

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO GUBA, DEFENDANT-APPELLANT.

G.R. No. L-29190. October 29, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a decision of the Court of First Instance of Pangasinan, in its Criminal Case No. D-1795, finding the accused guilty beyond reasonable doubt of the crime of murder. The dispositive part of the decision follows:

"WHEREFORE, this Court finds the accused Feliciano Guba guilty beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code, and hereby imposes upon him the penalty of reclusion perpetua to indemnify the heirs of the late Jose Fernandez in the sum of P6,000.00; and to pay the costs.

The information originally charged FELICIANO GUBA, the herein accused-appellant, with FEDERICO U. CRUZ of the crime of murder, and recites:

"The undersigned Assistant Provincial Fiscal after conducting the preliminary investigation in accordance with the provisions of Republic Act 1799 hereby accuses FELICIANO GUBA and FEDERICO U. CRUZ of the crime of MURDER, committed as follows:

That on or about the 4th day of March 1965 at early dawn, in Poblacion, Mapandan, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused FELICIANO GUBA and FEDERICO U. CRUZ, the former a duly appointed police-man and the latter a duly appointed Municipal Judge both of Mapandan, Pangasinan, cons-piring, confederating and mutually helping one another with evident premeditation, with intent to kill and with the use of carbine, did then and there wilfully, unlawfully and feloniously shoot and kill one JOSE FERNANDEZ, a detention prisoner of the municipal jail of Mapandan, Pangasinan and as a consequence of which the victim suffered the following injuries to wit:

Abrasions: bulbar region, left, medial, 1.5 x 1.0 cm.; chin, right, 2.5 x 1.0 cm.; base of neck, posterior, across midline, 6.0 x 0.6 cm.; elbow, right posterior, 0.6 x 0.2 cm. and left, 6.4 x 3.5 cm.; wrist, right, 1.0 x 0.5 cm. and left small finger, 2.0 x 1.0 cm.

Contusions, scapular region, right, 5.7 x 2.8 cm.; knee, left, anterior, 2.0 x 1.0 green-ish purple color.

Contused-abrasions; right shoulder, posterior 4.5 x 4.0 cm.; arm, right, posterior, middle 3rd, 1.3 x 1.1 cm. and left, 3.0 x 3.0 cm.

Gunshot wound:

Entrance wound-located at the back, left, 9.0 cm. to the left of the posterior median line, level of the 9th intercostal space, along the midscapular line, and 136.5 cm. from the left heel, size 0.8 x 0.7 cm. shape; oriented downwards and medially; with contusion collar-widths that the supero-lateral border measuring 0.5 cm. and 0.1

cm. - at the rest of the border, and inverted borders.

Direction and involvement: directed from left to right, downwards and anteriorly; penetrating the left thoracic cavity, posterior thru the 9th intercostal space, along the midscapular line, then perforating pericardial sac and lacerating extensively the heart, right side, thru the posterior mediastinum, producing extensive hematoma, then perforating the lower lobe of the right lung at its medial aspect, producing extensive hematoma on the dome of the liver, and then thru the thoracic wall, right, anterior, level of the 6th rib, making an;

Exit wound -- located at the chest, right anterior, lower portion, 2.0 cm. to the right of the anterior median line, level of the 6th rib, along the parasternal line; size 1.7 x 0.9 cm., oval shape with everted borders.

which injuries caused the instantaneous death of the said JOSE FERNANDEZ."

After a reinvestigation, and specifically on 23 February 1967, the Provincial Fiscal of Pangasinan moved that the case against Federico U. Cruz be dropped for the reasons that only witness Domingo Alican appeared, and "for lack of interest" on the part of the victim's widow.[1] On 28 February 1967, the court dismissed before the plea the case against Federico U. Cruz[2], thus leaving Guba as the lone accused.

The evidence for the prosecution shows that on 3 March 1965 Domingo Alican, one of prosecution witnesses herein, went to the house of the deceased, Jose Fernandez, in barrio Torres, Mapandan, Pangasinan, for the purpose of buying sugar (tagapolot). Alican followed Fernandez to the poblacion when Fernandez' wife informed him that her husband was there. Having found Fernandez, both proceeded to the parking space of tricycles to board one in returning to the house of Fernandez where Alican was going to see the sugar. While Fernandez was talking to the driver, Alican was hit at the left back part of his head with a stone. Fernandez ran because stones were also being thrown at him.

