

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SABANDAL, DEFENDANT-APPELLANT.*G.R. No. L-31129. September 30, 1971*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7ea379bbdfd/>**FERNANDO, J.:**

For a life needlessly lost, that of Claudio Oliveros, in a senseless encounter, appellant Jose Sabandal and Rosalio Saluper were prosecuted for murder, the killing being qualified by treachery. Only appellant, who fired the fatal shot, was convicted of such an offense; the other accused, who did not appeal, being held liable only for the offense of slight physical injuries inflicted on the aggrieved party, no conspiracy having been shown. Appellant would impress on this Court that the judgment should have been one of acquittal, as the shooting was the result of his having acted in the fulfillment of a duty or in the lawful exercise of his office, he being a member of the police force of Gingoog City. A careful study of the evidence of record, however, does not justify the setting aside of the decision reached by the lower court. We affirm.

The conviction arose from the facts as testified to by the prosecution given credence by the trial court. On June 9, 1968, at around 8:30 in the evening, the victim, Claudio Oliveros and five others, including the witness Rogelio Rafal, were gathered together below the house of another eyewitness, Loreto Caban in Sitio Balanoc, Gingoog City. In no time at all, Rosalio Saluper and appellant Jose Sabandal arrived on board a truck, parking it near such house.[1] The two then approached the Oliveros group and asked whether there were prostitutes available.[2] It was Caban who answered: "There are no prostitutes here." Appellant Sabandal and Saluper, however, did not believe such a statement.[3] Appellant, desirous of finding out for himself, went up the house, with Saluper being left behind.[4] After ascertaining that such indeed was the case, appellant immediately proceeded downstairs, and while still descending, shouted to Rosalio Saluper: "Pare, there [are no women]."[5] Saluper was not to be mollified. He exclaimed in anger: "You all deserve a kick." [6] He vented his displeasure by giving a blow to Oliveros.[7] A fist fight ensued, with Oliveros apparently on the losing end.[8] Appellant Sabandal, without more ado and fast on the draw, fired at Oliveros, hitting him at the "right side of his stomach." [9] With such a turn of events, the rest of the group immediately dispersed, scampering for safety. Oliveros, badly wounded, attempted to flee, but was fired upon again by appellant, without however the bullet finding its mark.[10] Thereafter, together with Saluper, on board the same truck, appellant hurriedly left the place.[11]

After they had gone, Loreto Caban and one Jorge Daculap, coming out of their hiding place, looked for Oliveros whom they found still alive some 30 meters behind Caban's house crying for help: "Brod, don't leave because I will die with this. I was shot by Jose Sabandal and Rosalio Saluper." [12] They were unable to do much for the victim as, trying to carry him, they found him too heavy. His wife was then fetched. With the help of the neighbors, Oliveros was taken to the Mission Clinic at Gingoog City. He died two hours later, having in the meantime given an ante-mortem statement pointing to appellant as the one who shot him.[13]

As noted in the lower court decision before us, the doctor who conducted the autopsy found two gunshot wounds traceable to the fatal shot on the body of the deceased, one being located at the "region of the back, right thoracic

area near the scapular region, posterior midclavicular line" and the other at the "right lumbar region of the abdomen," The cause of death, according to the medical finding, was "shock secondary to massive intraperitoneal and intrathoracic hemorrhages secondary to perforation of right lung; liver, duodenum, mesenteric portion of jejunum, right kidney secondary to gunshot wound." [14]

As set forth in the appealed decision, "the accused Jose Sabandal [was found] guilty beyond reasonable doubt of the offense charged of murder, and there being no aggravating or mitigating circumstances [was] sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided for by law and to indemnify the heirs of the deceased Claudio Oliveros in the sum of P12,000.00." [15]

In this appeal, the two principal errors discussed jointly in the well-written brief of counsel de oficio, Senator Lorenzo Sumulong, would find fault with the above decision as appellant, who was the peace officer, being in the Secret Service Division of the police force of Gingoog City, was allegedly entitled to the benefits of the justifying circumstance of having acted in the fulfillment of a duty or in the lawful exercise of a right or office, the lower court failing to accord belief and credence to the evidence submitted by him. Hence his acquittal is sought. As noted at the outset, such a plea, while strongly pressed, is unconvincing. The conviction must be affirmed.

