

**THE PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS.
BENJAMIN CUNANAN, ALIAS BEN CUNANAN, ALIAS COMMANDER
HIZON, ACCUSED-APPELLANT.**

G.R. No. L-30103. January 20, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is a murder case. On August 30, 1960 Isaac Tanglao, a forty-three-year old hacienda overseer, was feloniously killed in a ricefield located at Barrio Suclaban, Mexico, Pampanga by three armed persons wearing army fatigue uniforms. Tanglao sustained eight gunshot wounds and three incised wounds. His eyes were eviscerated (Exh. A). Two incised wounds affected the brain tissue. The third incised wound was on the "plantar surface" of the right foot. Death was due to hemorrhage brought about by the eleven wounds (Exh. B).

Question: Was Huk Commander Benjamin Cunanan one of the three assailants of Isaac Tanglao?

According to Jacob Tanglao, the victim's fifteen-year old son, he and his father, together with Leocadio Dionicio, a tenant, were in the ricefield of Quintin Magat at Barrio Suclaban in the morning of August 30, 1960. Isaac was Magat's overseer. Jacob and Dionicio were repairing the rice paddies (pilapil).

While engaged in that task, they heard shouts of "Hoy! Hoy!" emanating from the bamboo grove about sixty meters away. Jacob saw three men in army fatigue uniforms, with caps and combat shoes and armed with rifles, emerging from the bamboo thicket. They ran towards the spot where Isaac and his son were working. They were firing their guns.

Sensing danger, Jacob lay down on the ground near a rice paddy. Dionicio scampered and concealed himself in the sugarcane plantation nearby. Isaac tried to flee in the same direction but he stumbled and fell face down on the field about eight paces away from his son Jacob.

The three malefactors, one of whom was later identified by Jacob as Benjamin Cunanan, approached Isaac. Cunanan kicked him and turned his face up. Cunanan asked Isaac whether Jacob was his son. Isaac shook his head or denied that Jacob was his son. (He did so in order to save his son's life, as surmised by the trial court).

Then, Cunanan and his two companions repeatedly fired their guns at Isaac. One of the trio fired at Isaac's eyes and then remarked "Patay na". Cunanan took Isaac's bolo from the latter's waist and, with a laugh, hacked Isaac on the forehead and slashed his toe. After Cunanan had warned Jacob to stay put for an hour, the three men left the field. Jacob noticed that Cunanan had a sharp nose, a mustache and a gold tooth.

Isaac moaned with pain. His head and face were bloodied. Jacob embraced his father. The back part of his head was soft. Jacob could not recognize him anymore.

At this point, Francisco D. Lingad, a thirty-year old jeepney driver, takes up the thread of Jacob Tanglao's story. Lingad, in his sworn statement (Exh. F), declared that in that morning of August 30, he was in Barrio Suclaban.

His jeepney was parked on the roadside near the Pasudeco railroad track and the ricefield of Quintin Magat (p. 12, Record). While waiting for passengers, he heard gunshots. About ten minutes later, three armed persons in fatigue uniforms accosted him and asked him to drive them to the Constabulary headquarters at Angeles City. They apprised him that they had killed a Huk. Lingad was taken aback. The smallest of the trio had a regular build and a fair complexion. The second was slightly taller than the first. The third; who was as tall as Lingad but with a heavier build, was brown and had a sharp nose and a mustache (Exh. F).

One of the three persons poked a carbine at Lingad and ordered him to proceed to Angeles. After the jeepney had travelled a short distance, he was ordered to stop in front of the combination warehouse and residence of Isaac Tanglao which was near the chapel (p. 12, Record). Two of the malefactors alighted from the jeepney and talked with Ursula Pangan, the wife of Isaac Tanglao, who was in front of the warehouse. They asked her about the gun of Isaac. When she did not answer, they entered the bodega and went up the house. A few minutes later, they came down from the house with two carbines, a Garand rifle and a pistol (Exh. F) or one carbine and a Garand rifle (pp. 6-7, Record).

Lingad heard the two men telling Ursula Pangan that they had killed her husband. The three men repaired to the nearby house of Menen Miranda and asked for water. Then, they instructed Lingad to drive them to the Magat hacienda where they alighted. Lingad went to the Constabulary headquarters at Angeles and reported the incident (Exh. F).

Ursula Pangan, the victim's widow, testified that at around nine o'clock in the morning of August 30, 1960, while she was in the bodega of Quintin Magat, where her family had living quarters, she heard gunshots. Some minutes later, a jeepney stopped in front of the bodega. She noticed that the three armed passengers in the jeepney were wearing fatigue uniforms with big pockets. They jumped out of the jeepney, approached her, held her wrists and pointed their guns at her breast. One of them held her left shoulder.

