

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO HALILI Y NAVARRO @ “SGT. JULIUS HALILI” @ “PUSA” AND MANUEL PALTING @ “MANNY,” ACCUSED-APPELLANTS.

G.R. No. 108662. June 27, 1995

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The accused-appellants Halili and Palting, whose full names and aliases are set out in the caption, were charged as co--conspirators in two (2) felonies of murder in the Regional Trial Court of Laoag City (Branch 13). At the time of the commission of the offenses ascribed to them, they "were working for then Laoag City Mayor Ernesto Tamayo, Halili as bodyguard and Palting as driver cum bodyguard." [1] The informations against them, docketed as Criminal Cases Numbered 5141-13 and 5142-13, contain the following recitals: [2]

(Criminal Case No. 5141-13)

That on or about the early dawn of the 28th day of November, 1990, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the ** accused, conspiring, confederating and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with the qualifying circumstance of evident premeditation and with treachery, shot one PAT. OSCAR DULDULAO with a Caliber 22 gun and afterwards shot again said victim but this time using the service pistol Caliber 38 of the victim, Pat. Oscar Duldulao, thereby causing injuries on different parts of his body which caused the instantaneous death of the victim.

CONTRARY TO LAW.

(Criminal Case No. 5142-13)

That on or about the early dawn of the 28th day of November, 1990, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the ** accused, conspiring, confederating and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with the qualifying circumstance of evident premeditation and with treachery, shot one LEONICO ACPAL with a Baby Armalite, thereby causing injuries on different parts of his body which caused the instantaneous death of the victim.

CONTRARY TO LAW."

Both accused entered a plea of not guilty when arraigned. Both were, after joint trial, found guilty beyond reasonable doubt of the crimes of which they were accused and correspondingly sentenced. The dispositive portion of the decision rendered against them on September 23, 1992 reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring Fernando Halili y Navarro, alias `Sgt. Julius Halili, alias `Pusa,' and Manuel Palting, alias `Manny,' guilty beyond reasonable doubt of the murder of police officers Leonico Acpal and Oscar Duldulao, punishable under Article 248, par. 1 of the Revised Penal Code, and are hereby sentenced to suffer the penalty of reclusion perpetua and its accessory penalties for each of the two murders and to indemnify, jointly and severally, the respective heirs of the deceased victims in the amount

of P50,000.00 each.

With costs against the accused.

The Court a quo based its verdict on the facts detailed in its decision, which it found to have been established by the prosecution by the requisite degree of proof. Hereunder reproduced is the Court's narration of these facts:[3]

"On November 27, 1990, at about 11:00 p.m., the accused Fernando Halili and Manuel Palting and four other companions entered the Colonial Fastfood Restaurant, a place they frequented to drink beer. They were ushered inside the restaurant by the security guard on duty, Arthur Andres. Among those who served and entertained the group was Irene Leilanie Tuvera, a receptionist-waitress who knew both the accused quite well.

Towards midnight there was a commotion inside the restaurant. Manuel Palting and another customer had an altercation over a woman. The customer ran outside followed by the group of Palting including the accused Fernando Halili. As the man ran away Fernando Halili, who was in civilian clothes, raised his cal. 45 handgun and aimed at the fleeing man. It was at this juncture that the late police officers Leonicio Acpal and Oscar Duldulao were passing by and, seeing what was happening, Acpal grabbed Halili and after grappling with each other for a while, Acpal succeeded in wresting away Halili's gun, effectively disarming him. As this was happening, a police patrol car headed by Police Lt. Maximo Cabang chanced upon them. Acpal explained to Lt. Cabang what happened and then turned over Halili's gun to Lt. Cabang. Angry and embarrassed, Halili introduced himself as an army enlisted man assigned as security to the City Mayor. After talking to the two protagonists, Lt. Cabang returned the gun to Halili with the consent of Acpal. This incident happened a few meters away from the Colonial Fastfood Restaurant.

After the incident, Palting and his group went back to the Colonial Fastfood Restaurant. It was almost midnight and shortly thereafter, Acpal and Duldulao also entered the restaurant and seated themselves at the table near the glass entrance door.

Halili, still smarting from the disarming incident, did not go back inside the restaurant but went home to his boarding house. He changed into his combat uniform, took his Armalite rifle (M-16) equipped with a grenade launcher (M--203), and donned a bandolier of bullets around his waist and across his shoulders and chest. Thus armed, he went back to the Colonial Fastfood Restaurant arriving there shortly after 12:30 A.M., November 28, 1990. When the security guard saw Halili, the former told him that it was prohibited to bring firearms inside the restaurant but Halili brushed past the guard and entered, followed by the security guard. Halili paused at the entrance door looking around until he recognized Acpal who was seated at the table near the entrance, facing north and with his back to the entrance. Halili approached Acpal and, without any warning, shot Acpal point-blank with his armalite, hitting Acpal at the right temple. This was followed by several bursts of gunfire, hitting Acpal in various parts of his body. In all, Acpal sustained 12 gunshot wounds fired from the armalite, killing him instantaneously.

