

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEES VS.
JULIAN TIONGSON Y DE LA CRUZ, ET AL., DEFENDANTS PAULINO
GUIEB Y MENDOZA, WILSON ALICANTE Y MORALES, ANTONIO
YACAT Y B...**

G. R. Nos. L-9866-7. November 28, 1964

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/796bcdde6f5a/>

MAKALINTAL, J.:

The above-named defendants were charged under two separate informations filed in the Court of First Instance of Rizal (Quezon City Branch) with the murders of Rizalino Lopez and of Mariano Lopez, Jr., respectively. After trial they were found guilty as charged — the crimes being qualified by treachery and abuse of superior strength, and aggravated by the circumstances that they had been committed by a band — and sentenced in each case to suffer the penalty of reclusion perpetua; to indemnify, jointly and severally, the heirs of the victim (Rizalino in Criminal Case No. Q-765, and Mariano, Jr., in Criminal Case No. Q-766) in the amount of P6,000.00, with the accessory penalties provided by law; to pay 5/6 of the costs.

All the defendants appealed from the judgment, but Julian Tiongson, upon motion, was permitted to withdraw his appeal by resolution of this Court of August 13, 1963. The remaining appellants are Paulino Guieb y Mendoza, Wilson Alicante y Morales, Antonio Yacat y Belmonte and Pablo Antonio y Feria.

The following facts appear clearly established. Sometime before June 26, 1952 Mariano Lopez, Jr. and Rizalino Lopez, brothers, had a quarrel with Jesus Sayo, Nephew-in-law of their sister, Mrs. Marcelino Sayo. Her husband, Atty. Marcelino Sayo, having heard rumors that his wife's relatives were intending to create trouble, with the help of Tondo gangsters, asked for protection from the Philippine Army, of which he was formerly an officer. The Army Chief of Staff assigned herein appellants, then soldiers, to act as security guards at the Sayo residence in Halcon Street, Quezon City.

On June 26, 1952 the four appellants were on duty at said residence. At about 7:00 p.m. of that day Rizalino Lopez and his brother Ramon arrived in a jeepney and got down at the corner of Maria Clara and Halcon streets. From there they walked up to the corner of Halcon and Simoun streets, where Ramon left Rizalino and proceeded alone to the Sayo house. Their intention was to borrow money from their sister with which to buy medicine for Rizalino's sick child. Ramon was allowed by the guard stationed at the gate to go inside. Ramon had a brief talk with his sister, received P3.00 from her and then left to rejoin his brother. When he arrived at the corner of Halcon and Simoun streets, he saw Rizalino being questioned by Julian Tiongson, a civilian, who was also a guard in the premises, having been assigned by Atty. Sayo himself. Revolver in hand, Tiongson included Ramon in the questioning, and also Mother brother, Mariano, Jr., who in the meantime had come with their cousin Pacifico Arceo. With Tiongson another armed man, known only by the name "German." Even so, Tiongson called out to the soldiers at the Sayo residence, and at the same time herded the four, the Lopez brothers and their cousin, to the middle of the street in the direction of the house. Suddenly a shot rang out, immediately followed by a continuous

volley. Ramon Lopez was able to hide behind the fence of his sisters' house while Pacifico Arceo sought shelter in a nearby alley.

The incident having been reported to the Homicide Section of the Secret Service Division, Quezon City Police Department, a group of detectives headed by Detective Napoleon Albano rushed to the scene and there found the bullet-riddled bodies of Rizalino and Mariano Jr., sprawled in the middle of Halcon street.

Results of the necropsies conducted by Dr. Ernesto Brion, medico-legal officer of the National Bureau of investigation, showed that Mariano, Jr., suffered seventeen (17) gunshot wounds, five of them fatal, and Rizalino suffered eighteen (18) gunshot wounds, three of them fatal. Five slugs were recovered from the body of Mariano, Jr. and four from the body of Rizalino.

A search of the premises by the police detectives yielded five (5) .45 caliber fired empty cartridge cases; one (1) .45 caliber AP type ball ammunition; thirty one (31) .30 caliber fired empty carbine cartridge cases; one (1) .30 caliber fired empty cartridge case; one (1) .38 caliber dud revolver ball ammunition; and three (3) .30 caliber fired bullets.

