

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO GUIYAB AND GONZALO BACULI, ACCUSED-APPELLANTS.

G.R. No. L-48779. November 05, 1985

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Ernesto Guiyab, alias Erning, Gonzalo Baculi, and Roman Revocal were charged before the Court of First Instance of Cagayan in Criminal Case No. 139, of the crime of Murder under an information dated October 15, 1971, which alleged the following:

"That on or about May 4, 1971, in the municipality, of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Ernesto Guiyab alias Erning, Roman Revocal and Gonzalo Baculi, armed with a pointed bolo (immuco), conspiring together and helping one another, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Felipe Palacpac, inflicting upon him stab wounds which caused his death.

"Contrary to law."

At their arraignment, all the accused entered their respective pleas of not guilty. After trial, the Court of First Instance of Cagayan, rendered the judgment under review, convicting the accused Ernesto Guiyab and Gonzalo Baculi of the crime of Murder and imposed on these two accused the death penalty. They were also ordered to indemnify the heirs of the offended party, Felipe Palacpac, the sum of P12,000.00, and to pay said heirs the amount of P50,000.00 as moral damages, and to pay also, proportionately, the costs.

The other accused, Roman Revocal, was acquitted for failure of the prosecution to prove his guilt beyond reasonable doubt.

The facts of this case as recited in the People's Brief and by the evidence adduced by the prosecution, are as follows:

"In the evening of May 4, 1971, Barrio Dalin, Municipality of Baggao, Province of Cagayan, was still celebrating its fiesta. In said barrio the house of Alfred 'Peding' Pattung had several guests and among them were Felipe Palacpac, a neighbor of the host, PC Sgt. Felipe, Father Bassig, Sgts. Alilam, Fernandez and Gonzalo Baculi. Across the street some few meters is the hut of Felipe Palacpac with a small sari-sari store being tended that evening by Felipe's thirteen year old daughter, Rosenia.

"Rosenia could see that moonlight evening the feverish activities going on around the house of Peding Pattung for there were no obstructions impeding her view.

"That evening Felipe Palacpac was busy helping prepare the table for the other guests of Peding when Gonzalo Baculi called him. Responding to the call, Felipe went out of Peding's house only to find himself being confronted by Ernesto Guiyab and Roman Revocal. Gonzalo Baculi who was then following from behind suddenly grabbed the arms of Felipe Palacpac and almost instantaneously, Ernesto Guiyab, who was now at the side of Felipe, stabbed the latter with a knife (immuko) which hit the chest and the left arm of the

unsuspecting victim Felipe Palacpac. Somehow, Felipe Palacpac was able to run in staggering manner towards Peding Pattung's house clutching his chest wound with his left hand and shout "Sgt. Felipe I was stabbed by Ernesto Guiyab."

"However, Felipe Palacpac was not able to enter the premises of Pattung's house for by the side of the fence he collapsed and died. He sustained three stab wounds, two on the breast and one on the left arm. The depth of the two stab wounds on the chest is about five inches while the stab wound on the left arm is about three inches long. The next day the remains of Felipe Palacpac was interned at the Catholic cemetery in San Jose, Baggao, Cagayan with many persons in attendance immediately after the cadaver was examined by the Sanitary Inspector of Baggao since the local Municipal Health Officer was in Manila at that time. The interment was made without the benefit of a burial permit, death certificate and an autopsy except the inspection of the cadaver conducted by the Sanitary Inspector. However, on September 20, 1972, the remains of Felipe Palacpac was exhumed by the local authorities to determine the cause of death.

"xxx xxx xxx

"After the incident, Ernesto Guiyab ran away from the scene of the crime and surrendered to the Local Chief of Police at Centro, Baggao, Cagayan. Guiyab executed a statement admitting the killing of Felipe Palacpac which statement was reduced in writing but which Guiyab refused to sign.

"Gonzalo Baculi on his part denied any participation in the incident, and wondered why he was implicated in the killing of Palacpac. Baculi, however, admitted that in the evening of May 4, 1971, he was among the guests of Peding Pattung in the latter's house celebrating the barrio fiesta when he heard a shout from outside 'Sgt. Fernandez, I was stabbed by Ernesto Guiyab'. (Brief for the Appellee, pp. 3-7).

