

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOAQUIN VELEZ, ALEJANDRO VELEZ AND ANTONIETO VELEZ,
ACCUSED, JOAQUIN VELEZ AND ALEJANDRO VELEZ, ACCUSED AND
APPELLANTS.**

G.R. No. L-30038. July 18, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Joaquin Velez and Alejandro Velez appealed from the decision of the Court of First Instance of Northern Samar, Laoang Branch, convicting them and their brother, Antonieto Velez, of murder, sentencing each of them (Joaquin and Alejandro) to reclusion perpetua and ordering them to indemnify solidarily the heirs of Narciso Becuna in the sum of P6,000 and to pay the costs (Criminal Case No. 3591).

Alejandro died during the pendency of the appeal. The case against him was dismissed insofar as his criminal liability was concerned (Resolution of September 19, 1972).

Antonieto did not appeal his sentence of ten (10) years and one (1) day of prison mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal.

This case presents the ever-recurring situation of a victim who was allegedly assaulted by two or more persons, usually relatives or members of a group. One assailant assumes responsibility for the killing but pleads self-defense. The others offer alibis or contend that they had no complicity in the killing.

The judgment of conviction was based on the following facts:

At around three o'clock in the afternoon of June 24, 1966 Narciso Becuna, upon the invitation of Joaquin Velez, was playing a card game called monte in the latter's house (the house of his father Ciriaco) at Barrio P. Rebadulla, Catubig, Northern Samar. Velez acted as banker or dealer. Narciso was the bettor. Ernesto Becuna, the seventeen-year-old brother of Narciso, was a spectator.

Later, Alejandro Velez and Antonieto Velez, the brothers of Joaquin, and one Damaso Mercader arrived and participated in the game. Since Narciso was winning, he agreed to be the dealer or banker. The others were bettors. The game lasted until the next day, June 25th. At around six o'clock in the morning of that day, Agripino Baldostamo arrived and had a private talk about sawn lumber with Alejandro. Baldostamo watched the game. Narciso was winning.

Inasmuch as Narciso had not eaten anything since the game started, he suggested at around seven o'clock in the morning that the game be suspended so that he could eat and then the game would be resumed thereafter. The Velez brothers, who had already eaten, objected to the cessation of the game. Narciso, who was assailed by the pangs of hunger, was adamant. Alejandro left, saying that he had to go home. Narciso made another deal. Antonieto, Joaquin and Mercader placed their bets. Narciso won.

He collected his winnings, picked up the cards, arranged them and placed them on the table. He stood up and made a motion to leave the house. Joaquin, who was much discomfited by his losses, uttered the ominous threat that their lives would be involved if Narciso stopped playing. Joaquin forthwith ran to the kitchen. He was followed by Antonieto.

Suspecting that their lives were in jeopardy, Narciso and Ernesto jumped out through the window and ran. After they had traversed a distance of about twenty arms' length, they encountered Alejandro who, to all appearances, had been waiting for them. Alejandro was armed with a bolo (sondang). Narciso stopped and stepped backward. Ernesto took refuge in a grassy place. As Narciso backed out, Joaquin appeared from behind. He was holding a barbed harpoon (gata-ao) more than a meter long, which he plunged into Narciso's back and then tried to pull out. While Joaquin was trying to extricate the harpoon which got stuck because of its hooks, Alejandro stabbed Narciso with his sondang. Narciso fell to the ground. Antonieto, also armed with a sondang, slashed the prostrate Narciso in the abdomen. Alejandro and Antonieto repeatedly stabbed him while Joaquin was pulling out the harpoon. Narciso died in consequence of his numerous wounds.

His cadaver was dragged to the house of Joaquin, which was really the house of his father, Ciriaco Velez. The body was brought to the town. The autopsy conducted on June 26th by Doctor Antonio S. Daiz, the municipal health officer, disclosed that the twenty-six-year old victim sustained fourteen (14) wounds. Two were fatal: (a) the stab wound in the chest, piercing the cavity, cutting the fifth rib and muscles thereof and the diaphragm and piercing the lower lobe of the left lung, probably caused by a bolo and (b) the wound at the back, penetrating the chest cavity, cutting the rib near the tip of the scapula and piercing the base portion of the left lung, the left side of the diaphragm and the superior portion of the stomach. Due to the presence of satellite wounds around the big penetrating wound, Doctor Daiz concluded that a barbed harpoon-like instrument was used in inflicting that wound. The cause of death was shock due to massive internal hemorrhage coming from the two fatal wounds and the other twelve wounds (Exhs. A and A-2).

