

FIRST DIVISION

[G.R. No. 111692, February 09, 1996]

**ALEJANDRO FUENTES, JR., PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

Still professing innocence and insisting that he is a victim of mistaken identity, petitioner Alejandro Fuentes, Jr., seeks reversal of the decision of the Court of Appeals affirming his conviction for murder.^[1]

At four o'clock in the morning of 24 June 1989 Julieta Malaspina together with Godofredo Llamas, Honorio Osok and Alberto Toling, was at a benefit dance at Dump Site, Tudela, Trento, Agusan del Sur. Petitioner called Malaspina and placed his right arm on the shoulder of the latter saying, "Before, I saw you with a long hair but now you have a short hair."^[2] Suddenly petitioner stabbed Malaspina in the abdomen with a hunting knife. Malaspina fell to the ground and his companions rushed to his side. Petitioner fled. Before the victim succumbed to the gaping wound on his abdomen he muttered that Alejandro Fuentes, Jr., stabbed him.^[3]

Dr. Porfirio L. Salubre, the Rural Health Physician who autopsied the cadaver of Julieta Malaspina on 24 July 1989, reported that death was due to "stab wound at left lumbar region I V2 in. in length with extracavitation of the small and large intestines."^[4]

Petitioner claims on the other hand that it was his cousin Zoilo Fuentes, Jr., alias "Jonie" who knifed Malaspina; that when the victim was killed he was conversing with him; that he was compelled to run away when he heard that somebody with a bolo and spear would "kill all those from San Isidro" because "Jonie," the killer, was from that place; that since he was also from San Isidro he sought refuge in his brother's house where he met "Jonie"; that "Jonie" admitted spontaneously that he stabbed Malaspina because after a boxing match before the latter untied his gloves and punched him; that as there were many persons milling around the house "Jonie" jumped out and escaped through the window; that he was arrested at eight o'clock in the morning of 24 June 1989 while he was in a store in the barangay.^[5]

The Regional Trial Court of Prosperidad, Agusan del Sur, found petitioner guilty of murder qualified by treachery and imposed on him an indeterminate prison term of ten (10) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum, to indemnify the heirs of the victim Julieta Malaspina the amount of P50,000.00 and to pay P8,300.00 as actual damages plus costs.^[6]

The Court of Appeals affirmed the judgment of the trial court; hence, this petition for review.

Petitioner contends that the appellate court erred when it held that petitioner was positively and categorically identified as the killer of Malaspina, in affirming the judgment of conviction and in holding petitioner liable for damages to the heirs of the victim.

Petitioner points to an alleged inconsistency between the testimonies of prosecution witnesses Alberto Toling and Honorio Osok to the effect that they saw petitioner stab Malaspina on the right lumbar region, and the testimony of the attending physician that the victim was stabbed on the left lumbar region.

This discrepancy is inconsequential. What is material is that Malaspina was stabbed to death and that three (3) prosecution witnesses positively identified petitioner as the knife wielder. It must be stressed that these witnesses had known petitioner for quite some time and never had any personal misunderstanding nor altercation with the latter as to create any suspicion that they were impelled by ill motives to falsely implicate him.

That it was another person who committed the offense is too incredible. No less than petitioner's own witness, Nerio Biscocho who claimed he also saw the killing, testified that Alejandro Fuentes, Jr., the petitioner, and "Jonie" Fuentes are one and the same person. Thus -

COURT:

- Q.** Who is this Joni Fuentes and Alejandro Fuentes?
That Joni Fuentes is the same of that or the accused
- A.** Alejandro Fuentes. I do not know his real name but he is called as Joni, sir, x x x^[17]

On cross-examination witness Biscocho further admitted that he himself would call petitioner Alejandro Fuentes, Jr., as "Jonie" or "Jonie" Fuentes, as some of his friends did, but victim Malaspina occasionally called petitioner "Junior."^[8]

