

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENERO BATAAC ALIAS “ROGELIO”;
DEFENDANT-APPELLANT.**

G.R. No. 54500. January 29, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The killing in these cases was committed inside a passenger bus in transit. It was done in cold blood and openly, without even the slightest attempt at concealment. The assailants simply did their gory deed and then fled from the vehicle, presumably on foot. They left one man dead and the rest of the passengers in terror. The slain victim, who never knew what hit him, was a municipal policeman.

In time, Genaro Bataac was charged as the actual gunwielder and, after trial, convicted of murder.[1] Subsequently, the other appellant, Renato Refuerzo, was arrested, accused of the same offense, and also convicted after his own trial.[2] The other two persons who allegedly conspired with the appellants in the killing are still at large and have yet to be tried.

There was one eyewitness on whose testimony the trial court relied heavily. This was Mamerto Macaranas, who was in the minibus when the shooting occurred. According to him, the incident happened at about seven o'clock in the evening of September 23, 1977, at Malasiqui, Pangasinan. Appellant Renato Refuerzo was seated to the left of Patrolman Julian de Guzman on the second row of seats. Appellant Genaro Bataac was seated at the rear of the vehicle. Suddenly and without warning, Refuerzo tried to wrest De Guzman's service pistol from him, but the latter resisted. While the two were grappling for the gun, Bataac approached them and shot the policemen twice with a pistolized carbine. The victim slumped dead. Bataac then shouted, "This is a hold-up!" The other occupants of the minibus dropped to the floor except two passengers who were apparently companions of Bataac and Refuerzo. The four of them alighted from the bus and fled. All this Macaranas said he saw because the minibus was well-lighted. He was quite positive in identifying the two appellants.[3]

Earlier that day, according to another witness, the appellants had announced their deadly intention. This witness was Numeriano de Guzman, the victim's father. He testified that at about four o'clock in the afternoon, Bataac, with Refuerzo and two other persons passed by their house in a carromata and shouted in his presence, "We will surely kill the policeman here!" Bataac was pointing to his house. Six days before his son was killed, the witness said, Bataac and his nephew came to their house in a motorcycle. Bataac was looking for Julian, who was not there at the time. When Numeriano asked what they wanted from Julian, they simply left.[4]

Numeriano de Guzman was corroborated by Leonila de Guzman, his daughter-in-law and Julian's widow. She added that three days before the killing, her husband had received a letter reading "Friend Julian, if you cannot kill me, I will be the one to kill you." She could not produce the note, however, because Julian had torn it up.[5]

Both appellants relied on the defense of alibi.

Batac claimed that at about six o'clock in the after-noon of September 23, 1977, he went to the house of his cousin Teresa Frias. From there, he proceeded at eleven o'clock to the railway station and took the train to Manila to attend the wake of his uncle's son. Informed that he was being sought for the killing of Patrolman De Guzman, he returned to Pangasinan and surrendered to the authorities on September 26, 1977.[6]

To corroborate her brother, Primitiva Batac testified that she informed the appellant of their cousin's death and that Batac left for Manila by train at eleven o'clock in the evening of September 23, 1977.[7] The uncle, Victoriano Alansalon, declared at the trial that he saw Batac in Manila at eight o'clock in the morning of September 24, 1977. Batac stayed in this witness's house up to midnight of that date.[8]

Denying that he killed or even threatened to kill De Guzman, Batac said he had been accused of the killing because he himself had filed a complaint against Julian's brother for shooting him, his wife and his daughter on November 7, 1977.[9]

For his part, Refuerzo said that when the killing occurred on September 23, 1977, he was nowhere near the scene of the crime. He was in Cotabato. He was living there with his father after having served in the Armed Forces from February 5, 1974, and until three years later. He returned to Malasiqui, Pangasinan only on August 15, 1979, long after the commission of the crime.[10]

The trouble with Batac's alibi is that it is hardly an alibi. He says he left for Manila at eleven o'clock in the evening of September 23, 1977, but that was about four hours after the slaying of Julian de Guzman. There is no showing, to refute his positive identification by Macaranas, that Batac could not have been in the minibus when Julian de Guzman was killed at seven o'clock that same evening. By his own testimony, Teresa Frias's house was "before the railway station," which was only seven kilometers away from the scene of the crime.[11]

It is also difficult to believe that Batac would leave immediately for Manila to attend a funeral wake and commiserate with an uncle who he says had helped him secure a temporary job as a cargador more than ten years ago.[12] As the trial court noted, his sudden departure looked more like flight rather than sympathy for a bereaved collateral relative.