At the Quezon City Police headquarters Ramon Lopez and Pacifico Arceo declared that the shooting had been perpetrated by two civilians, Julian Tiongson and the one known only as German, and by the four soldiers. These four soldiers surrendered their respective firearms but refused to make any statement when they were taken to the police headquarters that night. German had escaped and remained at large even during the trial of case. Julian Tiongson, however, was apprehended the following day aside from the weapons surrendered by the four soldiers, the police authorities also recovered two other firearms at the scene of the crime, one a .38 caliber revolver, commando type, and the other a .45 caliber automatic pistol.

In their joint brief the four appellants contend (1) that Antonio Yacat and Pablo Antonio should be acquitted; (2) that there was no proof of conspiracy among them to kill the deceased; (3) that the circumstances preceding the shooting should have been considered by the trial court; and (4) that they should not have been convicted of the two murders, qualified by treachery and abuse of superior strength, and aggravated by its having been committed by a band. Another brief was filed by Pablo Antonio alone, wherein he dwells particularly on the comparative credibility of prosecution witnesses Ramon Lopez, Pacifico Arceo and Napoleon Albano, on one hand, and of himself and his own witnesses, on the other.

In the resolution of this appeal, the defense of Yacat and Antonio calls for a separate treatment from that of Guieb and Alicante. The first two deny having taken part in the shooting; the last two admit such participation, but allege certain circumstances which, they contend, should exempt them from criminal liability. The prosecution, however, sought to establish that all of them plotted (with Tiongson and German) to kill the Lopez brothers and in consonance with such criminal plan shot the victims. Appellants Yacat and Antonio maintain that at the time of the shooting they were both at the back of the Sayo residence, having been assigned by Corporal Guieb to guard that part of the premises, and that they never fired their guns at all. This second point finds support in the very evidence for the prosecution.

The firearms confiscated from the four soldiers were Presented at the trial and identified as Exhibits G-1 to G-4, inclusive, thus:

Cpl. Paulino Guieb

-

SN-500475 (PA)-.30 cal. Carbine MI with three (3) empty magazines - 5018389 (Exhibit G-4).

Pfc. Wilson Alicante

-

SN 503986 (PA) .30 cal. Carbine M2-7409102 (Exhibit G-3),

Pvt. Antonio Yacat

-

SN 528745 (PA) .30 cal. Browning Automatic Rifle (BAR) with one (1) Magazine and 17 live ammo. - 522539 (Exhibit G-1).

Pvt. Pablo Antonio

-

SN-G32908 (PA) .30 cal. Garand rifle with one (1) clip and 8 rounds ammo. 2245108 (Exhibit G-2).

Julian Tiongson's gun was .38 caliber revolver, Colt commando type, with serial No. 14137, marked Exhibit G-5. The sixth gun, a .45 caliber automatic pistol, with serial No. 13147, marked Exhibit G-6, appears to have been the one used by the other civilian named German.

The above firearms, as well as the cartridge cases and bullets found at the scene of the crime, and the bullets extracted from the bodies of the victims, were all submitted to the Criminal Investigation Laboratory of the Manila Police Department to determine which firearms had fired which shells or bullets. Ballistics tests were conducted by Simeon F. Molina, ballistics technicians of said laboratory, who submitted to report (Exhibit P) and testified in court on his findings.

According to Molina, except for four .30 caliber fired bullets and one .30 caliber fired carbine cartridge case, as to which no conclusions could be made because of their deformed or mutilated conditions, all the bullets and cartridge cases examined by him came from the fire-arms marked Exhibit G-3, G-4, G-5 and G-6. None of them, he said, could have been discharged from appellant Yacat's weapon (Exhibit G-1) which, although also of caliber .30, is not of the carbine type but a Browning automatic rifle. And so far as appellant Antonio's M-1 Garand rifle (Exhibit G-2) was concerned, no bullets or empty shells from such a firearm were submitted to Molina for examination. It is significant to note further in this connection that when Exhibits G-1 and G-2 were surrendered the first had its magazine still containing 17 live ammunition, and the second had its clip with 8 rounds likewise undischarged.

In convicting these two appellants, Yacat and Antonio, the lower court relied on the testimony of Ramon Lopez and Pacifico Arceo to the effect that all the soldiers took part in the shooting, and on the statement of Detective Napoleon Albano that they made no admission to that effect when he questioned them.

The version given by Ramon Lopez and Pacifico Arceo is substantially as follows: Tiongson pointed his .38 caliber revolver at the Lopez brothers and their cousin and then ordered them to march to the middle of the street. At the same time, Tiongson ordered "German" to call Guieb. Tiongson then shouted "Alex", presumably some kind of code word. One of the soldiers approached Tiongson and had a whispered conversation with him, left and then came back. At that moment the other soldiers had already come out to the street. Tiongson said, "sige, tirahin mo na," and fired the first shot, followed by continuous volley from German and the four soldiers.

