

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VIRGILIO NACUSPAG, PABLO NACUSPAG, ERNESTO SARADOLLA
AND ARISTEDES SALAZAR, DEFENDANTS-APPELLANTS.**

G.R. No. L-31682. July 20, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Originally an appeal by all four accused, Virgilio Nacuspag, Pablo Nacuspag, Ernesto Saradolla and Aristedes Salazar, three of them, namely, Virgilio Nacuspag;^[1] Ernesto Saradolla;^[2] and Aristedes Salazar;^[3] withdrew their appeal, thus leaving Pablo Nacuspag, who had been found guilty as the "principal" of murder under an information which alleged:

"The undersigned Provincial Fiscal accuses VIRGILIO NACUSPAG, PABLO NACUSPAG, ERNESTO SARADOLLA and ARISTEDES SALAZAR of the crime of MURDER committed as follows:

"That on or about the 7th day of September, 1966, in the Municipality of Madalag, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Virgilio Nacuspag, Pablo Nacuspag, Ernesto Saradolla and Aristedes Salazar, armed with knives, with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, conspiring and confederating together and mutually helping with each other, did then and there wilfully, intentionally, criminally, unlawfully and feloniously attack and stab one INIEGO NALA, thereby inflicting injuries on the body or person of said Iniego Nala, to wit:

'wound, punctured, transverse, two inches in length, one inch in width, 5.3 inches in depth through and through at the level of the 4th and 5th rib, 3 inches from mid-sternal line to the lateral side to the left, traversing the pleura, left lung and apex of the heart.'

as per Autopsy Report by Dr. Eugenio I. Rondario, Rural Health Physician of Madalag, Aklan, attached hereto and considered integral part hereof, which injuries caused the death of said Iniego Nala;

"That in the commission of the offense, the following aggravating circumstances were present:

QUALIFYING - treachery and taking advantage of superior strength

"CONTRARY TO LAW.

Kalibo, Aklan, February 22, 1967." (Pp. 5-6, Record.)

After hearing, the trial court rendered judgment, dispositive portion of which reads:

"WHEREFORE, the accused PABLO NACUSPAG is found guilty as principal of the crime of Murder and sentenced to suffer reclusion perpetua, together with the accessory penalties provided lay law; the other accused, namely: Virgilio Nacuspag, Aristedes Salazar and Ernesto Saradolla are found guilty as accomplices to the crime of Murder and each of said accomplices is sentenced to suffer imprisonment of not less than eight

(8) years and 1 day of prision mayor as minimum and not more than seventeen (17) years and four (4) months of reclusion temporal as maximum, together with the accessory penalties provided by law. All the said four accused shall indemnify jointly and severally the heirs of the deceased Iniego Nala in the amount of P12,000.00, without subsidiary imprisonment, in case of insolvency, and pay the costs. Being detention prisoners, they shall be credited with one-half (1/2) of the preventive imprisonment undergone by them." (Page 18, Record)

Appellant has opted not to make any specific assignment of errors in his brief. He has simply discussed what he claims is sufficient proof of his claim of self-defense, assailing at the same time alleged weakness of the state's evidence.

After a careful review of the record, however, We are convinced of the participation of the appellant in the offense charged. As summarized in the People's brief, the circumstances of the commission of the offense were as follows:

"In the night of September 7, 1966, there was a reunion and celebration in the house of Teodoro Nala at barrio Cabangahan, Madalag, Aklan, wherein his son and the latter's bride were brought to his house (p. 10, t.s.n., Isberto). In that reunion, many people attended, both invited and uninvited and among the persons invited were Dioscoro Nala, cousin of Teodoro Nala, and Dioscoro's son, Iniego Nala, who helped in the kitchen in the preparation of the food for the guests (pp. 19-21, t.s.n., id.). Also present at the celebration were the accused Virgilio Nacuspag, Ernesto Saradolla, Aristedes Salazar and their two companions, Deo and Lydio Saradolla, brothers of the accused Ernesto Saradolla, and cousins of the accused Virgilio and Pablo Nacuspag, who were not invited by Teodoro Nala (pp. 14-15, t.s.n., id.). Once the guests were assembled, a dance took place with the music being furnished by a banjo player and after some time, supper was served at which, the accused with the Saradolla brothers, ate with the bride and other guests in the room (pp. 13-15, t.s.n.). When the accused, including the Saradolla brothers, arrived in the house of Teodoro Nala, all had knives (siyaw) whose handles protruded from their respective pockets (p. 13, t.s.n., Fadullon).

