cm., left pre-auricular area, left side, involving soft tissues only; (4) 0.3 x 0.2 cm., thru and thru, left penna; (5) Triangular, 0.3 x. 0.5 cm., left upper lip involving, soft tissues and make an approximate depth of 1.0 cm., (6) multiple, sixteen (16) in number, sizes vary from 0.3 x. 0.5 to 0.4 x. 0.4 cm., nape, over an area of 13.0 x 9.0 cms., the average depth is 1.0 cm., (7) Triangular in shape, 0.4 x 0.4 x 0.4 cm., subcostal arch, left side, 19.0 cm., from anterior midline, directed upwards, medially backwards, penetrating abdominal wall thru 9th intercostal space into abdominal cavity, grazing spleen; (8) Triangular in shape, 0.3 x 0.3 x 0.3 cm., back left side along posterior axillary line, 13.0 cms. From posterior midline, level of 10th rib, penetrating abdominal wall thru 20th intercostal space into abdominal cavity, perforating left kidney and left renal artery; (9) Triangular in shape, 0.4 x 0.4 x 0.4 cm. Lumbar region along midline, bone depth; (10) Thru and thru, triangular in shape, 1.0 x 1.5 cms., forearm, right side, dorso-ulnar aspect, 13.0 cms. Below elbow penetrating soft tissues

and make an EXIT, triangular in shape 0.3 x 0.2 cm., forearm, right-side, antero-lunar aspect, 5.0 cm., below elbow' (11) 0.3 x 0.5 cm., forearm, left side, antero-ulnar aspect, 6.5 cms., below elbow, penetrating soft tissues and make an EXIT, 0.5 cm., forearm, left side, anterior aspect, 3.0 cms., below elbow; (12) triangular in shape, 0.3 x 0.3 cm., forearm, left side, antero-ulnar aspect, 13.5 cms. Below elbow, penetrating soft tissues and make an approximate depth of 3.0 cms x x x x

CAUSE OF DEATH: Hemorrhagic shock secondary to multiple punctured wounds.^[4]

According to Dr. Jaboneta, among the twelve (12) punctured wounds suffered by Isauro, wounds 7 and 8 which were caused by a triangular pointed instrument were the most fatal having penetrated the vital organs of the victim.

Meanwhile, at around 5:00 in the morning of 28 April 1994, Rogelio Contega was apprehended at his residence in Barangay Pa-on, Estancia, Iloilo, about three (3) kilometers from the *Los Pescadores Restaurant*.

Eduardo Barba, Isauro's nephew, stated that Isauro was receiving a salary of P3,000.00 per month. He also stated that the Barba family incurred hospitalization expenses of P10,000.00, expenses for embalming services of P15,000.00 as borne by a receipt;^[5] expenses for the wake for ten (10) days of P7,000.00; and, expenses for labor and materials for the gravestone of P5,000.00.

Rogelio's alibi was that at around 5:30 in the afternoon of 27 April 1994 he was in his house with his wife Norma, children and his wife's sister-in-law Silma Dominguez. He was melting lead to be used in catching squid. At 7:00 they had dinner; afterwards, he slept. At 5:00 the following morning, two (2) members of the Estancia police force arrived in his house and told him that the Chief of Police wanted to see him. He went with them thinking, according to him, that there was a job waiting for him. At the police station, he learned that he was a suspect in the killing of Isauro Barba. Afterwards, he was locked up in jail. His defense was corroborated by Dominguez.

The trial court convicted Rogelio based on Isauro's dying declaration that his assailant was "Rogelio," a former *pakyaw* in the *bodega*/restaurant, as told to Jose Navarro and PO3 Armando Robles. The trial court was not impressed with his alibi because his residence was only approximately three (3) kilometers away from the *Los Pescadores Restaurant* and could be negotiated by foot at a slow pace in thirty (30) minutes. In addition, it found that he had the motive because he was dismissed from employment for reportedly stealing rice from the *bodega*.

Accused-appellant now disputes the sufficiency of the dying declaration of Isauro on the ground that he merely mentioned the name "Rogelio" without further details on the identity of the suspect.