Immediately before the first burst of gunfire, Duldulao had just paid their bill at the counter and was about to go back to the table he and Acpal occupied. Upon seeing Acpal shot, Duldulao turned and tried to go back to the counter. It was at this precise moment that Manuel Palting, shot Duldulao with a Caliber .22 Magnum revolver. In spite of his wounds, Duldulao was able to run but he stumbled and fell a few meters away. As he lay on the floor, Palting caught up with him and again fired at Duldulao. Running out of bullets, Palting took the caliber .38 revolver of Duldulao and again shot him. Duldulao sustained five gunshot wounds causing his death on the spot.

After shooting Acpal and Duldulao, Halili and Palting ran out of the restaurant and proceeded together to the headquarters of the 503rd Brigade in Vintar, Ilocos Norte where they stayed until they were surrendered to the police by Halili's commanding officer."

For their part, the accused tried to persuade the Court to accept a different set of facts demonstrating the presence in their favor of the justifying circumstance of lawful defense of self.

Halili sought to prove that actually, Pat. Acpal had confiscated two (2) revolvers from him, one, a .44 caliber "magnum," and the other, a "paltik" entrusted to him by another soldier for surrender to their brigade headquarters; that only the "magnum" was returned to him, Acpal having responded to his request for the return of the other gun, the "paltik," with insults and curses; that not wishing to have any trouble with Acpal, he had not insisted on the return of the weapon but had gone home; that feeling hungry shortly afterwards, however, he decided to go back to the Colonial Fastfood Restaurant to take something; that he had put on his combat uniform because he brought his armalite rifle with him; that on reaching the restaurant he saw Acpal and thought of asking him again to return his "paltik;" that when he tapped Acpal on the shoulder and asked for the gun, Acpal stood up, grabbed his (Halili's) armalite with his right hand at the same time drawing his own pistol from his left side with his left hand, whereupon Halili squeezed the trigger of his rifle.

On the other hand, the thrust of Palting's evidence is that when Halili shot Acpal, Duldulao (Acpal's brother-in-arms) drew his own gun and shot at Halili but the gun misfired; that Palting asked Duldulao what was happening but what Duldulao did was to say, "Sika pay" (You, too), aim his gun at Palting and squeeze the trigger twice; that providentially, the firearm again misfired; that he (Palting) then drew his own gun and shot Duldulao.

As already stated, these defenses were disbelieved by the Court a quo which instead convicted the two (2) defendants of the offenses of murder imputed to them.

Said defendants have appealed, and in this Court attribute to the Tribunal below the following errors, to wit:

- 1) "*** giving credence to the improbable and inconsistent testimonies of prosecution witnesses Irene Leilanie Tuvera and Arturo Andres;"
- 2) " ** not finding that appellants Fernando Halili and Manuel Palting acted in lawful self-defense;"
- 3) and even "on the assumption that appellants are guilty, ** finding that conspiracy existed between them and ** convicting them of murder when the evidence tended to establish homicide only."

Expatiating on the first assigned error, the accused argue that the testimony of the two principal prosecution witnesses, Irene Leilani Tuvera and Arturo Andres, regarding the circumstances attending the shooting of Acpal and Duldulao are so tainted by inconsistencies and improbabilities as to cast doubt on their credibility and render their declarations unworthy of belief.

They maintain, first, that the testimony of the waitress-receptionist, Leilanie Tuvera — that Duldulao was shot several times at the back — should not be believed because it is not corroborated by the post-mortem medical findings that all the entry wounds were at the front of the victim's body. The argument is untenable; the seeming discrepancy is adequately explained by the Trial Court, viz.:^[4]

"It will be recalled that when Palting shot Duldulao, firing had already started with Acpal's killing by Halili. Duldulao had just come from the counter and was then standing facing north, with Palting a few meters to his left and with Tuvera also a few meters to his right. When Duldulao heard the first burst of gunfire and saw Acpal shot, he turned to his right and tried to go back to the counter. It was at this precise moment when Palting fired at him hitting Duldulao on the left side of his anterior chest and this is what Tuvera could have seen and thought to be a shot at the back of Duldulao."