On July 22, 1966 the following developments in the case transpired: (1) the statements of Baldostamo and Ernesto Becuna, identifying the three Velez brothers as the killers, were sworn to before the Municipal Judge; (2) the Chief of Police filed a complaint for murder against them on the basis of those statements; (3) the Municipal Judge conducted a preliminary examination; (4) a warrant was issued for the arrest of the Velez brothers and (5) they were confined in jail (Exh. C; 1-18 Record). The Chief of Police certified that Antonieto had surrendered before the warrant of arrest was issued (Exh. B-1).

Alejandro and Antonieto waived the second stage of the preliminary investigation. Joaquin, twenty-four years old, presented witnesses to prove his alibi. The Municipal Court commissioned Cereal P. Rebadulla to make a house-to-house inquiry in Barrio P. Rebadulla so as to ascertain whether Joaquin was a resident of that barrio. The commissioner in his report found that Joaquin, who was engaged in planting coconuts and sawing lumber, used to reside in his father's house in the barrio but he did not permanently live therein. That house was near the houses of Antonieto and Alejandro (Exhs. D, 1, 1-B).

The Municipal Court did not give credence to Joaquin's alibi. The case was remanded to the Court of First Instance, where on September 15, 1966 the Fiscal filed against the Velez brothers an information charging them with the murder of Narciso Becuna.

The trial court convicted the Velez brothers on the assumption that they conspired or ganged up against Narciso. On the other hand, the theory of the defense is that only Antonieto and Narciso played monte, that they quarrelled and that Antonieto killed Narciso in self-defense. Joaquin and Alejandro interposed alibis.

The following summation of the evidence for the defense, if juxtaposed with the prosecution's version, will show

which factual recital is more credible:

According to Antonieto, at around seven o'clock in that morning of June 25th, Narciso arrived at his house and proposed that they play monte. Antonieto rejected the suggestion because the game was prohibited. Narciso quieted his apprehension by reminding him that the barrio captain was Narciso's grandfather.

So, they played monte. Narciso, who had a five-peso bill, acted as banker. Antonieto won four pesos. When Antonieto gave Narciso a one-peso bill as change, the latter lost his temper, tore the bill and threw the cards at Antonieto. Narciso assumed a squatting position and was poised to draw his bolo (depang) but Antonieto pushed him out of the house through the door. Narciso fell to the ground. Antonieto immediately closed the door and tied it with a piece of rope and wire. Narciso challenged Antonieto to come out and fight.

Narciso tried to destroy the door's shutter which was made of woven bamboo (bagacay). Aware that Narciso could smash the door and reenter the house, Antonieto got hold of a harpoon and went out of the house through the kitchen. He outflanked Narciso and stabbed him with the harpoon on the left side of his back.

According to the defense's version, Narciso, with the harpoon sticking in his back, tried to stab Antonieto by swinging his bolo backward. Antonieto twisted the harpoon thereby causing Narciso to fall to the ground. Fearing that Narciso might be able to pull out the harpoon, Antonieto stabbed him several times and stopped only when he realized that Narciso had already been immobilized. He looked around and saw Maria Tosing (Tusing) but Ernesto and Baldostamo were not around. He immediately went to the poblacion and surrendered to a policeman at the municipal building.

Pedmina Baldoza, a sister of the Velez brothers, and Maria Tosing, a neighbor, corroborated Antonieto's story.

On the other hand, Alejandro's alibi was that at about five o'clock in that morning of June 25th, he had gone to Barrio Nagbobtac in order to buy palay. He went to the house of Monica de Asis which was near Elisa Becuna's house, to inquire about persons selling palay. Monica mentioned Emiliano Pluma. While Alejandro was at Monica's house; it rained and he chatted with her and her husband.

At about eight o'clock that morning, Pedro Becuna, Narciso's father, informed his daughter that Narciso was killed in Barrio P. Rebadulla by Antonieio. Alejandro returned at around nine o'clock to Barrio P. Rebadulla, which is about two kilometers away from Barrio Nagbobtac. He saw Narciso's remains in the yard of Ciriaco Velez's house.

He went to his own house nearby and informed his wife that they would have to leave the vicinity and go to the town because Narciso's relatives, who had home-made shotguns, might retaliate and wreak reprisals on members of the Velez family. At noontime, he went to the poblacion. He was afraid of the Becunas. He remembered that Julito Becuna had shot on December 24, 1963 Juan Tosara, the brother-in-law of the Velez brothers. Monica de Asis corroborated Alejandro's testimony.