1. The brief for the appellant would present his side of the case thus: "On June 9, 1968 at about 7 o'clock in the evening while he was at the residence of the City Mayor, his co-accused Rosalio Saluper arrived and reported [his being mauled] at Balanoc by somebody and because of his assignment he referred the matter to the Mayor, and when the latter came to know about it he, Jose Sabandal, was ordered by the Mayor to go with Rosalio Saluper to find out who were the persons who mauled the latter and to arrest them * * *. When he and Rosalio Saluper arrived at Balanoc, Rosalio Saluper pointed to him the place where the incident happened. It was dark and at a distance he saw a light. They proceeded to the lighted place, and when they arrived, one person approached them. They went down from the three-fourth truck and asked the person who approached them who were those persons who were noisy and the man replied that those persons were drinking and waiting for women. When Caban told him that the men were waiting for women, he asked Caban to go upstairs and at the same time asked Rosalio Saluper to identify the man who boxed him. After finding out that there were no women upstairs, Sabandal and Caban decided to go upstairs and while going upstairs he, Jose Sabandal, saw Rosalio Saluper being boxed by one person and was surrounded by the others. Upon seeing that his companion was being boxed he said 'Don't you know that I am an authority of the law?' * * * and when he was about to separate Saluper and the other person who boxed him, whom he later came to know to be the victim, Claudio Oliveros, another person was holding with his two hands above his (Sabandal's) head, and this man he came to know, later as Jorge Daculay. Fortunately, however, he was able to evade the blow by Jorge Daculay with the stone in his hands, and what he did in order to stop Daculay from any further attempt to harm him, [was to draw] his pistol, and Daculay upon seeing his pistol drawn, ran away. He chased Daculay but upon reaching a dark place, he became afraid so he fired a warning shot. Afterwards he went back to the place of the incident because he heard shouts for help, and there he saw Saluper and Claudio Oliveros still fighting, grappling and rolling on the ground while the other persons were holding pieces of wood and bamboo. Realizing the situation, he shouted to stop them, but the three persons instead of stopping the fight ran away, and the two (Saluper and Oliveros) continued fighting and grappling. He tried his best to separate the protagonists, but he found it difficult so what he did was to bend and shove Saluper who was on top of this adversary. When he succeeded in separating Saluper, the other person was still lying face up and while he was bending towards him, said person (Oliveros) kicked him, and he was hit on his left shoulder causing him to fall down backward * * *. When he was trying to regain his position, Claudio Oliveros kicked him again hitting him this time on his right hand which was holding his pistol, and simultaneously after that, there was an explosion which he did not notice if somebody was hit, and after that [he saw] Rosalio Saluper and the other person with whom he was grappling still lying on the ground." [16]

It is to be noted that the argument thus advanced was raised and rejected by the lower court. The decision on appeal explains why the version of the prosecution is entitled to greater credence and belief. Thus: "The location of the two wounds which indicates the trajectory of the bullet jibes completely with, and confirms, the version of the eye-witnesses for the prosecution that the victim was staggering, body leaning backwards as if to fall on his back, when the accused Sabandal fired the first shot. The second shot when the victim was on the run apparently was a miss. The story of the accused Jose Sabandal is fishy from the very beginning. And worst, when the accused Sabandal was asked to demonstrate his position and that of the victim at the precise time the victim allegedly kicked him on the right hand and caused his pistol to explode accidentally, it was found that if such was their relative position and the position of the pistol, the trajectory of the bullet would not have been as indicated by the wounds on the right lumbar region of the abdomen and the right thoracic area near the scapular area. Accused Sabandal demonstrated that at the precise time his pistol accidentally exploded he was seated on his buttocks legs extended, with his left hand braced against the ground to support him and his right hand holding the pistol parallel to the ground. The victim was lying face up with the right leg extended and the right foot touching Sabandal's right upper arm. The pistol was one (1) foot and five (5) inches from the ground. On the other hand it is to be noted that the difference in elevation between the wound on the abdomen and the wound on the back is nine (9) inches measured from the malleolus of the right leg. With the help of a meter stick to trace the trajectory of the bullet from the pistol in the position demonstrated it was found improbable, if not impossible, for the entrance wound to be on the abdomen. When the accused Sabandal was confronted with the improbabilities in his testimony, he changed the position of the pistol and explained that at the time his pistol exploded, he was holding it limply with his right hand; and then later on said that he could not tell exactly the position of his pistol at the time it accidentally exploded." [17]

