

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GONZALO GALAS, JOSUE GALAS, NOE GALAS, DIMAS ACMA ALIAS “DEWAY”;, AND MAXIMO DELGADO, ACCUSED-APPELLANTS.

G.R. No. 114007. September 24, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Federico Gamayon, a farmer and resident of Apoaporawan, Palawan, died on 23 December 1985 in Tinagong Dagat, Narra, Palawan, due to six hack wounds and two stab wounds inflicted on various parts of his body. Held to account for his death were the accused herein.

The prosecution was commenced by the filing of a criminal complaint for murder in the Municipal Trial Court (MTC) of Narra, Palawan. The complaint was then amended to charge the accused with the lesser offense of homicide.[1] They were released by the said court upon the approval of their bail bonds and the record of the case was forwarded to the Office of the Provincial Fiscal of Palawan. In his resolution of 7 April 1986,[2] then Provincial Fiscal Aurelio Trampe recommended the filing of an information for murder due to the presence of the qualifying circumstances of evident premeditation and abuse of superior strength.

On 8 April 1986, an Information[3] was filed with the Regional Trial Court (RTC) of Palawan by Provincial Fiscal Trampe charging the accused with the crime of murder committed as follows:

That on or about the 23 rd day of December, 1985 at Barangay Tinagong Dagat Municipality of Narra, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another with intent to kill, with evident premeditation and treachery and by the use of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab with their deadly weapons one Federico Gamayon hitting him in different vital parts of his body thereby inflicting upon him several injuries which was the direct and immediate cause of his instantaneous death.

Contrary to law and committed with aggravating circumstances of evident premeditation and use of superior strength.

No bond was recommended for the temporary liberty of the accused.

The case was docketed as Criminal Case No. 6233 and initially assigned to Branch 48 of the said court.

On 10 February 1988, the court, per Judge Singuat Guerra, granted the motion of 9 February 1987 filed by Third Assistant Fiscal Reynaldo R. Guayco with the approval of Provincial Fiscal Eustaquio Z. Gacott, Jr., for the cancellation of the bail bonds of the accused and the issuance of a warrant for their arrest in view of the filing of the information for murder which recommended no bond for them.[4]

On 30 October 1987, Judge Guerra ordered the case archived and directed the issuance of an alias warrant of arrest since no return was made of the warrant of arrest issued on 10 February 1987. Two more alias warrants of arrest were subsequently issued, but no returns were likewise made. Thus, on 12 July 1988, Judge Guerra directed the Station Commander of Narra, Palawan, to show cause and explain why he should not be held for indirect contempt.[5]

On 15 December 1988, accused Gonzalo Galas was turned over to the court.[6] Whether he voluntarily surrendered or was arrested is unclear from the record. Since the other accused remained outside the jurisdiction of the court and the warrants for their arrest had not been returned, Judge Guerra, on 12 July 1988, again directed the Station Commander of Narra, Palawan, to explain why he should not be held for indirect contempt.[7]

On 9 May 1989, with Judge Angel Miclat as the new presiding Judge of Branch 48, accused Gonzalo Galas was finally arraigned. As he entered a plea of not guilty, the court scheduled the pre-trial and initial trial of the case, as against him, on 5 and 6 July 1989. The court further issued another alias warrant of arrest for the other accused.[8]

On 4 October 1989, with another judge, Judge Amor A. Reyes, presiding over Branch 48, the trial court ordered the forfeiture of the bail bonds of Gonzalo Galas' co-accused and granted counsel for the accused five days to file his announced petition for reinvestigation and the prosecution to resolve it within twenty days from receipt.[9] The petition[10] was filed with the trial court on 6 October 1989 and the latter referred it to the Provincial Prosecutor for resolution within twenty days.[11]

After the reinvestigation, First Assistant Provincial Prosecutor Sesinio B. Belen, with the approval of Acting Provincial Prosecutor Clarito Demaala, filed a Motion to Admit Amended Information which now charges the accused with Homicide. As ground for the downgrading of the offense charged, Prosecutor Belen alleged that the reinvestigation disclosed no evidence of evident premeditation nor treachery, and the victim even had the opportunity to wound accused Gonzalo Galas.[12]

On 29 January 1990, Criminal Case No. 6233 was transferred to Branch 47 of the RTC of Palawan, which was then presided by Judge Eustaquio Z. Gacott, Jr., former Provincial Fiscal of Palawan.