"After the first group had taken supper, the dancing stopped because somebody took the banjo and they had to look for it. After a little while, Iniego Nala went up the house holding the banjo, with a bolo in its scabbard tucked in the waist of his trousers at the back (p. 16, t.s.n., id.). Scarcely had Iniego Nala taken two steps from the end of the stairs when without any warning or provocation, Virgilio Nacuspag gave Iniego Nala a fist blow on the right jaw, followed by the accused Pablo Nacuspag who gave Iniego another fist blow on the left side (p. 16, t.s.n., id.). Then, the accused, Aristedes Salazar, approached Iniego Nala and with his arm, squeezed the neck of Nala from the back (pp. 12-13, t.s.n., Isberto). Thereafter, Pablo Nacuspag stabbed Iniego on the left side, somewhere below the left nipple (pp. 13-29, t.s.n., id.). Iniego, thereupon, fell on the floor and died. (p. 12, t.s.n., id.)

"In the meanwhile, Dioscoro Nala stood up and asked, 'Why do you box a person who has no fault?' (p. 15, t.s.n., id.) But Lydio Saradolla put his arm around the neck of Dioscoro Nala and Deo Saradolla pushed them both outside of the house, causing them to fall to the ground (pp. 5-6, t.s.n., Fadullon). Once downstairs, Lydio Saradolla and Deo Saradolla struck Dioscoro Nala who was beaten from behind with the back of a bolo (p. 6, t.s.n., id.). At this juncture, Dioscoro heard the voice of Teodoro saying, 'Manong Caroy, Iniego Nala is dead because he was stabbed by Pablo Nacuspag.' (p. 6, t.s.n., id.). And, upon hearing that, Dioscoro Nala went up the house of Teodoro Nala and saw his son, Iniego, lying on the floor dead with a wound on his left chest (pp. 12-13, t.s.n., id.). Later on, Dioscoro Nala reported the stabbing incident to the chief of police at the municipal building (pp. 13-14, t.s.n., id.)."

On September 8, 1966, the day following the stabbing incident, the Madalag Rural Health Physician, Dr. Eugenio I. Rondario, conducted an autopsy on the body of the victim, Iniego Nala. His autopsy report showed:

"1. Wound, punctured, transverse, two inches in length, one inch in width, 5.3 inches in depth through and through at the level of the 4th and 5th rib, 3 inches from mid-sternal line to the lateral side of the left, transversing the pleura, left lung and apex of the heart.

Cause of death:

Hemorrhage secondary to cutting wound." (Exhibit "A")

On the witness stand, Dr. Rondario declared that a sharp-pointed instrument, locally known as "siyaw", could have caused the wound described in his autopsy report (p. 4, t.s.n., id.)

The trial court accepted the veracity of the prosecution's version although it rejected the presence of conspiracy. It adjudged accused Pablo Nacuspag to be principal and the other accused as mere accomplices of the crime of murder and sentenced them in the manner already stated above.

Appellant Pablo Nacuspag does not deny that he stabbed Iniego Nala and that the wound he inflicted was so fatal that it caused the victim's death. As already stated earlier, he claims the exempting circumstance of self-defense.

It is at once obvious from the facts as related above that appellant has failed to show unlawful aggression, the first requisite of self-defense.

His testimony runs thus: On the night of September 7, 1966, he and the other accused were invited to the party held at the house of Teodoro Nala in honor of the latter's new daughter-in-law; the bride was the first cousin of the accused Pablo and Virgilio Nacuspag (pp. 48-50, t.s.n., Regalado); he saw the guests dancing to the strains of a banjo and later on he played the instrument (p. 51, t.s.n., id.); later on, he returned the instrument to the person playing it since he was invited by the host to take supper and he went to the dining room, being joined thereat by Virgilio Nacuspag, Ireneo Saradolla, Aristedes Salazar and Edita Nacuspag (p. 52, t.s.n., id.); after eating he retired to the old sala while Ireneo Saradolla went down, since it was warm upstairs (p. 55, t.s.n., id.); he was again invited Susan Nam-ay to take supper and he accompanied her to the dining room but did not eat (p. 55, t.s.n., id.); after three minutes, he heard shouts for help and he went back to the old sala where he tried to pacify Filoteo Nacional and Lydio Saradolla who were fighting but was unable to do so, since he saw Virgilio Nacuspag being held at bay on the other side of the room by Dioscoro Nala who was holding a knife (p. 56, t.s.n.); he immediately rushed to the rescue of Virgilio and wrested the knife from Dioscoro Nala (pp. 56-57, t.s.n. id.); then he started retreating towards the kitchen but his path was blocked by Iniego Nala who was armed with a bolo (p. 57, t.s.n., id.); he therefore retreated to a corner with Iniego Nala pursuing him; when he reached the corner, Iniego Nala tried to hit him with the bolo but he managed to escape the blow by ducking behind a post and "when his bolo passed over me I thrust the knife to (sic) him and hit him on his left side of the stomach" (p. 58 t.s.n., id.); he and Iniego Nala then grappled for possession of the bolo and he was able to wrest it from Nala (p. 59, t.s.n., id.); and, thereafter, he went down the house and went home (p. 59, t.s.n., id.).

