

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
LUCRESIO CARDENAS ALIAS LOTE, NIDO CAR-DENAS, AND MANUEL  
CARDENAS, ACCUSED-APPELLANTS.**

*G.R. No. L-39503. November 19, 1982*

Ponente: CONCEPCION JR., J.

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**CONCEPCION JR., J.:**

The accused, Lucrecio Cardenas alias "Lote", Manuel Cardenas, and Nido Cardenas, were charged before the Court of First Instance of Misamis Occidental with the crime of Murder, committed, as follows:

"That on or about March 25, 1972, in Labuyo, Tangub City and within the jurisdiction of this Honorable Court, the above-named accused with in-tent to kill, acting together, conspiring, confe-derating and cooperating with one another, with treachery and taking advantage of superior force and strength, or employing means to weaken the defense, did then and there willfully, unlawfully and feloniously, the accused Manuel Cardenas and Nido Cardenas did pull and drag one Nestor Aboabo, from inside the barrio market place where a bene-fit dance was in progress and once outside the said place, the accused Manuel Cardenas and Nido Car-denas hit the said Nestor Aboabo with their fist blows causing injuries on the body of the latter, while co-accused Lucrecio Cardenas, alias Lote followed with a firearm in his hand and struck and shot the said Nestor Aboabo, with his (Lucrecio Cardenas) unlicensed firearm, causing a gunshot wound on the body of said Nestor Aboabo, injuring his liver, stomach and right kidney, which caused his (Nestor Aboabo) death immediately thereafter." [1]

After trial, Judge Geronimo R. Marave found said accused guilty of the crime charged and sentenced them "to suffer the penalty of reclusionperpetua, with the acces-sory penalties of the law; to jointly and severally indem-nify the heirs of the deceased, Nestor Aboabo, the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs." [2] From that sentence, the accused appealed to this Court.

The evidence for the prosecution shows that in the evening of March 25, 1972, Fernando Lumagbas, Alfredo Evi-dientes, Nicolas Ronda, and Nestor Aboabo, all young men from Barrio Bosicong, in Tangub City, went to the adjacent barrio of Labuyo, also of the same city, to attend a bene-fit dance, jointly sponsored by the Labuyo barrio council and the barrio's Young Ones Association, held at the mar-ket place of Labuyo, about a kilometer away from barrio Bosicong. At about 11:00 o'clock in the evening, Nestor Aboabo requested those in charge of the affair a "special dance" for their group. However, the accused Manuel and Nido Cardenas pulled and dragged Nestor Aboabo out of the dance hall and brought him outside where they mauled him. The other accused, Lucrecio Cardenas, alias Lote, followed them and struck Nestor Aboabo with a pistol hitting him on the neck and on the side of the body and later shot him. Nestor Aboabo was able to walk five steps and then fell down. "Persing", the wife of the accused Lucre-sio Cardenas reproached her husband and asked him why he did it. [3] Nestor Aboabo was taken to a hospital at Tañgub City but he died on the way. [4] Dr. Sinforiana del Cas-tillo, Tañgub City Health Officer, examined the cadaver and issued a certificate reading, as follows:

"Post-mortem Examination 3/28/72

9:35 A.M. - 10:00 A.M. Bosicong,

Tangub City

"Preliminary Examination

"In a house at Bosicong lie a dead body of Mr. Nestor Aboabo, 18 years of age, single alle-gedly a resident of Lala, Pagadian City. The dead body embalmed, had been dead on March 25, 1972 after being attended by a private physician.

"General Survey: Fairly nourished, fairly deve-loped, male, approximate weight 60 kilos or more, approximate height more than 5 ft.

"Pertinent Findings:

"1. Gunshot wound of entrance at right hypochondriac region mid-clavicular line 1.1 cm. in diameter, oval, contusion colar widest at the upper right side of the wound.

"2. Slit like open wound over left lumbar region midscapular line.

"3. Linear abrasion over lower eyelid right eye, stillate in form 2.5 cm. by 1 cm.

"4. Abrasion of mucous membrane of lips.

"5. Linear abrasion 13 cm., 7 cm. and 2.5 cm. obliquely at posterior aspect of right forearm.

"Caused of Death:

"Gunshot wound injuring vital organs: liver, stomach, right kidney.

"This examination was done upon the request of the Chief of Police of Tangub City in the presence of Patrolman F. Oling and Tia."[5]

As a result, an information was filed by the City Fis-cal of Tañgub City with the City Court of Tañgub charging the accused Lote Cardenas, Manuel Cardenas and Nido Carde-nas with Murder for the slaying of Nestor Aboabo.[6] But, the warrants for their arrest were not served as they could not be found, prompting the City Court to issue an order on October 26, 1972, shelving the case temporarily.[7] It was only in the first week of November, 1972, when the three accused were arrested in Ginitilan, Cebu, by Pat. Eugenio Ledesma and Teodulfo Lanzado.[8]

The accused Nido Cardenas admitted shooting the deceased Nestor Aboabo, but claims self-defense.[9] He declared that he was the assigned announcer at the benefit dance in question, being a member of the Labuyo Young Ones Association and was in-charge of requests for special dance. At about 11:00 o'clock that evening, he was ap-proached by the deceased Nestor Aboabo who made a request for a special dance. Nestor Aboabo was drunk. Since he (Nido) was to call the next dance a special dance for the Labuyo barrio council and the Young Ones Association, he just told Nestor to wait for the next piece. He also told Nestor to pay for his requested special dance. Nestor Aboabo, however, did not go to the table to pay for the requested special dance. Instead, he went out. Thereafter, he (Nido) announced the special dance for the barrio coun-cil officials and the members of the Association, and when the music was played, he went out of the dance hall to urinate across the road. While urinating, he heard a per-son behind him saying: "You are a braggart, Nid." He looked back and saw Nestor Aboabo pointing a pistol at him. He stepped backward, faced Nestor, and then struck the hand of Nestor which held the pistol. The pistol fell and Nestor tried to pick it up. But, he held the hand of Nes-tor and wrested the pistol away from him. After getting the pistol, he warned Nestor not to come near. But, Nes-tor did not heed him and continued to advance towards him. So, he shot Nestor who staggered and fell. Not knowing what to do, he left

for Ozamiz City and upon reaching the Malubog bridge, he threw the pistol to the river.[10]

