

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENARO GUCOR ET AL., DEFENDANTS. GENARO GUCOR,
DEFENDANT-APPELLANT.**

G.R. No. L-2433. April 20, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In the Court of First Instance of Bohol, Genaro Gucor and Catalino Logroño were accused of assault upon a person, in authority with murder, for the killing of Fabian Cenabre, Chief of Police of Inabanga, Bohol. After trial, Catalino Logroño was acquitted while his co-defendant Genaro Gucor was found guilty but only of murder and sentenced to reclusion perpetua with the accessories of the law, to indemnify the heirs of the deceased Fabian Cenabre in the sum of P2,000, and to pay one-half of the costs. Gucor is now appealing from that decision.

The following facts are not disputed. In the month of October, 1947, the campaign for municipal elections particularly for the post of Mayor of Inabanga, Bohol, was at its height. Margarito Anana was head of the local Liberal Party and it seems that he was campaigning for his re-election because he was then the incumbent Mayor. Catalino Logroño who had in previous years been elected Mayor, was head of the Nacionalista Party in the town and was campaigning for his own election as Mayor. Margarito Anana had as Chief of Police the deceased Fabian Cenabre who, it may be presumed, belonged to his party and was perhaps helping in the campaign. Logroño had as his constant companion and bodyguard his co-defendant Genaro Gucor, a first cousin and a loyal follower.

On October 8, 1947, at about 7 o'clock in the evening, in the course of their campaign, Logroño and Gucor were returning to the poblacion of Inabanga from their campaign tour in one or two barrios. Logroño, according to the prosecution, was carrying a gun or rifle while according to the defense what he was carrying was only a cane. His bodyguard Gucor was carrying a carbine (Exhibit B). That same evening Chief of Police Fabian Cenabre had gone to the barrio of Cogon of the same municipality, armed with a carbine. He stopped at the store of Asuncion Melecio and inquired of her about a brother who was reported to have boxed somebody. In the course of the inquiry and resulting conversation, the Chief of Police stood outside the store, leaning against the outside wall thereof with his carbine (Exhibit C) slung over his right shoulder. Not long after this, the two defendants Logroño and Gucor passed by the store on their way to the poblacion. During that chance encounter between the two defendants and the Chief of Police, Gucor with his carbine fired many shots at the Chief of Police inflicting on him twelve wounds some of which were necessarily mortal, on different parts of the body, mainly on 'che head, chest and hips, instantly killing the deceased. The prosecution and the defense naturally differ as to the manner the shooting and killing occurred.

According to the prosecution, earlier that evening of October 8th, Logroño with appellant Gucor and other companions had been roaming the streets of Inabanga looking for and challenging the followers and supporters of Margarita Añana, even maltreating and abusing some of those followers whom they encountered, Gucor and Logrono were each carrying a rifle, They announced to all and sundry that they were the suicide squad of the

Logroño faction and that they were looking for Margarito Ariana and the Chief of Police and one named Jimenez, When Logroño and Gucor arrived in front of the store of Asuncion Melecio at barrio Cogon, they passed by Chief of Police Cenabre who was standing in front of the store but a little to one side so that the bright light from the Coleman lamp hanging in the ceiling of the store inside did not directly fall upon him, but there was a small lamparilla (lamp) on a table outside the store where some wares and merchandise were exhibited for sale. In passing in front of the store, at a distance of about eight meters the two defendants apparently at first did not recognize the Chief of Police, but almost immediately, Gucor turned back, faced the Chief of Police and said; "So Bian (Fabian), you are here," and immediately cocked his carbine and commenced firing at Cenabre. The shooting stopped, but almost immediately it was followed by many more shots. According to this version, the deceased was caught unawares with his carbine still slung over his shoulder. He gave no provocation and was unable to offer any resistance.

