

EN BANC

[G.R. No. 127659, February 24, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICOLAS BAHENTING, ALIAS "COLAS," ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision,^[1] dated October 18, 1996, of the Regional Trial Court of Barili, Cebu (Branch 60), finding accused-appellant Nicolas Bahenting guilty beyond reasonable doubt of murder and sentencing him to death and to indemnify the surviving spouse of Remegio Rivera in the amount of P50,000.00.

The information^[2] in this case alleged -

That on or about the 6th day of March, 1996, at about 4:00 o'clock in the morning, more or less, at Barangay Basak, Municipality of Badian, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot with the use of a firearm Remegio Rivera, hitting the victim on his chest which caused his death thereafter.

Accused-appellant pleaded not guilty to the charge,^[3] whereupon trial commenced.

The prosecution presented three witnesses: the victim's widow Generosa Rivera, his son Eduardo, and the doctor who conducted the postmortem examination.

Generosa Rivera testified^[4] that she and her husband resided at Barangay Basak, Badian, Cebu; that they were farmers, planting corn and *camote* (sweet potato) on their land, and that they had nine children named Eduardo, Erlinda, Jovencio, Renato, Ana Marie, Annabel, Marcelo, Roel, and Gauden. According to Generosa, in the morning of March 6, 1996, at about 4 a.m. while she was in their house preparing breakfast, she heard a shot and, when she turned around, she saw her husband Remegio Rivera, who was at her back, falling down to the ground. Generosa claimed that when she rushed to her husband and asked him what had happened, he answered in a "very clear voice" that he had been shot by accused-appellant Nicolas Bahenting. Generosa said that their three children who were with them, Annabel, Roel, and Gauden, were still asleep and did not hear the commotion in the house.

Generosa testified that Nicolas Bahenting was a barangay *tanod* whose house was "near" theirs, being around 100-200 meters away; that accused-appellant harbored some resentment against them so much so that her son Eduardo was prohibited by accused-appellant from passing near his house. Testifying on the impact of her

husband's death on her, Generosa said she was very worried because "I'm the one left . . . to earn a living for my children"; that her husband was buried on March 7, 1996, the day after he had been killed; that she spent P8,000.00 for the wake and burial; that their house was located in the mountain and that there was no electricity there; and that at the time of the shooting one could not see outside the house because it was dark.

The next witness for the prosecution was Dr. Urduja B. Espiritu. She had been the municipal health officer of Badian, Cebu for eight years. She conducted an examination on the corpse at around 10 a.m. of March 6, 1996, shortly after Remegio Rivera was killed. The results of her examination were stated in her report, as follows:

POST MORTEM FINDINGS

Victim: Remegio Rivera, 48 yrs. old, Male, married, from Basak, Badian, Cebu

Date, time, place of incidence: March 5 [should be March 6], 1996, 4 Am; Basak, Badian, Cebu

Date, time, place of examination: March 5 [should be March 6], 1996, 10 Am, Basak, Badian, Cebu

Examination requested by: SPO4 Eutiquio M. Arances - Deputy COP Badian, Cebu

Examination conducted by: Urduja Binghay-Espiritu MD. - MHO Badian, Cebu

Findings:

Chest:

- semicircular wound about 0.5 cms. in diameter with blackish discoloration at its periphery, located at the right side of the chest about 9 cms lateral to the mid-sternal line 2 cms. below the level of the right nipple and 2 cms. laterally

Probable Cause of Death:

Hypovolemic shock, Irreversible secondary to Hemorrhage Int. & Ext. 2°
Gunshot wound, chest, right side.

Prepared by:

(Sgd.)
Dr. Urduja B. Espiritu M.D.
MHO-Badian^[5]

Dr. Espiritu also signed the victim's death certificate^[6] which gave the immediate cause of his death as "hypovolemic shock," the antecedent cause as "Hemorrhage,

Internal & Ext.," and the underlying cause as "Gunshot wound, chest."

Dr. Espiritu testified that the assailant could have been more or less 24 inches away from the victim when he shot the latter.^[7]

The last witness for the prosecution was the victim's son Eduardo Rivera. Eduardo testified^[8] that he used to pass by the house of accused-appellant in going to the house of his parents from his (Eduardo's) house; that on March 3, 1996 accused-appellant gave him (Eduardo) marijuana seedlings to plant in his farm; that when his father learned about this he told Eduardo not to do what accused-appellant wanted him to do and instead to "let Nicolas Bahenting plant the seedlings [so] he will be the one to be arrested alone." According to Eduardo Rivera, accused-appellant resented these remarks of his father and "got very angry" every time he saw Eduardo pass by his farm.