Alejandro explained that Ernesto Becuna implicated him because he allegedly harbored a grudge against Alejandro. Ernesto had threatened to stab Alejandro with a bolo when the latter asked Ernesto to comply with promise to saw lumber. Alejandro further explained that Baldostamo testified against him because he had asked Baldostamo to deliver nipa palms which had already been paid for.

Joaquin, the third accused, testified that in that morning of June 25th he was in Barrio Tongodnon where he had allegedly been residing since 1963. He had married Celia Turbana, a native of that barrio which is about seven kilometers away from Barrio P. Rebadulla. The distance could be covered in two hours.

From June 24th up to the afternoon of June 25th, Joaquin, with Juan Tosing (Tusing) and Ireneo Sending, were

weeding the upland ricefield of Clemente Placa, the barrio captain of Tongodnon. Joaquin came to know of the killing after Antonieto sent word to him while he (Antonieto) was already incarcerated. Placa and Tosing corroborated Joaquin's testimony.

Ignacio Asebuche, a guard of the sub-provincial jail, testified that from June 23rd up to about ten o'clock in that morning of June 25th, he and prosecution witness Baldostamo, who was his friend and is a cousin of his brother's wife, were in Barrio Vigo, attending the fiesta. Later, Baldostamo accompanied Clemente Becuna to Barrio P. Rebadulla to view the remains of Narciso Becuna who was reported to have been killed. From Barrio Vigo, it would take two hours to walk to Barrio P. Rebadulla.

Ruben L. Roxas, appellants' counsel de oficio, true to the noble art of advocacy and aware that the accused should be zealously defended according to the merits of his case, even if the advocate cannot expect any monetary reward, conscientiously studied the case and submitted two well-written briefs based on the voluminous record.

He (a) assailed the testimonies of the prosecution witnesses, Ernesto Becuna and Baldostamo, (b) contended that, even under the prosecution's version, the killing could not be characterized as murder and (c) argued that the testimonies of the defense witnesses should be given credence.

The trial court noted that Antonieto's plea of self-defense "is not supported by convincing and credible evidence" and that inconsistencies vitiate the testimonies of the witness for the defense. It also regarded the testimonies of Ernesto Becuna and Agripino Baldostamo as "positive, clear and convincing".

Appellants' counsel brands Ernesto and Baldostamo as coached prosecution witnesses as allegedly shown by the similarity in phraseology of their testimonies and in the sequence of the episodes described by them. But, as pointed out by the Solicitor General, the wording of the declarations of Ernesto and Baldostamo is alike because the same interpreter translated their answers. For that matter, their testimonies followed the pattern of their sworn statements at the preliminary examination. A scrutiny of their testimonies does not support the conclusion that the same were rehearsed and fabricated. Being eyewitnesses of the same occurrence, it is not surprising that their testimonies dovetailed and coincided in vital particulars.

It is contended that Ernesto and Baldostamo erred in stating that the monte game was played in Joaquin's house when in truth it was played in the house of his father, Ciriaco. That error does not impair their credibility. It is not unusual that the father's house is regarded in the community as the son's house, especially if the son is still young and goes often to his father's house and although the son resides in another barrio (Exh. D).

Another discrepancy pointed by appellants' counsel is that Baldostamo testified that he saw Joaquin's wife and child in Ciriaco's house on that morning of June 25, 1966, whereas, Ernesto was positive that he did not see any woman and child in that house. That inconsistency refers to a trivial detail. It cannot destroy the probative value of their consistent testimonies on how the Velez brothers assaulted Narciso.

The appellants regard it as improbable that Narciso's decision to stop the game in order that he could eat had provoked the Velez brothers to encompass his death. What the prosecution's evidence shows is that when Narciso decided to stop the game the Velez brothers were already in a fractious frame of mind as a result of their losses. Narciso's refusal to continue the game meant that they would not be able to recover their losses. That was the proverbial last straw which caused their anger to explode and to trigger their murderous inclinations.

The appellants contend that the nature and location of the wounds indicate that there was a struggle or "grappling" between Narciso and Antonieto and that they had a face-to-face encounter. That contention is conjectural or speculative. If there was a struggle and if Narciso was armed with a "file" or bolo, it was strange that Antonieto did not sustain any wound, whereas, the victim suffered fourteen wounds, two of which were fatal. One fatal

wound was at the back. It was caused by a harpoon. To all appearances, it was inflicted in a treacherous manner.

