

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO GEMOYA, AND RONILO TIONKO, ACCUSED-APPELLANT.*G.R. No. 132633. October 04, 2000*

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-132633/>**MELO, J.:**

Before us on automatic review is a joint decision of the Regional Trial Court of the Eleventh Judicial Region stationed in Davao City (Branch 15), finding accused-appellants guilty of frustrated homicide in Criminal Case No. 35,459-96, and sentencing each of them to a prison term of two years, four months, twenty-one days to eight years and one day.

The two accused-appellants were also found guilty of murder in Criminal Case No. 36,460-96, and were sentenced to suffer the death penalty. The relevant facts are summarized in the People's Brief as follows:

At about 9:00 in the evening of January 27, 1996, the neighborhood of Barrio Malagamot, Panacan, Davao City was awakened by a commotion. Irene Lantapon was among those who went out to check what was happening. She saw accused Armando Gemoya and Candelario Aliazar running towards their house (TSN, June 11, 1996, p. 20, November 5, 1996, p. 65).

After about half an hour, Gemoya and Aliazar came back with Ronilo and Rolly Tionko, the former's uncles and the latter's in-laws. They were armed with pipe, wood and an improvised bow and arrow locally called "indian pana." It was like a sling shot with an arrow made of nail with feathers in the end. Addressing a group of people who were huddled together, Ronilo Tionko stopped and demanded an explanation for what happened to his brother-in-law. They replied that nothing happened to him and advised them to go home. Accused ignored them and proceeded to the house of the Alferezes, which was along the road in front of the school, when they saw Wilfredo Alferez standing by the road waiting for a taxi (*ibid.*, June 11, 1996, p. 5, 16, 20-21; November 4, 1996, p. 57; November 5, 1996, pp. 66 and 71).

The quartet rushed to him. Ronilo Tionko beat him with a cylindrical wood, Rolly Tionko with a pipe of the same size while Aliazar held his arms behind him. Once Gemoya had aimed his "indian pana," they stepped aside to ensure that they would not be hit. Wilfredo Alferez was hit directly on his left chest. Slumped to the ground, Edgardo Jimenez rushed to his aid. His daughter Rosalie, who had just come from school, tried to pull him away. Irene Lantapon yelled at her to run as Gemoya was about to shoot his "indian pana" again. Before she could do so, she was hit in her left ear. Then the four scampered away (*ibid.*, June 11, 1996, pp. 6-7, 21-24; June 13, 1996, pp. 34-36; November 4, 1996, pp. 57-58; November 5, 1996, pp. 66-67; November 6, 1996, pp. 79-81).

Rosalie Jimenez and Wilfredo Alferez were rushed to the hospital. After minor treatment, she was declared out of danger. Wilfredo Alferez was not as lucky. He was pronounced dead on arrival (*ibid.*, June 11, 1996, pp. 8-9; June 13, 1996, pp. 36, 41; November 6, 1996, p. 81).

Two separate Informations were filed against four suspects, namely, the herein two accused-appellants and two others who have remained at-large, to wit:

Criminal Case No. 36,459-96

That on or about January 27, 1996, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused, conspiring together and mutually helping one another, with intent to kill, hit with the use of an "Indian Pana", one Rosalie Jimenez. The accused performed all the acts of execution which could produce the crime of Homicide, as a consequence but which did not produce it by reason of a timely medical intervention, a cause which is independent of the will of the perpetrators.

Contrary to law.

Criminal Case No. 36,460-96

That on or about January 27, 1996 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused, conspiring together and mutually helping one another, with intent to kill, treachery and abuse of superior strength, wilfully, unlawfully and feloniously attacked, assaulted and hit with an "Indian Pana" one Wilfredo Alferez which caused his subsequent death.

Contrary to law.

(pp. 7-8, Rollo.)

On May 28, 1996 and August 28, 1996, Armando Gemoya and Ronilo Tionko, respectively, entered their pleas of "not guilty", and the two criminal cases were thereafter jointly tried, following which, judgment was rendered disposing:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt in the two cases, judgment is rendered as follows:

- Criminal Case No. 36,459-96 -- the penalty of two years, four months, twenty-one days to eight years and one day is imposed on accused Armando Gemoya and Ronilo Tionko for frustrated homicide with respect to victim Rosalie Jimenez.
- Criminal Case No. 36,460-96 -- the death penalty is imposed on accused Armando Gemoya and Ronilo Tionko for the murder of Wilfredo Alferez.

(p. 27, Rollo.)

In their individual and separate briefs, the following errors are assigned:

Accused-appellant Ronilo Tionko:

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT RONILO TIONKO GUILTY IN CRIMINAL CASE NO. 36,459-96 FOR FRUSTRATED HOMICIDE, WITH RESPECT TO VICTIM ROSALIE JIMENEZ AND, ALSO, IN FINDING HIM GUILTY IN CRIMINAL CASE NO. 36,460-96 FOR THE MURDER OF WILFREDO ALFEREZ AS THE SET OF FACTS OBTAINING IN THE CASE AT BAR IS CAPABLE OF TWO OR MORE EXPLANATION.