Such version does not inspire credence. In the first place, it is difficult to believe that Dioscoro Nala collared appellant's brother Virgilio Nacuspag with a knife and that appellant rushed to his rescue and wrested the knife from said Dioscoro. Both appellant Pablo and his brother Virgilio admitted that Dioscoro Nala was much older than they are, Dioscoro being past 60 years old, (63 to be exact) while they were in their prime age of 30. They also admitted that Dioscoro is much weaker than they are. (Pp. 61-62, t.s.n.; pp. 79-80, Isberto) So, how could such an old and weak man corner and attack a much younger man? And then, as declared by appellant Pablo Nacuspag, he was able to wrest possession of the knife from the old man Dioscoro Nala and then retreated to the kitchen. But why would appellant retreat to the kitchen when he and his brother were already free of the supposed aggression of the old man? Furthermore, his claim that he retreated because he also saw the deceased approaching cannot be given any iota of credit because when he retreated, the deceased (according to him) was still far from

them. At any rate, what need was there for him to retreat when he has on his side his brother Virgilio and he was also armed. All these circumstances taken together render weak appellant's claim that the victim attacked him first thus rendering it necessary for him to use a knife in self-defense.

Appellant declared also that he was unable to retreat towards the kitchen because the deceased Iniego Nala blocked his path and he was forced to retreat towards another part of the house behind a post. But instead of retreating towards another corner, why did he not go back to where his brother Virgilio was then standing? And, if it were true that the deceased Iniego Nala tried to hit him with a bolo after he went behind a post, it is incredible that he could have thrust the knife he was holding at the deceased, Iniego Nala, and hit the latter on the left side of his stomach. Because if appellant Pablo Nacuspag had sought cover behind a post, he would have been out of balance and could not have been in a position to make a swift knife thrust at the deceased and be able to mortally wound the latter.

In any event, when the deceased Iniego Nala was supposedly attacking appellant Pablo Nacuspag, where was his brother Virgilio? Why did he not come to his aid? We have tried to search for an explanation in the record, specially in the testimonies, but none appeared. Both Pablo and Virgilio Nacuspag cannot account for Virgilio's actuations at the time of the supposed unlawful aggression by the deceased upon appellant Pablo Nacuspag.

It is well-settled that self-defense is an affirmative allegation that must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. (People vs. Lebumfacil, Jr., No. L-32910, March 28, 1980, 96 SCRA 573, See also People vs. Davis, L-13337, Feb. 16, 1961; 1 SCRA 473; People vs. Solaña, L-13967, Sept. 29, 1962, 6 SCRA 60; People vs. Mendoza, L-16392, Jan. 30, 1965, 13 SCRA 11; People vs. Libed, L-20431, June 23, 1965, 14 SCRA 410; People vs. Tesorero, G.R. Nos. L-34828-31, June 30, 1976, 76 SCRA 579).

The circumstances in the instant case do not indicate self-defense on the part of Pablo Nacuspag. Having admitted that he was the author of the death of the deceased, Iniego Nala, it was incumbent upon the appellant, in order to avoid criminal liability, to prove the justifying circumstance claimed by him – self defense – to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after the accused himself had admitted the killing. (People vs. Ansoyon, 75 Phil. 772; People vs. Jamero, G.R. No. L-32256, January 31, 1977, 75 SCRA 137; People vs. Tesorero, supra; People vs. Kindo, G.R. No. L-35781, January 28, 1980, 95 SCRA 553).

