

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEONCIO CURAMBAO, GODOFREDO DAGAYLOAN, GERONIMO
CRUZ, EUFRACIO SALARDA, VENANCIO CADUNGOG, EUSTAQUIO
DURAN, SAYENG SAN...**

G.R. No. L-10557. January 28, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

On July 31, 1954, the provincial fiscal of Zamboanga accused Leoncio Curambao, Godofredo Dagayloan, Geronimo Cruz, Eufrosino Salarda, Venancio Cadungog, Eustaquio Duran, Sayeng Sandal, Andres Salibat and John Doe, of triple murder. It was alleged in the information:

"That on or about the 16th day of September, 1952, in Sitio Gomin, Barrio Lacsutan, Municipality of Labason, Province of Zamboanga del Norte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, armed with carbines, Enfield rifles and pistol and with evident premeditation to kill, in conspiracy, confederation and mutual assistance with one another together with certain JOHN DOE whose identity is yet undetermined, and taking advantage of their superior strength and public positions, the first six being members of the police force of Labason, the seventh and eight a barrio lieutenant and rural policeman of Barrio Lacsutan, Labason, respectively, did then and there without justifiable motive, willfully, unlawfully and feloniously shoot to death with their firearms SUBANO BLASA DANSALAN, SUBANO TIGWASAN MOLAONG AND SUBANO BASILAN LAKTAYAN.

"Contrary to law, with the aggravating circumstances of superior strength and abuse of public positions."

Immediately before the trial, defendants Sayeng Sandal and Andres Salibat were, on motion of the prosecution discharged from the information in order to become state witnesses. After appropriate proceedings the Court of First Instance of Zamboanga, found the other defendants, namely, Leoncio Curambao, Godofredo Dagayloan, Geronimo Cruz, Eufrosino Salarda, Venancio Cadungog and Enstaquio Duran, guilty as charged, and sentence them three (3) times to life imprisonment, not exceeding altogether forty (40) years, and to indemnify, jointly and severally, the heirs of each of the deceased Blasa Dansalan, Tigwasan Molaong and Basilan Laktayan, in the sum of P3,000, and to pay the costs.

The aforementioned convicted defendants appealed from said decision, but, subsequently, five of them, namely, Leoncio Curambao, Godofredo Dagayloan, Geronimo Cruz, Eufrosino Salarda and Venancio Cadungog, withdrew their appeal. Hence, this decision deals only with that of defendant Eustaquio Duran.

The version of the prosecution and that of the defense are correctly set forth in the decision appealed from in the following language:

"It appears from the evidence of the prosecution that all the accused were on September 16, 1952, members of the police force of the municipality of Labason, Zamboanga del Norte. At about 9:00 o'clock in the morning of 16 September, 1952 all the defendants led by the Sergeant Leoncio Curambao, arrived together at the house of

Anton Salibat in Barrio Lacsutan, Labason; Zamboanga del Norte. All of them were fully armed with loaded carbines except Eustaquio Duran who carried a mauser also loaded. In the house of Anton Salibat, the police posse met rural police Andres Salibat and barrio lieutenant Saroy Sandal who were on order of Sgt. Curambao drafted as guides to the house of Blasa Dansalan, Tigwasan Molaong and Basilan Laktayan, all subanos. The two were told that the accused were after Blasa, Tigwasan and Basilan.

"With Sandal and Salibat leading the way the posse finally arrived at sitio Gomin, barrio Lacsutan, Labason, Zamboanga del Norte, and on nearing the house of Blasa, Tigwasan, and Basilan the group halted. Only these 3 persons and the wife of Basilan named Udo lived in the house. In the yard there were growing banana plants and outside the premises was cogon grass one foot high.

"Sgt. Curambao directed the guide Sandal to go to the house and order Blasa, Tigwasan and Basilan to leave the dwelling and lay down their arms. Basilan refused the order and answered that they would not lay down their arms because they committed no fault. When Sgt. Curambao was informed of the reply, he sent back Sandal to insist on the trio to come out and lay down their arms. At this time, the three obeyed and left the house. Basilan had a spear and a bale with him; Tigwasan had a bolo in the scabbard which was tied, around his waist; and Basilan had also a bolo on his left waist inside the scabbard.