Accused-appellant Armando Gemoya:

I.

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING GEMOYA OF THE CRIME OF MURDER.

II.

THE TRIAL COURT SERIOUSLY ERRED IN FAILING TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN FAVOR OF GEMOYA.

III.

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING GEMOYA OF THE CRIME OF FRUSTRATED HOMICIDE FOR THE WOUNDING OF ROSALIE JIMENEZ.

IV.

THE TRIAL COURT SERIOUSLY ERRED IN IMPOSING THE DEATH PENALTY OF GEMOYA.

After reviewing the evidence on record we found no compelling reason to depart from the factual findings of the trial court that accused-appellants, in conspiracy with one another, committed the crime of murder qualified by abuse of superior strength. In *People vs. Patalin* (G.R. No. 125539, July 27, 1999) we reiterated the ruling on this matter, thus:

Of primordial consideration in appellate matters is the legal principle that the assessment of the credibility of witnesses and their testimony is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. We generally uphold and respect this appraisal since as an appellate court, we do not deal with live witnesses but only with the cold pages of a written record.

(p. 15)

Accused-appellant Gemoya claims that the uniform narration of facts by prosecution witnesses is not supported by the documentary and the expert's testimony of the NBI Medico Legal Officer who conducted the autopsy examination on the victim Wilfredo Alferez. Dr. Ricardo M. Rodaje affirmed that he found no other injury on the victim aside from the puncture wound on his chest which was the sole cause of death (TSN, July 3, 1996, p.46).

We are not persuaded by this argument.

It must be borne in mind that accused-appellant Gemoya has not denied having executed the fatal act, which caused the death of Wilfredo Alferez. He admittedly discharged the weapon ("indian pana") which hit a vital organ of the victim, causing his instantaneous death. His only lame excuse is that, to defend himself, he used the sling shot ("indian pana"), which he grabbed from "somebody", against the victim in the course of a tumultuous affray allegedly instigated by the victim himself.

When an accused admits having killed the victim, the burden of proving his innocence is shifted to him. We ruled in *People vs. Manlulu* (231 SCRA 701 [1994]) that "by invoking self-defense, the accused admit killing Alfaro. The burden of proof is thus shifted to them. Their duty now is to establish by clear and convincing evidence the lawful justification for the killing." Accused-appellant Gemoya can no longer invoke the constitutional right of being presumed innocent of the crime charged. As far as he is concerned, the crime of murder in the case at bar is established once the prosecution, establishes any of the qualifying circumstances with proof beyond reasonable doubt. This is because the fact of death and the cause thereof are already established by the admission. The intent to kill is likewise presumed from the fact of death, unless the accused proves by convincing evidence that any of the justifying circumstances in Article 11 or any of the exempting circumstances in Article 12, both of the Revised Penal Code, is present.

As we have earlier observed, however, we find no cogent reason to disregard the trial court's factual findings on this score. We find nothing upon review of the record, which would convince us that accused-appellant Gemoya and his cohorts were not the assailants in this case. The theory of self-defense has not been duly established.

The fact that accused-appellant shot the victims with an "indian pana" cannot be negated by supposed inconsistencies between the testimony of the eyewitness and the findings of the medico-legal officer who

conducted the autopsy examination. It matters not if Wilfredo suffered no injury other than the fatal puncture wound. His death was caused by that puncture wound, and the fact that there were four assailants who ganged up on the said victim is incontestable. These established realities make accused-appellants criminally liable for murder, qualified by abuse of superior strength.

Abuse of superior of superior strength is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of in the commission of the crime (*People vs. Bongadillo*, 234 SCRA 233 [1994]). When four armed assailants, two of whom are accused-appellants in this case, ganged up on one unarmed victim, it can only be said that excessive force was purposely sought and employed.

Although only accused-appellant Gemoya may have inflicted the fatal wound upon the victim in this case, accused-appellant Tionko is also liable for the crime of murder since evidently, the concerted acts of the two accused-appellants, and their two other companions, to obtain a common criminal objective signify conspiracy among them. Ronilo Tionko beat Wilfredo with a cylindrical wooden cane or "batuta", and Rolly Tionko with a pipe, while Gemoya, after his companions had step aside to give him a clear shot, released his dart-missile at Wilfredo. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (*People vs. Taguba*, 229 SCRA 188 [1994]). Conspiracy need not be proved by direct evidence of a prior agreement to commit the crime. It may be deduced either from the mode and manner in which the offense was committed or from the accused themselves pointing to a community of interest or concerted action (*People vs. Gayon*, 269 SCRA 587 [1997]). Herein accused-appellants and their companions ganging up upon a single common victim until one of them is able to inflict the fatal wound is clearly indicative of a common design to assail and disable their victim. Conspiracy can be inferred and proved by the totality of the acts of the accused when said acts point to a joint purpose and design (*People vs. Bayrante*, 235 SCRA 19 [1994]).