Alican then went to see the Chief of Police of Mapandan to complain about the incident. While there, Jose Fernandez arrived accompanied by a corporal and a policeman. Then Municipal judge Federico U. Cruz, the other accused in the information, arrived and remarked, "So, you are here again, Jose. May be you are the one again who caused the trouble. Let me see how tough you are. I will put out your soul." Corroborating witness, Reynaldo Erfelo, quoted the judge as specifically saying: "Jose you are here now to pay for your faults. Tonight, we will vanish your soul," translated from the Pangasinan dialect, "Ibalang ko tay camareruam." After this, the judge allegedly instructed the Chief of Police to file a complaint for public scandal against the two and put them in jail.

Jose Fernandez and Domingo Alican were thus detained in the municipal jail on 3 March 1965 at 5 in the afternoon. Both were still in jail in the early dawn of the following day when Pat. Feliciano Guba, identified in court as the accused, came and awakened Fernandez. The accused, calling Fernandez as "Bayao"(appellant being a cousin of Fernandez' wife), said that he was already off-duty and that he was going to help Fernandez secure a bond for his release. Fernandez then asked how much bond was necessary for him and Alican and the accused answered that it was P1,000.00 for each.

After fetching water for Alican, Fernandez and the accused went out again. About 30 minutes after they left, the inmates heard one gun report, which led them to nudge each other, and Alican to remark, "I think they shot Jose." The detainees numbered 8, including Alican and Fernandez.

PC corporal Caasi, accompanied by Pat. Petrola, soon after arrived at the jail and inquired from the inmates if they knew that Fernandez was already dead. He said further that any one who would tell that Fernandez was brought out of jail to be killed would be the next to suffer the same fate. Pat. Petrola then ordered the prisoners to go to sleep and not to talk about the matter. At about 5 or 6 in the morning of the same date, Judge Cruz also visited the inmates in jail and likewise ordered them not to talk about what happened, otherwise what befell Fernandez would also happen to them.

Alican's testimony up to this point was substantially corroborated by Reynaldo Erfelo, the other prosecution witness.

On 3 May 1965, Alican was in a cockpit in barrio Licsi when the accused-appellant saw and called him saying that if he (Alican) wanted to live, he should not be a witness regarding the death of Jose Fernandez. Alican answered "how" when he already signed the subpoena. The accused then tried to draw his gun, but Alican was able to wrest the same from the accused. This gun was surrendered by Alican to policeman Macaraeg at the Municipal Hall of Manaoag, Pangasinan. Alican then filed a criminal complaint^[3] against Pat. Guba with the municipal court of Manaoag as a result of this incident, while the latter filed a countercharge. The case, however, was settled upon the intervention of politicians.^[4]

Rosario Guba, widow of the deceased Fernandez, was also called to testify. She learned about her husband's death that same morning of 4 March 1965 in her house through her father. She then went to the presidencia in town. She saw many people at the back thereof when she arrived, among them, Judge Cruz, the accused, and the municipal health officer, Dr. Maximo Al. Parayno, Jr. Her husband's body was being opened and autopsied. She asked why they did not wait for her, but Dr. Parayno answered that she arrived very late and that they were looking for the bullet. She also asked the accused, who is her second cousin, why he shot her husband and the accused answered that Fernandez was running away. She then remarked that he could have just shot him in the leg, to which he did not reply.

Mrs. Fernandez' father went to Dagupan in the meantime to seek the aid of the NBI (National Bureau of Investigation), but it was only in the following day that the NBI came. The body of the husband was moved to their house at already 6 in the afternoon because they waited for that help.

The Death Certificate dated 5 March 1965, signed by Dr. Parayno, Jr., shows that Fernandez died of shock due to profuse hemorrhage caused by a gunshot wound.^[5] Death occurred at about 3:30 am. of 4 March 1965 at the public plaza. The probable distance between assailant and the victim was placed at about 22 feet.^[6]

The defense, on the other hand, does not contest the fact that the victim died of gunshot wound and that it was the accused who shot him. In fact it admitted Exhibit "B", the Death Certificate, when the same was presented by the prosecution. However, the reason given by the accused-appellant for the shooting was that the victim was running away and would not stop despite warning shots. It is, therefore, claimed by the defense that the accused did not incur criminal liability for the killing because it occurred in the course of performing an official duty which was to prevent the escape of a prisoner.

