

## THIRD DIVISION

[ G.R. No. 105004, July 24, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DIONISIO MAROLLANO @ "JUN," ACCUSED-APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

Inconsistencies and contradictions in minor and trivial matters do not impair the credibility of a witness, specially after the trial court has accorded it full faith and credence. Nor do the defenses of alibi and denial prevail over the victim's own ante mortem statement which, as a dying declaration and/or part of the *res gestae*, points to the accused as the assailant.

#### Statement of the Case

These postulates are stressed by this Court in resolving this appeal from the Decision dated February 25, 1992 of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52,<sup>[1]</sup> in Criminal Case No. 2627 convicting Accused-appellant Dionisio Marollano alias "Jun" of murder.

A Criminal Complaint was filed by Jeffrey G. Gigantoca, INP Station Commander of Pilar, Sorsogon, in which appellant, Consorcio Molleno and one "John Doe" were accused of murder. After preliminary investigation, Sorsogon First Assistant Provincial Fiscal Honesto J. Borrromeo filed an Information dated July 10, 1989 charging Appellant Marollano, Consorcio Molleno and John Doe with murder allegedly committed as follows:

"That on or about the 14th day of May, 1989, at barangay Sta. Fe, municipality of Pilar, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with sharp bladed instruments with intent to kill, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and without any justifiable cause and motive, did then and there, wilfully, unlawfully and feloniously, attack, assault and stab one Domingo Guadamor, inflicting upon the latter mortal wound which caused the death of said Domingo Guadamor, to the damage and prejudice of his legal heirs."<sup>[2]</sup>

During arraignment, both accused<sup>[3]</sup> assisted by counsel de oficio pleaded not guilty to the charge.<sup>[4]</sup> After trial, Accused Molleno was acquitted while appellant was convicted of murder. The dispositive portion of the assailed Decision reads:<sup>[5]</sup>

"WHEREFORE, premises considered judgment is hereby rendered finding accused Dionisio Marollano alias 'Jun' guilty beyond reasonable doubt of

the crime of Murder with neither aggravating nor mitigating circumstance attendant to its commission and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA with all the accessories provided for by law, to indemnify the heirs of the victim Domingo Guadamor in the amount of P50,000.00, actual damages of P11,050.00 and unearned income of P360,000.00 without subsidiary imprisonment in case of insolvency, and to pay one-third (1/3) of the costs.

In the service of his sentence accused Dionisio Marollano alias Jun shall be credited with the full period of his preventive imprisonment pursuant to law.

For failure of the prosecution to establish his guilt beyond reasonable doubt, the accused Consorcio Molleno is hereby ACQUITTED with one-third (1/3) of the costs de oficio. Accordingly, his immediate release from custody is hereby ordered unless sufficient legal cause exists to warrant his further detention.

The case as against the accused John Doe is hereby provisionally dismissed subject to its immediate revival upon his proper identification and/or apprehension by the State.

SO ORDERED."

## **The Facts**

### **Admission of Facts**

The pre-trial conference held on November 23, 1989 yielded from the parties a stipulation of facts contained in the Order of the trial court dated November 23, 1989. The defense admitted:<sup>[6]</sup>

"(1) The existence of the Certificate of Death of the victim, Domingo Guadamor, injury sustained as indicated therein; cause of death; authenticity of said Certificate of Death; and the fact that may be testified to by the Resident Physician. Roy Palanca as to his opinion of the cause of injury sustained;

(2) That the two accused, namely: Dionisio Marollano and Consorcio Molleno, were both present at the scene of the subject incident; and,

(3) That subject incident occurred between 12:00 o'clock midnight of May 12, 1989 and 1:00 o'clock in the morning of May 14, 1989 at Barangay Sta. Fe, Pilar, Sorsogon."

The prosecution, on the other hand, admitted that: (a) the incident in question occurred outside but near the dance hall; (b) a dance was actually in progress when the incident took place; and (c) both accused were arrested in their respective

houses.