On 22 March 1990, accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado filed a motion to lift the order of arrest and of the forfeiture of their bail bonds.[13]

On 23 March 1990, Branch 47 of the RTC, per Judge Gacott, denied for lack of merit the prosecution's motion to admit the Amended Information,[14] and arraigned accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado on the basis of the information for murder. Each entered a plea of not guilty and trial on the merits ensued, commencing on 14 May 1990 and ending on 13 July 1993.[15]

The prosecution established the following facts:

On 23 December 1995, at around 9:00 p.m., Federico Gamayon and his 15-year old son Crisanto, who was riding on a carabao, and 6-year old nephew Joemar,[16] who was riding on the sled, were on their way home to Tinagong Dagat from Sandoval, Narra, Palawan, where they had sold copra to a certain Gabileo. When they were near the house of accused Gonzalo Galas, Federico was called by Gonzalo. When Federico approached Gonzalo, the latter suddenly hacked Federico with a bolo.[17] Federico fell to the ground,[18] then accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado "ganged up" on Federico, according to Crisanto;[19] or "helped each other in mauling" Federico, according to Joemar.[20] Josue Galas hacked Federico with a bolo, while Noe Galas, Dimas Acma, and Maximo Delgado were armed with pieces of wood.[21]

Federico was unable to fight back; he could not even unsheath his bolo from its scabbard.[22]

Crisanto Gamayon could not do anything to help his father because he was afraid; moreover, the accused ran after him.[23] Crisanto ran to his uncle for help, but the latter was not in his house.[24] Crisanto did not return to the crime scene until the next day[25] and after the incident was reported to the police authorities.

Federico lay there until the next day when the police and Dr. Dominador Hubo, the municipal health officer, arrived to transport and examine Federico's cadaver. Dr. Hubo conducted the autopsy and his findings are quoted verbatim:[26]

The cadaver in the state of rigor mortis [sic] wearing red jacket and red short pants. The cadaver is covered with a twig and leaves of cacao tree and a small plastic canvas in a right side double up position. Several blood stains were scattered on the water where he is lying and a dry place. The cadaver is located approximately 200 yards from the house of Mr. Galas.

Autopsy findings:

1. Hack wound 8 inches in length, 3 inches deep running from the left side to the back of the neck, severing the 8th cervical.
2. Hack wound 6 inches in length, 3 inches in deep [sic] one inch above the first wound, severing the 4th cervical vertebrae.
3. Hack wound 6 inches in length, 2 inches in deep [sic], 2 inches above the second wound, severing the 2nd cervical vertebrae.
4. Hack wound 5 inches in length, 2 inches in deep [sic] severing the left parietal bone.
5. Stab wound 2 inches in length left infra mammary area, perforating the left thoracic cavity and lung.
6. Hack wound 4 inches in length 2 inches in deep [sic], right arm.
7. Stab wound, one inch in length right and left inguinal area, perforating the abdominal cavity.
8. Hack wound, 3 inches in length, 2 inches in deep [sic], anteromedial right leg.

Dr. Hubo opined that the cause of death of Federico was:

Cardio respiratory arrest secondary to --

1. Multiple hack and stab wound [sic].
2. Internal and external hemorrhage[27]

Dr. Hubo declared that he did not find any contusions nor abrasions on Federico's body as it was covered with mud caused by occasional showers.[28]

As to the accused's motive, Crisanto intimated that Gonzalo was angry because Federico demanded payment from Gonzalo for hiring his carabao[29] for one year,[30] with the payment supposed to be in kind: ten sacks of palay.[31]

Each of the accused had a different version of what transpired.

Accused Gonzalo Galas claimed that on 23 December 1985 at around 9:00 p.m., he was twenty meters away from his house in Sandoval, Narra, Palawan, helping a baby carabao nurse from its mother. He was then called and challenged to a fight by Federico Gamayon, and when he approached Federico, the latter stabbed him with a bolo. He grabbed his bolo and used it to defend himself. He retreated; but Federico still hit him. They hacked each other. Federico fell; Gonzalo went home to ask for help to get to the doctor. He was brought to the doctor by Maximo Delgado and Joel Buncag. The medical certificate issued to him (Exhibit "1") by the doctor indicates that he was wounded on the right arm and on the left part of his abdomen. According to Gonzalo, nobody witnessed the fight and nobody helped him fight Federico. He asserted that he had no previous quarrel with Federico and that the latter was drunk that night.[32]

On their part, accused Josue and Noe Galas declared that on the date and time Federico was killed, they were in Tigsiapo, Apu-aporaoan, Aborlan, Palawan, which is five kilometers away from the scene of the crime, where they were hauling palay for Sergio Gabileo. They came to know of the incident only the day after it happened." [33]

Accused Maximo Delgado testified that on 23 December 1985 at 9:00 p.m., he was in his house in Tinagong Dagat, Narra, Palawan, [34] about half a kilometer away from Gonzalo's home. He was summoned by Gonzalo's wife and one Joel Buncag to help bring Gonzalo to the hospital. He denied having inflicted any injury upon Federico. [35]