At any rate, Batac does not in his brief question the rejection by the trial court of his defense of alibi.

As for Refuerzo, who was also positively identified by the prosecution witnesses, the only witness he presented to corroborate his claim of alibi was Jesus Caragan, his uncle. This man's reason for testifying for his nephew would be suspect to begin with. At any rate, his testimony is clearly hearsay as he did not personally know that the appellant was actually residing with his father in Cotabato at the time of the shooting. On the contrary, he admitted on cross-examination that the reason he said Refuerzo was not in Malasiqui on September 23, 1977, was that he did not see him then.[13]

It is too obvious an axiom, and so often repeated by the Court, that alibi, to be believed, must be supported by the most convincing evidence.[14]

The testimony of the driver and the conductor of the minibus where the killing was committed adds nothing to the defense as they simply said in effect that they could not identify the appellants. Carlos Abalos, the conductor, testified that he did not see the face of the person who shot De Guzman and that he could not tell with certainty whether or not Refuerzo was inside the bus at the time of the shooting (and so too with Macaranas, whom he did not know).[15] Marciano Junio, who was driving the bus, was no help either. He said he would not know whether it was Batac who shot De Guzman or Refuerzo who tried to wrest the gun from the policeman because he was looking at the road ahead and not at what was happening behind him.[16] The testimony of these two witnesses was non-committal as to the identification of the appellants. Significantly, however, Abalos's declarations are

useful in corroborating prosecution witness Macaranas's account of how the killing of De Guzman was committed.

But Macaranas's testimony is itself faulted by the appellants on the ground that it is not worthy of credence. They argue that it was offered tardily, some eight months after the event, and suggest that it was fabricated for a fee or some other unworthy consideration. We shall suppose otherwise, giving him the benefit of the doubt. It should be easy to understand the natural reluctance of the ordinary individual to involve himself in court litigations, especially those about killings and killers.

As for the supposed factual inconsistencies in his declarations, the Court finds they can be reconciled or explained. The autopsy report did speak of two entrance wounds in the shoulder and in the chest of the victim. However, Macaranas was not inaccurate when he said the policeman was shot in the head, for the fact is that one of the bullets actually pierced the skull and exited in the head, per the same autopsy report.[17] And it is true that in Batac's trial, the witness said he did not know who tried to grab the service pistol of the victim.[18] But in the subsequent trial of Refuerzo himself, Macaranas declared categorically and at length that he saw the accused struggle with the victim until Batac approached and fired the fatal shots. Significantly, the defense counsel did not then confront the witness with his previous testimony in the earlier trial and seems to have agreed that he had succeeded in recollecting Refuerzo's participation in the crime.

Both the appellants also question the delay in the filing of the charges against them by the victim's family. They argue that although the offense was committed on September 23, 1977, it was only on May 6, 1978, or about eight months later, that Numeriano de Guzman and Leonila Ico de Guzman gave their statements to the Philippine Constabulary investigators. This suggests, they say, that the charges were merely fabricated as otherwise they would have been pursued earlier, and additionally, in Batac's case, were filed merely in retaliation for his own case against Julian's brother.

The delay cannot be imputed to Numeriano and Leonila. On the same day Julian de Guzman was killed, they reported the matter to the police station commander of Malasiqui who in turn informed the commanding officer of the Philippine Constabulary in Bayambang, Pangasinan.[19] After the novena for their slain relative, they went to the PC headquarters, where they were questioned verbally about the killing and were told they would be asked to make written statements later.[20] When they inquired from the station commander when they would make such statements, they were asked to wait until the investigation was completed.[21] It is clear that as early as September 23, 1977, Numeriano and Leonila were ready to state their accusation in writing against the appellants.

As for the accusation itself, the appellants contend that it was only for homicide and not the higher offense of murder. Their reason for so arguing is the wording of the informations which, after alleging the killing of Julian de Guzman, averred that it was "attended by the aggravating circumstances of abuse of superior strength, evident premeditation and treachery."

What controls, of course, is not the designation of the offense but its description, and in the case of the attending circumstances, not their denomination but their function. If the killing was committed with the attendance of any of the circumstances mentioned in Article 248 of the Revised Penal Code, then the offense committed is murder as qualified by such circumstances although they are mistakenly called aggravating in the information. They are qualifying circumstances nonetheless.

The appellants cannot argue that they can be convicted if at all only of the lesser offense of homicide under the informations. In fact, they have been accused therein of the higher offense of murder. It is futile for the appellants to pretend that they have not been informed of the nature and cause of the accusation against them for the informations plainly showed they were being charged with murder as qualified by the circumstances alleged

therein.

