

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO AQUIATAN, JAIME LIMPIADO AND SIMPLICIO ABAYON, ACCUSED, SIMPLICIO ABAYON, ACCUSED-APPELLANT.

G.R. No. L-32072. July 25, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

The accused Alfonso Aquiatan, Jaime Limpiado, and Simplicio Abayon were charged before the Court of First Instance of Northern Samar with Murder committed as follows:

"That on or about the 13th day of April, 1968, in the municipality of San Antonio, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with pistol, revolver and riot gun, conspiring, confederating together, and mutually helping one another, and taking advantage of their superiority in number, with intent to kill, evident premeditation and treachery, and without justifiable cause, did then and there, wilfully, unlawfully and feloniously attack, assault, and shoot one Aquillano Rodrigo, with accused Alfonso Aquiatan acting as the triggerman and accused Simplicio Abayon and Jaime Limpiado holding the arms of said Aquillano Rodrigo, thereby inflicting a gunshot wound which passed through and perforated vital internal organs and parts of the body of said Aquillano Rodrigo, which wound caused the instantaneous death of the latter."

After trial, Judge Juan Figueroa found the accused Alfonso Aquiatan and Simplicio Abayon guilty of the crime charged and sentenced each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law; to indemnify, jointly and severally, the heirs of Aquillano Rodrigo the sum of P15,604.00, and to pay two-thirds of the costs, but acquitted the accused Jaime Limpiado on ground of reasonable doubt and ordered his immediate release from custody. From that sentence, the accused Alfonso Aquiatan and Simplicio Abayon appealed to this Court. Alfonso Aquiatan, however, withdrew his appeal.[1]

The record of the case shows that at about 7:00 o'clock in the evening of April 13, 1968, the accused Simplicio Abayon, a member of the police force of San Antonio, an island community in Northern Samar, hired the Honda "scooter" of Guillermo Albez (also known as Pedro and Ruperto Albez) in going to Barrio Burabod, about 4 kilometers from the poblacion of San Antonio. Arriving at Barrio Burabod, Abayon stopped by the house of Avelino Balat. Abayon went up the house, leaving Albez on the ground. About an hour later, Abayon came down together with his co-accused, Jaime Limpiado and Alfonso Aquiatan, also members of the town's police force, and returned to the poblacion of San Antonio. Aquiatan rode on the "scooter", which he rented from Restituto Mahinay, while Abayon and Limpiado rode with Albez. On their way, Abayon was heard to say: "If we can locate Aking, he will have his small pox by this riot." And "Aking" referred to was Aquillano Rodrigo while the "riot" was the riot gun he was carrying. Upon reaching Sitio Pongdol at about 9:00 o'clock in the evening, the policemen stopped and inquired from Pedro Monares, who was in the porch of their house, where the house of Aquillano Rodrigo was. Monares pointed the house to them and the policemen retraced their steps, leaving Albez behind, who sat beside Monares in the porch. Albez told Monares: "If we can hear gun report it is sure that Aking is

already shot". Albez told Monares that that was what he heard from Abayon. Obviously, Aquillano Rodrigo was not in his house for the policemen were seen proceeding to the house of Melanio Gallardo nearby, where Aquillano Rodrigo was talking with Melanio Gallardo and Paulino Rodrigo. The policemen barged in upon them and Aquiatan addressed those inside: "Nobody should run." Then, Limpiado and Abayon went to Aquillano and each held him by the wrists which they then raised. Limpiado held the right hand of Aquillano while Abayon held the left hand. Abayon then told Aquiatan to shoot Aquillano Rodrigo "as nothing will happen to us as we are instructed by the Mayor." Aquiatan went towards Aquillano and shot him. Aquillano fell and the three policemen ran away. Aquiatan ran towards his "scooter" which was parked near the house of Monares and rode on it. But, the "scooter" would not start. So, Aquiatan pushed it towards the poblacion of San Antonio. Abayon and Limpiado ran towards the seashore. When they failed to re-appear, Albez, who was waiting for them in the house of Monares, went home.

After the three policemen left, Melanio Gallardo sent word to Simon Rodrigo, elder brother of Aquillano, who then brought Aquillano to the Allen Emergency Hospital at the mainland of Samar where he was operated on. But, he died the following day. Dr. Conchita R. Orquin, junior resident physician of the Allen Emergency Hospital certified that "AQUILLANO RODRIGO, 47 years old, male, married from San Antonio Samar, was confined and treated in the hospital on April 13, 1968.

"FINDINGS:

- Gunshot wound level of 6th intercostal space perforating inferior lobe of left lung passing through left diaphragm; perforating body of stomach; perforating duodenum; perforating jejunum, attachment of small intestines and perforating hepatic flexure (ascending colon).

- Internal Hemorrhage.

