

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTEMIO BERNAL, DEFENDANT-APPELLANT.

*G.R. Nos. L-29016-18. April 05, 1984*

Ponente: ESCOLIN, J.

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### ESCOLIN, J.:

Charged with two (2) murders and attempted murder under three separate informations docketed as Criminal Cases Nos. 3299, 3300 and 3301 of the defunct Court of First Instance of Zamboanga del Sur, and thereafter tried upon his plea of not guilty, Artemio Bernal was found guilty and sentenced as follows:

"WHEREFORE, in Criminal Case No. 3299, the Court finds Artemio Bernal guilty beyond reasonable doubt of the crime of Homicide and hereby sentences him to an indeterminate sentence consisting of SIX (6) YEARS of prision correccional as minimum to SEVENTEEN (17) YEARS of reclusion temporal as maximum, to indemnify the heirs of the deceased in the amount of P6,000.00, plus P30,000.00 for loss of earning capacity, P2,450.00 for actual expenses in the litigation, and P4,000.00 for moral damages.

"In Criminal Case No. 3300, the defendant Artemio Bernal is found guilty beyond reasonable doubt of the crime of Murder against Jimmy Peñaflor, Jr. and hereby sentences him to reclusion perpetua, to pay the heirs of the deceased the amount of P6,000.00 as indemnity, plus P5,000.00 for loss of earning capacity, and P5,000.00 as moral damages.

"In Criminal Case No. 3301, the defendant Artemio Bernal is found guilty beyond reasonable doubt of the crime of Attempted Murder, and the Court hereby sentences him to an indeterminate penalty consisting of FOUR (4) YEARS of prision correccional as minimum to EIGHT (8) YEARS of prision mayor as maximum, to suffer the accessory penalties of the law, and to pay the costs."

The evidence for the prosecution tends to show the following facts:

Shortly after midnight of December 9, 1966, Eugenio Satajo, captain of the vessel "MV San Antonio", invited Jimmy Peñaflor, Jr., Ricarte Monsanto, Warlito Ybañez and Marcial Ortega, all dockhands at the Pagadian City wharf, to take a snack at a refreshment parlor located at the national highway in Pagadian City. As they were walking along Mabini St. on their way thereto, they saw appellant Artemio Bernal approaching from the opposite direction. When appellant was about six meters away from them, Monsanto accosted him by saying: "Good evening, bay." Appellant did not respond. Peñaflor likewise greeted him, "Good evening, bay." This time appellant countered by saying "Pusilon ta mo ron (I'll shoot you)." Whereupon he pulled out his gun, levelled it at Monsanto who was about 4 meters away, and fired twice. The latter ducked and was not hit.

At this juncture, Jimmy Peñaflor, Jr., with upraised hands, approached appellant and said: "Don't shoot, friend." Appellant pushed Peñaflor and fired two shots, hitting him on the head and the abdomen. As Peñaflor fell on the pavement, Monsanto, Ybañez and Ortega ran away. Roberto Romales, who was at the scene of the incident, testified that after the trio had fled, appellant gunned down Capt. Satajo with three successive shots.

Shortly after, Monsanto, Ybañez and Ortega, accompanied by Pat. Porfirio Tezano of the Pagadian City Police

Department, returned to the scene of the crime. Patrolmen Tezano, Baton and Santos, who later arrived in a patrol jeep, arrested appellant.

The victims, Captain Satajo and Peñaflor, were brought to the clinic of Dr. Mateo Dayo, Jr. According to the doctor, Captain Satajo died about five minutes after arrival at the clinic and that the victim's death was due to the following gunshot wounds:

"This is to certify that Eugenio Satajo, 40 years old, in command of M.V. San Antonio, was given emergency treatment at the Nstra. Sra. dela Paz Clinic on December 10, 1966 for the following wounds sustained:

- Bullet wound 3½ inches to the right and up of the umbilicus 2½ inches from the midline 2 mm in diameter.
- Bullet wound - left anterior axillary line 4 inches below to the left of the left nipple 3 mm. in diameter.
- Bullet wound - left mandibular area - 1 inch from the ear and down to the anterior (face) measuring 2 mm. in diameter.

