

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORBERTO QUINTO, ALIAS OBET, ROMEO IBIAZ, RENATO DIUSEN,
ALIAS DAGOL, DEFENDANTS, NORBERTO QUINTO AND ROMEO
IBIAZ, DEFENDA...**

G.R. No. L-36186. October 29, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal from the decision of the Circuit Criminal Court in Pasig, Rizal, convicting Norberto Quinto and Romeo Ibiaz of the crime of murder; sentencing them to suffer the penalty of death; and ordering them to indemnify jointly and severally the heirs of Vicente Ballestamon in the amount of P12,000.00, to pay the amount of P10,000.00 as moral damages, and another P5,000.00 as exemplary damages; and to pay their proportionate share of the costs.

Both appellants are represented by separate counsels, who submitted their separate appellants' brief.

The statement of facts in the brief filed by the People of the Philippines is as follows:

"Appellants Norberto Quinto and Romeo Ibiaz at the time of the incident were policemen of the municipality of Rosario, Cavite. At around 6:00 o'clock in the evening of June 16, 1971 at Barrio Sapa, Abdilla Street, Rosario, Cavite, appellants and another person by the name of Renato Diusen alias Dagul stopped a tricycle (p. 14, tsn., March 10, 1972). The three men who were in fatigue uniform (p. 17, tsn., March 10, 1972) asked the passenger of the tricycle, who was later on identified as Vicente Ballestamon, the deceased (p. 15, tsn., March 10, 1972), to alight from the tricycle (Ibid) and to raise his hands (Ibid). The appellants policemen then fired successive shots at the deceased (Ibid).

"The mother of the deceased upon being informed that her son had been shot ran to the place of the incident (pp. 16-27, tsn., April 17, 1972). Upon her arrival at the place of the incident she saw her son lying prostrate on the ground (p. 39, tsn., April 17, 1972) but his feet were still moving (p. 140, tsn., April 17, 1972). She also saw appellants Norberto Quinto and Romeo Ibiaz and their companion Renato Diusen alias Dagul surrounding her son (Ibid) and all of them were carrying long arms (p. 41, tsn., April 17, 1972). Then she shouted 'Bakit ninyo ginanyan ang aking anak' (p. 42, tsn., April 17, 1972) and appellants told her 'Do not meddle here. This is the command of the mayor. Utos ito ni mayor, huwag kang makialam dito. Lumayo ka' (p. 41, tsn., April 17, 1972). When the mother remonstrated that her son should be brought to the hospital as his feet were still moving (p. 42, tsn., April 17, 1972), appellant Norberto Quinto shot again her son (pp. 42-43, tsn., April 17, 1972).

"The apparent motive for the killing was that the deceased witnessed the killing of one Lamberto Alcantara by Danny Enriquez, son of the mayor, and his bodyguards. He was going to be a witness against them (pp. 44-47, tsn., April 17, 1972).

"The deceased suffered eight (8) gunshot wounds (p. 8, tsn., March 10, 1972). Cause of death was severe hemorrhage (p. 10, tsn., March 10, 1972). Both hands of the victim were subjected to paraffin test and were

found negative for the presence of camphor residue prints (p. 3, tsn., March 10, 1972).

"Appellant Norberto Quinto admitted in open court that he killed the deceased (p. 6, tsn., November 27, 1972).

Both appellants went to the municipal building to surrender after the incident.

On February 11, 1972, Norberto Quinto alias "Obet", Romeo Ibiaz and Renato Diusen alias "Dagul" were charged before the Circuit Criminal Court in Pasig, Rizal of the crime of murder by District State Prosecutor Cornelio M. Melendres and Assistant City Fiscal Enrique A. Cube in an information which reads:

"That on or about the 16th day of June 1971, in the Municipality of Rosario, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused NORBERTO QUINTO alias OBET, ROMEO IBIAZ, and RENATO DIUSEN alias DAGOL, conspiring, confederating and mutually aiding one another without justifiable cause, with deliberate intent to kill, with treachery and evident premeditation, armed with firearms of different calibers, taking advantage of their public position; that the wrong done in the commission of the crime was deliberately augmented by other wrong not necessary for its commission, did then and there willfully, unlawfully and feloniously shoot one VICENTE BALLESTAMON y GERON in the different parts of his body thereby inflicting upon the latter gunshot wounds which directly caused his instantaneous death."

Upon arraignment, Norberto Quinto and Romeo Ibiaz pleaded not guilty. The other co-accused Renato Diusen has not been brought to trial. As aforesaid, the two: Quinto and Ibiaz were convicted and they appealed.

Norberto Quinto gave the following assignment of errors, to wit:

"I. That the Circuit Criminal Court erred in giving credit and weight to the false and fabricated testimonies of two prosecution witnesses, Antonio Giron and Rosalina G. Ballestamon, who are uncle and mother of the victim;

"II. That the Circuit Criminal Court erred in refusing to give credit and belief to the legitimate self-defense presented by herein defendant-appellant;

"III. That the Circuit Criminal Court erred in convicting herein defendant-appellant in the absence of the proof of his guilt beyond reasonable doubt."