With or without himself inflicting injuries upon victim Wilfredo, accused-appellant Ronilo Tionko is equally liable for the crime of murder in the case at bar as accused-appellant Gemoya. He cannot escape criminal liability under the circumstances even though the autopsy report indicated no other injuries except the punctured wound on the victim's chest. A conspirator, no matter how minimal his participation in the crime, is as guilty as the principal perpetrator of the crime (*People vs. Alas*, 274 SCRA 310 [1977]). Holding the victim to render him immobile to enable his companions to consummate their dastardly act (*People vs. Dinglasan*, 267 SCRA 29 [1997]) or standing guard or lending moral support to the actual perpetrator is criminally responsible to the same extent as the one who inflicted the fatal blow (*People vs. Diaz*, 271 SCRA 504 [1997]).

As regards their second victim, Rosalie Jimenez, however, we agree with accused-appellants that the trial court erred in convicting them of frustrated homicide. As correctly pointed out in the People's brief, the testimony of Jerry Lantapon and Irene Lantapon concurred to the effect that the hitting of Rosalie was accidental as the second "indian pana" was intended for Wilfredo. The intent to kill Rosalie which is essential if accused-appellants were to be held liable for frustrated homicide is, therefore, absent.

The two accused-appellants herein are liable for the crime resulting from Gemoya's act of releasing the second "indian pana", which accidentally hit Rosalie. Although Rosalie may not have been their intended victim, accused-appellants, acting in conspiracy with one another as we have earlier discussed, are liable for the consequences of their felonious act (see: Paragraph 1, Article 4, Revised Penal Code). Mistake in the identity of the victim, which may either be (a) "error in personae" (mistake of the person), or (b) "aberratio ictus" (mistake in the blow), is neither exempting nor mitigating (*People vs. Gona*, 54 Phil. 605 [1930]). Accused-appellants, therefore, cannot escape the criminal liability resulting from the injury suffered by Rosalie.

As for the penalty, even though it appears on record that Rosalie received medical treatment immediately after her injury, there is no evidence regarding the extent of incapacity said injury caused her. Accordingly, accused-appellants may only be held liable for the crime of slight physical injury under Paragraph 2 of Article 266 of the Revised Penal Code, which provides:

ART. 266. Slight physical injuries and maltreatment.- The crime of slight physical injuries shall be punished:

- By arresto menor when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attention during the same period.
- By arresto menor or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance;
- By arresto menor in its minimum period or a fine not exceeding 50 pesos when the offender shall illtreat another by deed without causing injury.

Since there is no showing that victim Rosalie Jimenez was incapacitated from carrying out her habitual work after the injury, both accused-appellants in this case are sentenced to the penalty of arresto menor or a fine of P200.00 and censure for the crime of slight physical injury.

As to the imposition of the death penalty upon both accused-appellants in this case, we agree with the Solicitor General and accused-appellant Gemoya that the trial court seriously erred in not considering the mitigating circumstance of voluntary surrender in favor of accused-appellant Gemoya. The trial court likewise erred in imposing the maximum in the range of penalty for murder.

Under Article 248 of the Revised Penal Code, the crime of murder is punished by reclusion perpetua to death. Where there are no aggravating and no mitigating circumstances attendant in the commission of the crime, the medium penalty shall be imposed. For the crime of murder, the medium as well as the minimum penalty are the same because the lower range penalty, reclusion perpetua is an indivisible penalty.

Applying the rule to the case at bar where there is the mitigating circumstance of voluntary surrender and the absence of any aggravating circumstances other than those already absorbed in the circumstances which qualified the killing to murder (People vs. Cheng, 279 SCRA 129 [1997]), the minimum penalty of reclusion perpetua should be imposed.

Finally, as correctly pointed out in the People's brief, when death occurs as a result of a crime, the heirs of the deceased are entitled to the amount of as P50,000.00 indemnity for the death of the victim without need of any evidence or proof of damage (People vs. Galladan, G.R. No. 126932, November 19, 1999; People vs. Española, 271 SCRA 689 [1997]). Thus, civil indemnity in the amount of P50,000.00 for the death of Wilfredo Alferez will have to be awarded in favor of his heirs. Accused-appellants being convicted as co-principals for the crime of murder, the two shall be held solidarily liable for the civil indemnity.

WHEREFORE, accused-appellants are found guilty beyond reasonable doubt of: (a) slight physical injury in Criminal Case No. 35,459-96 and each sentenced to a determinate prison term of thirty (30) days of arresto menor; and (b) murder in Criminal Case No. 36,460-96 and accordingly each sentenced to reclusion perpetua, and ordered to solidarily pay civil indemnity in the amount of Fifty Thousand Pesos (P50,000.00) to the heirs of Wilfredo Alferez for the latter's death, the two prison terms to be served concurrently with one another. No special pronouncement is made as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.