Accused Dimas Akma testified that on 23 December 1985 at 9:00 p.m. he was at Sandoval, Narra, Palawan, at the house of one Decena which is approximately three kilometers away from the scene of the crime. At that time they had just finished threshing palay for Sergio Gabileo and were roasting chicken for a little get-together. [36]

The accused also presented corroborating witnesses, viz., (a) Joel Buncag, who said he saw Federico hack Gonzalo; and that the two eyewitnesses, Crisanto Gamayon and Joemar Deocadiz, as well as the four other accused were not at the scene of the crime when the killing occurred; however, Maximo Delgado arrived to help bring Gonzalo to the hospital; [37] (b) Policarpio Gabello, who corroborated the testimony of Maximo Delgado who had said that his only participation was to help bring Gonzalo to the hospital for treatment and that of Dimas Akma who had said that he was in the house of one Decena at the time of the killing; [38] and (c) Sergio Gabileo, who corroborated the testimonies of accused Josue Galas and Noe Galas who earlier testified that they were on his farm hauling palay on the day of the killing and that the two slept in his house that night. [39]

In its decision dated 23 August 1993, [40] the trial court found all the accused guilty beyond reasonable doubt of the crime of murder as charged, and rendered judgment as follows:

WHEREFORE, premises considered, the Court hereby holds that the prosecution has proven the guilt of the accused Gonzalo Galas, Noel Galas, Josue Galas, Maximo Delgado and Dimas Akma beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code for having mutually helped, connived and conspired with each other in killing the victim, Federico Gamayon with treachery, evident premeditation and the use of superior strength. They are, therefore, sentenced each to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of the victim the sum of P150,000.00 (or P30,000.00 each accused) as actual, moral and exemplary damages, with costs.

With this conviction that makes the accused herein maximum security prisoners, they are hereby ordered shipped immediately to the national penitentiary, Muntinlupa, Metro Manila, to serve their sentence there.

The accused seasonably filed their notice of appeal and in their Appellants' Brief they impute upon the trial court the commission of the following errors:

I

THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LOSS OF JURISDICTION IN RELYING ENTIRELY ON THE MANIFESTLY PERJURED TESTIMONY OF THE TWO SUPPOSED EYEWITNESSES FOR THE PROSECUTION AND IN DISREGARDING EVIDENCE FAVORABLE TO THE ACCUSED;

II

THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LOSS OF JURISDICTION IN NOT ACCORDING ACCUSED THEIR CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT AND TO AN IMPARTIAL TRIBUNAL. [41]

In the first assigned error the accused make it appear that the relationship between the deceased and the two main

witnesses diminishes the potency of their testimony. Such emphasis is misplaced. This Court has held in a number of cases that relationship between the witnesses and the deceased does not automatically impair the credibility of the former.[42] We have likewise held that a witness' relationship to a victim, far from rendering his testimony biased, would even render it more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[43] They have a definite stake at seeing, the guilty person brought before the courts so that justice may be served.[44] It is not to be lightly supposed that relatives of the victim would callously violate their conscience to avenge the death of a dear one by blaming it on persons who are in fact innocent of the crime.[45]

They also put in issue the age of one of the main witnesses, Joemar Deocadiz, who was five years old when he allegedly witnessed the killing.

It must be stressed that Joemar's age does not disqualify him as a witness. Section 20, Rule 130 of the Rules of Court provides that all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. The exceptions thereto are found in the succeeding Section 20 and, insofar as children are concerned, only those whose mental maturity is such so as to render them incapable of perceiving the facts respecting which they are examined and of relating truthfully are disqualified. It is thus clear that any child, regardless of age, can be a competent witness if they meet the following criteria: (a) capacity of observation, (b) capacity of recollection, and (c) capacity of communication.[46] The accused urge us to give no weight to Joemar's testimony because of its unreliability; they claim that he could not even remember the month and the year when the incident happened. A close scrutiny of his testimony discloses, however, that Joemar was clear on the facts he observed surrounding the death of Federico which, according to him took place on a date "nearing Christmas." [47] Since the date of Federico's death was undubitably established to be 23 December 1985, which was, indeed, "nearing Christmas," Joemar's approximation was sufficient.

The accused also harp on Crisanto Gamayon's credibility on the ground that if he were really there, he would have unquestionably helped his father instead of merely standing still and simply gaping at the latter's killing by five men and returning to the scene only on the following day. Crisanto's testimony that he was afraid [48] sufficiently refutes this objection. Fear has been known to render people immobile, if not useless, in some life-and-death situations. Crisanto and Joemar left Federico's body overnight at the scene. of the crime because darkness had fallen and fear gripped them. Under the circumstances, the 16-year old Crisanto and the 5-year old Joemar could not be expected to act like adults, in full possession of their mental emotional, and psychological faculties.