Appellants next contend that Tuvera's comportment during the shooting incident is contrary to natural human experience: she remained nonchalantly seated while observing the killings, hands across her breast and legs raised.^[5] They theorize that the instinct of self-preservation would have naturally prompted her, a young woman

at that, to take cover to avoid being hit by stray bullets. The fact is that, as this Court has had occasion to remark, witnesses of startling occurrences react differently depending upon their situation and state of mind;[6] there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience;[7] witnesses to a startling event see differently some details thereof due in large part to the excitement and confusion that it usually brings.[8] It must be stressed that the incident transpired very quickly, and it is not improbable that because of the rapidity and shocking character of the occurrences the girl was rendered immobile, so stunned that she never changed her position all throughout the killings.

The appellants also remark on the singular omission of the other prosecution witness, the security guard Arturo Andres, to mention either in his testimony or his affidavit the earlier commotion that had occurred in the restaurant, i.e., the chasing of a man by the group of Halili and the subsequent disarming of the latter by Pat. Acpal; this, notwithstanding that at that time, Arturo was standing at the door of the restaurant and could not but have seen the event. The argument is neatly and quite sufficiently confuted by the Solicitor General: "The fact that Arturo Andres, ** never mentioned in his testimony nor in his affidavit the earlier commotion that occurred in the restaurant when appellant Halili and his group chased a man, is easily explained by the fact that he was not questioned regarding this matter. Thus, his answers do not touch on this earlier incident." [9]

The appellants next advert to what they consider the implausibility of Arturo Andres' testimony that Halili shot Acpal using his right hand, Acpal being actually left-handed. Again it suffices to reiterate the Trial Court's refutation of the argument, viz:

"The defense attempted to discredit the credibility of Arthur Andres by proving that Halili is left handed. Andres had testified that he saw Halili shoot Acpal with his right hand. The defense presented a picture (Exh. 1) showing Halili holding his rifle with his left hand. A witness who is a detention prisoner like Halili testified that Halili uses his left hand when playing basketball and when writing and eating. In open Court, Halili also wrote his name and signature using his left hand.

"Needless to say, Exh. 1 is self-serving. Furthermore, it is a known fact that some people are ambidextrous, able to use either hand with the same skill and dexterity. This is true with basketball players as well as with people skilled in the use of firearms like the accused who has been with the military for a number of years. But whether Halili used his right or left hand in shooting down Acpal is a minor matter. In the swiftness of the unfolding events, it is entirely possible that the witness may have been honestly mistaken when he testified that he saw Halili used his right hand. What is important is the manner in which Halili shot Acpal and the guard's testimony on this point is clear and unequivocal and substantiated by other evidence - that Acpal was completely unaware and defenseless when he was shot without warning by Halili." [10]

Halili and Palting insist that when they shot and killed Acpao and Duldular respectively, they were acting in legitimate self-defense. According to them, there was actual unlawful aggression on the part of Acpal in drawing his gun and at the same time grasping the barrel of Halili's gun, and this appellant Halili had the right to prevent or repel; Halili had to act as fast as possible since he was running the risk of losing his own life, and the use of his rifle as a weapon against Acpal's drawn gun, was reasonable under the circumstances; moreover, Halili had not given any provocation, having done nothing to invite the victim's ire or give rise to his belligerence.

As regards Palting, his claim is that after hearing the first shots, he went down from the stage, where he was then singing and asked Duldulao what the incident was all about; Duldulao retorted, "Sika pay" (you too) at the same time discharging his gun at Palting but the gun misfired; and this prompted Palting to shoot Duldulao.

This Court shares the skepticism with which the Court a quo regarded appellants' plea of self-defense. The claim is based on their own account of the incident, which is belied by the evidence on record.

With respect to Halili, the evidence amply proves that only one gun was confiscated by Acpal, the one he shortly gave back to Halili at the behest of Lt. Maximo Cabang; it is not true that there were two (2) guns taken by Acpal from Halili. The evidence also clearly establishes that Halili acted with treachery. Acpal was seated, completely unaware of Halili's presence when the latter shot him without warning from behind. Also contradicted by the evidence is Halili's tale that when he approached Acpal the latter stood up, grabbed the rifle with his right hand while drawing his own gun from his left side with his left hand. Police Investigator Rodrigo Ventura's testimony is that he found Acpal's gun still tucked at his waist, proof that Acpal had been unable to draw it at all; and a photograph (Exhibit M) shows Acpal's gun tucked at his right side, not at his left side as claimed by Halili, which is corroborative of Ventura's testimony that Acpal had not been able to pull his gun out.