Appellant contends that the trial court committed a grave error in giving weight to the version of the prosecution which it found to be credible while debunking the version of the defense. This contention is untenable. The record bears out that prosecution's eye witnesses Teodoro Nala and Felix Nahil, in clear, concise language, positively and steadfastly maintained that the appellant Pablo Nacuspag together with his companions – Virgilio Nacuspag, Ernesto Saradolla and Aristedes Salazar (who all withdrew their appeal in this case) – ganged up on the deceased and during the fight appellant stabbed the deceased.

Appellant tries to impute unreliability to Teodoro Nala's testimony. During cross examination (Pp. 16-34; 36-37, Tsn., Isberto) he was continuously asked if he is a relative of the deceased, Iniego Nala. As was the fact, Teodoro Nala admitted that the victim is his nephew. But mere relationship of a prosecution witness to the victim does not necessarily vitiate his otherwise credible testimony nor does it impair his positive and clear evidence. (People vs. Ruiz, et al., G.R. Nos. L-33604-05, October 30, 1979, 93 SCRA 739.)

In brief what impresses Us is that notwithstanding thorough cross-examinations of both prosecution witnesses Teodoro Nala and Felix Nahil, they came out unscathed, they stood pat on their declaration that Virgilio Nacuspag gave the deceased Iniego Nala a fist blow on the right jaw, followed by the appellant Pablo Nacuspag

who gave another fist blow on the left side; then Aristedes Salazar approached Iniego Nala and with his arm squeezed the neck of said Iniego Nala from the back; and in such position appellant Pablo Nacuspag stabbed him on the left nipple with a "siyao".

The contradictions and inconsistencies pointed out by appellant in the testimony of the prosecution witnesses, such as who were present in the room during the melee or fight, refer merely to minor details. These are not of such magnitude and character as to lead Us to believe that these witnesses were coached or tutored. (People vs. Abejuela, G.R. No. L-32702, August 6, 1979, 92 SCRA 503).

Trite to say, appellate courts generally accept the findings of the trial court:

"Clearly, the focal issue presented here revolves around the credibility of witnesses, i.e., whether or not the trial court was correct in giving weight to the testimony of the prosecution witnesses. And the well-established rule on this point is that the factual conclusion reached by the trial court, which had the opportunity more than the reviewing tribunal to observe and gauge the demeanor and conduct of the witnesses while testifying and to properly appreciate the same, is not to be disturbed, unless there is proof of misapprehension of evidence. (People vs. Baduso, 60 SCRA 61; People vs. De la Victoria, 64 SCRA 400; People vs. Legones, G.R. No. L-30245, January 30, 1976, 69 SCRA 210; People vs. Padiernos, L-37284, February 27, 1976, 69 SCRA 484; People vs. Sarile, L-37148, June 30, 1976, 71 SCRA 593; People vs. Caramonte, G. R. No. L-31866, November 7, 1979.)

"x x x This then is a case where the well-settled principle as to the acceptance of the findings of the lower court which had the opportunity to see, hear and observe the witness testify and to weigh their testimonies, finds application. This Court had even gone so far as to hold in People v. Tila-on; 'Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from.'" (People vs. Payao, G.R. No. L-29364, November 21, 1975; People vs. Gumahin, 21 SCRA 729; People vs. Panganiban, 22 SCRA 817; People vs. Pelago, 24 SCRA 1027; People vs. Manos, 36 SCRA 457; People vs. Beraces, 38 SCRA 107; People vs. Sabandal, 41 SCRA 179; People vs. Dramayo, 42 SCRA 59; People vs. Angcap, 43 SCRA 437; People vs. Carandang, 52 SCRA 259; People vs. Macaraeg, 53 SCRA 285; People vs. De la Victoria, 65 SCRA 400; People vs. Tila-on, 2 SCRA 653; See also People vs. Ordonio, G.R. No. L-33829, December 19, 1975.)

The findings and conclusions of the trial court on the credibility of the prosecution witnesses, specially Teodoro Nala and Felix Nahil, should not be disturbed in this appeal. We see no reason at all to do so. There is no proof that in making the findings, His Honor had failed to appreciate facts or circumstances of weight and substance that would have altered the results of the case.

WHEREFORE, the judgment of the trial court, being supported by evidence proving the guilt of appellant beyond reasonable doubt, is hereby affirmed in toto, with costs against said appellant.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Withdrawal of appeal was granted by this Court on March 17, 1975. (p. 170, Rollo)

[2] Withdrawal of appeal was likewise granted on October 15, 1975. (p. 175, Rollo)

[3] Withdrawal was granted on March 17, 1975. (p. 170, Rollo)

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