In the second assigned error, the accused insist that Gonzalo Galas alone killed Federico Gamayon in self-defense; and assuming arguendo that self-defense was not found to be satisfactorily established, an impartial tribunal could not but rule that the crime committed was not murder, but only homicide.

In its Appellee's Brief filed by the Office of the Solicitor General, the People agree with the trial. court except as to its order directing each of the accused to pay P30,000.00 to the heirs of the victim as indemnity, which, it submits, is not in accord with Article 110 of the Revised Penal Code and prevailing jurisprudence on the matter. They should be held solidarity liable in the amount of P50,000.00 pursuant to People vs. Macam.[49]

We have no doubt whatsoever that prosecution witnesses Crisanto Gamayon and Joemar Deocadiz were with Federico Gamayon on that fateful evening of 23 December 1985. But, whether their testimony given only after the lapse of five years presented an authentic picture of what actually happened is an entirely different matter, especially as regards the accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado whose alibis have, nevertheless, to be rejected in light of their positive identification by Crisanto and Joemar. It is doctrinally settled that alibi cannot prevail over and is worthless in the face of the positive identification by prosecution

witnesses.[50]

Our meticulous scrutiny: of the evidence discloses that accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado were not with accused Gonzalo Galas when the latter and Federico Gamayon met for the first time. They arrived at the scene of the incident after accused Gonzalo Galas had hacked Federico with a bolo and the latter had fallen. Then and there they "ganged up" (according to Crisanto) or "mauled" (according to Joemar) Federico. Thus, on direct examination, Crisanto testified:

PROSECUTOR DELOVINO:

x x x

Q You said you were in that place, what happened in that place?

A Gonzalo Galas suddenly called my father, Ma'arn.

Q What did your father do after he was called by Gonzalo Galas?

A He went near Gonzalo Galas and suddenly he was hacked.

COURT:

Q Who hacked your father?

A Gonzalo Galas, Your Honor.

x x x

PROSECUTOR DELOVINO:

Q When he was hacked by Gonzalo Galas, what happened next?

A He was ganged up by the companions of Gonzalo Galas.

x x x

Q You. said that after your father was hacked he was ganged up by the companions of Gonzalo Galas, who ganged up on him?

A Josue Galas, Noe Galas, Maximo Delgado and a certain alias Dimay.

x x x

COURT:

Q You said that these people ganged up on him, what do you mean by that?

A Gonzalo Galas used a bolo in hacking my father; also Josue Galas; Noe Galas, Maximo Delgado and alias Dimay were bringing pieces of wood, each of them.[51]

That Gonzalo Galas' co-accused participated only after Federico had already fallen or was already lying on the ground was further elicited by the trial court from Crisanto, thus:

COURT:

Q Did your father not shout for help?

A No, sir.

Q Who actually killed him?

A Gonzalo Galas, Your Honor.

Q So, when Gonzalo Galas hacked him, he was already dead?

A No, Sir, because he was also being clubbed by the other accused.

Q The other accused was already clubbing him when he was already lying down?

A Yes, Your Honor.[52]

On additional cross-examination by the defense counsel, Crisanto even admitted that Gonzalo had already hacked Federico three times before the latter fell to the ground and that it was after the fall that he was attacked by Gonzalo's co-accused. Thus:

ATTY. RUELO:

Q How many seconds elapsed after the start of the incident before your father fell to the ground?

A He fell down after three hacks, Sir.

Q I said seconds.

A He fell down immediately.

Q After he fell only the accused went near your father and nobody else?

A Yes, Sir.

x x x

Q And you said that the incident took so long and most of the time spent was when your father was already lying down on the ground?

A Yes, Sir.[53]

This answer prompted the court to ask:

Q Was it possible that your father was already dead when he fell and he was still being clubbed?

to which, Crisanto answered:

A It was possible, Your Honor.[54]

Joemar Deocadiz corroborated Crisanto's testimony that it was only after Federico had fallen that Gonzalo's co-accused attacked Federico. However, contrary to Crisanto's claim, Joemar asserted that Federico fell after he was hacked twice by Gonzalo. Thus:

PROSECUTOR DELOVINO:

Q How many times was Federico Gamayon hacked by Gonzalo Galas?

A Twice, Ma'am.

Q Where was Federico Gamayon hit?

A On the right neck. (As demonstrated by the witness).

Q And where else was he hit?