In their appeal, appellants Ernesto Guiyab and Gonzalo Baculi attribute as errors committed by the trial court, the following: (1) in finding that there was treachery and evident premeditation attendant in the stabbing and killing of Felipe Palacpac; (2) in not considering as a mitigating circumstance the fact of voluntary surrender of Ernesto Guiyab; (3) in not giving credit to the claim of self-defense of Ernesto Guiyab; and (4) in not finding that the prosecution failed to establish their guilt beyond reasonable doubt, particularly in the case of Gonzalo Baculi, and in sentencing them both to death and ordering them to pay indemnity and moral damages to the heirs of the deceased, Felipe Palacpac.

It may be proper to begin by taking note of the manifestation of the People in the Appellee's Brief submitted by the Office of the Solicitor General. From said brief we quote the following:

"There is however no sufficient evidence of evident premeditation in the case before us. The evidence on record is bereft of any proof of attendant deliberations on the part of the appellants as well as the selection of the method, time and means of executing the crime. As there was no direct evidence of the planning or preparation to kill the victim, the trial court's conclusion that evident premeditation attended the commission of the crime finds no factual basis. For to show premeditation, it is required that the criminal intent be evidenced by notorious acts evincing the determination to commit the same (People v. Ordiales, 42 SCRA 238).

"On the other hand, the evidence for the defense shows that appellant Guiyab surrendered to the local authorities the next day after the killing incident (pp. 81, 82, tsn. June 9, 1973) a fact which was corroborated by the Chief of Police to whom the appellant Guiyab surrendered (pp. 113, 114, 115, 119, 129, tsn. June 6, 1973, P.M.). Such circumstance should therefore be taken into account in the imposition of the proper penalty." (Appellee's Brief, pp.8-9)

We agree with the observations above made which are reflected by the evidence and record of this case. Accordingly, and as the element of treachery which qualifies the offense charged to Murder may no longer serve as an aggravating circumstance, and there being no other aggravating circumstance that can be rightfully considered and applied, it would follow that the corresponding penalty for Murder that may be meted out against

appellant Ernesto Guiyab, who unquestionably should be credited with the mitigating circumstance of his voluntary surrender would then be the minimum period of the penalty prescribed by law for said offense.

As to the merits of the appeal, it will be appropriate to treat separately the respective submissions of the appellants. Appellant Ernesto Guiyab acknowledges the fact that he stabbed the offended party, Felipe Palacpac. He contends, however, that he acted in self-defense because upon meeting Felipe Palacpac that evening, the latter drew and aimed a gun when they were two meters apart from each other and when Felipe Palacpac continued to advance towards him, he Ernesto Guiyab, thereupon parried the gun with his left hand and stabbed Palacpac twice on the breast. After stabbing the deceased, Guiyab ran away to surrender to the Chief of Police of the town.

Appellant Gonzalo Baculi denies any involvement in the stabbing incident. He avers that in the evening of May 4, 1971, he was one of the guests of Peding Pattung, on the occasion of the barrio fiesta. Among the guests were three constables. When he heard somebody shout from outside the house, "Sgt. Fernandez, I was stabbed by Ernesto Guiyab" (Tsn, 243-245, June 9, 1973), he (Baculi) went out of Pattung's house to find out what the commotion was about. He later returned to the house of Pattung wherein he stayed till one o'clock of the following morning. Later, he was invited by PC Sgt. Andres Fernandez to execute an affidavit as a witness to the stabbing incident but to his surprise, he was arrested on June 10, 1971. It was then when he learned for the first time that he had been implicated in the fatal stabbing of Felipe Palacpac.

The manner how Felipe Palacpac was stabbed as recounted by his fifteen year old daughter, Rosenia Palacpac, was accorded more faith and credit by the trial court and rightly so, rather than the self-serving and uncorroborated account of the incident tendered by the accused Ernesto Guiyab. What strongly militates against the allegations of appellant Guiyab that a shot gun was aimed at him which he parried and that his firearm was picked up soon after the stabbing incident by Sgt. Leonardo Felipe who, with other PC soldiers were the first to reach the scene of the crime, is the fact that said gun supposedly used against him by Felipe Palacpac, was never produced at all. Benigno Macanang testifying for the defense averred that said shot gun was dropped by Felipe Palacpac near the fence after the latter was stabbed and was then picked up by Sgt. Felipe of the Philippine Constabulary who later gave it to one Manolito Tuvera. However, as pointed out by the trial court in its decision, Sgt. Felipe himself testified that no gun was picked up by him nor had he given a gun to Manolito Tuvera two days after the incident (Tsn. pp. 8-9, June 9, 1973). Significantly, Sgt. Felipe even declared that he does not know Manolito Tuvera nor the witness Ben Macanang (Tsn. p. 109, June 9, 1973). Appellant Guiyab did not present Manolito Tuvera as witness to attest to the supposed delivery of said shotgun by Sgt. Felipe and the alleged receipt for the same.

