

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO NOMAT, SR., GERARDO NOMAT, JR. AND FERMIN NOMAT, ACCUSED-APPELLANTS.

G.R. Nos. L-37012-13. July 03, 1992

Ponente: NOCON, J.

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NOCON, J.:

From a seemingly inconsequential pushing incident inside a jeepney, Gerardo Nomat, Sr. and his three sons, namely, Gerardo, Jr., Fermin and Santos, all surnamed Nomat were charged of the crime of Murder with multiple attempted Murder before the Court of First Instance of Antique, docketed as Criminal Case No. 109.

Fermin Nomat was also charged with the crime of Frustrated Homicide in Criminal Case No. 124 for the shooting of one Josephus Paciente.

Inasmuch as the two cases arose from the same incident, they were tried jointly by agreement of the prosecution and defense, with the conformity of all the accused.

After due trial, the court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, in Criminal Case No. 109, for the death of Antonio Ricarze, Jr., this Court finds the accused, Gerardo Nomat, Sr., Gerardo Nomat, Jr. and Fermin Nomat, guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code and hereby imposes upon each of the accused, Gerardo Nomat, Sr. and Gerardo Nomat, Jr. the penalty of RECLUSION PERPETUA, and on the accused, Fermin Nomat, applying in his favor the provisions of Article 68, paragraph 2, this Court hereby imposes upon the accused, Fermin Nomat, a prison sentence which shall in no case be less than EIGHT (8) YEARS and ONE (1) day of prision mayor, nor more than FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, all accused to indemnify the heirs of Antonio Ricarze, Jr. jointly and severally in the sum of P12,000.00 and to pay P5,000.00 as moral and exemplary damages.

The evidence against Santos Nomat is insufficient to prove the commission of the crime of murder beyond reasonable doubt, consequently, the accused Santos Nomat is hereby acquitted of the crime charged, with his proportionate share of the costs de officio.

For the injuries sustained by Leandro Lazo, Jr., this Court finds the accused Gerardo Nomat, Jr. guilty beyond reasonable doubt of the crime of attempted homicide, defined and penalized under Article 249 of the Revised Penal Code in relation to Article 6 of the same Code and hereby imposes upon Gerardo Nomat, Jr., an additional penalty of not less than TWO (2) MONTHS AND ONE (1) DAY of arresto mayor, nor more than TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional, to indemnify Leandro Lazo, Jr. in the sum of P500.00, without subsidiary imprisonment in case of insolvency together with the accessory penalties prescribed by law and ordering the accused, Gerardo Nomat, Sr., Gerardo Nomat, Jr. and Fermin Nomat to pay the costs.

In Criminal Case No. 124, this Court finds the accused Fermin guilty beyond reasonable doubt of the crime of

attempted homicide defined and penalized under Article 249 of the Revised Penal Code in relation to Article 6 of the same Code and applying in his favor the provisions of Article 68, paragraph 2, hereby imposes upon him the penalty of FOUR (4) MONTHS and ONE (1) DAY of arresto mayor and to indemnify Josephus Paciente in the sum of P2,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED."[1]

Hence, this appeal.

As gleaned from the records, the facts are as follows:

On April 29, 1970, at about 6:30 in the evening, Antonio Ricarze, Jr. (Mao), Vicente Azurin, Jr., Nelson Dava and Joaquin Villavert (Bebo) were standing in front of the provincial hospital of San Jose, Antique waiting for a ride. Vicente Azurin Jr., stopped a jeep owned by Gerardo Nomat, Sr. and driven by Santos Nomat. Beside the latter at that time was Cesar Borromeo, a suitor of his sister and who later became his brother-in-law. Antonio Ricarze, Jr. asked Santos Nomat whether his group could be brought to the San Jose Academy where a benefit show was being held. Santos Nomat agreed but Ricarze Jr. asked Cesar Borromeo to transfer to the back seat which Santos resented, but Ricarze Jr. pushed Borromeo just the same to the back.