#### Evidence for the Prosecution

In the ensuing trial, the prosecution presented the testimonies of Witnesses Cesar Mapa,<sup>[7]</sup> Nildo Madronio, Jose Favia, Patrolman Andreo Somalinog and the victim's widow, Belleza Favia Guadamor. The State also offered the following documents: Certificate of Death dated May 16, 1989 (Exh. "A"); Pre-trial Order dated November 23, 1989 (Exhs. "B," "B-1" to "B-2"); and Receipt (Contract) No. 0792 issued by Bicolandia Funeral Service for P5,000.00 (Exhibit "C").

The trial court narrated the testimonial evidence of the prosecution, thus:<sup>[8]</sup>

"In the evening of May 13, 1989, prosecution witness Cesar Mapa was in front of the dancing pavilion at Sta. Fe, Pilar, Sorsogon, together with the late Domingo Guadamor (victim in this case) erstwhile husband of Sta. Fe's lady barangay captain Belleza Favia de Guadamor who was at the time inside the dancing pavilion watching the on-going dance. Mapa and the victim were then drinking a bottle of beer each near the gate of the dancehall when Guadamor (the victim) left Mapa and went momentarily to the side of the road to answer the call of nature, about 2 to 3 meters away from Mapa. While Guadamor was urinating, the latter suddenly shouted: 'Manoy Cesar, I was stabbed. I was stabbed by Jun Marollano'. As Mapa went near the victim, Mapa saw three (3) persons- two of whom he recognized to be the herein accused Jun Marollano and Consorcio Molleno even as he did not recognize the other companion of the accused. The herein two accused were standing side by side with the late Domingo Guadamor (who was already holding his wounded right waist with his right hand) and the two accused, Jun Marollano and Consorcio Molleno, were there with their bladed weapons as they fled from the scene of the incident to follow their companion who was also already running away.

Mapa demonstrated in Court that the bladed weapons of the herein two accused were about one (1) foot in length and of the 'ginunting Type' (scissors-shaped) knives; that accused Jun Marollano, while behind the victim, swung his right hand to the left hitting and wounding Guadamor on the right side of the body (waist), while his co-accused Consorcio Molleno was 'supposed to strike' Guadamor but because he (Mapa) approached him, the herein accused fled towards the eastern direction.

Mapa was able to recognize the herein accused although it was then already past midnight because aside from the half moon, there was a fluorescent lamp at the barrio hall and three (3) lighted bulbs at the gate of the dancehall; that aside from Mapa, those who gave assistance to the late victim after the stabbing incident were Nildo Madronio, Jose Favia and one named Samson who helped one another in bringing the victim to the latter's house. Thereafter, Madronio, Jose Favia and others accompanied the victim's wife Belleza Favia, in bringing him to the Albay Provincial Hospital at Daraga, Albay where the victim died. From the said Hospital, Guadamor's corpse was brought back to Sta. Fe, Pilar at about 10:00 o'clock in the morning of May 15, 1989 already inside a coffin. The

accused Jun Marollano and Consorcio Molleno were meanwhile picked up by the military and brought to the municipal building.

Prosecution asserted that right after the stabbing incident, Nildo Madronio and Jose Favia (barangay tanods and residents of Sta. Fe, Pilar, Sorsogon) were among those who went to the aid of the victim, Domingo Guadamor, and while the latter was being brought to his house that early morning, Guadamor told Madronio and Favia that it was herein accused Jun Marollano, a resident of barangay Lumbang, who stabbed him; that Madronio was also one of those who accompanied Guadamor and the latter's wife to the Albay Provincial Hospital; that the victim, Guadamor, rested on Madronio's arm while inside the jeep on the way to Daraga, Albay and when they reached the Hospital Guadamor again repeated that it was herein accused Jun Marollano who stabbed him; that at about 5' o'clock in the morning of the same day, Guadamor died; and, that when Madronio returned to Sta. Fe from the Albay Hospital, Madronio learned that the suspects, one of whom was Jun Marollano, was already brought to the Pilar Municipal building even as Madronio did not hear any other person being mentioned as suspect in the case except accused Jun Marollano.

However, on cross-examination Madronio admitted that he (Madronio) merely overheard the victim Guadamor saying that it was accused Jun Marollano who stabbed him because actually the latter did not directly or personally inform him (Madronio) [of] such thing.

