

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN GONDAYAO, ALIAS “BEN”; ET AL.,
DEFENDANTS, BENJAMIN GONDAYAO, ALIAS “BEN”;
AND ANOY GONDAYAO, DEFENDANTS-APPELLANTS.**

G.R. No. L-26240. October 30, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, taken by defendants Benjamin Gundayao and Anoy Gundayao, from a decision of the Court of First Instance of Panga-sinan, convicting them of the crime of murder, qualified by treachery, and sentencing them to life imprisonment and to jointly and severally indemnify the heirs of the deceased, Orlando Piol, in the sum of P6,000.00, and to pay two-fifths of the costs.

After grappling with Benjamin Gundayao, near the market place, in the Barrio of Paitan, Municipality of Sual, Province of Pangasinan, on November 14, 1965, between 11:00 and 11:30 a. m., Orlando Piol appeared to have - in addition to several lacerations on the head - two (2) stab wounds on the back, 4 to 4-1/2 inches deep, in consequence of which he died that same afternoon, due to a massive internal hemorrhage. Immediately after the occurrence, Benjamin assumed full responsibility for said injuries, which he claimed to have inflicted in self-defense. On November 17, 1965, Macario Aquino, Chief of Police of Sual, filed, with the Municipal Court thereof, a complaint charging Benjamin Gundayao with homicide. Twelve (12) days later, Aquino filed an amended complaint charging murder, allegedly committed, not only by Benjamin Gundayao, but, also, by his brother, Anoy Gundayao, and Eduardo Bersamina, Eto Agbayani and Jovencio Yanday. Soon thereafter, the corresponding information for murder was filed, with the Court of First Instance of Pangasinan, against said five defendants. After due trial, under a plea of not guilty, said court rendered the appealed decision convicting Benjamin Gundayao and Anoy Gundayao as charged and sentencing them as stated at the beginning of this decision, as well as acquitting their three (3) co-defendants, for insufficiency of the evidence, with three-fifths (3/5) of the costs de oficio. Hence, this appeal by the Gundayaos.

The main eyewitnesses for the prosecution were Macario Pascua and Police Chief Macario Aquino. The first testified that, while he was reading a newspaper, in front of the house of the Vice-Mayor, in Barrio Paitan, Sual, Pangasinan, on November 14, 1965, between 10:00 and 11:30 a.m., he saw Benjamin Gundayao and his co-defendants, a few meters away, drinking gin in front of the store of Segundo Sevillaena, which was alongside the house and store of the Vice-Mayor; that, after consuming a bottle of gin, Benjamin Gundayao, repeatedly cursed the "Nacionalistas" for not offering a drink despite their victory in the polls; that, as Orlando Piol, who was nearby, replied by cursing the losers in the elections, an exchange of unfriendly utterances followed; that, eventually, the group headed by Benjamin picked up stones and threw them at Piol, who was hit several times on the head; that, as the same began to bleed, Piol drew out a dagger and approached Benjamin, who, forthwith, embraced him; that, grappling with each other, they both fell down, with Piol on top of Benjamin; that, at this juncture, Anoy Gundayao picked up a stone and hit Piol with it on the head, and then wrested the dagger from

him; that, upon a signal given by Benjamin, who had meanwhile managed to get away from under Piol, Anoy stabbed Piol on the back and, then, leaving the dagger imbedded therein, retreated; that thereupon Benjamin pulled out the dagger and sank it again on the back of Piol, Who was still facing downward, in a stooping position; and that Eduardo Bersamina, Eto Agbayani and Jovencio Yanday were then about 5 meters away.

Macario Aquino did not witness the beginning of the incident. He was about 25 meters from the place of the occurrence, when he noticed a commotion. Rushing to the scene thereof, he saw Benjamin and Piol, about 3 meters away from him, rush at each other and grapple with one another, until they fell together from a bamboo bed, locally known as "papag", on which they were standing; that, inasmuch as the same and a wooden fence between him and the combatants pre-vented him from going to them directly and seeing what was going on after said fall, he walked about 10 meters, in order to go around the fence and approach the fighting men; that, bidding them to stop, he seized the hand of Benjamin which held a dagger, with which he was poised to stab Piol, then lying down on his stomach, under Benjamin; that Aquino thereupon wrested from him the dagger, which was stained with blood; and that Benjamin then said it was he who had wounded Piol.