The defense did not prove that Narciso committed any unlawful aggression which imperilled Antonieto's life. The fact that Narciso had been convicted of frustrated homicide and was a parolee (Exh. 3) would not mean that he was the aggressor. Antonieto's tortuous story as to how he defended himself against Narciso's supposed aggression has a patina of artificiality that readily evokes disbelief.

As to the trial court's refusal to give credence to the alibis of Joaquin and Alejandro, it may be argued that Antonieto's failure to appeal and his conformity to the trial court's rejection of his plea of self-defense rendered the alibis untenable. Those defenses were interlinked. If there was no self-defense, then the obvious conclusion is that the witnesses for the appellants were not telling the truth. That, in turn, would mean that the prosecution's version is the true recital of the circumstances surrounding Narciso's killing. Alibis can be concocted with facility.

Appellants' counsel considers it incongruous that Antonieto Was given the benefit of voluntary surrender to the authorities while the same mitigating circumstance was not appreciated in favor of Alejandro and Joaquin. As previously noted, on July 22, 1966 a warrant for the arrest of the Velez brothers was issued. It was returned by the Chief of Police on that same date with the report that Alejandro and Joaquin "surrendered to the Office of the Chief of Police" (Exhs. B-1 and C). According to the police blotter, "the persons of Alejandro Velez and Joaquin Velez" "surrendered" "after learning that they were involved and accused in connection with the death of the late Ernesto Becuna" (Sic, Exh. 4-B).

While the record seems to indicate that there was voluntary surrender because the Chief of Police and the police blotter euphemistically used the word "surrender", the truth is that, as admitted by Joaquin, he was actually arrested while buying rice in the poblacion (218 tsn). Alejandro did not testify that he surrendered voluntarily. He yielded because of the warrant of arrest. Hence, voluntary surrender to the authorities is not mitigating (People vs. Conwi, 71 Phil. 595; People vs. Adlawan, 83 Phil. 194; People vs. Saturnino, 96 Phil. 868).

It results that the trial court did not err in accepting the prosecution's version as worthy of belief and in concluding that the guilt of appellant Joaquin Velez had been proven beyond reasonable doubt.

The manner in which Alejandro, Joaquin and Antonieto assaulted Narciso and their conduct sometime before the encounter, show that they had hatched a conspiracy to assassinate him. They left Narciso and Ernesto in the place where the monte game was played. Later, when they confronted Narciso outside the house, they were all armed with deadly weapons. They waited for Narciso outside the house like Apache Indians poised to ambush their quarry. They orchestrated their efforts in their concerted assault on Narciso for the purpose of attaining their common objective of liquidating him.

The conspiracy among the Velez brothers is easily discernible from their conduct. The rule is that "if it is proven that two or more persons aimed by there acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, although apparently independent, were in fact connected and cooperative, indicating closeness of personal association and concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them is proven. (Underhill, Criminal Evidence, 4th Ed. by Niblack, pp. 1402-3; People vs. Carbonel, 48 Phil. 868, 875).

Treachery is aggravating. The Velez brothers, in way laying Narciso, employed a mode of attack, which was deliberately designed by them to insure his death without any risk arising from the defense which he could have made. He was unarmed. He was not able to make any defense at all.

Abuse of superiority is also aggravating considering that three assailant took advantage of their combined strength to overpower the victim. That circumstance is absorbed in treachery which qualifies the killing as murder.

Premeditation, which was alleged in the information, is not aggravating. The interval between the time when Joaquin uttered the warning that the lives of the players of monte were endangered and the time when the assault took place was not sufficient to afford the Velez brothers full opportunity for meditation and reflection and to allow their consciences to overcome the resolution of their will to kill Narciso had they desired to hearken to the warnings thereof (U.S. vs. Gil, 13 Phil. 530, 547).

There being no generic aggravating and mitigating circumstances the trial court properly imposed the penalty of reclusion perpetua which is the medium period of the penalty for murder (Arts. 64[1] and 248, Revised Penal Code).

The indemnity of P6,000 should be raised to P12,000.

WHEREFORE, the trial court's judgment as to Joaquin Velez is affirmed with the modification that the indemnity should be raised to P12,000. The trial court's pronouncement that he should be credited with only one-half of his preventive imprisonment was correct when its judgment was rendered in 1968. That holding was superseded by Republic Act No. 6127 which took effect on June 17, 1970 and which gives the accused full-time credit for his preventive imprisonment as long as the conditions indicated in that law are satisfied. Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

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