The absence of such firearm negates and removes credit from the allegations of Ernesto Guiyab that he had acted in self-defense to prevent possible harm from a gun wielded by the deceased.

As very well pointed out in the People's Brief: -

"xxx xxx xxx. Contrary to defense pretenses that the deceased had a gun that evening (p. 6, 7, 8, 78, 79, 80, Tsn. June 9, 1973) the following circumstances strongly militate against the defense theory: First, the PC authorities who were at the scene of the crime right after the incident deny having seen a gun that evening whether in the body of the deceased Palacpac or anywhere in the premises where the incident took place (p. 108, tsn, June 9, 1973). Second, if as appellants claim the deceased was armed with a gun which the PC authorities took (pp. 6, 7, 8, Tsn. June 9, 1973) it would be unbelievable and foolhardy, as appellants assert, that the law enforcers would hand it to a private individual for safekeeping (pp. 9, 30, 31, 32, tsn. June 9, 1973). Finally, if the deceased Palacpac was really armed with a gun, he would just have stood his ground and used it against his assailants. The evidence however shows that the deceased Palacpac, after having been wounded, retreated towards the nearby house of Peding Pattung and shouted for help: "Sgt. Felipe, I was

stabbed by Ernesto Guiyab". (pp. 176, 177, 182, 183, tsn. June 6, 1973' pp. 23, 45, 51, 55, 68, 69, tsn. June 9, 1973." (Appellee's Brief, pp. 7-8).

Indeed, in the matter of the supposed firearm, the records show that the trial court went as far as to state in its decision of the following:

"To clear the doubts of the Court, Sgt. Felipe was recalled to the witness stand. He stated that no gun was ever picked up by him during the night of the incident. Neither was he given any gun to a person by the name of Manolito Tuvera. As a matter of fact, he denied knowing one of the name. Confronted with the bulldog stated in the receipt Exh. "2", he claimed the same to be false." (Decision, pp. 72-73)

In the light of the evidence reviewed, there is, therefore, no basis at all to sustain or uphold the claim of self-defense interposed by Appellant Guiyab. We find no cause to disturb the trial court's rejection of his claim.

With respect to Appellant Gonzalo Baculi, his defense is anchored on his claim that he was upstairs in the house of Peding Pattung when the stabbing incident occurred and he could not, therefore, have participated in the stabbing of Felipe Palacpac as alleged by the prosecution. Aside from this, he argues that he is entitled to an acquittal inasmuch as the trial court did not give credit to the declarations of Rosenia Revocal and yet the latter was absolved on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

The foregoing contentions of appellant Baculi are untenable. There is direct testimonial evidence which establish that it was Gonzalo Baculi who called out to Felipe Palacpac to go down from the house of Peding Pattung and it was also Gonzalo Baculi, who suddenly grabbed the arms of Felipe Palacpac as Ernesto Guiyab stabbed the former. Even if the trial court did not grant total and absolute credit to all the declarations of Rosenia Palacpac with respect to Roman Revocal, still the rule is well settled that courts are not bound to accept or reject the whole of the testimony of a witness. They may disbelieve one part and believe the other part of his testimony (People vs. Duldulao and Del Prado, G.R. No. L-13335-36, Nov. 29, 1960; People vs. Hidalgo, et al., G.R. No. L-6223, Dec. 27, 1957, cited in Rules of Court, Martin, Vol. V, 3rd edition, pp. 640-641.).

But apart from this, what promotes disbelief and repels appellant Baculi's claim of being an innocent bystander who had gone to the scene of the stabbing only after the deceased Palacpac had already been knifed is the unassailable fact that his co-accused Roman Revocal who was acquitted, had declared during the trial of this case that when he (Revocal) approached Gonzalo Baculi to inquire what had happened after the stabbing of Palacpac had occurred, Gonzalo Baculi swang his sharp pointed bolo and told him "Why are you asking so many things. It is already finished. Better go home", hitting Revocal on his right palm. What Baculi had done to his co-accused Revocal was never denied by Baculi during the trial. We can see no logical or reasonable explanation for this behavior of Gonzalo Baculi and this belies his claim that he was merely a curious onlooker. As noted by the trial court in its decision, the scars on the frontal and dorsal side of the right palm of Roman Revocal are eloquent proof of the injury he sustained than the aggression committed against him by appellant Gonzalo Baculi who later asked for forgiveness from Revocal and apologized for the wrong he had done. On cross-examination, Roman Revocal even added that accused Gonzalo Baculi told him not to testify (Tsn. 102-103, 107-108; Hearing of June 9, 1973). The foregoing facts and circumstances make it difficult for the Court to accept the protestations of Gonzalo Baculi that he had no involvement at all in the death of Felipe Palacpac. The reasons set forth by the court in its decision acquitting Roman Revocal on the grounds of reasonable doubt, do not pertain in the case of Gonzalo Baculi. He cannot, therefore, insist that the same consideration apply to him.