Upon the other hand, Benjamin Gondayao testified that his remark, about the failure to give a blow-out on the part of the win-ner in the elections, was addressed to his nephew, Rudy Natividad; that, when Piol resented said remark, Benjamin replied that the same was not aimed at him, and that, perhaps, he (Piol) is a "nacionalisto"; that, after another exchange of unfriendly remarks, Piol drew out his dagger and said "I am going to kill you"; that Benjamin then tried to run away and went up the "papag", with the intention of jumping over the wooden fence beside it; that he was unable to do so because Piol followed him on top of the "papag"; that he, therefore, faced Piol, who thrust his dagger at him (Benjamin), but he parried the thrust with the left arm, which was then wounded slightly; that, by pressing the hand with which Piol held the dagger, Benjamin succeeded in disarming him; that, as Piol grappled with and embraced him, they fell to the ground, with Piol under him; that Piol landed over the dagger - then held by Benjamin-which pierced his (Piol' s) back; that, as they kept on wrestling with each, other, Piol managed to roll over and place himself on top of Benjamin; that Piol then picked up a stone and with it struck Benjamin on the face, thereby causing thereon a lacerated wound; that Piol tried to hit him a second time with the stone, but Benjamin ward off the blow; that he was then able to get another stone, with which he, in turn, hit Piol on the head several times; that Piol, however, squeezed the neck of Benjamin, who let loose the stone and, pulling Piol down with his (Benjamin's) right hand, stabbed him (Piol) with his (Benjamin's) left hand, by thrusting the dagger into his back; and that the Chief of Police then came and separated them.

Benjamin's co-defendants set up their respective alibis, but We are not concerned with the three (3) defendants who were acquitted by the lower court. As regards appellant Anoy Gondayao, We note that the Chief of Police did not even see him at the scene of the occur-rence, although said officer admitted that he had not paid any attention to the persons who were near the combatants. Again, it is difficult to see how Anoy Gondayao could have, stabbed Piol without being noticed by said peace officer. In this connection, it is well to remember that, according to Macario Pascua - the only witness who testified to the alleged participation of Anoy Gondayao in the commission of the crime charged - this appellant stabbed Piol after the latter and Ben-jamin had fallen from the "papag", in the course of their fight. The Chief of Police was only three (3) meters away, looking at them, even before they had thus fallen. Hence, he would have, in all pro-bability, seen Anoy, had he done what Pascua imputed to him (Anoy). There was, of course, the possibility that Anoy's intervention may have taken place as the Chief of Police went around the fence that separated him from the combatants and his attention was momenta-rily diverted from them. In a way, however, this circumstance is offset by the fact that as soon as the Chief of Police approached the combatants and bade them to stop, Benjamin owned his responsibility for the injuries of Piol. This statement was made before Benjamin had had time to reflect, and thus forms part of the *res gestae*, as well as carries much weight. All things being considered, We find that the prosecution has not established, beyond

reasonable doubt, the guilt of Anoy Gondayao, who should, accordingly, be acquitted, for insufficiency of the evidence.

With respect to appellant Benjamin Gondayao, his Honor, the trial Judge, found his testimony unworthy of credence and the record before Us fully justifies such finding. Indeed, Benjamin testified that, as he grappled with Piol, on top of a "papag", they fell together therefrom, with him on top of Piol, who landed on his back, over the dagger held by Benjamin, who had wrested it from Piol, and that this was how Piol sustained the first stab wound on the back. This cannot possibly be true, for the Chief of Police testified that Piol was holding the dagger when he and Benjamin fell down from the "papag". Besides, had Piol's back been pressed against the dagger, which was allegedly held by Benjamin, the resulting wound would have taken a markedly slanting direction, instead of being almost at right angle with, or perpendicular to, the body, as it turned out to be. Then, too, Piol was on top of Benjamin, when they fell from the "papag", according to Macario Pascua.

Again, Benjamin's version is that, after this accidental injury, on the back of Piol, the latter succeeded in rolling over and being on top of him (Benjamin); that Piol then struck him on the face with a stone; that, after fending off another attempt of Piol to similarly hit him again, he (Benjamin) picked up another stone and, in turn, struck him with it on the head; that, as Benjamin squeezed him by the neck, he let the stone loose and, pulling Piol down with his (Benjamin's) right hand, he (Benjamin) stabbed Piol on the back - on which, according to Benjamin, Piol was lying - by thrusting the dagger with his left hand; and that, at this juncture, the Chief of Police came and took the weapon from him.

This story is manifestly artificial and unworthy of credence. It should be noted that, according to Benjamin, he held the dagger, even before they fell from the "papag"; that the dagger was still in his hand when Piol allegedly struck his face with a stone; and that he (Benjamin), in turn, took another piece of stone, and hit Piol with it. This would have been impossible, however, unless Benjamin first released the dagger, which he then held; but, We cannot believe that he, or anybody for that matter, would have done so under the circumstances.