Nor is this all that the lower court said on the subject, as shown by the following: "Moreover, there is absolutely no corroboration to the alleged accidental firing. According to the accused Rosalio Saluper, who from his testimony seems to lose consciousness always at the critical moment, he was almost unconscious when he heard the shot and when he recovered consciousness the victim was no longer beside him. So desperate were the accused in their need for witnesses to support their story that they had to resort to the testimony of a woman of ill-repute. But even this woman failed to corroborate the alleged accidental shooting." [18] Further: "Besides, if the accused Sabandal were as innocent as he claims, why did he fail to report the incident immediately that same night of June 9, 1968. From the testimony of the Deputy Chief of Police it appears that Sabandal did not report until the following day, and only after a memo was sent to him to surrender. Then strangely he refused to submit to an investigation by his fellow officers and instead insisted on making an affidavit of his own. What had he to fear from his fellow officers? All these lean heavily against the accused Sabandal's pretension of innocence." [19]

What was said in *People v. Beraces* [20] finds relevance: "It is significant that in this appeal the attack on the correctness of the lower court decision is centered on the proposition that the prosecution failed to prove beyond reasonable doubt the guilt of the accused. Appellants would have this Court disregard the findings of the trial judge as to the weight to be given the evidence of record. That such a power exists is not to be denied. It is equally undeniable that unless a fact or circumstance of weight or influence has been shown to be disregarded by the lower court there is no justification for its judgment as to the credibility to be attached to the testimony offered by the witness being disturbed. So this Court had occasion to reiterate in the relatively recent case of *People v. Gumahin*. Thus: 'The findings of the lower court embodied in a well-written decision cannot only stand the test of the most rigid scrutiny but also has in its favor the well-settled principle that as far as credibility is concerned the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies will be accorded the highest degree of respect by this Tribunal.' Appellants were unable to demonstrate that such a principle should not be paid deference." [21]

2. More specifically, concerning the defense of appellant having acted in the fulfillment of a duty as a peace officer or in the lawful exercise thereof,[22] it cannot be said that the rejection thereof by the lower court amounted to an error. That there is such a justifying circumstance admits of no doubt. It is equally undoubted that the codal requirements are plain and explicit. The public official must act in the fulfillment of his duty or in the lawful exercise of the position he holds. It must be evident then that he is acting in such a capacity, otherwise such a plea is unavailing. There are cases when the certainty of an accused performing the act in the discharge of his official duties is quite apparent. This is not one of them. Rather, the evidence speaks in no uncertain terms that appellant figured in a brawl arising from an incident in no wise connected with the performance of a function vested in him by law. No other conclusion is justifiable in the light of the facts disclosed. Such a defense was rightfully rejected then.

