

G.R. No. L-9045

[G.R. No. L-9045. September 28, 1956]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. NUMERIANO BALINES, JOSE BALINES, VICENTE ARMAZA, RAMON BURCE, AND CALIXTO LLANZON, DEFENDANTS-APPELLANTS

D E C I S I O N

FELIX, J.:

According to the evidence for the prosecution, on the moonlit night of May 14, 1954, at about 11:00 o'clock, Cayetano Banaay and Teodorico Bergonio were returning home from a dance at the Dagupan Sawmill in South Villazar, Sipocot, Camarines Sur. On the way, Banaay was followed by Bergonio who was 3 meters behind. Upon reaching a place about 250 meters from the Dagupan Sawmill, the latter saw Numeriano Balines, Jose Balines, Vicente Armaza, Ramon Burce and Calixto Llanzon emerge from the tall grasses beside the road and that Jose Balines suddenly struck Cayetano Banaay on the back of the head with a piece of wood, Bergonio staggered as a consequence of the blow and Numeriano Balines followed suit and also struck Banaay with a piece of weed similar to Exhibit B. Banaay fell and Vicente Armaza also hit him with a piece of wood. Thereupon, Teodorico Bergonio approached them and inquired why they assaulted Cayetano. Vicente also struck Teodorico in reply but the latter was not hit. Teodorico then ran away and hid behind the grasses, about 4 meters away. From his hiding place he saw that Numeriano, Jose and Vicente continued beating Banaay while Calixto Llanzon and Ramon Burce were stoning him. After Teodorico had recognized them, he left and went to the house of his cousin Daniela Barrameda and related the incident identifying Jose, Numeriano, Vicente, Ramon and Calixto as Cayetano's assailants. Teodorico also repaired to the house of Josefina Bonita and told her that her uncle Cayetano Banaay was killed by the aforementioned 5 persons.

On the following morning, May 15, 1954, at about 8:00 o'clock, Numeriano Balines accompanied by the barrio Lieutenant Warciso Hint surrendered to the Chief of

Police, Porfirio Pantalla, and confessed that he had struck somebody. Thereupon, the Chief of Police accompanied by Dr. Felix Macalino, charity physician of Sipocot, Camarines Sur, a photographer and Numeriano went to the scene of the crime and there found the dead body of Cayetano Banaay. A picture of the cadaver of the deceased (Exh. A) was taken at the place of the incident, Dr. Macalino conducted a post mortem examination and made the following report;

- (a) Fracture of the occipital portion of the skull exposing the brain followed by profuse hemorrhages;
- (b) Blood exit from the mouth, ears, and nose;
- (c) Multiple contusions and swelling all over the face;
- (d) Swelling with hematoma at the neck (back) - Exhibit C,

After due investigation and proper proceedings, a complaint was filed in the Court of First Instance (of Camarines Sur) charging Humsriano Balines, Jose Balines, Vicente Armaza, Baraon Burce and Calixto Llanzon with the crime of murder qualified by treachery. After hearing, the Court found defendants guilty as charged in the information and each of them was sentenced to the penalty of reclusion perpetua, with the exception of Ramon Burce who, being a minor 17 years old, was sentenced to a penalty one degree lower, pursuant to Article 68 of the Revised Penal Code, or to 14 years and 8 months of reclusion temporal; to the accessory penalties prescribed in Article 41 of said legal body to pay jointly and severally P3,000.00 as indemnity to the heirs of Cayetano Banaay; and to pay one-fifth of the costs.

From this verdict all the defendants appealed to Us and in this instance their counsel interposes the defense of alibi in favor of all the accused, except Numeriano Balines who claims self-defense.

In addition to the facts stated at the beginning of this decision, the evidence of the prosecution further established the motive for the assault upon Cayetano Banaay, which is disclosed by the testimony of Josefina Bonita. We copy from the decision appealed from the following:

"She (Josefina Bonita) testified that previous to May 14, 1954, Numeriano Balines had been making love to her. On one occasion, while she was alone in the house, Numeriano attempted to abuse her. The arrival of her sister, who come in response to her cries for help, frustrated Numeriano's design, Since then, she was forbidden by her uncle and mother to have any dealings with Numeriano.

