

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEOPOLDO GUYAL AND DIONISIO GUYAL,
DEFENDANTS-APPELANTS.***G.R. No. L-523. September 30, 1946*

Ponente: PARAS, J.

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The appellants in the present appeal are Leopoldo Guyal and Dionisio Guayal who, upon being tried for murder, were convicted by the Court of first Instance of Sorsogon of homicide and sentenced to be imprisoned for an indeterminate period of from 10 years and 1 day, prison mayor, to 17 years, 4 months and 1 day, reclusion temporal, with legal accessories and the right to be accredited with one-half of their preventive imprisonment; to indemnify jointly and severally the heirs of the deceased Miguel Espela in the amount of two thousand pesos; and each to pay one-half of the costs.

The principal witness for the prosecution is Bernardo Glipo whose testimony is more or less of the following tenor: In the morning of October 13, 1941, he was a passenger in a bus heading towards the municipality of Bulan, province of Sorsogon. When the vehicle reached Sitio Tagna, it stopped to pick up another passenger, Miguel Espela. The latter had hardly gotten into the bus when the two appellants arrived, accusing Miguel Espela of having stolen from Leopoldo's plantation the Bananas which Miguel had just loaded in the bus. Whereupon, after a brief exchange of words, Leopoldo G-uyal hit with a bolo the right arm of Miguel. This was soon followed by another blow on Miguel's back. Instinctively to avoid further injury, Miguel Espela jumped out of the bus and proceeded to run away, but was pursued and actually overtaken by the appellants. After having inflicted a bolo wound near the left ear of Miguel Espela, the appellant Dionisio Guyal held the former. At this juncture the other appellant, Leopoldo Guyal, accomplished the last phase of his role, — a bolo cut on the back near the left side of Miguel Espela.

The latter unquestionably died as a consequence of the wounds thus received by him; and the efforts of counsel for the appellants herein are merely directed to the propositions that the testimony of Bernardo Glipo, star witness for the Government, is inherently insufficient and that, at any rate, the appellant Leopoldo Guyal counterattacked Miguel Espela in self-defense. In effect it is contended that if said witness were to be believed, the fatal incident occurred in two places, kilometer 6 and kilometer 7 of Sitio Tagna; that he failed definitely to state whether he executed one or two affidavits before the justice of the peace; that his testimony in court is glaringly inconsistent with his affidavit wherein he failed to incriminate the appellant Dionisio Guyal.

There may be some justification for doubting the veracity of the witness Bernardo Glipo, if the appellant Leopoldo Guyal had not admitted that he delivered only two blows, one on the right arm and another on the back of Miguel Espela, and if the victim's body did not exhibit more than two wounds, which logically shows that the other wounds must have been inflicted by Dionisio Guyal, in the absence of any pretense that anybody else had taken part in the attack. Moreover, Bernardo G-lipo is from all appearances a disinterested eyewitness; and the

flaws in his testimony obviously indicate that he was not rehearsed before testifying. Indeed, appellants' criticisms relate to unimportant particulars, except perhaps the alleged omission of the witness to include in his affidavit Dionisio Guyal as one of the assailants; but even this circumstance had been somewhat explained by the witness when he said that he made the proper reference to said appellant but that he did not know why the affidavit, prepared for his signature by Dionisio himself, did not contain that detail. The appellants could, but did not attempt to, rebut the explanation.

The theory of self-defense must, therefore, also fail. It may be added that the appellants had more reason than Miguel Espela to be resentful and aggressive, because the latter allegedly stole their bananas. Besides, Miguel would not ordinarily dare provoke a fight against a greater number; and if as claimed by the appellants, Miguel was known to them to be pugnacious, it is reasonable to suppose that they, who chose to follow Miguel and accused him of theft, would certainly not permit the latter to have a chance to attack them first.

The appellants clearly took advantage of their superior strength; but contrary to the recommendation of the Solicitor General, we hold that the same should be considered, not as a qualifying circumstance, but merely as an aggravating circumstance. This view is fair to the appellants, taking into account the very allegations of the information and the conclusion of the trial court.

The appealed judgment — which is in harmony with the facts and the law — is hereby affirmed with costs against the appellants. So ordered.

Moran, C.J., Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

Mr. Justice Hontiveros did not take part.

CONCURRING AND DISSENTING OPINION

PERFECTO, J.:

In the evaluation of the evidence of this case, the following important facts must always be borne in mind:

1. One witness, Bernardo Glipo, only one and no more, was made by the prosecution to testify as to how the stabbing affray, in which Miguel Espela died, happened, and about the circumstances surrounding it.
2. The incident took place in the morning of October 13, 1941, but the trial took place more than four years later, on January 22, 1946, the accused having been released in the meantime upon the invasion of the Japanese armed forces and rearrested after liberation to undergo the trial. Within the span of that long parenthesis, our people had suffered the bitterest experience of all their history, the impact of which had the effect of impairing the memory, of changing the mental perspective, and even shattering the ethical principles of many individuals.
3. In the very day of the bloody affray, Bernardo Glipo, while the facts were still fresh in his mind, appeared before the Justice of the Peace of Bulan to subscribe to an affidavit (Exh. 2), in which he did not mention appellant Dionisio Guyal as having attacked the deceased or in any way participated in the affray.