A On the right side of the head, Ma'am. (As demonstrated by the witness)

x x x

Q What happened to Federico Gamayon?

A He fell down, Ma'am.

Q After Federico Gamayon fell down, what happened next?

A They helped each other in mauling him.

Q Who mauled him?

A Dimay, Noe, and Ming.[55]

The "mauling" was explained by Joemar to mean "clubbing" with the use of wood. Thus:

PROSECUTOR DELOVINO:

Q You said that Federico Gamayon was ganged up or mauled

by these accused whom you have just identified. How did they gang up on Federico Gamayon?

A They clubbed Federico Gamayon.

Q With what weapon?

A Wood, Ma'am.[56]

Whether Gonzalo had hacked Federico - thrice according to Crisanto or twice according to Joemar -- before Federico had fallen, the fact remains that it was after that fall when Gonzalo's co-accused arrived to "maul" or "club" Federico.

Assuming that, indeed, Federico was "mauled" or "clubbed," did accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado succeed in inflicting any injury on Federico Gamayon? If full credit is to be given to Crisanto and Joemar, the answer would be in the affirmative.

Unfortunately, there is no convincing evidence that proves that the wounds sustained by Federico Gamayon were inflicted by two persons with the use of two different weapons to justify a conclusion that anyone of Gonzales' co-accused also stabbed Federico with the use of another weapon. Dr. Hubo was uncertain as to the first. He merely stated that they could have been caused by one or two persons. Thus:

FISCAL DELOVINO:

Q Doctor, with all these injuries, could you tell us how many persons inflicted those injuries?

x x x

A By the manner of the wounds and the size of the wounds, they were caused by one or two persons.[57]

As to the second, Dr. Hubo admitted on cross-examination the possibility that only one weapon was used. Thus:

ATTY. AUSTRIA:

x x x

Q Is there a possibility that there is only one instrument that was used by the assailant in inflicting this kind of injuries to the victim?

A Yes, sir.

Q Now, if that bladed instrument particularly say for example a bolo, Doctor, which was used by the assailant in hacking the victim was used also by him in stabbing the victim, could the victim also sustain stabbed [sic] wounds, similar stabbed [sic] wounds as appearing in this autopsy report?

A If that bolo is so thin and the size of the bolo is 2 inches, that is possible.

Q So, Doctor, [y]ou will agree with me that it is

possible that only one bladed instrument or bolo was used in inflicting all these injuries by the assailant to the victim?

A It is possible if the bladed instrument is pointed and the size of 2 inches.

Q That is also your basis in stating that those injuries could have been caused by only one or two persons, isn't it?

A Yes, sir.[58]

And on cross-examination by another defense lawyer, Dr. Hubo emphatically declared that only one weapon was used in inflicting the wounds on Federico. Thus:

ATTY. DE LOS REYES:

I will repeat for emphasis, your Honor.

Q Do you agree that only one weapon could have been used in inflicting all the wounds?

A Yes, sir.[59]

There is, as well, no evidence that the "mauling" or clubbing" by Gonzalo Galas' co-accused had produced any injury on any part of Federico's body. Dr. Hubo explained that he failed to detect any contusions nor abrasions because the cadaver was covered with mud due to occasional showers.[60] The People suggest, however, that the failure of Dr. Hubo to detect the contusions or abrasions does not mean that Federico did not sustain any injury from the mauling or clubbing.[61] This is plain speculation which finds no support in the rule on evidence in criminal cases.

Furthermore, there is no evidence on record that Gonzalo Galas was with his co-accused when he called Federico Gamayon, or that all the accused arrived simultaneously at the place where Federico was hacked by Gonzalo. While Gonzalo's co-accused were seen at the scene of the crime by Crisanto and Joemar, no clear and convincing evidence can support a conclusion that the said co-accused were able to inflict any injury - either a stab or hack wound with the use of a bolo, or contusion, abrasion, or hematoma with the use of pieces of wood - on Federico. There is, as well, absolutely no evidence of conspiracy among Gonzalo and his co-accused as to make each of the latter equally liable for all the acts of Gonzalo under the doctrine that once conspiracy is established the act of one is the act of all.[62] Crisanto and Joemar may have thus miscomprehended or misappreciated the sequence of events after the arrival of Gonzalo's co-accused.