Upon arriving in their house, Santos Nomat immediately reported the incident to his father in the presence of his brother, Fermin Nomat and Mrs. "Bucay" Rodriguez, sister of Joaquin Villavert. Gerardo Nomat, Sr., Fermin, Santos and Mrs. Rodriguez lost no time in proceeding to the house of Mayor Oscar Salazar of San Jose to complain about the alleged abuses of Dava, Azurin, Jr., Villavert and Antonio Ricarze, Jr. They likewise proceeded to the house of Engineer Antolin Dava, father of Nelson Dava. When informed that the latter was at the San Jose Academy, the group proceeded to the house of Petong Villavert, father of Joaquin, where Gerardo, Sr. informed Petong what his son and his group did to Cesar Borromeo.

Thereafter, Gerardo Nomat, Sr. and his two sons, Fermin and Santos, went to the San Jose Academy, venue of the benefit show, at about 8 o'clock in the evening armed with guns and with the intention of seeing Engineer Antolin Dava. Gerardo Nomat Sr., was holding a gun about 6 inches in length with his right hand, while Fermin's gun was tucked in his waist. The trio inquired from Ms. Angelica Paraque, one of the attendants in the sale of the tickets, whether Nelson Dava, Antonio Ricarze, Jr. and Vicente Azurin, Jr. had already entered. When informed by Ms. Paraque that they were inside, Fermin Nomat said, "We will look for them inside," but was stopped by Abraham Sanchez, another attendant. The trio returned to their jeep with the intention of waiting for Ricarze Jr.'s group but Fermin Nomat saw Nelson Dava coming out of the "tunnel" of the San Jose Academy and Fermin shouted, "Nelson come out", while aiming his gun at the direction of Nelson. Gerardo Nomat, Sr. alighted from the jeep and said "No more talking, shoot him at once." [2] Miss Paraque told Gerardo Nomat, Sr. to "just take it easy" but Nomat, Jr. said, "It will not last till morning, I will kill him." [3]

The next day, April 30, 1971, at about 5:30 in the afternoon, Gerardo Nomat, Jr., together with his brothers, Fermin and Santos and Nestor Navarro went to the Modern Life Restaurant after coming from the cockpit. While they were drinking beer, Fermin showed off his gun which is about 6 inches long, and so did Gerardo, Jr., who also took out and displayed his revolver which was of the same kind as that of Fermin.

At about 8 o'clock that evening, Josephus Paciente and his first cousin Antonio Ricarze, Jr. entered the public market and while walking towards the interior of the market, they met Gerardo Nomat, Jr. and Fermin Nomat. Gerardo, Jr. remarked, "Mao, what did you do to my visitor?" Ricarze answered, "I did not do anything to your visitor." Suddenly, Fermin, who was at a distance of 1 1/2 brazas from Ricarze, Jr., fired .38 caliber revolver at the latter and hit him. Almost simultaneously, Gerardo Nomat, Jr. also drew his .38 caliber gun and fired at Ricarze, Jr. Gerardo Nomat, Sr. and Santos Nomat ran to the direction of Fermin holding their respective .38 cal.

revolvers and likewise fired at Ricarze, Jr. who reeled and fell to the ground. Gerardo Nomat, Jr. continued firing at the fallen Ricarze, Jr., while the former stood about 2 meters away from the right foot of the latter.[4]

While Fermin Nomat and Gerardo Nomat, Jr. were firing at Antonio Ricarze, Jr., the assistant market collector in the public market, Leandro Lazo, Jr., was in the premises and only about 4 or 5 meters away from Fermin, about 10 meters from Gerardo Nomat, Jr. and was 8 meters distant from Ricarze Jr. He was in between Gerardo, Jr. and Antonio Ricarze, Jr. and was therefore in the line of fire coming from Gerardo, Jr.[5] As he crouched and tried to seek cover, Lazo, Jr., was hit by a bullet and wounded, the nature of which is that described in a medical certificate, Exhibit "L".[6] He laid flat on his back and after the firing stopped he was brought to the Antique Provincial Hospital for treatment.

After Fermin Nomat fired at Ricarze, Jr. he faced Paciente and said, "You also." As Paciente tried to run, Fermin fired at him and hit him on the left side of his body, about four (4) inches below the nipple towards the left. After he was hit, Paciente ran towards the plaza where he was able to ride on a tricycle that brought him to the Antique Provincial Hospital.