Accused-appellant himself recounted that he was on duty as guard of the municipal building from 8 in the morning of 3 March 1965 to 8 in the morning of the following day, 4 March. At 3 in the morning of this latter day, Jose Fernandez, one of the eight detainees, and the deceased herein, asked permission from him to go out to attend to his personal necessities. Accused-appellant opened the door^[7] and Fernandez went out first, while the former locked the door by inserting a chain through a hole therein, which took sometime to do. The accused-appellant did not see Fernandez after he locked the door, so he looked for the said detainee in the toilet which was about 10 meters from jail, but Fernandez was not there. When accused-appellant did not find Fernandez in the municipal building, he looked around. It was then that he saw Fernandez crossing the street. Accused-appellant called Fernandez to stop twice but the latter did not do so; he then fired two shots in the air. When Fernandez did not heed the alleged warning, accused-appellant fired towards Fernandez who fell, face downward.

Accused-appellant denied that the reason for his taking Fernandez out of jail was to help him find a bond for his release. He reported the shooting incident to the Chief of Police upon the latter's arrival at the municipal building from patrol duty, at 5 o'clock the same morning.

The court a quo convicted accused-appellant for murder, which judgment of conviction is now before Us on appeal, with the accused-appellant assigning the following errors: The trial court erred in -

1. Giving credence to the testimony of the witnesses for the prosecution, particularly Alican and Erfelo;
2. Holding the shooting of Fernandez to be unjustified because he was only charged with a light felony;
3. Finding the existence of treachery in view of the fact that the accused was shot from behind; and
4. Finding the accused guilty of the crime charged and in sentencing him therefore.

It has been repeatedly held that as a rule, the finding of the trial court as to the credibility of witnesses is not to be disturbed on appeal to the Supreme Court.[8] Witnesses Alican and Erfelo were two of eight detainees in jail when the accused-appellant came to awaken Jose Fernandez, stating that he was already off-duty and that he would help Fernandez secure the bail for his release. The said witnesses, specially Erfelo, had no motive at all to testify falsely against the accused-appellant. The fact that the latter was actually on duty from 8 in the morning of 3 March 1965 to 8 in the morning of the following day, as shown in Exhibit "5-A", a certification of entries on the police blotter on those dates[9] does not necessarily mean that what the witnesses heard was not true. On the contrary, as will be seen later, it strengthens the prosecution's stand that Fernandez was taken out of jail to be killed. Witnesses Alican and Erfelo likewise quoted PC corporal Caasi and Judge Cruz as warning the inmates not to talk about what happened, otherwise what befell Fernandez would also happen to them. Only truth could have motivated these persons in testifying against accused-appellant, who is a policeman, against Cpl. Caasi of the PC, Pat. Petrola, another policeman, and even the municipal judge, Federico U. Cruz. Moreover, neither Cpl. Caasi, Pat. Petrola, nor the municipal Judge himself were presented to refute the aforesaid testimony regarding the warning or threats, especially after witness Erfelo pointed in court to Judge Cruz during the latter's cross-examination of said witness, as one of those who made the threat. It will be further noted that the accused-appellant himself later threatened Alican with a gun in a try to stop the latter from testifying regarding the death of Fernandez. As a result of this incident, Alican filed a criminal complaint against the herein accused-appellant with the municipal court of Manaoag, Pangasinan. The caution or warning made by the accused to the jailmates of Fernandez (not to reveal what they had heard or seen shows the guilt of the appellant of the crime with which he is charged).[10] Even more important, there is no proof that the 3 shells allegedly found in the plaza came from the carbine of this appellant, and the prisoners at the jail heard only one shot.