The State furthermore claimed that earlier that same evening of May 13, 1989, or more particularly after about 9 to 10 o'clock while Jose Favia and his fellow barangay tanod Samson Vergara patrolled together on foot around the dancing pavilion, they saw accused Dionisio Marollano alias Jun and Consorcio Molleno who were drinking 'gin' about a meter away from them (Favia and Vergara). Then they both heard accused Consorcio Molleno telling accused Jun Marollano words to this effect: 'if you could not stab him, I will stab you". They heard accused Molleno repeating such words of instructions to his herein co-accused Jun Marollano. But such fact notwithstanding, Favia and companion Samson Vergara did not give it any importance because after the two accused had consumed the bottle of 'gin' both left the place and Favia and Vergara did not mind making a surveillance even as they already heard and had known of the plan of accused to stab someone that evening.

Pat. Andreo Somalinog of the Pilar police force who accompanied the Pilar INP Station Commander to the house of accused Dionisio Marollano alias Jun on May 14, 1989 at Lumbang, Pilar, found the accused and his wife in said house and the policeman had observed that accused Marollano became pale (as if afraid) when Somalinog informed him that the INP Station Commander was inviting him to the Municipal building for questioning. Pat. Somalinog likewise noticed a drop of dry blood on Marollano's big toe but when he called Marollano's attention to it, the latter told him that the blood came from his pimple. Then, the accused went inside the room to change his clothes but when accused came out of the room, the dry blood on his toe was gone as his feet was already

washed up (sic). At the Municipal building, accused Marollano was placed inside the jail and after a week's confinement thereat, Marollano, out of loneliness and thoughts for his children, became emotionally upset and cried, telling Pat. Somalinog that it was his co-inmate 'Consoy' (referring to co-accused Consorcio Molleno) who killed the victim and not he so why should he (Marollano) suffer in jail.

Belleza Favia vda. de Guadamor, the victim's widow, confirmed the fact that she was helped by the barangay tanods Samson Vergara, Jose Favia and Jose Padua, and some others, in bringing her husband to their house that early morning after the incident and that most of them even accompanied her and her wounded husband to the Albay Provincial Hospital where the victim eventually died at about 5 o'clock that same morning; that right after he was stabbed, the victim told her that he was stabbed by herein accused Jun Marollano- a statement which the victim again repeated even while he was already dying in the Albay Provincial Hospital.

In bringing the victim to the said hospital, the widow spent P300.00 for the jeep she hired for the purpose, P500.00 for hospital and medical expenses, plus P250.00 for the 500cc of blood she bought which was not anymore used. The victim's wake and vigil lasted for one (1) week, costing the family an expense of about P10,000.00 inclusive of the coffin bought from, and funeral services rendered by, the Funeraria Bicolandia (Exh. C).

At the time of his death, Domingo Guadamor was only 45 years of age, gainfully employed (since his marriage) at the Hacienda Turilla in Sta. Fe Pilar, Sorsogon, with a monthly salary of P2,000.00 and complete with SSS, Pag-ibig and Medicare coverage. In addition to the widow, the victim's other heirs are three (3) children namely, Bobby, 23 years old, Nove, 20 and Juvy, 16 years of age, two of whom (Bobby and Nove) had to stop schooling and had to leave for Manila after the victim's death. These heirs most especially the widow suffered sleepless nights and utter loneliness and bereavement for which they seek atonement by way of moral damages in the amount of at least P100,000.00."

### **Evidence for the Defense**

Appellant and Accused Molleno claimed innocence by setting up the defenses of alibi and denial of any participation in the crime. In support thereof, the defense presented the testimonies of Mary Molleno, Lilia Lopez, David Tolosa, Rogelio Mape and Romulo Molleno; and the following pieces of documentary evidence: Sworn Statement of Cesar Mapa dated May 15, 1989 (Exh. "1"); TSN dated May 23, 1989 and bracketed portions thereof (Exhs. "2" and "2-A"); Sworn Statement of Jose Favia (Exh. "3"); and the Warrant of Arrest dated May 23, 1989 (Exhs. "4," "4-A" and "4-B"). Considering that Accused Molleno was acquitted, it is unnecessary to discuss his version of the facts.

From the testimony of the witnesses, the trial court gave the following summary of facts pertinent to Appellant Marollano:<sup>[9]</sup>