Petitioner would make much of the alleged confession of Zoilo Fuentes, Jr., since it is a declaration against penal interest and therefore an exception to the hearsay rule. The so-called confession of Zoilo was allegedly given to Felicisimo Fuentes, the uncle of petitioner and Zoilo, who in turn relayed the matter to P/Sgt. Benjamin Conde, Jr. Felicisimo testified that on 24 June 1989 while he was at Barangay San Isidro, Zoilo Fuentes, Jr., confessed that he killed Malaspina in "retaliation"; that he even showed him the knife he used and asked his help in finding a lawyer, in securing bail and, if possible, in working out a settlement with the relatives of the deceased. The following day however he learned that the self-confessed killer was gone and that petitioner had been arrested for a crime he did not commit.^[9]

For his part, Station Commander P/Sgt. Conde, Jr., testified that after the criminal information for murder was filed on 26 July 1989, petitioner met Felicisimo who informed him of the disclosure by Zoilo. Conde then advised Felicisimo that if it was true that it was Zoilo who fatally stabbed Malaspina Felicisimo must persuade Zoilo to surrender. Conde then personally went to Barangay San Isidro to investigate.

There he was told by the townsfolk that Zoilo had already fled).[10]

One of the recognized exceptions to the hearsay rule is that pertaining to declarations made against interest. Sec. 38 of Rule 130 of the Rules of Court provides that "(t)he declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons." The admissibility in evidence of such declaration is grounded on necessity and trustworthiness.[11]

There are three (3) essential requisites for the admissibility of a declaration against interest: (a) the declarant must not be available to testify; (b) the declaration must concern a fact cognizable by the declarant; and (c) the circumstances must render it improbable that a motive to falsify existed.

In the instant case, we find that the declaration particularly against penal interest attributed to Zoilo Fuentes Jr. is not admissible in evidence as an exception to the hearsay rule. We are not unaware of *People v. Toledo*,^[12] a 1928 case, where Justice Malcolm writing for the Court endeavored to reexamine the declaration of third parties made contrary to their penal interest. In that case, the protagonists Holgado and Morales engaged in a bob duel. Morales was killed almost instantly. Holgado who was seriously wounded gave a sworn statement (Exh. 1) before the municipal president declaring that when he and Morales fought there was nobody else present. One (1) month later Holgado died from his wounds. While the Court was agreed that Toledo, who reportedly intervened in the fight and dealt the mortal blow, should be exonerated on reasonable doubt, the members did not reach an accord on the admissibility of Exh. 1. One group would totally disregard Exh. 1 since there was ample testimonial evidence to support an acquittal. The second group considered Exh. 1 as part of the *res gestae* as it was made on the same morning when the fight occurred. A third group, to which Justice Malcolm belonged, opined that the court below erred in not admitting Exh. 1 as the statement of a fact against penal interest.

For all its attempt to demonstrate the arbitrariness behind the rejection in certain cases of declarations against penal interest, the Toledo case cannot be applied in the instant case which is remarkably different. Consider this factual scenario: the alleged declarant Zoilo Fuentes Jr., a cousin of accused-appellant, verbally admitted to the latter, and later to their common uncle Felicisimo Fuentes, that he (Zoilo) killed the victim because of a grudge, after which he disappeared. One striking feature that militates against the acceptance of such a statement is its patent untrustworthiness. Zoilo who is related to accused-appellant had every motive to prevaricate. The same can be said of accused-appellant and his uncle Felicisimo. Secondly, we need not resort to legal rhetorics to find that the admission of such a statement may likewise be, according to Wigmore, "shocking to the sense of justice."^[13] Let us assume that the trial court did admit the statement of Zoilo and on that basis acquitted accused-appellant. Let us assume further that Zoilo was subsequently captured and upon being confronted with his admission of guilt readily repudiated the same. There is nothing, absolutely nothing, that can bind Zoilo legally to that statement.