According to the defense, however, this is what happened. Shortly before reaching the store of Asuncion Melecio, Gucor tarried in order to pass off water and asked Logroño to go ahead but walk slowly. That was the reason why Logroño first arrived at the store. Upon seeing him, Chief of Police Cenabre immediately shot at him twice; Logroño who had no gun had to run away to save his life. Then Gucor who from a distance saw and heard the shooting approached Cenabre and said: "Chief, so you are determined to kill a man" and he tried to wrest the carbine from the Chief of Police, During the struggle Gucor kicked Cenabre in the abdomen as a result of which Cenabre fell to a sitting position. Taking advantage of this discomfiture or disadvantage of the Chief of Police, Gucor grabbed a carbine that had previously been laid on the table by one Dionisio Anota, a companion of the Chief of Police, while said Anota was lacing his shoes. With Anota's carbine, Gucor fled from the scene to hide but Cenabre shot at him once or twice.

As a measure of safety, Gucor threw himself down on the ground and then ensued an exchange of shots between the two men resulting in the death of Fabian Cenabre. This version given by the defense if accepted, will naturally result in his acquittal because according to said story, acted in self-defense.

It is clear that the determination, of this case hinges upon, the credibility of witnesses and also on the reasonableness of the theory of each party—prosecution and defense. The trial court considered the witnesses for the Government as more worthy of credit and accepted their version. After carefully weighing and considering the oral and documentary evidence we fully agree with the trial court and find that Fabian Cenabre was shot and killed in the manner related by the prosecution witnesses. There are several reasons for our action and attitude in this regard. The two witnesses for the defense, Eustaquio Celis and Isabel Vitur who claimed to have witnessed the shooting contradicted each other as to the number of shots allegedly fired by the Chief of Police at Genaro Gucor, one saying that there were two while the other said that there was only one. Another material contradiction is that while one defense witness says that the remark or exclamation by Gucor which was, "chief, so you are determined to kill a man" was made before the struggle between the two men for the possession of the carbine, the other witness said that it was made in the course of the struggle. Furthermore defense witness Isabel Vitur who claims to be at the store of Asuncion Melecio serving as a salesgirl that evening and therefore saw all that happened, said when, questioned by Capt. Garces of the Military Police the day following the shooting, that she was not at the store at the time and did not see the incident between Gucor and the Chief of Police. Asuncion Melecio also told the court that she had never employed Isabel Vitur as salesgirl because her business in the store was so small that she needed no help. Moreover, it is hard to believe that in the supposed exchange of shots between Gucor who was supposed to be handling a carbine not his own because it belonged to one Dionisio Anota, and the Chief of Police who was using his own carbine and therefore was familiar with its use to say nothing of the presumption of his being more or less an expert in the use of firearms because of his position, the deceased should have received twelve bullet wounds, several in the head, in the face and in the abdomen and hips

while Gucor received not even a scratch. Besides, if Gucor had really acted in self-defense he should have surrendered himself to the authorities and reported the killing so as to prove his innocence. Instead, he fled from the neighborhood and the town, taking with him the carbine (Exhibit C) of the Chief of Police and delivered it to another for safekeeping if not to hide it. He also gave his own carbine (Exhibit B) to another to be kept. His flight and his failure to notify the authorities of the killing, including his taking away the carbine of the deceased neither speak well of nor support his protestations of innocence. Men guiltless and with a clear conscience do not act the way he did. When the two carbines in question were finally found and confiscated by the Military Police, it was found that the magazine (Exhibit C-1) of Carbine (Exhibit C) of the Chief of Police, still contained bullets while the magazine (Exhibit B-1) of the carbine (Exhibit B) of Gucor was empty. There is every reason to believe that Gucor as soon as he recognized the Chief of Police in front of the store of Asuncion Melecio, began firing at him and that when the Chief of Police slumped to the ground, Gucor emptied his carbine into his helpless and prostrate victim. We have no doubt whatsoever that the appellant is guilty of murder. The killing was qualified by treachery because of the sudden, unexpected attack with a firearm.

Finding no reversible error in the decision appealed from, the same is hereby affirmed with costs against the appellant.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Padilla voted for affirmance.

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