During the incident, aside from the victims aforementioned, there were other persons who suffered gunshot wounds caused by stray bullets namely: Jose Abagat, Leonila Fabila and Leon Bungay. Hernani Abello, resident physician of the Antique Provincial Hospital gave them medical attention and issued their respective medical certificates.[7]

Fermin Nomat went to the municipal hall where he surrendered to Cpl. Jose del Rosario of the San Jose Police Force, stating that he had shot Ricarze Jr. inside the public market due to a personal grudge.[8]

Fermin Nomat claims self-defense while the other three accused, Gerardo Nomat, Sr., Gerardo Nomat, Jr. and Santos Nomat, predicated their defense on denial.

We find no merit in their defenses.

Since appellant Fermin Nomat admitted that he alone shot Ricarze, Jr. in self-defense,[9] it was incumbent upon him to prove by clear, sufficient, satisfactory and convincing evidence his plea of self-defense[10] that excludes any vestige of criminal aggression on the part of the person invoking it. Appellant must rely on the strength of his own evidence, and not on the weakness of the prosecution, because even if it were weak, it could not be disbelieved after the appellant admitted the killing.[11]

Appellant must show that there was unlawful aggression against him; that there was reasonable necessity of the means he employed to prevent or repel the unlawful aggression and there was lack of sufficient provocation on his part.[12]

The defense tried to show that the deceased was at that time armed with a gun and was the one who first drew his weapon and fired twice at Fermin; that two of the companions of Ricarze Jr. namely, Liberato Reyes and Edgardo Reyes each fired at Fermin and at least four (4) shots were fired at the latter.[13] If that were so, it was highly incredible that not one of the shots hit Fermin. Moreover, the testimony of Fermin Nomat and his witnesses as to the manner he shot the deceased Ricarze, Jr. appears to be inconsistent with the physical findings with respect to the trajectory of the bullets that found their way through the body of the deceased Ricarze Jr. The version of the defense is that the shots were fired by Fermin while Ricarze, Jr. although reeling, was still in a standing position.[14] This runs counter to the findings of the NBI Medical Legal Officer, Dr. Mariano Cueva that "this was inflicted when the victim also could have been in a lying down position, either lying on his body or on his left side of the body with the assailant at the position of the feet of the victim on the right side." [15]

Except for the bare testimony of Fermin, no proof was presented to show that Ricarze, Jr. had a gun during the incident. The only gun that Sgt. De los Santos saw when he arrived at the crime scene immediately after the shooting was the .38 caliber revolver used in the shooting that Gerardo Nomat, Sr. and Fermin were grappling for possession. Likewise, defense witness Pat. Ramon Tamugdan, testified that when he arrived at the scene of the shooting after hearing three gunshots[16] and therefore would have been in a position to witness the incident because no less than seven shots were fired, he did not find any gun in the premises, much less in the body of Ricarze, Jr. If Ricarze had a gun and used it, it is impossible that the same could not have been found at the premises.

The accused Fermin Nomat, in his effort to save his co-accused, testified that he was the only one who fired shots at the victim with his revolver. This appears to be in conflict with the physical findings concerning the bullets "R1" (Exhibit "B") and "AR" (Exhibit "D") which were extracted from the body of the deceased, which, according to the Supervising Ballistician Felicisimo Lunasco of the NBI were fired from a caliber .38 revolver other than the exhibit .38 caliber revolver (Exhibit "A") which according to the defense, was the one used by Fermin Nomat in shooting the deceased Ricarze Jr. In fact, according to the NBI Ballistic Report No. B-373-670[17] submitted by Ballistician Felicisimo Lunasco, the two specimen bullets found in the body of the deceased were not fired from the specimen gun but could have been fired from two different guns. These findings show that at least three (3) .38 caliber revolvers of the Smith and Wesson make were used in the killing of the victim Ricarze, Jr.[18]

Indeed, the evidence presented by the accused Fermin Nomat to prove self-defense falls short of that standard required of the accused who interposes self-defense as a justification for an otherwise criminal act.

As regards the defense interposed by the accused Gerardo Nomat, Sr. and Gerardo Nomat, Jr., the same pales into insignificance in the face of the overwhelming and convincing evidence presented by the prosecution showing their guilt. The testimonies of the defense witnesses in support of the defense of said accused could not stand scrutiny by this Court.