Romeo Ibiaz made a lone assignment of error, to wit: "that the trial court erred in finding him guilty of the crime charged."

The appellants claim self-defense, stating that at about six o'clock in the late afternoon of June 16, 1971, Lt. Enrique Banzon told them to go to barrio Sapa, Rosario, Cavite and to apprehend Vicente (Boyot) Ballestamon who was making trouble at the place. Upon being informed that Ballestamon was armed with a long gun and indiscriminately firing shots, Quinto brought with him, aside from his caliber .38 service pistol, an armalite. Ibiaz had at the time his caliber .45 service pistol. As they approached the place, they heard a shot followed by another. Whereupon, Quinto jumped out of the tricycle they were riding in going to barrio Sapa and turning his head saw the victim, Boyot Ballestamon, pointing his gun at them.

On the other hand, Ibiaz, overcome with fear, stayed in the tricycle and, looking at the direction where the shot came from, saw Ballestamon with his gun pointed at them.

At this juncture, Quinto, without waiting for Ballestamon to shoot, fired at the latter inflicting upon him multiple gunshot wounds which caused his death.

Further, the defense contends that Ballestamon was known to be a police character even before the advent of martial law. They claim that considering his incivility in the use of guns Quinto immediately fired before he himself would be the victim.

The killing of the deceased by appellant Norberto Quinto being admitted by the latter, the burden of proving that the slaying was legally justifiable lay upon him. Our view of the evidence discloses that this burden was not adequately met. In the first place, both hands of the deceased were examined by Major Crispin B. Garcia of the Philippine Constabulary and they gave "negative results to the test for the presence of gun powder residue." (Exhibit A). Thus, the claim that the deceased was armed with a carbine and was firing the same shortly before he was shot is not true. Quinto's explanation about this consists mainly of speculation, like possible tampering of the specimen or reference to the rare cases where a person fires a gun and yet his hand is negative for gunpowder nitrate.

Secondly, Quinto's claim that empty carbine shells were found in the vicinity is denied by defense witness, PC Sgt. Mario Genuino, who testified, thus:

"Q What did you do in the vicinity, where you found the victim, and took the carbine and gave it to Lt. Banzon?

A I looked around if I could find any empty shells.

Q Did you find any empty shells?

A I did not find.

COURT:

Was there any magazine in the carbine?

A There was.

Q How many?

A Around twenty, but it was a banana type magazine.

COURT:

Proceed.

ATTY. DOLORFINO:

Q Were you able to examine the carbine before you gave that to Lt. Banzon?

A Yes, sir.

Q Were you able to see the contents of the magazine in relation to the said carbine?

A The magazine was tucked in the carbine and the bullets were jammed in the muzzle of the gun." (tsn. pp. 15-17, Oct. 13, 1972 hearing).

Further, Sgt. Genuino declared that when he arrived at the crime scene there was nobody there except the appellants, Lt. Banzon and a photographer. The People's theory that the carbine was placed by the police after the incident could be true. The photographer was fetched after the shooting incident and he arrived at the crime scene about 7:15 in the evening. As found by the trial court, "the accused did not allow the people to go near the body of Boyet for almost thirty minutes, which time was more than enough opportunity for them to place the carbine beside the body of Boyet."

In the third place, the claim of Quinto that prosecution witnesses Antonio Giron and Rosalina Ballestamon, uncle and mother, respectively of the deceased, were biased to the point of falsifying and fabricating evidence against them, is untenable. As aptly stated by the Solicitor General in his brief:

"The rule on evidence provides that a party or any other person interested in the outcome of a case may testify (Sec. 18, Rule 130, Rules of Court). Hence, the testimony of an interested witness can not be rejected on the ground of his apparent interest alone, but must be judged on its own merits, and if the testimony is clear and convincing and not destroyed by other evidence on record, it may be believed (*Carandang vs. Cabatuando*, L-25384, October 26, 1973 citing the case of *U.S. vs. Mante*, 27 Phil. 134 (1914). Other than their relationship to the deceased there is no other reason why their testimony should be rejected."

To prove justification, the accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing (*People vs. Ansoyon*, 75 Phil. 772). The first requisite of self-defense is that there should be unlawful aggression on the part of the person injured or killed by the accused. There can be no self-defense in the absence of unlawful aggression (*People vs. Apolinario*, 58 Phil. 586). Without it, the second requisite would not apply since there would be nothing to prevent or repel. There is nothing to defend from or against and there will be no occasion to require that the means of defense employed be reasonable. In the case at bar, the appellants failed to sustain this first requisite of self-defense. The victim did not have any firearm at the time he was fired at, slain and killed.

We now come to the claim of appellant Ibiaz that he is not a principal by direct participation or a co-conspirator. He argues that he had no motive to kill Ballestamon and that the only evidence against him was his passive presence at the scene of the crime. Other-wise stated, it is his contention that he did not use his gun against the deceased.

This contention of Ibiaz is contradicted by NBI Dr. Dario Nalagan who testified that from the nature and extent of the injuries inflicted upon the deceased, at least two (2) malefactors participated in the killing.