Accused-appellant has a point and it is valid. His conviction indeed rests on quicksand. While factual findings of the trial court are entitled to great weight and respect, this case calls for a departure from the general rule. Easily, it can be said that the trial court has overlooked certain facts of substance and value that if

considered would have altered the result of the case.^[6]

A dying declaration, made in *extremis* when the party is at the point of death and the mind is induced by the most powerful considerations to speak the truth, occasioned by a situation so solemn and awful, is considered by the law as creating an obligation equal to that which is created by a positive oath administered in a court of justice. The idea more succinctly expressed is that "truth sits on the lips of dying men."^[7] As an exception to the hearsay rule, it is defined in Sec. 37, Rule 130, of the Rules of Court as one made by a dying person under the consciousness of an impending death with respect to the cause and surrounding circumstances of such death. It may be received in any case wherein his death is the subject of inquiry and requires the concurrence of the following: (a) the statement or declaration must concern the crime and the surrounding circumstances of the declarant's death; (b) at the time it was made the declarant was under a consciousness of an impending death; (c) the declarant was competent as a witness; and, (d) the declaration is offered in a criminal case for homicide, murder or parricide in which the decedent is the victim.^[8]

Isauro declared that his attacker was "Rogelio," a former *pakyaw* (piece-meal worker) in the *bodega*/restaurant of *Los Pescadores*. On this aspect, Jose Navarro testified -

Q: After you switch(ed) all the lights and you held the shoulder of Isauro Barba, did you notice his appearance x x x

A: His neck was bloodied and there was also blood on the cement.

Q: And when you saw this, what did you do?

A: When I put on the light and I saw him in this situation I asked him what happened to him and he answered me that it (sic) was bumped by two men, and when I asked him who the men are (sic), he answered me that it was Rogelio one of his piece-meal workers (pakyaw) in a local dialect (*underscoring supplied*).^[9]

Navarro continued his narration by stating that he did not know any other person by the name of "Rogelio" who also worked there as *pakyaw* except accused-appellant whom he identified in court -

Q: You said that on April 27, 1994 you were already working as a waiter at the Los Pescadores Restaurant. Since when have you been working there?

A: December of 1993.

Q: Do you know a person by the name of Rogelio who was previously working as *pakyaw*?

A: Yes, sir.

Q: Do you know where this Rogelio was residing?

A: At Brgy. Pa-on, Estancia, Iloilo x x x x

Q: Now, if (sic) this Rogelio whom you said was working before as a *pakyaw* at the Los Pescadores Restaurant, is

he inside the Courtroom? Can you point him?

INTERPRETER: Witness goes to a person inside the Courtroom and points to a person who upon being asked identified himself as Rogelio Contega x x x x^[10]

Q: Aside from Rogelio Contega who is still working as a pakyaw in the bodega, do you know if there were any other person(s) by the name of Rogelio who was also working there as pakyaw?

A: No more (*underscoring supplied*).^[11]

Aside from having known accused-appellant as a former piece-meal worker in the *bodega*/restaurant, Navarro also knew why his employment was terminated, thus providing the motive for the crime -

Q: At the time you found Isauro Barba at the bodega on April 27, 1994 was this Rogelio Contega still working at the bodega?

A: No more.

Q: Do you know the reason why Rogelio Contega was not working there?

A: As far as I know among (sic) before the incident, this Rogelio Contega was a suspect in the stealing of rice from the bodega.

Q: Do you personally know this Rogelio Contega?

A: Yes, sir.

Q: During the time that you were there at the Los Pescadores Restaurant, how often will (sic) you see him?

A: We often see (sic) each other because he catch-up (sic) to eat his breakfast x x x x^[12]

Q: As far as you know, how many months did he work as "pakyaw" worker of Isauro Barba?

Q: Since I work (sic) in the Los Pescadores, in December of 1993 up to the time when the incident happened, this Rogelio Contega was no longer working, and a month before the incident (*underscoring supplied*).

Q: Why did he no longer work at (sic) Isauro Barba? What happened?

A: Because according to what I heard, and what the late Isauro Barba told us, while he was still alive and in fact contained in the police blotter, this Rogelio Contega was involved in the stealing of palay x x x x (*underscoring supplied*).

Q: Is it possible because Rogelio Contega was involved in the stealing of palay, this prompted Isauro Barba to dismiss Rogelio Contega from his work?

A: Probably that is one of the reasons.

Q: Is it possible also that this Rogelio Contega harboured ill feeling against Isauro Barba?

A: It is possible.^[13]

Isauro also gave the same name and description of his assailant to P03 Armando Robles -