We cannot fully agree with the trial courts' unqualified reliance on the testimonies of Crisanto and Joemar, nor cast our imprimatur on its assessment of the said witnesses' credibility pursuant to the rule that the issue of credibility is addressed to the trial court since it heard the witnesses and observed their deportment and manner of testifying during the trial.[63] For one, the trial court overlooked the foregoing facts, viz., infliction of the wounds by one person with the use of one weapon, and the absence of any injury caused by the mauling or clubbing. Excepted from the rule on the binding character of the trial court's assessment of credibility of witnesses are instances when trial courts have overlooked, misapplied, and misinterpreted facts and circumstances of great weight and value which would affect the result of the case.[64]

For another, Judge Gacott, who tried the case, heard the witnesses, and rendered the decision, cannot be said to have possessed the cold neutrality of an impartial judge. As noted early on in this ponencia, he approved, in his capacity as the Provincial Fiscal, the motion of Third Assistant Provincial Fiscal Reynaldo R. Guayco to cancel the bail bonds of the accused and to issue the warrant of their arrest[65] in view of the filing of the information for murder which recommended no bond for the accused.[66] As such, Judge Gacott, as the then Provincial Fiscal, was deemed to have concurred with the view of Fiscal Guayco that the evidence of guilt of the accused in this

case was strong. In light of the presumption of regularity in the performance of official duty,[67] he must have read the supporting evidence, such as the sworn statements of Crisanto Gamayon and Joemar Deocadiz. Finally, after the case was transferred from Branch 48 to his branch - Branch 47 - Judge Gacott denied the prosecution's motion to admit an amended information charging the accused with the lesser offense of homicide.[68] Such acts merely evinced his belief in the trustworthiness of the testimony of Crisanto and Joemar and an impression of prejudgment is thus unavoidable.

Under these circumstances, it was discretionary upon Judge Gacott to voluntarily inhibit himself pursuant to Section 1(2), Rule 137 of the Rules of Court,[69] and returned the case to Branch 48 where it originated. However, while Judge Gacott's voluntary inhibition would have been preferable, it cannot be said that his failure caused substantial prejudice to the accused. Initially, let it be clear that Judge Gacott's previous participation in the case as Provincial Fiscal was not raised either before us nor the court a quo. On this score, it has been held:

[T]he disqualification of a judge is not a matter that affects his jurisdiction and power to act such as to render his decision null and void, so much so that failure on the part of a party, to timely interpose such an objection of disqualification prior to the decision has been held to be a fatal obstacle to raising such objection on appeal. In *Government of the Philippines vs. Abella* [49 Phil. 374-378], we held: ... The attorneys for the appellants should have been familiar with the pleadings in the cause, as well as other documents in the record. Reference to these would at once have revealed the fact that Judge Carballo had participated administratively to the extent above stated. A litigant, having these facts before him, cannot be permitted to speculate upon the action of a court and raise an objection to this sort after [the] decision has been rendered. The grounds for disqualification specified in Section 8 of the Code of Civil Procedure (now Rule 137) supply matter for preliminary exception, and timely objection should be submitted in writing as is required in said section. The inadvertent failure of the court to disqualify himself in the case there mentioned does not supply a ground for reversing the judgment.; but of course if this court were of the opinion that the litigant had not had a fair trial, a new trial could be granted....

x x x

The question of a judge's disqualification, therefore, is one that should be timely raised in the first instance, so that it may properly be raised and considered on appeal. At the same time ... if this Court were of the opinion upon a review of the case that the litigant had not, had a fair trial, it would grant a new trial, although the judge may not have been disqualified under Rule 137, not on the ground of lack of jurisdiction but in the best interests of justice....[70]

Further, given that the guarantee of an impartial judge concerns itself with procedural due process[71] any defect therein may be waived as implied above and is subject to the curative effect of filing a motion for reconsideration or an appeal.

That Crisanto and Joemar could have misapprehended or misappreciated the events, especially as to the participation of Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado, could easily be deduced from the fact that the incident occurred at nighttime; Crisanto was "a little bit far"[72] from his father, and he ran away. Joemar, who was only six years old, was sitting on a sled.[73] He did not testify as to his distance to Federico when the latter was attacked.

We have then serious doubts as to the culpability of accused Josue Galas, Noe Galas, Dimas Acma, and Maximo Delgado. Their acquittal is inevitable for failure of the prosecution to overcome the presumption of innocence which is guaranteed in Section 14(2), Article III of the Constitution.