"Basilan came walking slowly, towards the group who were at the time deployed. His right hand was holding the middle of the spear carried parallel to the ground and in the scabbard tied to his waist was his bolo. At this instant and at a distance of 14 meters, Sgt. Curambao aimed his carbine and fired at the slowly walking Basilan. Mortally wounded by Curambao's bullet Basilan fell and died instantly. Immediately after firing his carbine Curambao ordered 'fire' and the other accused Dagayloan, Cruz, Salarda, Cadungog and Duran, then in battle formation and prepared for instant action, all fired in rapid succession against Tigwasan and Blasa who were at the time inside the yard and just standing still at the foot of the ladder. The hail of bullets felled Blasa and Tigwasan and killed them instantly.

"After the killing, the accused and the two guides returned to the house of Andres Salibat where they met Bongcasan Somogo who went there to inquire about the cause and origin of the rapid firing he had heard. Sgt. Curambao ordered Somogo to bury the bodies of Tigwasan, Blasa and Basilan and then left with the other, accused for the town. Somogo upon arriving, at the scene of the shooting saw the dead bodies. Tigwasan had a gunshot wound on the forehead and other wounds on the right hand and right lumbar region. He was in a crouching position. Blasa was lying on his left side with three gunshot wounds, below the right nipple, right arm and right lumbar region. A meter away was a bolo in scabbard. Lying about two meters from Tigwasan was the body of Blasa. Basilan had a bullet wound mutilating his mouth and other bullet wounds on the right arm, left thigh and right lumbar region. No weapon was found in his dead body outside the yard and 25 meters from the house. Tigwasan's dead body was found just under the eaves of his house and near him was Blasa's corpse. Bongcasan shouted for help and Udo, Modiales, Tobil and Tiorgis, all residents of the vicinity, came and together they buried the bodies of Tigwasan, Blasa and Basilan in one unnamed grave near the house of the deceased.

"The above is the substance of the testimonies of Andres Salibat, Sayeng Sandal and Bongcasan Somogo, witnesses for the prosecution.

"The theory of the accused is as follows: Sometime in September, 1952, Primitivo Barrios, an officer of the Bureau of Forestry with station at Dipolog went to Gomin as head of a party of officers, workers and surveyors to reclassify some forest land into disposable agricultural land. On the way and from somewhere a spear was thrust at Mr. Barrios and barely missed him. The party did not continue the trip, but returned to the town and reported the incident to the Chief of Police of Labason the following morning.

"Sometime also that month, one Pausa, a Subano, reported to the Chief of Police that certain Subano families in sitio Dominolog were kidnapped by the deceased Blasa, Basilan and Tigwasan and taken to their homes; so on September 7, 1952, policemen Cenon Silva and Eufrocino Salarda were sent out by the Chief of Police to

verify the report and investigate the alleged kidnappers. The two policemen left for Lacsutan in the afternoon of September 7th and passed the night in the house of Councilor Antonio Salibat. Next morning Silva and Salarda, accompanied by Andres Salibat their guide, went to the house of the deceased but the three refused to talk to them. So the two policemen returned to the town and reported all that transpired.