Patient was admitted semiconscious, pale, weak and pulseless, was pronounced dead at 12:50 am. 20 min. after he was rushed to our clinic.

(SGD.) MATEO DAYO, JR., M.D.

Pagadian, Zamboanga del Sur"

[EXHIBIT "C"]

Peñaflor expired at about 5:50 in the morning of the following day. Dr. Dayo likewise ascribed his death to gunshot wounds which he described in the autopsy report as follows:

"This is to certify that Jimmy Peñaflor, Jr., 18 years old, of San Pedro District, Pagadian, Zamboanga del Sur, was treated at the Nstra. Sra. dela Paz Clinic on 12-10-66 for the following wounds sustained:

1. Bullet wound 2 mm in diameter 2½ inches above umbilicus - 1 inch to the right of the midline
2. Bullet wound 3 mm in diameter 6 inches to the right at the same level of the umbilicus - Distance between the 2 wounds is 5½ inches.
3. Head injury - Bullet wound occipital region leftside 3 inches from the back of the left ear - measuring approximately 2 mm in diameter.

Whitish material simulating brain matter was expressed out of the wound while applying pressure dressing to control the bleeding.

The patient was admitted unconscious with a normal pulse and blood pressure. He never regained consciousness. Was pronounced dead at 7:50 am 12/10/66 seven hours after admission.

(SGD.) MATEO DAYO, JR., M.D.

Pagadian, Zamboanga del Sur"

[EXHIBIT "E"]

The appellant admitted having shot to death Captain Satajo and Jimmy Peñaflor, Jr., but pleaded self defense to justify his act. He vehemently denied having fired at Monsanto. He alleged that on the night in question, a group of six or seven men tried to stage a hold-up while he was on his way home. His version of the incident, as summarized by the trial court, is as follows:

"On the other hand, the defense consists mainly of the testimony of the defendant Artemio Bernal. He declared that at about midnight during the incident in question, he was going home towards his house at the Bernal

Hotel. On his way, he met people who were all armed to commit robbery against him. There were six or seven of them armed with knives and pistols. One of them said, 'This is a holdup.' At first, he did not recognize who uttered these words but he found out in the morning that his name was Capt. Eugenio Satajo. The companions of Capt. Satajo said, 'We will kill this person because he knows us'. That person who said that was Ricarte Monsanto. At this juncture, Bernal grabbed the weapon of Capt. Satajo and ran away. Ricarte Monsanto blocked his way and so he fired two warning shots. Then Jimmy Peñaflor who was armed with a bladed weapon blocked his way. Because Jimmy was near Bernal, he shot him, and after shooting Jimmy, Bernal continued running to the Bernal Hotel. The group of men chased him and almost overtook him. So he turned back and shot Capt. Satajo who was among the pursuers. After Satajo fell, he threw away the pistol. The companions of Satajo ran away when Capt. Satajo fell. At this juncture, Adriano Bernal, father of the defendant, approached the latter and said, 'Boy, you surrender; we will surrender to the police checkpoint'. But they could not surrender because at the precise moment a police wagon arrived precisely to arrest the defendant. The policeman who arrested the defendant were Pat. Porfirio Tezano, Pat. Baton and Pat. Santos. The defendant admits that there has never been any grudge or misunderstanding between him on the one hand and Jimmy Peñaflor, Ricarte Monsanto, and Warlito Ybañez on the other. He never saw Capt. Satajo before the incident. He denies the version of both Ricarte and Warlito. The gun which was used by the defendant in shooting Jimmy Peñaflor, Jr. and Capt. Satajo was never recovered. This testimony of Artemio Bernal is substantially corroborated by the witness Artemio Lagbunan and his father Adriano Bernal.