The person who held her wrists was Benjamin Cunanan. One of the malefactors went up the house and seized the carbine and the Garand rifle of her husband, Isaac Tanglao. Cunanan told her: "We are going to kill you also now because we killed already your husband". She did not make any reply. The malefactors left.

Mrs. Tanglao declared that she and the deceased had seven children of whom the youngest was six months old at the time he was killed. Her husband earned sixty to seventy pesos a week as overseer. She spent P625 for the funeral.

On September 15 and 22, 1960 Jacob Tanglao and his mother, Ursula Pangan, were investigated by Constabulary agents. They were shown a photograph (Exh. C). One of the three persons in that photograph, who was Benjamin Cunanan (he was in uniform and he had a mustache) was fingered by Jacob and Mrs. Tanglao as one of the three persons whom they saw in the morning of August 30, 1960. That was the first time that they learned that one of the assailants of Isaac Tanglao was Cunanan, alias Commander Hizon.

On September 27, 1960 an investigator of the Constabulary Criminal Investigation Service (CIS) filed a complaint for murder against Cunanan and two John Does in the justice of the peace court of Mexico. Jacob, Lingad and Mrs. Tanglao testified at the preliminary examination. A sketch of the scene of the crime was attached to the record (p. 12).

On September 30, 1964 Fiscal Antonio P. Fausto filed an information for murder against Cunanan and two John Does in the Court of First Instance of Pampanga, San Fernando branch. Cunanan pleaded not guilty at the arraignment. After trial, during which Cunanan pleaded an alibi, the trial court convicted Cunanan of murder, sentenced him to reclusion perpetua, and ordered him to indemnify the heirs of Isaac Tanglao in the sum of six

thousand pesos (Criminal Case No. 4872). Cunanan appealed.

His counsel did not make any assignments of error. In his brief, he attacks the credibility of the prosecution witnesses.

Appellant argues that, if according to Jacob he lay flat on the ground face down near the dike, he could not have seen his father's assailants. That contention does not take into account Jacob's entire testimony. Jacob also testified that he saw the three malefactors for about eight minutes when they approached his father and assaulted him. During the cross-examination, he made a sketch (Exh. G or 1) of the scene of the crime and the positions of his father, himself and the three assailants. He even demonstrated how Cunanan stabbed his father in the head and toe with his (Isaac's) own bolo. Jacob declared:

"If for instance at that time I was in this place (witness pointing to the testimonial chair) my father then was in this place (witness pointing to the place where Fiscal Fausto is), and the accused Benjamin Cunanan was at this place then (the witness pointing to the place where the witness was), and the said accused Cunanan took hold of the bolo of my father who was then in a lying position, naturally he placed himself in such a way that he was facing (me) and then I saw him in that moment." (29 tsn May 12, 1965).

Jacob's testimony appears to be credible and trustworthy.

Appellant's counsel also impugns the testimony of Ursula Pangan. He argues that it was impossible for Cunanan to hold the wrists of Ursula Pangan and at the same time point a rifle at her breast, unless Cunanan had three arms, the third of which was used to hold his rifle. That argument is misleading. Ursula Pangan declared that another person, not Cunanan, poked the rifle at her chest. She declared:

"Q. Will you please demonstrate the respective places of these three (3) persons when they held you?

"Court: Assuming that Mr. Tuazon, the interpreter, represents you. - A. Like this, sir: the witness stepped down from the testimonial chair and then placed herself in front of the interpreter who is taking the place of the witness (Ursula Pangan) and began to hold the two wrists of the interpreter (playing the role of Ursula Pangan) and said that one of those persons placed himself at the left side of the interpreter and began to hold the left shoulder of the said interpreter and at the same time was pointing his gun at him (meaning Ursula Pangan), and that person in front of the interpreter, who was holding the two wrists said: "Garand, carbine" in a loud voice, and the man was shaking the hands of the witness.

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"Q. Will you please look around the courtroom and point out any person who was among those three (3) persons who approached and held you, if there is anyone? x x x A. Could I be permitted to approach that person, sir?

"Court: Make of record that there are several persons, male and female on the benches for the audience.

"Q. Now can you point out the person among the three? - Make of record that the witness pointed to accused Benjamin Cunanan, and when Benjamin Cunanan was pointed, he (Benjamin Cunanan) smiled, and the accused is sitting on the last bench of the three (3) benches for the audience. On his right is the PC guard, and on his left is a PC in civilian clothes.

"Q. Why could you identify this man? What made you sure for (in) identifying him? - A. Because that person whom I pointed just a while ago did not leave me, and he remained holding my two (2) wrists and we were staring (at) each other while one of his companions went out to get the Garand and the carbine, sir." (62-64 tsn July 6, 1965).