Defense witness, Pat. Ramon Tumogdan testified that when he heard the first shot and two other gunshots, he was in the municipal building and so he rushed to the public market passing thru Carretas Street. He said that all in all he heard only three (3) shots.[19] This is belied not only by the testimonies of the prosecution witnesses but even by the defense witness who testified that several shots, about 15 to 20 shots, were fired during the incident. That this witness was not telling the truth is further shown by the fact that according to him it took him 20 minutes to run the distance from the municipal building to the place of the incident which incidentally, is found to be only 10 meters.[20] Certainly, it will not take 20 minutes for one to run a distance of only ten meters.

Another defense witness Alberto Tumogdan who tried to corroborate the testimony of the accused Gerardo Nomat, Jr. testified hearing shots and seeing Ricarze, Jr. for the first time with a black revolver about 6 inches in length on his right hand[21] as he was falling down. As he fell down the gun he was holding was thrown from his hand and was picked up by somebody.[22] But on cross examination, the witness could not remember the color of the shirt, nor the color of the pants, or the length of the hair of Ricarze, Jr.[23] The Court finds it hard to believe that the witness can describe the color and length of the firearm used and the hand that held the gun but cannot remember other details of the person of the deceased, thereby placing in doubt whether he actually saw what he testified to. It appears that the witness was presented merely to testify on the fact that Ricarze, Jr. was holding a black revolver on his right hand to support Fermin Nomat's allegation of self-defense.

The testimony[24] of defense witness Angel Davila appeared to be biased and not convincing enough. It is hard to believe that during all the time that Fermin Nomat and the deceased were trading shots, that this witness stayed at

the place of the incident and witnessed even the minutest detail of the shooting including the conversation that occurred between the two, the exact number of shots fired by Fermin and Ricarze Jr. together with the latter's companions, what the companions of Ricarze Jr. did, the exact distance not only between Fermin and Ricarze Jr. but also the distance between the two and the companions of Ricarze during the shooting and other details without said witness running for cover for dear life, which under the circumstances, considering the frightening suddenness of the shooting could not have been testified to even by an eyewitness unless he is coached and rehearsed.

It is hard to believe that Ricarze Jr. would angrily approach, confront and grab Fermin by his shirt and saying "I will kill you" right in the presence of the latter's father, Gerardo Nomat Sr. without said father taking any action, considering that he is one person who would not take lightly the slightest affront to his family. In fact, the minor incident that happened the day before to his son Santos and family guest, Cesar Borromeo, made Gerardo Nomat, Sr. angry that he went into a hunting spree looking for the members of Ricarze's group in an apparent attempt to redress a wrong done to his family. What more of an affront done to his son in his presence.

From the point of reliability and naturalness the testimonies of the prosecution eyewitnesses appear to be more natural and reliable. The reaction of eyewitness Josephus Paciente, Edgardo Reyes, Liberato Reyes and Romeo Villavert to the incident is far more in keeping with the natural course of things.

Take the testimony of prosecution witness Liberato Reyes as to the position of Gerardo Nomat, Sr. when he fired at Ricarze Jr.

"COURT:

Q. When you said you saw Gerardo Nomat fired at Ricarze, where was Nomat in relation to the body of Ricarze?

A. Gerardo Nomat, Sr. was at the place towards the right foot of the body of Antonio Ricarze, Jr.[25]

This testimony of prosecution witness Liberato Reyes is confirmed by the findings of Dr. Cueva, Jr. who testified as follows:

"Q. Now taking into account the track or direction of the bullet that entered the wound No. 3 into the body of the deceased can you possibly tell this Court the relative position of the assailant and the victim when wound No. 3 was inflicted?

A. Because of the acute upward course of the bullet from the right flank to the left shoulder, this suggest that in all probability this was inflicted when the victim as could have been in a lying down position either lying on his back or on his . . .

Q. Left side of the body?

A. Left side of the body with the assailant at the portion of the feet of the victim on the right side."[26]

The court gave credence to the testimony of Liberato Reyes not only because it is natural and convincing but also because it is confirmed by no less than the NBI Medico-Legal Officer, Dr. Mariano Cueva, Jr.

The version of the defense is that victim Antonio Ricarze, Jr. had a gun with him which he used in trading shots with Fermin Nomat. But no such gun was recovered from the body of the victim nor within the vicinity of the incident where the shooting occurred. Defense witness Pat. Ramon Tomugdan[27] who was one of the several police officers who arrived first at the scene of the crime and whose testimony that somebody picked up the gun of the victim could not be given full faith and credence on the basis of his incredible testimony as previously described.