- CAUSE OF DEATH:- Cardio-respiratory failure; shock, irreversible secondary to internal hemorrhage."[2]

On May 14, 1968, Alfonso Aquitan was apprehended while boarding a bus and brought to Catarman, Samar, for investigation. Because he could not produce a license for the firearm found on him, he was charged with illegal possession of firearm.

The accused Alfonso Aquiatan admitted shooting Aquillano Rodrigo but claimed that he acted in self-defense. According to him, he was detailed in Barrio Burabod on April 13, 1968 to maintain peace and order in the cockpit and during the dance to be held that evening. At about 5:30 o'clock in the afternoon, while he was in the house of Barrio Captain Amado Tuan, a commotion took place near the cockpit. He went to the place and found Aquillano Rodrigo and Toto Dauden quarrelling over a bet, each claiming to have won. Aquiatan tried to pacify Aquillano and Dauden and told them not to create trouble. But, Aquillano challenged his authority as policeman, saying: "You are a liar (bogus) policeman" and boxed him on the chest. Celedonio Toleran also boxed him and then both ran away. Aquiatan did not pursue them. Instead, he returned to the house of the barrio captain and requested the latter to ask the town mayor for help as he was afraid that Aquillano and Celedonio might return and create further trouble. The barrio captain wrote a letter to the Mayor and not long thereafter, the appellant Simplicio Abayon arrived with instructions to bring Aquillano before the Mayor. But, they could no longer find Aquillano near the cockpit. So, Abayon, Aquiatan, and Pat. Jaime Limpiado, who resided in the barrio, returned to the poblacion of San Antonio. He and Limpiado rode tandem on the "scooter" which they rented from one Restituto Mahinay, while Abayon followed on board the "scooter" of Guillermo Albez. Upon arriving at sitio Pongdol, their way was blocked by Aquillano Rodrigo and Melanio Gallardo, who were standing in the middle of the road. Aquillano asked him if he was the one they were looking for, and when he answered: "Yes, you are the one," Aquillano immediately boxed him on the left eye, causing them to fall, and the right foot of Limpiado was pinned under the

"scooter". He tried to stand, but Aquillano pushed him down. Abayon arrived and ran towards Aquillano Rodrigo to pacify him. Upon seeing Abayon, Aquillano Rodrigo grabbed the riot gun of Abayon and the two wrestled for its possession. He blew his whistle and upon hearing it, Aquillano Rodrigo released the gun of Abayon saying: "You are whistling, it is a lie that you are a policeman," and at the same time drew his gun. So, he also drew his gun and shot Aquillano Rodrigo. When Aquillano Rodrigo fell, Melanio Gallardo drew his gun and fired twice. But, they were not hit as they had sought cover behind some coconut trees. When he saw Melanio Gallardo running, he also ran towards the poblacion of San Antonio. He went to surrender, but their chief of police was not there. So, he went to barrio Binisitahan to look for a motorboat to take him to Catarman so he could surrender to the PC Detachment stationed there. Finding none, he returned to barrio Pilar where he spent the night. The following day, he surrendered to PC Sgt. Ignacio Lumapak who took him to Catarman where his statement was taken down.[3] He was also brought to the hospital where he was treated of:

"Abrasion and contusion, left lower eyelid with slight hematoma;

"Abrasion and contusion at left elbow;

"Abrasion and contusion at right elbow;

"Complaining of moderate pain at left temple." [4]

He denied that they parked their "scooter" near the house of Pedro Monares or that they went up the house of Melanio Gallardo and shot Aquillano Rodrigo while the latter's hands were raised by Simplicio Abayon and Jaime Limpiado. His testimony is corroborated by his co-accused Jaime Limpiado and Simplicio Abayon.

Simplicio Abayon declared that he was detailed in the municipal building of San Antonio in the afternoon of April 13, 1968. At about 6:00 o'clock in the afternoon, the Mayor sent him to barrio Burabod to maintain peace and order in the barrio, in answer to the request of the barrio captain to send policemen as there were many drunks making trouble. When he did not find any more drunks there, he went back to the poblacion of San Antonio together with Alfonso Aquiatan and Jaime Limpiado. He rode on the "scooter" of Guillermo Albez, while Alfonso Aquiatan and Jaime Limpiado rode in the "scooter" driven by Aquiatan. Aquiatan was ahead of him by about 10 meters. Upon reaching Sitio Pongdol, their way was blocked by Aquillano Rodrigo and Melanio Gallardo who were standing on the middle of the road. When the lead "scooter" driven by Aquiatan stopped, he saw Aquillano Rodrigo box Alfonso Aquiatan, and the "scooter" driven by Aquiatan fell on its side, pinning the leg of Jaime Limpiado. He shouted at Aquillano Rodrigo: "Do not do that" and ran to separate Aquillano Rodrigo and Alfonso Aquiatan. Upon seeing him, Aquillano Rodrigo grabbed the riot gun slung on his left shoulder and they wrestled for its possession. When Alfonso Aquiatan blew his whistle, Aquillano Rodrigo released the riot gun and told Alfonso Aquiatan: "You are lying, whistling when you are not a policeman." Aquillano Rodrigo also "took at once his firearm" and pointed it at Alfonso Aquiatan who also drew his revolver and fired at Aquillano Rodrigo. When Aquillano Rodrigo fell, Melanio Gallardo fired twice in succession so that he sought cover behind a coconut tree. Then, he ran away because he was afraid.[5]