None of the elements of self-defense may thus be said to have been proved by Halili. There was no unlawful aggression on the part of the victim. It was Halili who was the aggressor. The evidence shows no improper act on the part of Acpal to warrant concluding he had given provocation. Indeed, the use against Acpal of a weapon as powerful and lethal as an Armalite rifle, the traitorous manner in which he was shot, and the number of wounds inflicted on him, all demonstrate a deliberate, determined assault with intent to kill, and rule out any claim of self-defense.

On the other hand, Palting's narration of the killings is also devoid of persuasive probative basis, and is diametrically at variance with the testimony given by prosecution witness, waitress Leilanie Tuvera, whose testimony this Court finds no reason to doubt. She positively and clearly declared that she saw Palting shoot Duldulao several times, while the latter was standing and even after he already lay prostrate on the floor, and that Palting used not only his own gun but that of his victim as well. She also stated that she was warned by Palting not to tell anybody about what she saw.

Although this Court is in total agreement with the Trial Judge respecting the appellants' guilt of the slaying of their respective victims, it cannot accept the finding that a conspiracy existed between them to kill the hapless police officers. It may be true that, as His Honor asserts, appellants were both security aides of the Laoag City Mayor who became closely associated with each other, having been together for eight (8) months prior to the incident one being the boarder of the other, and were wont to spend time together in drinking sprees; that on the night of the incident they were again together and shot their respective victims on the same occasion and almost simultaneously, and that, thereafter, also together, they sought sanctuary in the Headquarter's of Halili's army unit in Vintar, Ilocos Norte. There is however no convincing evidence that the two killers had had an opportunity to both decide on and agree to liquidate the two police officers who had earlier figured in the disarming (and ostensible humiliation) of Halili. It is after all essential to a finding of the existence of conspiracy that there be adequate proof that the malefactors had "come to an agreement concerning the commission of a felony and decide(d) to commit it." [11] And while it is, to be sure, established doctrine that agreement on the commission of a felony need not be shown by direct evidence, evidence thereof being inferable from the proven conduct of the accused disclosing a common understanding among them for the perpetration of the offense, no such inference may be fairly drawn in this case. It would appear, on the basis of the evidence, that the appellants simply acted on individual, reprehensible impulse in killing their respective victims, without any common plan. [12] The most that may perhaps be conceded along this line is that it was Palting alone who came to share in Halili's nefarious intent when the same became apparent to him, and without the latter's knowledge or request, himself embarked on a deadly foray against the companion of Halili's victim. It is after all axiomatic that "the same degree of proof necessary to establish a crime is required to establish criminal conspiracy. Although direct proof is not essential to establish conspiracy, it must be established by positive and conclusive evidence. And conviction (no less than a conclusion of the existence of conspiracy) must be founded on facts, not on mere inferences and conjectures." [13]

Neither does this Court see its way clear to accepting the Trial Court's finding that evident premeditation attended the commission of the crime. To properly appreciate evident premeditation it is needful that there be proof, as clear as the evidence of the crime itself, about the following elements thereof, viz: 1) the time when the offender determined to commit the crime; 2) an act manifestly indicating that he has clung to his determination; and 3) sufficient lapse of time between determination and execution to allow himself to reflect upon the consequences of his act.[14] In this case Palting's decision to kill Pat. Duldulao appears to have been made on the spur of the moment, at the time when he saw Halili shooting down Pat. Acpal. And as to Halili, the evidence indicates that he had no sufficient opportunity to reflect on his action.[15] Not unreasonably it may be said of him as of the accused in *People v. Pletado*, [16] that "(t)he fact that after an altercation involving the appellant and the group of Sgt. Agipo, the former left and then returned after thirty minutes and attacked the latter does not prove beyond doubt that he committed the crimes with evident premeditation."

But the Court agrees that the aggravating circumstance of treachery (*alevosia*) [17] may be appreciated against both appellants. It is clearly established against appellant Halili. He shot his victim without any warning whatever, while the latter was seated at a table in a restaurant with absolutely no inkling that Halili had returned to the place, had approached from behind and aimed his rifle at him. It is certain that the shot in the head that snuffed out Acpal's life came as a complete surprise to him, as "a bolt from the blue," as the saying goes. In other words, Halili intentionally employed such a method in the commission of the crime as entailed no risk to himself arising from any defense his victim might take.[18]

So, too, treachery may properly be appreciated against appellant Palting. Palting's attack on Pat. Duldulao was frontal, but no less unexpected and sudden, giving the latter no opportunity to repel it or offer any defense of his person. When Halili shot Acpal, Duldulao was at the restaurant's counter, having just settled his and Acpal's bill and was about to go back to their table. When he saw Acpal being gunned down, Duldulao turned and tried to go back to the counter; and it was while he was doing so that Palting shot him. At the time, Duldulao's attention was no doubt centered on Halili and his smoking gun; and so like Acpal, he had no idea that he was about to be shot by Palting, Halili's friend. Realization of Palting's deadly intent must have come only when he was struck by the bullets fired from Palting's revolver. He tried to run away but stumbled and fell. As he lay wounded on the floor, unable to offer any defense whatever against any further assault, it not being known what nature of injury had already been inflicted on him, he was shot again and again, Palting using not only the weapon with which he began his attack but also his victim's own. The Court is satisfied of the existence of *alevosia* in Palting's killing of Duldulao.