Accused-appellant Nicolas Bahenting was the sole witness for the defense. His defense was alibi. He described the victim as a neighbor, who was "not a friend, just an acquaintance." He claimed that, on March 5, 1996, he went to Badian to fish and returned home late at night; that the next day (March 6, 1996), he got up at 6 a.m. when it was "already bright." He then went to his farm to inspect his plants for two hours, after which he brought his cow to the barangay center for the inspection by the Department of Agriculture. It was there, he said, where he was arrested by some Philippine National Police (PNP) officers. Accused-appellant denied that he had asked Eduardo Rivera to plant marijuana in the latter's farm and that he had prohibited Eduardo from using a pathway near accused-appellant's farm because Eduardo had refused to plant the marijuana seedlings. Accused-appellant said he and Eduardo agreed that the latter would take another route in going to his parents' house "because my house might get burned because its roof is made of cogon." But, he said, he had no "serious problem" with either Eduardo or his father.

After trial, the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of murder qualified by treachery and evident premeditation with the aggravating circumstance of dwelling and sentenced him to death. Hence, this appeal.

First. We have reviewed the records of this case and find that accused-appellant's guilt has been fully established.

Accused-appellant basically contends that his guilt has not been proven beyond reasonable doubt. But the most telling evidence against accused-appellant is the dying declaration of the victim that it was accused-appellant who had shot him. The requisites for the admissibility of *ante mortem* statements under Rule 130, §37 are: (1) the statement concerns the crime and the surrounding circumstances of the declarant's death; (2) at the time it was made, the declarant was under the consciousness of an impending death; (3) the declarant would have been competent as a witness had he survived; and (4) the declaration was offered in a criminal case for homicide, murder, or parricide in which the declarant was the victim. Dying declarations are considered an exception to the hearsay rule since they are made in extremis, when the declarant is at the point of death. For then, the motive to commit falsehood is improbable and the inclination is only to speak the truth.^[9]

In this case, there is no doubt that all four requisites are present. First, Remegio Rivera's statement to his wife Generosa concerned his death as it pointed to accused-appellant as his assailant. Second, he made the declaration under the consciousness of an impending death. Remegio Rivera knew he had been seriously injured as, in fact, he died shortly after he had been shot.^[10] Third, Remegio Rivera would have been competent to testify in court had he survived. There is no evidence which indicates otherwise. Fourth, his dying declaration was offered in a criminal prosecution for murder where he was the victim.^[11]

Accused-appellant questions the veracity of the aforementioned dying declaration. He argues that "it was not easy" to identify the assailant because it was not even daybreak yet. He points out it was only 4 o'clock in the morning of March 6, 1996 when Remegio Rivera was shot.

It is true that, as Generosa Rivera herself testified, it was dark outside with no electric light to illumine the place.^[12] But Remegio was shot inside his house at close range. It was also established that his wife was cooking their breakfast. Naturally, there had to be some source of light inside the house. According to Dr. Espiritu, judging from the gunshot wound suffered by the victim, his assailant was "more or less" only twenty-four (24) inches away from him. Under such circumstances, Remegio Rivera could have identified his assailant, especially since accused-appellant had been their neighbor for almost a year.

Accused-appellant also contends that his alibi should be given credence. For the defense of alibi to prosper, however, the accused must not only prove that he was not at the scene of the crime when it happened but also that it was impossible for him to be there at the time of the commission of the offense.^[13] Accused-appellant failed to prove this. By his own admission, the house of the victim was "just near" his house, about half a kilometer away.^[14] Nor did accused-appellant deny that he was in the vicinity at the time. His only claim is that he was asleep in his house. It was not, therefore, impossible for him to have gone to the victim's house and to have shot him there.

In any case, accused-appellant's alibi cannot prevail over his positive identification^[15] which in this case was even made by the victim himself as he was dying. This positive identification of accused-appellant as the assailant also does away with the need to prove his motive for committing the crime.^[16]

Second. Notwithstanding our finding that accused-appellant is guilty of the killing of Remegio Rivera, we believe that the trial court erred in finding that the killing in this case was attended by evident premeditation and treachery.

For evident premeditation to be considered, the following must be proved: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) sufficient time between such determination and execution to allow him to reflect upon the consequences of his act.^[17]

In this case, no attempt was made by the prosecution to establish the above requisites. There is no proof as to when the plan to kill was made or how the