The lower court thus paid heed to what has been decided by this Tribunal. So it has been from *United States v. Bertucio*,[23] a 1901 decision. The opinion of Justice Dizon in the latest case in point, *Valcorza v. People*,[24] promulgated in 1969, is illuminating. Thus: "While We have not lost sight of the fact that the deceased Pimentel was charged with a relatively minor offense, namely, stealing a chicken; and while We do not in any way wish to encourage law enforcing officers to be trigger-happy nor to employ force and violence upon persons under their custody, We cannot, in the consideration of this case, disregard the following facts: the said deceased, in violation of the law, had escaped from detention; when ordered to stop by Sgt. Daiton - whom he must have recognized as a peace officer in his pursuit - he ran away and then threw himself into a creek to elude his pursuer; after sometime he suddenly emerged from bushes near which petitioner and a fellow policeman were and assaulted the former twice with a stone and then ran away again pursued by petitioner and his companion; that petitioner does not appear to be a trigger-happy policeman as shown by the fact that he had fired five cautionary shots into the air and decided to aim directly at the escaping detainee only when he had already reasons to fear that the latter would be able to elude him and his companions. These facts and circumstances constrain Us to hold that the act thus performed by petitioner - and which unfortunately resulted in the death of the escaping detainee - was committed in the performance of his official duty and was more or less necessary to prevent the escaping prisoner from successfully eluding the officers of the law. To hold him guilty of homicide may have the effect of demoralizing police officers discharging official functions identical or similar to those in the performance of which petitioner was engaged at the time he fired at the deceased Pimentel, with the result that thereafter We would have half-hearted and dispirited efforts on their part to comply with such official duty. This of course, would be to the great detriment of public interest." [25]

To repeat, appellant clearly is not entitled to assert that what was done by him was in the fulfillment of a duty or in the lawful exercise of his office.

WHEREFORE, the appealed decision of July 31, 1969 finding the appellant Jose Sabandal guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua with all the accessory penalties provided for by law as well as to indemnify the heirs of the deceased Claudio Oliveros the sum of P12,000.00 is affirmed. With costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] T.s.n., Session of Nov. 26, 1968, pp. 19-20; Session of Feb. 11, 1969, P. 2.

[2] Ibid, p. 21; *ibid*, pp. 2-3.

[3] Ibid.

- [4] Ibid.
- [5] Ibid.
- [6] Ibid, p. 32.
- [7] T.s.n., Session of Feb. 11, 1969, p. 3.
- [8] T.s.n., Session of Nov. 26, 1968, p. 22.
- [9] Ibid; T.s.n., Session of Feb. 11, 1969, p. 3.
- [10] Ibid; T.s.n., Session of Feb. 11, 1969, p. 4.
- [11] T.s.n., Session of Nov. 26, 1968, p. 23.
- [12] Ibid, pp. 23-24.
- [13] Ibid, p. 9.
- [14] Decision, Appendix to Brief for Appellant, pp. 2 and 3.
- [15] Ibid, p. 10.
- [16] Argument, Brief for the Appellant, pp. 7-9.
- [17] Decision, Appendix to Brief for Appellant, pp. 7-8.
- [18] Ibid, p. 8.
- [19] Ibid, pp. 8-9.
- [20] L-25016, March 27, 1971, 38 SCRA 127.
- [21] Ibid, p. 132, citing *People v. Gumahin*, L-22357, Oct. 31, 1967, 21 SCRA 729, Cf. *People v. Tila-on*, L-12406, June 30, 1961, 2 SCRA 653; *People v. Curiano*, L-15256-57, Oct. 31, 1963, 9 SCRA 323; and *People v. Lumayag*, L-19142, March 31, 1965, 13 SCRA 502.
- [22] According to Art. 11, par. 5 of the Revised Penal Code: "The following do not incur any criminal liability: *
* * (5) Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office."
- [23] 1 Phil. 47. Cf. *United States v. Barbosa*, 1 Phil. 313 (1902); *United States v. Capisonda*, 1 Phil. 575 (1902); *United States v. Cuison*, 4 Phil. 194 (1905); *United States v. Magno*, 8 Phil. 314 (1907); *United States v. Aviado*, 38 Phil. 10 (1918); *People v. Delima*, 46 Phil. 738 (1922); *People v. Francisco*, 57 Phil. 418 (1932); *People v. Oanis*, 74 Phil. 257 (1943).
- [24] L-28129, October 31, 1969, 30 SCRA 143.
- [25] Ibid, p. 149.

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.