"On September 15th, Eufrocino Salarda was sent again together with other policemen Dagayloan, Duran, Cruz, Cadungog and Sgt. Curambao on patrol duty to Barrio Lacsutan. On September 16th they went to sitio Gomin together with Andres Salibat and Sayeng Sandal as their guides. At a distance of 150 meters from the house of the 3 deceased they heard the sounding of a gong—agong in the local dialect—coming from said house. The guide Andres Salibat told the group that the sounding of the agong meant 'they would fight'. The group moved to a distance of 90 meters from the house and stopped. Sgt. Curambao instructed the two guides to go up the house and tell Blasa, Tigwasan and Basilan that the policemen wanted to talk to them. The guides went and returned and informed the sergeant that the trio would not believe them. Sgt. Curambao sent back the guides to relay the information that no harm would come to them, that policemen were not bad people, and that they were there merely to verify the reports against them. Still the three refused to talk to them, so Curambao ordered all the policemen to fire shots in the air to warn the three persons and then ordered the guides to return and talk again to the trio. At this time the group moved closer and at a distance of 30 meters from the house, Sandal shouted 'watch out sergeant he is going to kill you'. A man came from the house toward them with a spear in hand and while he was in the act of throwing the spear at the group, Sgt. Curambao shot him. He fell dead on the spot about 8 meters from Curambao. After shooting the sergeant shouted towards the house commanding the occupants to lay down their arms for the policemen had no bad intention. Before he could even finish uttering his words, a spear was thrown from the place where the dead man was and fell near the sergeant. Curambao shouted 'fire' and all the policemen fired their guns at two persons running towards them, one with a spear and the other with a bolo in hand. The two persons fell dead about 10 meters from them. Sgt. Curambao then ordered his policemen to carry the 3 dead bodies to be buried, but unable to find tools to dig a grave they just abandoned the dead near their house. The group left and upon seeing Bongcasan, Sgt. Curambao ordered him to bury the bodies."

Thus, the main issue raised in the lower court was one of credibility of the testimony of the opposing witnesses, which was settled by His Honor, the trial Judge, in favor of the prosecution, for the following reasons:

"Reports against the conduct of the deceased were made to the office of the Chief of Police, including that one made by Sayeng Sandal to the municipal mayor to the effect that the trio refused to work and cooperate in the construction of the barrio school, in defiance of mayor's order. Then there was the report of policemen Cenon Silva and Eufrocino Salarda about the refusal of the deceased to be investigated by them on September 7, 1952. The accumulated reports against the three must have incurred the ire of the police force. The suspicion that they were engaged in acts of lawlessness must have induced the police force to do something to remedy the situation. So, on September 16, 1952, all the accused, fully armed and well prepared went to Gomin to confront the deceased.

"Their suspicion—which unfortunately turned into conviction in the minds of the accused—that the deceased were the enemies of peace and order in that part of the community, was based on wild rumors and also on suspicion. The deceased maintained that they committed no wrong, so they at first refused to be investigated. They were not fugitives from justice, they were not desperate criminals, so that the testimonies of the accused to the effect that Sgt. Curambao fired and killed Basilan at the time he was near and about to hurl his spear at him is improbable and incredible; also incredible and improbable was their claim that they fired and killed Blasa and Tigwasan because they, defied them and tried to throw their spears at them. The deceased knew that they were fully armed, as when Sgt. Curambao ordered his policemen to fire in the air as an advance warning. The deceased knew that their spears—if any they had—were no match to the long-range fire power of the weapons of the accused; and that the three were assured by the messenger that the accused meant well and meant no harm. Under these circumstances and considering that the instinct of self-preservation is inherent, it

would require the faith of ten men to believe that all the deceased were killed because they attacked the accused without provocation on their part. Only an idiot or a desperate criminal would dare do such a suicidal act attributed to the deceased. The accused would also want the Court to believe that the deceased approached them stealthily and attacked treacherously. How could the trio do it when from the very beginning their attention and eyes were focused on the house where the deceased were? The sounding of the agong and the growth of tail cogon grass were mere concoction to lead a touch of realism to the accused's theory that they fired in self-defense. Evidence to be believed must be in accord with common experience and observation of mankind. Accused's evidence is a far cry from what may be termed 'dear and convincing', for it cannot stand the test of logic and appears to be unnatural upon the standard of common experience.

"The court is convinced that the events in dispute happened as narrated by the witnesses for the prosecution; that Basilan was killed while obeying Curambao's order to lay down his arms and submit to an investigation; and that Tigwasan and Blasa were killed while standing harmlessly at the foot of their ladder far from the accused."

A review of the record has disclosed nothing that would warrant interference with the foregoing findings. On the contrary, the police blotter for September 16, 1952, which was introduced as Exhibit 9 of the defense, contradicts the testimony of its witnesses. Indeed, the latter would have us believe that, after coming down from his house, Basilan Laktayan rushed towards the peace officers with the avowed intention of attacking them. However, the police blotter says that Basilan Laktayan "stealthily" approached the peace officers, which, by the way, is, likewise, false and was impossible, for the policemen had deployed themselves a few meters away from said house. Hence, when—at the behest of Salibat, acting upon instructions from Sgt. Curambao—Basilan Laktayan, Tigwasan Molaong and Blasa Bansalan emerged therefrom, they were clearly within the view of the six (6) policemen, who were watching them closely and could not have failed to detect any of their (victims') moves.