"Josefina further declared that on April 16, 1954, she met Numeriano and Jose Balines in Sipocot. Numeriano proposed that she elope with him. Upon her refusal, they told her that they will kill her uncle. She met them again, together with Calixto Llanzon, at a dance on May 10, and on that occasion they inquired about her uncle. On May 14 (1954), she observed that the accused, who were all at the dance in the Dagupan Sawmill, (would) get together and then look at her uncle."

Numeriano Balines admitted having killed the deceased but in self-defense, His version of the incident, as narrated in the decision and adopted by his counsel, is as follows;

"xxx that after the dance in the Dagupan Sawmill, which he attended, he left for his house at about 11:00 or 12:00 p.m. On his way home, some 200 meters from the dance hall, he was attacked by two men, armed with pieces of wood, who suddenly came out of the bushes,, One of them struck him, but he dodged and was not hit. Before they could strike him again, he managed to turn back and escape. After running some 60 meters, he stumbled on stones, He picked up a stone and threw it at Banaay who was hit, Banaay went down squatting and dropped the piece of wood he was carrying. Numeriano picked it up, and as he saw Banaay stand up, he hit him in the region of the right ear and in the left forearm,, The left forearm was also hit because Banaay parried the blow with his left hand. After the first blow Banaay reeled. As he did so, Numeriano struck him again hitting him on the back of the head. Numeriano clubbed him for the third time but he does not know where this blow landed. He approached the man he hit but did not recognize him. He then fled and surrendered to the barrio lieutenant of South Villazor."

The trial court, however, did not give any credence to this version for according to His Honor;

“This account of the incident by Numeriano Balines is difficult to believe. If it is true that two men, who from all appearances were out to kill him, suddenly emerged from the bushes. and attacked him and he was alone and unarmed, it is highly improbable that he not only was not hit but that he should be able to- turn back, escape unscathed, and later kill one of them with his” own weapon,

“Besides being highly improbable, Numeriano’s story is furthermore confused and full of inconsistencies. At first, he declared that before he was struck, he did not see anyone and that his assailants suddenly came out of the bushes on the side of the road; later, he stated that he saw his assailants when they were still about five meters away from him, standing on the road. He said he was not hit for he parried the blow. After a while, he explained he was not hit because he ducked”. In direct examination he testified that he fell as lie stumbled on stones, in cross-examination, he asserted that he fell because lie was running fast and the road was small and somewhat descending,

“Asked why he did not shout for help since he was only 140 meters from the dance hall where there might still be some people, he answered that if he shouted his speed would have been retarded (how he did not explain), but later he said he did not shout because the deceased might have other companions and if he (Numeriano) shouted, they might join in the attack. In. the examination-in-chief, he declared that he hit the deceased as he saw him stand up while in the cross-examination, he swore that he delivered the first blow when the deceased was already standing, set to fight. He testified that he hit the deceased for the third time while he was reeling from the second blow but after a while he said that he hit Banaay for the third time after he fell from the second blow, with his body bent forward. He disclosed in the direct examination that Banany dropped his club when he was in a squatting position after being hit by the stone whereas in the cross-examination he manifested that he does not know whether the deceased dropped his clud when he was standing or squatting.

“The injuries found upon the body of the deceased also furnish convincing evidence of the falsity of Numeriano’s testimony. The findings of Dr. Macalino show that the deceased had no injuries either in the right ear or in the left forearm which he should have if it is true, as Numeriano claims, that he hit him in those parts of the body with the first blow. Again, Numeriano did not state that he hit Banany in the face and yet, according to Dr. Macalino, he had multiple contusions and swelling all over the face, indicating that he was hit many times in the face. Finally, Numeriano Balines stated that he gave Cayetano Banaay four blows one with a stone and three with the wooden club. If this is true then Banaay should have only four injuries in his body but the findings of Dr. Macalino disclose that the deceased had more than four injuries, for he aches the fracture in the skull, the swelling at the neck, he had, as already mentioned, many contusions and swelling all over the face,, This is incontrovertible proof that the deceased was hit more than four times, giving the lie to Numeriano’s assertion that he received only four blows as well as confirming Teodorico Bergonio’s declaration that the deceased was hit by the five accused many times.