It is also stressed that the accused had no motive for deliberately doing away with Fernandez, pointing out the fact that the deceased's wife and accused-appellant are second cousins. It has been held that motive is unessential to conviction in murder cases when there is no doubt as to the identity of the culprit.[11]

In the absence, therefore, of showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, this Court is not inclined to disturb the factual finding of the court a quo as to the credibility of said witnesses.[12]

Appellant's claim that he shot Fernandez in the back because the latter was running away and would not stop despite appellant's warning shouts and shots is further belied by the autopsy data. The necropsy report (Exhibit "6") states that the victim was shot from a distance of approximately twenty-two feet, which tallies with appellant's own report to the Chief of Police (shortly after the shooting) that he fired at Fernandez from a distance of six or seven meters. This distance is so short that appellant could not have had time to shout to Fernandez an order to halt nor fire two warning shots in the air before firing the fatal bullet, as he claims to have done, and explains the testimony of prosecution witnesses Alican and Erfelo that they heard only one shot fired. Under the circumstances, therefore, the shooting of Fernandez can in no way be considered justified as done in the performance of lawful duty.

Accused-appellant's version being discredited, there is no alternative but to concur with the trial court finding that it has been proved beyond reasonable doubt that the killing of Fernandez by appellant was attended by alevosia, since the victim was shot in the back. However, an examination of the information reveals that alevosia is not charged therein; hence the alevosia, although proved, can only be considered as a generic (not

qualifying) circumstance aggravating the crime of homicide.[13] Such aggravating circumstance, how-ever, is offset by the mitigating circumstance of voluntary surrender, the appellant having voluntarily admitted the killing to the Chief of Police of Mapandan shortly after the crime was committed.

The proper penalty for homicide is reclusion temporal (Revised Penal Code, Article 249), applicable in its medium degree in the absence of other aggravating or mitigating circumstance (Article 64, No. 1, Revised Penal Code). Giving appellant the benefit of the Indeterminate Sentence law (Act 4103, as amended by Act 4225), the proper imposable penalty is one with a minimum within the range of prision mayor which is the penalty immediately below reclusion temporal, and a maximum within the medium degree of the latter penalty.

WHEREFORE, the conviction of the appellant for the slaying of the late Jose Fernandez is affirmed; but the sentence imposed is modified by imposing upon said appellant a minimum of ten (10) years of prision mayor and a maximum of seventeen (17) years of reclusion temporal, with the accessory penalties prescribed by law. The civil indemnity due to the heirs of the victim is likewise increased to P12,000, as ruled in *People vs. Pantoja*, G.R. No. L-18793, 11 October 1968, 25 SCRA 468. Costs against the appellant.

Let a copy of this decision be referred to the Secretary of Justice for an inquiry into the pos-sible responsibility of Municipal Judge Federico U. Cruz, who was originally indicted jointly with accused Feliciano Guba, but subsequently excluded from the charge by the Provincial Fiscal on the patently ins insufficient ground of "lack of interest" on the part of the victim's widow.

SO ORDERED.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Makasias, J., did not take part.

[1] Page 2, Brief for the Appellee; Record, pages 67-69.

[2] Id., Id.

[3] Criminal Case No. 1189, See Affidavit, Exhibit "4", page 9, Folder of Exhibits.

[4] Page 11, Brief for the Appellee, T.s.n., 13 February 1968, pp 19-20

[5] Exhibit "B" page 3, Folder of Exhibits.

[6] See Exhibit "6", Medico-Legal Necropsy Report, dated 4 March 1965, page 12, Folder of Exhibits.

[7] Exhibit "1-A".

[8] *People vs. Dorado*, G.R. No. L-23464, 31 October 1969, 30 SCRA 53, See also *People vs. Ablaza*, G.R. No. L-27352, 31 October 1969, 30 SCRA 173, and *People vs. Briosos*, G.R. No. L-28482, 30 January 1971, 37 SCRA 336.

[9] Page 11, Folder of Exhibits.

[10] *People vs. Moreno*, G.R. No. L-2335, 7 March 1950, 85 Phil. 731.

[11] *People vs. Villalba*, G.R. No. L-17243, 23 August 1966, 17 SCRA 949, citing cases.

[12] See *People vs. Ablaze*, G.R. No. L-27352, 31 October 1969, *supra*

[13] *U. S. vs. Campo*, 23 Phil. 368.

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