The defense at the start of the trial said at the NBI conducted a paraffin test on the three accused and that they are going to present the results of the same in their defense. But the paraffin results were never presented before the trial court.

Another aspect of this case that seems to support the version of the prosecution and tend to militate against the theory of the defense is the fact that motive has been shown on the part of the accused to commit the act attributed to them. Overwhelming is the evidence submitted that the family of the Nomat was angered by that incident that happened to their family guest Cesar Borromeo.

But even if that incident did not happen, the finding of guilt will still stand in the face of the positive identification of the accused, Gerardo Nomat, Sr., Gerardo Nomat, Jr. and Fermin Nomat by the prosecution witnesses as the persons who shot the late Ricarze, Jr.

After Gerardo Nomat, Sr. had been informed that their family guest, Cesar Borromeo, had been abused by Ricarze's group, he and his sons went looking for the said group. The testimony of prosecution witness Myrna Orcasitas concerning the arrival of Gerardo Nomat, Sr., Fermin Nomat and Santos Nomat in the San Jose Academy[28] and the testimony of Nestor Navarro with respect to the incident the following morning where the Nomat brothers armed with their revolvers waited for Ricarze's group in the Modern Life restaurant show premeditation and conspiracy on the part of the father and his sons to kill Ricarze, Jr.[29] Added to these is the presence of all the accused during the shooting incident.

"While conspiracy to commit a crime must be established by positive evidence, direct proof is not essential, since by its nature it is planned in utmost secrecy. Consequently, competent and convincing circumstantial evidence will suffice to establish it."[30]

Where the issue boils down to a question of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered might affect the result of the case.[31]

WHEREFORE, finding no reversible error in the decision appealed herefrom, the guilt of the accused, Gerardo Nomat, Sr., Gerardo Nomat, Jr. and Fermin Nomat having been proven beyond reasonable doubt, the decision of the trial court is hereby **AFFIRMED**, with the modification that indemnity to be paid by all the accused to the heirs of the date Antonio Ricarze, Jr. is raised to P50,000.00.[32] With costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, p. 40.

[2] T.S.N., February 17, 1971, p. 31.

[3] Id., at p. 33.

[4] T.S.N., December 17, 1970, pp. 91-92.

[5] T.S.N., February 17, 1971, pp. 3-7.

[6] Records, page 10.

[7] Exhibit "CC", Records, page 12; Exhibit "Z", Records, page 13; Exhibit "Y", Records, page 14.

- [8] T.S.N., April 23, 1971, p. 330.
- [9] T.S.N., November 17, 1972, pp. 61-64.
- [10] Ortega vs. Sandiganbayan, G.R. No. 57664, 170 SCRA 38, (1989).
- [11] People vs. Rey, G.R. No. 80089, 172 SCRA 149, (1989).
- [12] Art. 11 par. (1), Revised Penal Code; People vs. Batas, G.R. Nos. 84277-78, 176 SCRA 46, (1989).
- [13] T.S.N., November 16, 1972, pp. 61-64.
- [14] Id., at p. 61.
- [15] T.S.N., February 17, 1971, p. 122.
- [16] T.S.N., March 23, 1972, p. 5.
- [17] T.S.N., December 17, 1970, pp. 35-36.
- [18] Exhibit "G", Records, pp. 422-433.
- [19] March 23, 1972, T.S.N., at pp. 5-6.
- [20] Id., at pp. 9-15.
- [21] Id., at pp. 63-64.
- [22] Id., at pp. 65-66.
- [23] Id., at pp. 82-85.
- [24] T.S.N., July 19, 1972, pp. 128-153; T.S.N., July 20, 1972, pp. 2-63.
- [25] T.S.N., December 17, 1970, pp. 91-92.
- [26] T.S.N., February 17, 1971, pp. 121-122.
- [27] T.S.N., March 23, 1972, pp. 2-24.
- [28] T.S.N., February 17, 1971, p. 24.
- [29] T.S.N., February 18, 1971, pp. 6-17.
- [30] People vs. Quiñones, G.R. No. 80042, 183 SCRA 747, (1990).
- [31] People vs. Sison, G.R. No. 86455, 189 SCRA 643, (1990).
- [32] Ibid.

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