Moreover, between Numeriano Salines and Teodorico Bergonio, the latter undoubtedly is the more reliable. His testimony is clearer, more consistent and more probable than that of Numeriano. He is not indicted for murder. He is not related to the deceased nor has any reason been shown why he should falsely testify to a charge that may bring death to five men against not one of whom he harbors any feelings of hate or resentment. The fact that Teodorico Bergonio stated that it was full moon on May 14, when according to the calendar, the moon was not full until the 18th does not materially impair his credibility. The error is plainly an innocent mistake. It is one anybody is likely to fall into, for where the moon is already big and high in the sky, as it was at about 11:00 or 12:00 o’clock in the night of May 14 when Cayetano Banany was attacked, it is difficult to say, without consulting a calendar, whether the moon is full or about to be full.” (Decision, pp. 46-49, rec.).

As to the defense of alibi interposed by the other appellants, the Courts have already held that such defense is the weakest that an accused can avail of and cannot prosper

when the accused as in this case, have been positively and properly identified, when the presence of all the appellants at the Dagupan Sawmill dance was established by the testimony of Josefina Bonita and when the identification of all the accused as the assailants was established by the testimony of Teodorico Bergonio who knew them very well. Alibi should be proved by proper evidence which would reasonably satisfy the Court of the of such defense (U.S. vs. Oxiles, 29 Phil. 587). Oral proof of alibi must be clearly and satisfactorily established because it is so easily manufactured and is usually so unreliable that it cannot be given credit (People vs. Badilla et al., 48 Phil. 710).

As may be seen from the foregoing considerations, there is conflict between the evidence produced by the prosecution and the defense. This conflict involves a question of credibility of the witnesses presented by both parties, which depends to a large measure on the sound discretion of the trial Court. It has been repeatedly held in this jurisdiction that;

“The appellate court will not disturb the findings of fact made by the trial court as to the credibility of witnesses, in view of its opportunity to observe their demeanor and conduct while testifying and that the said findings will generally be accepted and acted upon (people vs. Borbano, 76 Phil. 702, citing People vs. De Asis, 61 Phil. 642; People vs. Garcia, 63 Phil. 296; People vs. Masim, 64 Phil, 757 and many others). Nor will the appellate court reverse any findings of fact by the trial court made upon conflicting testimony and dependent solely upon the credibility of witnesses, unless the court below failed to take into consideration some material fact or circumstance presented to it for consideration (U.S. vs. Ambrosio, 17 Phil. 295; U. D. vs. Melad, 27 Phil. 488; Baltazar vs. Alberto, 33 Phil, 336; Melliza vs. Towle, 33 Phil. 345; U.S. vs. Semigio, 37 Phil. 599; People vs. Cabrera, 43 Phil. 64; Carazay vs. Arquiza, 53 Phil. 72, and Garcia vs. Garcia, 65 Phil. 419).

Upon going over the evidence on record, the find no reason to alter or modify the findings of fact and conclusions of the trial judge who, by reason of his opportunity of hearing the witnesses ‘and observing their demeanor and conduct while testifying, is in a better position than the appellate court to gauge their credibility.

The crime at bar is murder qualified by treachery, which absorbs the circumstances of nighttime (People vs. Antonio et al., G. R. No. L-3458; People vs. Chan Lim wat, 50 Phil. 191, and People vs. Yan, G. R. No. L-2161), and the use of superior strength. This Court has already held that when in the qualifying circumstance of treachery nighttime and abuse of superior strength are involved, the latter circumstances should not be taken into account for the purpose of increasing the penalty (People vs. Domingo, 18 Phil. 250 L

The Solicitor General calls our attention to the fact that the trial judge failed to consider the mitigating circumstance of voluntary surrender in favor of appellant Numeriano Balines and, consequently, that the penalty attached by the Code to murder, reclusion temporal in its maximum period to death, should be imposed in the minimum period. The State counsel also states that the benefit of the Indeterminate Sentence law should be given to him. As to appellant Ramon Burce, who was about 17 years old at the time of the commission of the offense, he shall also be given the benefit of the Indeterminate Sentence Law.

WHEREFORE, upon finding appellants guilty of the crime charged in the information, We hereby sentence Numeriano Balines to the indeterminate penalty of from 10 years and 1 day of *prision mayor* to 17 years, 4 months and 1 day of *reclusion temporal*. We also sentence Ramon Burce to suffer the indeterminate penalty of from 6 years and 1 day of *prision mayor* to 12 years and 1 day of *reclusion temporal*. The decision appealed from thus modified' is hereby affirmed in all other respects, with one-fifth of the costs against each of the appellants.

IT IS SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.