It is now a rule well-settled that one who admits the infliction of the injuries which caused the death of another, has the burden of proving self-defense, which is an affirmative allegation. Where the evidence of self-defense is of doubtful veracity, the defense must fail. The quintessence of various decisions on this point is to the effect that evidence of self-defense must be clear and convincing and the accused claiming self-defense must plant his case on the strength of his own evidence and not on the weakness of that of the prosecution.[11] We feel that in this case the burden has not been met. The version given by the accused Nido Cardenas, standing without corroboration, is not convincing. The throwing of the death weapon to the river upon the pretext that he was afraid that he might be caught by PC soldiers in possession of that pistol,[12] and his endeavor to elude arrest by roaming the mountains of Parodahan near Gini-tilan, Cebu, for seven (7) months until his arrest on the third or fourth day of November, 1972,[13] is also utterly irreconcilable with the reaction of an intelligent man with a clear conscience who killed another in defense of his person. His reaction, by all standards, was to notify the authorities and hand over the weapon to them.

Besides, the testimony of Fernando Lumagbas and Nico-las Ronda, testifying for the prosecution, have proved conclusively that the version of the prosecution is the true one. The defense impugns the testimony of these witnesses on the ground that their versions of the incident are contradictory in that while "Lumagbas declared that the deceased was pulled and dragged from the dancing place to the outside by Manuel Cardenas and Nido Cardenas and outside he was mauled by the two; thereafter Lote Cardenas followed them and upon reaching the deceased Lote struck Nestor with a pistol first on the neck and then on the side, whereupon there was a gun report;" Ronda "declared that it was Lote Cardenas who brought the deceased outside by placing his arms on the deceased shoulders and then outside Lote struck him with a pistol and there followed a gun report." [14] This difference is on a minor detail, and, instead of being considered a badge of untruthfulness, is a sign of veracity. Witnesses react differently on what they see and hear depending upon their situation and state of mind. On the other hand, uniformity in details is a badge of untruthfulness.[15] At any rate, neither witness was wrong in asserting that all the three accused were present and had taken active participation in the commission of the crime, and there is no convincing proof that these witnesses had a reason to testify falsely against the accused. Besides, it is a rule well-settled that where the issue of credibility of witnesses is concerned, due respect is accorded to the findings of the trial court who had the opportunity of observing the witness while testifying.

However, We find no sufficient evidence to indicate conspiracy. In the instant case, the witnesses for the prosecution merely testified that the accused Manuel and Nido Cardenas pulled and dragged Nestor Aboabo out of the dance arena and brought him outside where they mauled him. Then, the other accused, Lucrecio Cardenas alias Lote, followed them and pistol-whipped Nestor Aboabo and shot him. Conspiracy does not exist in the commission of the crime because when Manuel and Nido Cardenas dragged Nestor Aboabo from the dance arena, they had no plans of killing him. They merely gave him fist blows in the body. As a matter of fact, no motive was shown to indicate a desire on their part to kill the deceased. The other accused, Lucrecio Cardenas alias Lote, joined the mix-up on the impulse of the moment upon seeing his son Nido and brother Manuel involved in a fist-fight. It was out of strong fraternal and paternal instincts and not on account of a conspiracy, express or implied, that led him to join the fray and take the life of the deceased.

Hence, Manuel and Nido Cardenas, who merely boxed the deceased, should be held guilty only of slight physical injuries. Considering that they have been confined in prison for more than eight (8) years since September 12, 1974, they should be immediately released from confinement unless there be any other reason for their continued detention.

But, Lucrecio Cardenas alias Lote is guilty of Murder characterized by alevosia. The penalty imposed upon him is

correct and should be, as it is hereby, AFFIRMED. The said accused-appellant, alone, shall indemnify the heirs of the deceased Nestor Aboabo the sum of P12,000.00, without subsidiary imprisonment in case of insolvency.

WHEREFORE , with the modification above-indicated, the judgment appealed from should be, as it is hereby, AFFIRMED in all other respects. With costs against the appellants.

**SO ORDERED.**

Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Makasiar, (Chairman), joins Justice Aquino in his dissents.

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[1] Original Record, p. 83.

[2] Id., p. 237.

[3] t.s.n. of March 8, 1973, pp. 6-10, 21-25.

[4] Id., p. 25.

[5] Exhibit "E".

[6] Original Record, p. 3.

[7] Id., p. 45.

[8] t.s.n. of November 8, 1973, p. 20.

[9] The other accused did not take the stand to counter-act or explain the damaging evidence against them.

[10] t.s.n., of October 23, 1973, pp. 26-41.

[11] People vs. Cruz, 53 Phil. 635; People vs. Gutier-rez, 53 Phil. 609; People vs. Alviar, 56 Phil. 98; People vs. Berio, 59 Phil. 533; People vs. Espe-nilla, 62 Phil. 264.

[12] t.s.n. of November 8, 1973, p. 12.

[13] Id., pp. 17-20.

[14] Appellants' Brief, pp. 10-11.

[15] People vs. Pascual, 93 Phil. 1114.

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