The foregoing testimony shows that Ursula Pangan had sufficient opportunity to remember the features of

Cunanan and to connect him with the person, admittedly Cunanan, found in the photograph, Exhibit C.

Appellant's counsel capitalizes on the discrepancy between Jacob's testimony that Cunanan had a mustache and Ursula Pangan's hazy recollection that he did not have a mustache. Ursula Pangan testified more than four years after she saw Cunanan. That detail as to whether he had a mustache or not might have slipped from her memory. The variance of her testimony on that point with her son's testimony signifies that there was no rehearsed syn-chronization of their testimonies.

On the other hand, the evidence for the defense is not adequate to create a doubt as to Cunanan's guilt. Leocadio Dionicio, a tenant of Magat, instead of testifying for the prosecution, sided with the accused. He declared that Cunanan was not one of the three persons who appeared in the ricefield of Magat on that morning of August 30, 1960. To refute Lingad's sworn statement (Exh. F), Dionicio said that the three persons were shorter than Cunanan and appeared to be between nineteen and twenty years old only and to have the same height as Dionicio's. (During the trial the height of Dionicio was found to be five feet and five inches and that of Cunanan was five feet and seven inches with shoes on). Dionicio said that he saw the faces of the three malefactors for one minute only. Cunanan was not among the three assailants.

As shown in the cross-examination and as pointed out by the Solicitor General, there are inconsistencies between Dionicio's testimony and his affidavit dated September 19, 1960 (Exh. H). From his statement, it appears that he could not have seen closely the features of the three assailants because he fled to the sugarcane plantation to avoid them.

Appellant Cunanan, a native of Concepcion, Tarlac, who was thirty-nine years old in 1966, admitted that since 1942 he has been a member of the Hukbong Mapagpalaya ng Bayan (HMB). He operated in Tarlac and Nueva Ecija. He denied that he killed Isaac Tanglao. He said that he had never gone to Barrio Suclaban. He does not know that barrio. He was "shell-shocked" or he was sick. He never knew the spouses Isaac Tanglao and Ursula Pangan and their son Jacob. He said that it was against the HMB rules that an assassin should have a companion in the performance of his mission. He averred that his areas of operation were from Licab to San Antonio, Nueva Ecija and from Concepcion to the boundary of Arayat, Pampanga.

He said that after he was apprehended in 1962 the Constabulary authorities wanted him to be a stool pigeon or informer and to divulge the names of the politicians in Pampanga who were supporting the Huks. When he refused, the Constabulary agents showed him a bunch of papers containing criminal charges against him in the different courts in Central Luzon. They allegedly said that if he refused to cooperate, they would prosecute all those cases and he would languish, or even die, in jail. He said that when he stubbornly refused to be an informer, the Constabulary authorities methodically maltreated him not by means of physical punishments, but by using electricity. The maltreatments allegedly affected his eyesight.

To prove that he was repeatedly framed up by the Constabulary, he presented Exhibits 5 to 10, showing that the three murder cases filed against him in the municipal court of Mexico, the double murder case filed against him in the municipal court of Magalang, the two double murder cases and a kidnapping with murder case filed against him in the municipal court of Arayat were all dismissed.

After a conscientious evaluation of the evidence, we are convinced that the trial court did not err in concluding that Cunanan participated in the killing of Isaac Tanglao.

The unwavering identification of Cunanan, which was made by the eyewitnesses, Jacob Tanglao and Ursula Pangan and which dovetails with the statement of another eyewitness, the jeepney driver, Francisco Lingad (Exh. F), establishes Cunanan's guilt to a moral certainty.

The killing was qualified by abuse of superiority. Cunanan and his comrades took advantage of their manifest superiority in liquidating Isaac Tanglao, their unarmed and defenseless victim (Arts. 14[15], Revised Penal Code).

The aggravating circumstances of evident premeditation and craft, which were alleged in the information and were appreciated by the trial court, were not clearly established.

The malefactors resorted to a disguise. That circumstance did not facilitate the consummation of the killing. Nor was it taken advantage of by the malefactors in the course of the assault. According to the prosecution's version, at the incipency of the attack, Cunanan and his companions did not camouflage their hostile intentions. They announced their presence at the scene of the crime with shouts and gunshots. That mode of attack counteracted whatever deception might have arisen from their disguise. It even negated the existence of treachery since the element of surprise, which marks the presence of treachery, was absent.

There being no modifying circumstances, reclusion perpetua, the medium period of the penalty for murder, was properly imposed by the trial court (Arts. 64[1] and 248[1], Revised Penal Code).

The trial court's judgment is affirmed with the modification that the indemnity should be increased to twelve thousand pesos. Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Concepcion, Jr., and Martin, JJ., concur.

Antonio, J., no part.

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