The defense, likewise, maintains that, after shooting Basilan Laktayan, Sgt. Curambao bade Blasa Dansalan and Tigwasan Molaong to lay down their arms, because the policemen meant to do them no harm, but, before he finished his utterance, a spear fell near him. No such thing was, however, mentioned in the police blotter, which thus corroborates the version of the prosecution. In a further effort to justify the killing of Blasa Dansalan and Tigwasan Molaong, the defendants stated, in said police blotter, that the aforementioned Subanos "advanced and fought with their kris (Kris)". This statement and the theory of the defense were refuted, however, by the fact that, immediately after the occurrence, the dead bodies of Blasa and Tigwasan were found at the foot of the aforementioned house, with their "barong" inside the scabbards.

Counsel for defendant-appellant Duran maintains that the lower "court erred in holding that there was conspiracy in the case at bar". Insofar as said conspiracy was essential to hold Duran responsible for the death of Basilan Laktayan, appellant's pretense is well-taken. Indeed, the record shows that the policemen went to the scene of the occurrence, mainly for the purpose of bringing Blasa Dansalan, Tigwasan Molaong and Basilan Laktayan to the police station for investigation. Although prepared to use force, if necessary, the policemen intended to accomplish their task peacefully, if possible. In fact, they bade Sayeng Sandal and Andres Salibat to urge Blasa, Tigwasan and Basilan to submit peacefully to the authorities. Lastly, policeman Duran cannot be held responsible for the act of his superior, Sgt. Curambao, in shooting Basilan. Insofar as the killing of Blasa and Tigwasan is concerned, it makes no difference whether there was conspiracy or not, it appearing that Duran had fired at them.

It is next urged that the lower court erred in convincing appellant "when the prosecution failed to prove by direct, clear and convincing proof" that he had "actually fired and shot" Blasa and Tigwasan. There is no merit in this pretense. Andres Salibat and Sayeng Sandal, as witnesses for the prosecution, and defendants Salarda, Dagayloan and Curambao as witnesses for the defense, testified that, upon being ordered by Curambao to fire, the five policemen under his command—including, therefore, Duran—did so. And this is borne out by the fact that

according to the police blotter Exhibit 9—the policemen consumed 50 rounds of ammunitions on that occasion. In this connection, it is interesting to note that appellant Duran did not take the witness stand to deny his participation in the killing of Blasa and Tigwasan. Worse still, counsel for the defense announced in the lower court that he would "dispense with the presentation" of the testimony of defendants Cruz, Cadungog and Duran, because such testimony "would just be corroborative" of that of Curambao, Dagayloan and Salarda.

We agree, however, with appellant herein that the lower court erred in finding him guilty of triple murder. As above stated, Duran cannot be held responsible for the death of Basilan, which was due solely to an act of Sgt. Curambao. As regards the death of Blasa and Tigwasan, the qualifying circumstance of treachery, upon which the lower court relied in characterizing the crime committed as murder, is not alleged in the information. Besides, the generic aggravating circumstance of treachery should not be considered against Duran, for he did not employ means, methods or forms, in the commission of the offense, tending directly and especially to insure its execution, without risk to himself arising from the defense which the offended party may make, but merely, fired when, and because, his superior, Sgt. Curambao, gave the order to do so. For the same reason, and in view of the other conditions under which appellant acted, we do not deem it fit to consider against him any other aggravating circumstance.

In short, he should be acquitted of the charge, insofar as the death of Basilan Laktayan is concerned. As regards the death of Blasa Dansalan and Tigwasan Molaong, he should be convicted of two (2) homicides, and the penalty therefor should be twice imposed in its medium period. Accordingly, appellant should be sentenced twice to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal.

So modified, the decision appealed from is hereby affirmed, in all other respects, with the costs of this instance against defendant-appellant Eustaquio Duran. It is so ordered.

Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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