Hereunder is the testimony of Dr. Nalagan on this point:

"Fiscal Melendres -

Q Where is this third gunshot wound?

A The third gunshot wound is shown in the left lower chest pointed by a white arrow.

Fiscal Melendres -

I request that the same be encircled and marked as Exhibit C-9-A.

COURT -

Mark it.

(So marked.)

Fiscal Melendres -

Q What was the trajectory?

A Directed from left to right, backwards and slightly downwards making wound of exit on the right lumbar region.

Q Do you have the picture of that exit wound?

A Yes, sir. (pp. 18-19, tsn, April 14, 1972 hearing)

x x x x x x x x

Q Considering the numerous gunshot wounds, would you say that there are two persons involved in the

shooting or more than one person?

Atty. Buenviaje -

The witness is incompetent to testify on that.

Court -

Witness may answer.

Witness -

A Based on the different directions of the bullet in the body of the victim, one going upwards and laterally which means that the victim was in the lying position, and the other going downwards, so I would say there are two (2), unless the victim was lying first and then transferred to another place." (tsn. pp. 30-31, April 14, 1972 hearing)

x x x x x x x x

Atty. Buenviaje?

Q You also testified that the wounds inflicted upon the body of the victim could have been inflicted by at least two persons?

A Yes, sir."

(tsn., p. 40, April 14, 1972 hearing)

Besides, according to Rosalina Ballestamon, as early as four o'clock in the afternoon, or two (2) hours before the shooting incident, appellant Ibiaz, together with Quinto and Diusen was already at the scene of the crime going back and forth. They were in fatigue uniform, apparently waiting for the deceased who was eventually slain because he was a witness against the son of the mayor for killing one Lamberto Alcantara. And, consider the testimony of Antonio Giron, as follows:

"Q On June 16, 1971 at around 6:00 P.M. where were you?

A At the waiting shed of a resting place in Rosario, Cavite.

Q Were you alone at that time?

A Yes.

Q Was there anything unusual that happened at the hour and date mentioned?

A Yes, I saw 3 policemen stop a tricycle, asking the passenger to alight.

Q Were they all in uniform and did you recognize the three?

A Yes, (Witness identifies Norberto Quinto and Romeo Ibiaz who are inside the courtroom).

Q About the third one?

A He is not here; his name is Renato Diusen alias Dagul.

Q How far away were you from the 3 policemen?

A Twelve meters.

Q How did they ask the passenger to alight?

A I saw Dagul pull out the passenger, saying: 'Bumaba ka diyan.'

Q Who was the passenger?

A Vicente Ballestamon.

Q What happened then?

A The companions of Dagul poked their guns at Ballestamon asking him to raise up both hands.

Q What firearms were they using?

A Long firearms.

Q Where was Ballestamon facing when ordered to raise his hands?

A Facing the aplaya with his back turned towards the policemen.

Q What happened afterward?

A Ballestamon was ordered to walk; after making 3 steps the 3 police-men fired successive shots at him. He turned around and fell to the ground.

Q What did the 3 policemen do after shooting their victim?

A They lay themselves prostrate on the ground, in firing position and I heard the words: 'Darating ang kanyang ama; mapapalaban tayo diyan.'

Q What did you do then?

A After observing the policemen on the ground for 3 minutes, I left the place.

Q Where there people in the vicinity of the shooting at that time?

A Many, but they ran away.

Q Where did you go then?

A To our place where I saw the mother of the victim. I informed her that her son had been shot.

Q What is the name of the mother?

A Rosalina Ballestamon." (tsn. pp. 14--15, March 10, 1972 hearing)

To establish a conspiracy, it is not essential that there be proof as to a previous agreement to commit a crime. It is sufficient that the malefactors acted in concert to attain the same objective (*People vs. San Luis*, 86 Phil. 485, 497). The concurrence of wills, which is the essence of conspiracy, may be deduced from the evidence of facts and circumstances, which taken together, indicate that the parties cooperated and labored to the same end (*People vs. Macul*, 86 Phil. 423, 426; *People vs. Carbonel*, 48 Phil. 868, 875).

In the case at bar, it is quite clear that appellants, by their acts, aimed towards the accomplishment of the same unlawful object. They arrived together at the scene of the crime, in fatigue uniform, as early as 4:00 in the afternoon. Upon seeing the victim, they stopped the tricycle he was riding and, thereafter, fired at him. Applying the foregoing rules to this case, We hold that the assault by the assailants and their companion against Vicente Ballestamon, as declared by Antonio Giron, reveals a conspiracy and a tacit understanding to put him out of the way.

Considering the presence of the aggravating circumstance of evident premeditation and the mitigating

circumstance of voluntary surrender, the penalty that should be imposed on appellants is reclusion perpetua.

WHEREFORE, the judgment appealed from is modified in the sense that appellants are hereby sentenced to reclusion perpetua. In all other respects, the judgment is affirmed.

SO ORDERED.

Makasiar, Acting C.J., Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Teehankee, J., on official trip abroad.

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