The evidence given by Lopez and Arceo implicating appellants Yacat and Antonio is, as previously observed, contradicted by the finding of the ballistics expert presented by the prosecution that not a single bullet or cartridge case found in the premises or extracted from the victim's bodies came from the firearms of said appellants. Arceo

testified as to the number of soldiers who participated, but could not positively identify them individually at the trial. Considering the exciting and rather confused events of the evening, it is not improbable for him to be mistaken as to the exact number of the assailants. The testimony of Ramon Lopez concerning the part played by Yacat and Antonio is hardly any better. After the incident his sworn statement was taken at the Quezon City Police Department. On cross- examination at the trial he said:

P

Were you not asked also in that investigation to relate the incident which happened on June?

R

Yes, sir, I was asked.

P

And you answered those questions?

R

I answered.

* * * * *

P

On cross-examination you answered that 4 soldiers went out of the house and conversed with Mr. Tiongson, while in that declaration you talked of two soldiers coming out of the house of Mrs. Sayo, which of the two statements is true?

Atty. Yap: We just want to bring the attention of the Court to the materiality to show why we are asking the production of that statement. The defense here is that the two soldiers were at the back of the house. I want that to be appreciated.

P

You said that you were not feeling well because of the incident; do you mean to say that those statements which you gave because you were not feeling well at that time were inaccurate?

R

Maybe partly inaccurate, not all.

P

And particularly inaccurate with respect to the number of soldiers who responded to the call of Mr. Tiongson at that time?

R

I do not know if it was inaccurate, what I recall is that there were 4 soldiers.

P

That is what you recall now but what you were able to recall before in that investigation was two soldiers?

R

Yes, sir.

The spontaneous declaration of Ramon Lopez right after the incident that only two soldiers were involved in the shooting throws a serious doubt upon his subsequent declaration in court when he tried to incriminate all the four appellants, especially in the light of the established physical fact that the firearm of Yacat and Antonio did not fire any of the pertinent bullets retrieved and submitted for ballistics examination.

Much reliance was also placed by the lower court on the declaration of Detective Napoleon Albano that when he inquired from the one who was in charge of the guards (presumably referring to Guieb) as to who shot the two Lopez brothers, Guieb "admitted they were the ones who fired the shots"; and that "I also inquired from them who among them fired at the victims because beforehand at the scene of the crime they already admitted having fired the shots, and they said all of them fired."

Certain circumstances detract from the weight of this testimony. First, not one of the soldiers made a written statement confirming the alleged admission. Second, while Albano himself said he considered such admission to be important, he nevertheless made no mention thereof in his written report submitted to the fiscal's office. And third, the transcript shows that Albano did not ask the soldiers individually if each had participated in the shooting, but simply addressed the question to them as a group.

Guieb and Alicante both testified that at about 7:00 pm. of June 26, 1952, Yacat and Antonio were instructed by Guieb to guard the back part of the Sayo residence. Before the incident the four soldiers were in front. A certain Captain Camacho, a friend of Atty. Sayo, arrived, followed presently by Atty. Sayo himself. Right after Sayo's arrival, Yacat and Antonio, in obedience to Guieb's order, went to the backyard to stand guard there, while Guieb and Alicante remained at the street side of the house. A little later a maid called Yacat and Antonio to eat in the kitchen, located on the ground floor at the back. It was while they were eating that they heard shots. The lights went out and they got hold of their respective firearms, ready for any eventuality. Captain Camacho rushed down the stairs to get his son whom he had left in his car parked outside. When he came back he ordered Antonio to continue guarding the premises back of the house and had Yacat stay near him as he sought refuge inside the toilet. The foregoing testimony of Yacat and Antonio is corroborated by both Captain Camacho and Atty. Sayo.

We are of the opinion, on the evidence as a whole, appellants Yacat and Antonio are entitled to exoneration on the basis, at least, of reasonable doubt as to their guilt.

We now come to the appeal of Guieb and Alicante. They admit having taken part in the shooting, but claim (1) that they did not conspire with Tiongson to kill the victims; (2) that the killings were not qualified by treachery and abuse of superior strength; (3) that the crimes were not aggravated by its having been committed by a band; and (4) that the death of the Lopez brothers was not caused intentionally, but resulted from the erroneous belief on the part of the appellants that they were being attacked.