We find no error committed by the trial court in rejecting the appellant's theory of self defense. It is a settled principle that an accused who admits having inflicted the injuries which caused the death of another has the burden of proving self defense with clear and convincing evidence; and if such evidence is of doubtful veracity, the defense must fail. The trial court characterized the evidence adduced in support of appellant's plea as unconvincing and improbable. It explained why:

"x x x The story of Artemio Bernal that Captain Satajo was the leader of a gang of six or seven who staged a hold-up against him is highly incredible. It is admitted that Captain Satajo, who is the captain of an inter-island vessel 'San Antonio', is a stranger of the place, being a resident of Manila. He has a wife and family of three children and earns a salary of P450.00 a month. The court refuses to believe that a man with a stable income and who is a stranger in Pagadian would lead a group of hold-uppers to commit robbery against the defendant. Besides, the defendant is only a student, 22 years old at the time he testified in court. What thing of value can be robbed from a man who is still dependent for his own livelihood from his own father?"

We agree with the trial court's conclusion that appellant is criminally liable for the death of Capt. Satajo and Jimmy Peñaflor. We have carefully and painstakingly reviewed the evidence and We find no reason to discredit the eyewitnesses for the prosecution, whose testimonies appear to be a candid and truthful narrative of the incident.

But while the lower court correctly convicted appellant of homicide for the death of Capt. Satajo, it erred in finding him guilty of the crime of murder for the slaying of Jimmy Peñaflor, Jr. According to the trial court, the crime was attended by the qualifying circumstance of treachery because "the killing of Peñaflor was sudden and unexpected." In the People's brief, however, the Solicitor General submits a contrary view.

To constitute treachery, it is essential that the method, form or means adopted must be deliberately chosen to insure its execution without the risk to the offender arising from the defense which the victim might make. In the case at bar, while the appellants' attack on the deceased Peñaflor was sudden and unexpected, it does not appear that he had consciously intended such mode of attack to facilitate the perpetration of the homicide without risk to himself. Appellant pulled out his gun after he was greeted by Monsanto and Peñaflor. There is however no evidence to even intimate that before their meeting appellant had already formed the intention to kill Peñaflor. On the contrary, it is undisputed that their meeting was wholly accidental. There is no showing that prior to the

incident there was any misunderstanding or bad blood between appellant and the deceased Peñaflor. If appellant drew out his gun and fired at his victim, it was made wholly on impulse, as he was apparently irritated by the greetings made by Monsanto and Peñaflor.

The Solicitor General further disputes the trial court's finding that appellant actually fired at Monsanto and missed, and thus recommends that appellant be acquitted of the charge for attempted homicide in Criminal Case No. 3301. We sustain the position taken by the Solicitor General. Thus -

"Moreover, this brief entertains serious doubts that appellant actually fired at Ricarte Monsanto but missed. Monsanto's testimony (t.s.n., Stenog Villamero, pp. 22-23) that he ducked and thus avoided the shots that were fired at him from a mere four meters away strains belief. A .22 caliber bullet, according to ballistic tables, travels at a speed of 1335 ft. per sec. and in flight is imperceptible to the naked eye. It would take some pretty fancy ducking to avoid it."

WHEREFORE, judgment is hereby rendered as follows:

[a] The lower court's decision in Criminal Case No. 3299 convicting appellant Artemio Bernal of homicide is hereby affirmed with the modification that appellant shall suffer an indeterminate penalty ranging from SIX (6) YEARS AND ONE (1) DAY OF prision correccional, as minimum, to TWELVE (12) YEARS AND ONE (1) DAY of prision temporal, as maximum, and to indemnify the heirs of Eugenio Satajo in the amount of P30,000.00

[b] The judgment in Criminal Case No. 3300 is hereby set aside and, in lieu thereof, another one is entered finding appellant guilty of the crime of homicide and sentencing him to an indeterminate penalty ranging from SIX (6) YEARS AND ONE (1) DAY of prision correccional, as minimum, to TWELVE (12) YEARS AND ONE (1) DAY of prision temporal, as maximum, and to indemnify the heirs of Jimmy Peñaflor, Jr. in the sum of P30,000.00

[c] In Criminal Case No. 3301, appellant is hereby acquitted of the crime of attempted murder, with costs de oficio.

**SO ORDERED.**

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

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