We are not, however, in conformity with the finding of the court below that Gonzalo Baculi is guilty as a co-principal on the ground that there was a concert of action between him and Ernesto Guiyab. The liability of Gonzalo Baculi and his degree of responsibility as a co-principal is not justified by the evidence on record. There

is no showing that he agreed with Ernesto Guiyab to kill the deceased. In fact, even in the Appellee's Brief, it is stated and conceded "that the evidence is bereft of any proof of attendant deliberation on the part of the appellants, as well as the selection of the time and means of executing the crime; there was no direct evidence of the planning or preparation to kill the victim" (supra). What appears to be established only was the act of Gonzalo Baculi in calling for the victim while the latter was inside the house of Alfredo Pattung and in grabbing his arms from behind while he was being confronted by Guiyab. While the act of appellant Baculi understandably afforded help and cooperation to his co-accused Guiyab, it was not indispensable in the commission of the offense. The stabbing could have been committed even without Baculi's grabbing the arm of the victim. Baculi's cooperation not being essential to the commission of the crime and as it merely served to facilitate the same, his liability should be only of that an accomplice (People vs. Manansala, L-23514, February 17, 1970, 31 SCRA 401; People vs. Tamayo, 44 Phil. 30). Furthermore, the established rule is that in case of doubt, courts should lean towards the milder form of responsibility (People vs. Medrano, L-55831, May 31, 1982, 114 SCRA 335; People vs. San Miguel, L-30722-25, July 31, 1981, 106 SCRA 290).

Considering the observations made by the Office of the Solicitor, regarding which We agree, "that there is insufficient evidence in this case to establish evident premeditation" and as the mitigating circumstance of voluntary surrender has been established by the defense which is not offset by any aggravating circumstance, We accept the recommendation in the Appellee's Brief "that the imposable penalty should be reclusion temporal in its maximum period which is 17 years, 4 months and 1 day to 20 years. Applying the Indeterminate Sentence Law, the proper penalty should be within the range of prision mayor in its maximum period to reclusion temporal or from 10 years, one day to 17 years, 4 months as minimum to 17 years, 4 months, 1 day to 20 years as maximum. This recommendation is accepted only in the case of Ernesto Guiyab, who has the benefit of the mitigating circumstance of voluntary surrender in his favor.

In the case of the accused Gonzalo Baculi, who should be adjudged only as an accomplice, the latter should be sentenced to a penalty one degree lower than that prescribed by law for the offense committed. Without any aggravating or mitigating circumstance to be considered in the case of accused Gonzalo Baculi, and applying the provisions of the Indeterminate Sentence Law, he should be meted the penalty of an indeterminate prison term of ten (10) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months of reclusion temporal, as maximum.

However, the civil indemnity that should be paid to the heirs of the deceased Felipe Palacpac should now be increased to P30,000.00.

WHEREFORE, the decision appealed from, convicting the appellants herein of the crime of Murder, being in conformity with the evidence and the law on the matter, is hereby **AFFIRMED** but with modification as to the penalty that should be imposed, which is hereby reduced to an indeterminate prison term of **TWELVE (12) YEARS** of prision mayor, as minimum, to not more than **SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY**, of reclusion temporal, as maximum in the case of appellant Ernesto Guiyab, and to **TEN (10) YEARS** of prision mayor, as minimum, to **FOURTEEN (14) YEARS and EIGHT (8) MONTHS** of reclusion temporal, as maximum, in the case of accused Gonzalo Baculi. The civil indemnity to be paid to the heirs of the deceased Felipe Palacpac should be, as it is hereby increased to P30,000.00. As thus modified, the judgment under review is affirmed in all other respects.

SO ORDERED.

Makasiar, C.J., Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, Cuevas, and Patajo, JJ., concur.

Aquino, J., concur but accused Baculi should be considered a co-principal, not a mere accomplice.

Teehankee, J., no part.

Relova, J., on leave.

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