Halili is guilty of murder in the killing of Pat. Leonicio Acpal (with treachery as qualifying circumstance) and Palting, also of murder in the slaying of Pat. Oscar Duldulao (with treachery as qualifying circumstance, too).

Lacking, as stated, proof of conspiracy between the appellants, they are liable only for the crime individually committed by each of them. In the absence of any aggravating or mitigating circumstance, the penalty imposable on each of them is the medium period of that provided under Article 248 (paragraph 1 of the Revised Penal Code) — i.e., *reclusion perpetua* — which is the penalty imposed by the trial court for each murder, together with its accessory penalties, apart from the obligation "to indemnify ** the respective heirs of the deceased victims in the amount of P50,000.00."

It seems fitting to close this opinion with a quotation of the Trial Court's condemnation of the dastardly killings. "Finally, the Court condemns in the strongest possible terms this senseless killing of the young police officers, their deaths made more revolting because the killers were also men in uniform. The highest military officers must undertake a serious, widespread effort to purge the misfits, the scalawags and the homicidal maniacs in their ranks in order to refurbish the tarnished image of their organization and regain the trust and respect of the people they

are sworn to protect." [19]

WHEREFORE, the appealed judgment of the RTC, Branch 13, Laoag City, dated September 23, 1992, as thus modified, is hereby AFFIRMED. Appellant Fernando Halili Y Navarro alias "Sgt. Julius Halili," alias "Pusa" is hereby found guilty beyond reasonable doubt of the crime of murder for the killing of Pat. Leonicio Acpal and is hereby sentenced to suffer the penalty of reclusion perpetua with its accessory penalties and to INDEMNIFY the heirs of the deceased in the sum of P50,000.00. Appellant Manuel Palting, alias "Manny" is also found guilty beyond reasonable doubt of the crime of murder for the killing of Pat. Oscar Duldulao and is hereby sentenced to suffer the penalty of reclusion perpetua with its accessory penalties and to INDEMNIFY the heirs of the deceased in the sum of P50,000.00. Costs against appellants.

SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.

[1] Rollo, p. 143

[2] The victim's names being highlighted

[3] Rollo, pp. 28-29

[4] Rollo, p. 31

[5] Appellants' Brief, Rollo, pp. 56, 64 (citing TSN, p. 15, hearing on motion for bail)

[6] *People v. Cuyo*, 196 SCRA 447 [1991]

[7] *People v. Flores*, 217 SCRA 613 [1993]

[8] *People v. Gundran*, 228 SCRA 583 [1993]

[9] Rollo, p. 107

[10] Rollo, p. 303

[11] ART. 8, second paragraph, Revised Penal Code

[12] *People vs. Devaras*, 228 SCRA 482 (1993)

[13] *People v. Vda. de Quijano*, March 17, 1993, 220 SCRA 66

[14] ART. 14, par. 13, Revised Penal Code; *People v. Quintos*, 186 SCRA 14 [1990]; *People v. Talla*, 181 SCRA 133 [1990]; *People v. Nabayra*. October 17, 1991 cited in *People v. Pletado*, 210 SCRA 634)

[15] *People v. Ramirez*, 203 SCRA 25 [1991], citing *People v. Molato*, 170 SCRA 640 (1989); *People v. Catugay*, February 27, 1989; *People v. Almario*, March 16, 1989)

[16] 210 SCRA 634

[17] "There is teachery," according to Art. 16 of the Revised Penal Code, "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution, without risk to himself arising from the defense which the offended party might make."

[18] SEE *People v. Boniao*, 217 SCRA 653; *People v. Suits*, 220 SCRA 419; *People v. Claveria*, 221 SCRA 34; *People v. Kempis*, 221 SCRA 647; *People v. Arguelles*, 222 SCRA 166; *People v. Quiming*, 222 SCRA 371; *People v. Morato* 224 SCRA 361; *People v. Villanueva*, 225 SCRA 353; *People v. Buela*, 227 SCRA 534

[19] Rollo, p. 33

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