Simplicio Abayon also disputed the testimony of Melanio Gallardo, Pedro Monares, and Guillermo Albez, saying that Melanio Gallardo testified falsely against him because he had charged, at one time, the said Melanio Gallardo with illegal fishing with dynamite, while Pedro Monares, a half-brother of his mother, has a grudge against him because of their dispute over a parcel of land which originally belonged to their mother; and that Guillermo Albez testified falsely against him because he (Albez) was the favorite boy of Atty. Esteban Francisco, Jr., the private prosecutor.[6]

After going over the records of the case, We find no overriding consideration to reverse and set aside the decision of the trial court. The issue raised by the appellant is one involving credibility of witnesses and it suffices to

re-state the well-settled principle that this Court has invariably respected the findings of fact of a trial judge who was in a position to weigh and appraise the testimony before him except when circumstances of weight or influence were ignored or disregarded by him which does not obtain in this case. The imputation of bias on the part of the prosecution witnesses Melanio Gallardo, Pedro Monares, and Guillermo Albez are appellant's unfounded conclusions based merely from assumptions.

We also find that the trial court had correctly rejected the appellant's claim of self-defense there being no unlawful aggression on the part of the deceased. Melanio Gallardo categorically declared that while he and the deceased, Aquillano Rodrigo, and Paulino Rodrigo were talking inside his house, the three policemen, Alfonso Aquiatan, Simplicio Abayon, and Jaime Limpiado barged in upon them and Alfonso Aquiatan told them not to run. Then, Jaime Limpiado and Simplicio Abayon each held the arms of the deceased Aquillano Rodrigo and raised them, after which Simplicio Abayon told Alfonso Aquiatan to shoot the deceased Aquillano Rodrigo. After Alfonso Aquiatan shot the deceased, the three ran away.

While there may have been unlawful aggression on the part of the deceased Aquillano Rodrigo earlier that afternoon who challenged the authority of Alfonso Aquiatan saying: "You are a liar (bogus) policeman," and then boxing the said Alfonso Aquiatan on the chest after which he ran away together with Celedonio Toleran who had also boxed Alfonso Aquiatan, the aggression ceased when Alfonso Aquiatan, instead of pursuing Aquillano Rodrigo, returned to the house of the barrio captain whom he requested to ask the Mayor for help and then wait for the coming of re-inforcement. For aggression to be appreciated as an element of self-defense, it must be continuous. An act of aggression, when its author does not persist in his purpose, or when he discontinues his attitude to the extent that the object of the attack is no longer in peril, does not constitute an aggression which would warrant self-defense.[7]

The trial court also correctly rejected the appellant's contention that conspiracy was absent in the commission of the crime. Conspiracy could be deduced when two or more persons act together in the commission of a crime, whether they act through the physical volition of one or all, proceeding severally, or collectively. In the instant case, the common purpose or design on the part of the accused to commit the crime may be inferred from the fact that the accused were together in going to Sitio Pongdol to get the deceased and bring him before the town mayor for what he had done to Alfonso Aquiatan earlier that day. While on their way, Simplicio Abayon told Jaime Limpiado, who was riding with him in the "scooter" of Guillermo Albez: "If we can locate Aking, he will have his small pox by this riot." Then, upon seeing the deceased in the house of Melanio Gallardo, Alfonso Aquiatan ordered the deceased and his companions not to run, after which the appellant Simplicio Abayon and his co-accused Jaime Limpiado each held the hands of Aquillano Rodrigo and raised them. Appellant Simplicio Abayon then told Alfonso Aquiatan to shoot Aquillano Rodrigo. After shooting Aquillano Rodrigo, the three accused ran away. This concerted action proves conspiracy which makes the appellant Simplicio Abayon equally liable with Alfonso Aquiatan who shot the deceased Aquillano Rodrigo.

WHEREFORE, with the modification that the appellant Simplicio Abayon should be credited the full time during which he was under preventive imprisonment, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With proportionate costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Guerrero, Abad Santos and Escolin, JJ., concur.
De Castro, J., on sick leave.

- [1] Rollo, p. 183.
- [2] Exhibit "A".
- [3] Exh. "C", see also pp. 14-25, t.s.n. of March 10, 1970.
- [4] Exhibit 6.
- [5] t.s.n. of March 11, 1970, pp. 98-106.
- [6] Id., pp. 108-111.
- [7] People vs. Yuman, 61 Phil. 786.

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