The fate of accused Gonzalo Galas is entirely different. He admitted that he killed Federico Gamayon; however, he interposed self-defense to justify his act. The rule is unbending that where the accused admits the killing of the

victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself, i.e., the burden is shifted to him to prove that the killing was justified and he incurred no criminal liability therefor. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence for, even if the latter were weak, it would not be disbelieved after his open admission of responsibility for the killing.[74]

The three requisites of self-defense which accused Gonzalo Galas has to satisfy by clear and convincing evidence are: (1) unlawful aggression on the part of the victim, Federico Gamayon, (2) the reasonable necessity of the means he (Gonzalo) employed to prevent or repel it; and (3) lack of sufficient provocation on his (Gonzalo's) part.[75]

The prosecution and Gonzalo Galas have contrariant versions as to how the incident started. The former claimed that when Federico was near Gonzalo's house, Gonzalo called the former who then approached the latter. The latter then suddenly hacked Federico with a bolo. Upon the other hand, Gonzalo contended that while he was helping a baby carabao nurse from its mother at a place about twenty meters from his house, Federico called and challenged him to a fight and when he approached Federico, the latter stabbed him with a bolo. He then grabbed his own bolo to defend himself and retreated; but since Federico still hit him, they hacked each other.

Assuming Gonzalo's version to be true and accurate, he, therefore, accepted a challenge to fight. Both had bolos with them. By accepting the challenge and immediately approaching Federico, Gonzalo placed himself in an unlawful status. Settled is the rule that when parties mutually agree to fight, it is immaterial who attacks or receives the wound first, for the first act of force is an incident of the fight itself and in nowise is it unwarranted and unexpected aggression which alone can legalize self-defense. A personal fight freely and voluntarily accepted creates an illegal state of affairs which comes within the sanction of criminal law, during which no application can be made to either party of the circumstances modifying criminal liability, arising from facts or accidents, physical or otherwise, of the fight itself.[76]

Consequently, Gonzalo's claim of self-defense hardly merits even a semblance of sympathy.

That both had a fight was confirmed by Joemar in his answers during cross-examination. Thus:

ATTY. DE LOS REYES:

Q So that you saw the fight between your uncle, Federico Gamayon and accused Gonzalo Galas?

A Yes, sir.

Q And it was very near the house of the Accused Gonzalo Galas?

A Yes, Sir.

Q And inspite of the fact that it was already 9:00 o'clock that night you saw actually the fighting?

A Yes, Sir.[77]

Crisanto Gamayon likewise admitted that Gonzalo Galas sustained wounds. Thus:

ATTY.RUELO:

x x x

Q And you knew that Gonzalo Galas also suffered wounds?

A Yes, sir.

Q And you are trying to tell the Honorable Court it

was the other accused who inflicted his wound?

A I don't know, Sir.[78]

The claim of the prosecution that it was not possible that Federico inflicted the injuries on Gonzalo because the former was unable to pull out his bolo from its scabbard does not inspire belief. There is no evidence that Gonzalo's wounds were self-inflicted and the speculation of the prosecution that they would have been inflicted by his co-accused remains speculative. The best evidence that Federico was unable to use his bolo was his bolo and its scabbard; yet, they were not presented.

The challenge hurled by Federico was not unmotivated. Crisanto provided the motive: Gonzalo did not pay Federico the rental for one year for the former's carabao which the latter leased.

The foregoing considered, we rule that accused Gonzalo Galas is liable only for the crime of homicide as defined and penalized in Article 249 of the Revised Penal Code. Since no mitigating or aggravating circumstances have been proven the medium period of the penalty of reclusion temporal prescribed in Article 249 may be imposed upon him. He is also entitled to the benefits of the Indeterminate Sentence Law, and as such, may be sentenced to suffer an indeterminate penalty ranging from ten (10) years of prision mayor medium, as minimum, to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum.

WHEREFORE, the instant appeal is partly granted and the judgment appealed from is modified. As modified, (1) accused JOSUE GALAS, NOE GALAS, DIMAS ACMA alias "Dimay," and MAXIMO DELGADO are hereby ACQUITTED on grounds of reasonable doubt and ordered RELEASED from detention unless some other lawful cause warrants their further detention; and (2) accused GONZALO GALAS is CONVICTED of the crime of homicide, as defined and penalized in Article 249 of the Revised Penal Code, his guilt therefor having been proven beyond reasonable doubt, and applying the Indeterminate Sentence Law after having determined the absence of mitigating or aggravating circumstances, he is hereby sentenced to suffer an indeterminate penalty ranging from TEN (10) years of prision mayor medium, as minimum, to SEVENTEEN (17) years and FOUR (4) months of reclusion temporal medium, as maximum, with all the accessory penalties provided by law, to indemnify the heirs of Federico Gamayon in the sum of P50,000.00, and to pay the costs in the trial court and in this instance.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ, concur.

[1] Original Records (OR), 2.

[2] Id., 2-3.

[3] OR, 1.

[4] Id., 85-86.

[5] Id., 92

[6] Id., 95.

[7] Id., 99.

[8] OR, 105.

[9] Id., 127.

[10] Id., 129.

[11] Id., 140.

[12] Id., 142.

[13] Id., 159.

[14] Id., 163.

[15] Id., 175, 297.