4. Originally, Leopoldo Gual was the only one accused of having killed Miguel Espela, and it was only after the case was remanded by the Justice of the Peace of Bulan to the Court of First Instance of Sorsogon that the information was amended so as to include Dionisio Gual among the accused.

5. After the case had reached the Court of First Instance of Sorsogon, on October 22, 1941, more than eight days after the bloody affray took place, Bernardo Glipo was summoned by the justice of the peace of Bulan and there he was again made to subscribe to a second affidavit (Exh. 1), when the justice of the peace had no more jurisdiction over the case, and then in said Exh. 1, and only then, did Glipo mention Dionisio Gual as having attacked the deceased.

6. Although the affray was witnessed by many persons -- in fact several of those who were allegedly present in the scene are mentioned in the Information as witnesses for the prosecution — no one was called to corroborate Bernardo Glipo, the omission not having been satisfactorily explained by the prosecution, as the fiscal merely stated that he waived the calling of said witnesses because he found them to be hostile, without stating why, how, and since when.

7. As evidence for the prosecution, the fiscal presented also Exh. E, in which Dionisio Gual appears as declaring that his intervention in the incident was reduced to having tried to stop his brother Leopoldo from pursuing Espela and trying to wrest the bolo held by his brother, and that having been wounded in his hand in the attempt, he went away, to avoid further harm to himself.

Upon the facts above mentioned, we do not believe that there is enough ground in the evidence on record to find appellant Dionisio Gual guilty beyond all reasonable doubt.

It is true that Glipo attempted to explain his failure to mention Dionisio Gual in the affidavit made and sworn to by him before the Justice of the Peace of Bulan on the very day of the incident, October 13, 1941, that it was Dionisio who wrote the affidavit, but his miserable failure in the attempt is conclusively exposed by the following facts:

a. As shown by his signature in Exh. E, Dionisio appears to be an unlettered person who, with great difficulty, succeeds in scratching a signature, as a boy of tender age does.

b. That Dionisio is incapable of writing an affidavit, is corroborated by the testimony of Leopoldo, who declared that while he studied, his brother did not.

c. Even if Dionisio Gual were the one who wrote the affidavit or, as Glipo stated in another part of his testimony, other persons, alluded to by him with the pronoun "they", no explanation was given why the affiant should sign and swear to it when it does not contain the material and important declaration he alleges as having been made by him to be included in the affidavit. What has impeded Glipo from signing and swearing to the affidavit unless the allegedly omitted declaration be inserted therein?

d. The declaration having been made before the Justice of the Peace of Bulan and sworn to before him, and if it

were true that Glipo mentioned Dionisio Gual among the assailants of Miguel Espela, it is unbelievable that, without any strong inducement, said judicial officer should commit such a flagrant dereliction of duty by not ordering the insertion in the affidavit of so important a detail.

e. Lastly, if it were true that Glipo mentioned Dionisio Gual in his first oral declaration, no explanation has been given why Dionisio Gual was not included among the accused in the original information signed before the justice of the peace, and why the latter should allow the filing of such a defective and incomplete information.

In the majority opinion, an alleged admission made by Leopoldo Gual to the effect that "he delivered only two blows, one on the right arm and another at the back of Miguel Espela," and that the victim's body did not exhibit "more than two wounds", is capitalized, and then concluded that "the other wounds must have been inflicted by Dionisio Gual," No syllogistic principle may be invoked in support of such reasoning, which has for its basis inherently and incurably faulty premises. The reasoning assumes, against the most elemental lessons in human experience, that two blows can not product but two wounds. It assumes that, because Leopoldo "admitted that he delivered only two blows," such admission precludes the fact that he delivered, in fact, more than two blows. Moreover, it should be taken into consideration, in the first place, that nowhere in all the testimony of Leopoldo Gual does it appear that he delivered "only two blows." The only part of his testimony which might have induced the majority to make the mistaken assumption appears in pages 39 and 40 of the transcript of the stenographic notes in which Leopoldo Gual, when questioned by the court itself, testified as follows:

Q. You declared here that you stabbed him in the wrist of his right hand; is that the only wound you inflicted upon the deceased?

A. After stabbing his wrist, I immediately delivered another thrust at his neck.

Q. But you inflicted upon him two wounds?

A. Yes, sir.

Q. No more?

A. I do not remember for I was afraid because he might thrust at me«

Q. But, do you want the court to understand you that you have inflicted more than two wounds; is that what you want to say?

A. I could not remember already because I was afraid that he might also wound me.

For all the foregoing, while we agree that appellant Leopoldo Gual is guilty as found in the majority opinion, we vote however for the complete acquittal of Dionisio Gual, whose guilt has not been proved beyond all reasonable doubt.

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