On the first issue, we agree with appellants that their presence at the Sayo residence on the night in question was not in pursuance of a conspiracy. They were there upon orders of a superior officer and in the performance of the assignment given to them. However, the shooting itself was preceded by circumstances which show that a common accord actuated appellants. Thus when Tiongson shouted "Alex," Guieb and Alicante came out and deployed in front of the Sayo residence, facing the Lopez brothers and their cousin Arceo; and when Tiongson said "sigue, tirahin mo na" and fired the first shot the soldiers then followed suit with a hail of bullets that literally riddled the two victims.[1]

Guieb and Alicante contend that they acted in the erroneous belief that they were being attacked and that they killed the victims accidentally, without fault or intention, while they were engaged in the performance of a lawful act with due care. We find no merit in this contention.

Guieb's version is as follows: That night, while he and his companions were standing guard at the Sayo residence, he heard a commotion, followed by two shots, so he ordered Alicante to take cover. Guieb himself sought refuge beside a car (belonging to Capt. Camacho) parked in front of the house. As the gunfire became intense he ordered Alicante to shoot back. Both of them fired at their supposed attackers, whom they could discern only as figures in the dark. When the firing ceased, he went out to reconnoiter the place and it was then that he saw the two victims lying dead. Alicante testified along the same lines as Guieb. The aforesaid version, however, is far from convincing. The clear evidence for the prosecution is that Arcco and the three Lopez brothers were not mere figures in the dark just before the shooting. Tionson was herding them in the middle of the street in plain view of Guieb and Alicante.

They were unarmed, made no hostile move at all and had their hands raised in a gesture of helpless surrender. In fact no shots were fired other than with the four firearms mentioned heretofore. The situation could not possibly have given Guieb and Alicante cause to believe that they were being attacked.

The killings were attended by the qualifying circumstance of treachery. The attack, though frontal, was sudden, and perpetrated in a manner tending directly and especially to insure its execution, free from any danger that the victims might defend themselves. As to the circumstance of abuse of superior strength, we agree with the Solicitor General that the same was absorbed in the circumstance of treachery. (People vs. Peritu, L-13895, Sept. 30, 1963; People vs. Guarnes, L-12819, Dec. 29, 1960; People vs. Balines, Lr-9045, Sept. 28, 1956).

As aggravating circumstance, it has been sufficiently established that the offenses were committed by a band, that is, by more than three armed malefactors acting together. Four of the six guns recovered after the shooting appear to have been fired. Three of those from guns were used by Tionson, Guieb and Alicante, respectively. The fourth, a .45 caliber automatic pistol, was seen by Ramon Lopez and Pacifico Arceo in the hands of the man known to them only as German. Five empty cartridges found at the scene and submitted for ballistics examination are definitely known to have come from the said firearm.

The mitigating circumstance of voluntary surrender should be considered in favor of appellants Guieb and Alicante, it appearing that they gave themselves up to the Quezon City police right after the incident. There being two circumstances, one aggravating and one mitigating, to offset each other, the penalty provided by law for each of the offenses, namely, reclusion temporal in its maximum period to death, should be imposed in its medium degree, which is reclusion perpetua, as imposed in the judgment of the trial court.

Wherefore, the judgment appealed from is reversed with respect to appellants Antonio Yacat y Belmonte and Pablo Antonio y Feria, who are hereby acquitted; and affirmed with respect to appellants Paulino Guieb y Mendoza and Wilson Alicante, y Morales, who shall be solidarily liable, with the accused Julian Tionson y de la Cruz, for the indemnities provided for in said judgment. The costs shall be apportioned accordingly.

Bautista Angelo, Concepcion, Reyes, J. B. L. Barrera, Paredes, Dizon, Regala, Bengzon, J. P. and Zaldivar, JJ. concur.

[1] This Court has repeatedly decided that Conspiracy may be inferred from the acts of the accused themselves when such acts point to a point purpose and design (see People vs. Upao-Moro, G. R. No. L-G771, May 28, 1957, and cases cited therein). Unlike in evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his intended deed (U. S. vs. Gil, 13 Phil. 530), conspiracy arises at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime committed by anyone of them (People vs. Abrina, et al. G. R.

No. L-7849, December 1957). Hence, the accord between the accused is evidence by their concerted assault upon their victim, rendering each assailant liable for the entire consequences of the unlawful act. *People v. Monroy and Idica*, 65 Off. Gaz. 9042.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.