[16] As written in the transcripts of stenographic notes (TSN, 15 May 1990, 6); but spelled as Jomar in the challenged decision.

[17] TSN, 14 May 1990, 6-8; TSN, 15 May 1990, 8-10.

[18] TSN, 15 May 1990, 11.

[19] TSN, 14 May 1990, 8, 10.

[20] TSN, 15 May 1990, 11.

[21] TSN, 14 May 1990, 15. Joemar, however, later declared that Maximo was armed with a bolo (TSN, 15 May 1990, 17).

[22] TSN, 14 May 1990, 48.

[23] Id., 62.

[24] Id., 39.

[25] Id., 71.

[26] Exhibit "D"; OR 220

[27] Exhibit "D"; OR, 220.

[28] TSN, 23 July 1990, 11.

[29] TSN, 14 May 1990, 20-21.

[30] Id., 64.

[31] Id.

[32] TSN, 11 July 1993, 2-13.

[33] TSN, 16 January 1992, 3-6; TSN, 9 June 1993, 5-6, 8.

[34] TSN, 19 November 1992, 5.

[35] TSN, 19 November 1992, 5, 7, 9.

[36] TSN, 22 February 1993, 11-13.

[37] TSN, 15 January 1992, 5-9.

[38] TSN, 28 May 1992, 8-11.

[39] TSN, 4 August 1992, 7-8.

[40] OR, 307-315; Rollo, 91-99. Per Judge Eustaquio Z. Gacott, Jr.

[41] Brief for the Accused-Appellants, 4; Rollo, 79.

[42] *People vs. Paras*, 147 SCRA 594, 609 [1987]; *People vs. De Guzman*, 194 SCRA 618, 628 [1991]; *People vs. Alacar*, 211 -SCRA 580, 595 [1992].

[43] *People vs. Viente*, 225 SCRA 361, 368-369 [1993].

[44] *People vs. Dominguez*, 217 SCRA 170, 175 [1993].

[45] *People vs. Boniao*, 217 SCRA 653, 671 [1993]

[46] *People vs. Mendoza*, G.R. No. 113791, 22 February 1996, 14.

[47] TSN, 15 May 1990, 28.

[48] TSN, 14 May 1990, 20.

[49] 238 SCRA 306, 317 [1994] 49

[50] *People vs. De la Cruz*, 217 SCRA 283, 293 [1993]; *People vs. Kempis*, 221 SCRA 628, 642 [1993]; *People vs. Kyamko*, 222 SCRA 183, 194 [1993].

[51] TSN, 14 May 1990, 7-8, 10, 15.

[52] TSN, 14 May 1990, 70.

[53] *Id.*, 77-78, 79.

[54] *Id.*, 80.

[55] TSN, 15 May 1990, 10-11.

[56] *Id.*, 16-17.

[57] TSN, 23 July 1990, 16-17.

[58] TSN, 23 July 1990, 20-21.

[59] *Id.*, 23.

[60] *Id.*, 11

[61] Appellee's Brief, 10; Rollo, 122.

[62] *People vs. Pama*, 216 SCRA 385, 401 [1992]; *People vs. Rostata, Jr.*, 218 SCRA 657, 678 [1993]; *People vs. Canillo*, 236 SCRA 22, 42 [1994].

[63] *People vs. de la Cruz*, 217 SCRA 283, 290 [1993]; *People vs. Taneo*, 218 SCRA 494, 505 [1993]; *People vs. Marcelo*, 223 SCRA 24, 33 [1993].

[64] *People vs. Aguilar*, 222 SCRA 394, 405 [1993]; *People vs. Cordova*, 224 SCRA 320, 336 [1993]

[65] Supra note 4.

[66] supra note 3.

[67] Section 3(m), Rule 131, Rules of Court.

[68] Supra notes 12 and 14.

[69] This Section pertinently provides: SECTION 1. Disqualification of judges.

x x x

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[70] Paredes vs. Gopenco, 29 SCRA 688, 696-698 [1969].

[71] See JOAQUIN G. BERNAS, S.J., The Constitution of the Republic of the Philippines: A Commentary, vol. 1, 387 [1987].

[72] TSN, 14 May 1990, 9.

[73] TSN, 15 May 1990, 9.

[74] People vs. Ybeas, 213 SCRA 793, 801 [1992]; People vs. Boniao, supra note 45, at 665-666; People vs. Gomez, 235 SCRA 444, 451 [1994].

[75] Article 11(1), Revised Penal Code.

[76] RAMON C. AQUINO, Criminal Law, vol. 1 [1987 ed.], 143-144.

[77] TSN, 15 May 1990, 38.

[78] TSN, 14 May 1990, 78.

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