Again, when Piol allegedly squeezed the neck of Benjamin, the latter threw the stone away and picked up the dagger once more. He would thus have Us believe that, in order to get the stone with which he claimed to have hit Piol on the head, he put the dagger in a convenient place from which, at the opportune moment, he got it back to inflict the second stab wound. The context of Benjamin's story does not convey the idea that he had such a control of the situation as to be able to choose the place where he, would put the dagger and the time he would retrieve it.

But, this is not all. Instead of stabbing Piol on the stomach, for, by this time, he was again lying down on his back - according to the defense with Benjamin on top of him, he (Benjamin) thrust the dagger, with his left hand, into the back of Piol, causing therein another stab, wound almost at right angle with his body, like the first. Just why, being in the precarious condition he depicted himself, Benjamin chose to stab Piol in such an awkward, inconvenient and unbelievable manner, the defense has not even tried to explain. Regardless of the foregoing, an injury inflicted in this fashion on Piol's back, which was allegedly pressed against the ground, would have necessarily been much more slanting than the first, instead of being almost perpendicular to the body. The fact of the matter - and this has been established by the testimony of the Chief of Police, whose impartiality and veracity are not contested - is that Piol was then lying down, not on his back, but on his stomach, with Benjamin on top of him. This explains why and how he (Benjamin) managed to stab Piol on the back. It, likewise, shows that Piol could not have struck Benjamin on the face with a stone, much less squeezed his neck.

It is clear, from the foregoing, that Benjamin stabbed Piol twice from behind, after disarming him.[1] Considering, moreover, that Benjamin had provoked the incident, by hurling uncomplimentary remarks at his

political opponents, one of whom was Piol;^[2] that such remarks led to an altercation with Piol, in consequence of which, stones were thrown at him, hitting him on the head; that when, owing to the impact of said stone, which could have rendered him groggy, and the lacerated injuries thus sustained by him, Piol prepared himself to fight by drawing out his dagger, Benjamin accepted the challenge resulting from this act, by "rushing" to his encounter and grappling with him; and that, accordingly, Benjamin cannot be given the benefit of either complete or incomplete self-defense.^[3] Although Piol was stabbed from behind, Benjamin did not act with treachery, for this was merely an incident of their struggle, which had begun with both contenders facing each other, each prepared for the fight that ensued.¹

The crime committed by Benjamin Gondayao is, therefore, that of homicide, and no modifying circumstance having attended its perpetration, the penalty therefor (reclusion temporal) should be imposed in its medium period. Pursuant to the Indeterminate Sentence Law, he should, accordingly, be sentenced to an indeterminate penalty ranging from 8 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum, with the corresponding accessory penalties. More-over, the indemnity due from him to the heirs of Orlando Piol should be increased from P3,000.00 to P12,000.00, pursuant to *People v. Pantoja*² and subsequent cases,³ apart from the fact that Anoy Gondayao should be acquitted, for insufficiency of the evidence against him, with the proportional part of the costs de oficio.

With the foregoing modifications, the decision appealed from should be, as it is hereby affirmed, in all other respects, with one-fifth (1/5) of the costs against appellant Benjamin Gondayao.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.
Barredo, J., did not take part.

[1] *People v. Alviar*, 56 Phil. 98.

[2] *People v. Sotelo*, 55 Phil. 403.

[3] *People v. Neri*, 77 Phil. 109; *People v. Lumasag*, 56 Phil. 19; *People v. Nieto*, 55 Phil. 116; *People v. Marasigan*, 51 Phil. 701; *People v. Monteroso*, 51 Phil. 815; *U.S. v. Cortez*, 6 Phil. 837; *U.S. v. Navarro*, 7 Phil. 713.

¹ *People v. Luna*, 76 Phil. 101; *People v. Gonzales*, 76 Phil. 473; *People v. Cañete*, 44 Phil. 478; *People v. Peje*, L-8246, July 19, 1956.

² L-18793, October 11, 1968.

³ *People v. Sangaran*, L-21757, Nov. 26, 1968; *People v. Gutierrez*, L-25372, Nov. 29, 1968; *People v. Buenbrazo*, L-27852, Nov. 29, 1968; *People v. Bakang*, L-20908, Jan. 31, 1969; *People v. Labutin*, L-23513, Jan. 31, 1969; *People v. Acabado*, L-26104, Jan. 31, 1969; *People v. Vacal*, L-20913, Feb. 27, 1969; *People v. Gonzales*, L-23303-04, May 20, 1969; *People v. Tapac*, L-26491, May 20, 1969.

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