In the light of the recorded evidence, it is clear that on September 23, 1977, inside the minibus in Malasiqui, Pangasinan, Renato Refuerzo tried to grab the victim's service pistol and while they were struggling for it, Genaro Batac approached them and shot Julian de Guzman to death. Both the appellants are guilty of murder qualified by treachery as the victim was attacked suddenly and without warning. The crime was attended by the generic aggravating circumstances of evident premeditation, begun as early as the afternoon of the same day when the appellants, carrying the murder weapon, announced in front of the victim's house, and within hearing of his father and his wife, their sure intention to kill him.

It is also obvious that the appellants were acting in concert, and in pursuance of a preconceived purpose when one of them made a grab for the victim's gun and the other approached and shot him with the pistolized carbine they had brought with them beforehand. As conspirators, they are equally guilty of the murder.[22]

Their liability is not the same, however, because no modifying circumstances can be considered in the case of Refuerzo whereas Batac's voluntary surrender will offset the aggravating circumstance of evident premeditation. The death penalty having been abolished, it will now be replaced with reclusion perpetua in the case of Batac. As for Refuerzo, Article III, Section 19 of the Constitution has in effect reduced the penalty for murder to from reclusion temporal, maximum, to reclusion perpetua, the medium period of which is the upper half of reclusion temporal, maximum, or 18 years, 8 months and 1 day to 20 years.[23] This will be the maximum term of his penalty under the Indeterminate Sentence Law, and the minimum term shall be anywhere within the range of the penalty next lower in degree, i.e., prision mayor in its maximum period to reclusion temporal in its medium period, or 10 years and 1 day to 17 years and 4 months.[24] Accordingly, exercising its discretion, the Court hereby sentences Refuerzo to 17 years and 4 months of reclusion temporal as minimum to 20 years as maximum.

Both appellants are also held solidarily to the heirs of the victim in the increased sum of P30,000.00 as civil indemnity for the death of Julian de Guzman and P20,000.00 as actual and moral damages.

WHEREFORE, the appealed judgments as above modified are AFFIRMED, with costs against the defendants-appellants. It is so ordered.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Rollo, pp. 3, 20, G.R. No. 54500.

[2] Ibid., pp. 6, 30, G.R. No. 56020. Both cases were decided by Judge Willelmo C. Fortun.

[3] TSN, pp. 68-84, August 5, 1980; Ibid., pp. 27-28, February 14, 1980.

[4] Id., pp. 8-9, August 5, 1980; Rollo, p. 8, G.R. No. 54500.

[5] Rollo, p. 19, G.R. No. 56020.

[6] TSN, pp. 59-64, 81, February 14, 1980.

[7] Rollo, pp. 13-14, G.R. No. 54500.

[8] Ibid., p. 14.

[9] TSN, pp. 67 & 73, February 14, 1983.

[10] Rollo, p. 23, G.R. No. 56020.

[11] TSN, pp. 78-88, February 14, 1980.

[12] Ibid., pp. 82-83.

[13] Rollo, p. 28, G.R. No. 56020.

[14] People v. Tuando, 150 SCRA 8; People v. Cruz, 142 SCRA 576; People v. Amon, 133 SCRA 384; People v. Lorenzo, 132 SCRA 17; People v. Macayan, 126 SCRA 322; People v. Mosquera, 124 SCRA 775; People v. Dimatulac, 122 SCRA 47.

[15] Rollo, p. 26, G.R. No. 56020.

[16] Ibid., pp. 9 & 14.

[17] Exh. "A"; Exh. "8".

[18] TSN, p. 27, February 14, 1980.

[19] Rollo, p. 22, G.R. No. 56020; TSN, pp. 9-11, February 14, 1980.

[20] Appellee's Brief, pp. 10-11.

[21] Ibid., p. 11.

[22] People v. Ancheta, 148 SCRA 178; People v. Rojas, 147 SCRA 169, citing People v. Timbong, 74 Phil. 295; Gardines v. Magsalin, 73 Phil. 114; People v. Alonzo, 73 SCRA 484; People v. Cristobal, Jr., 91 SCRA 71; People v. Guillermo, 93 SCRA 315; People v. Compacion, 93 SCRA 334; People v. Cazano, 95 SCRA 146; People v. Villason, 115 SCRA 716; People v. Disney, 120 SCRA 637; People v. Loreno, 130 SCRA 311.

[23] Art. 64, par. 4, Revised Penal Code.

[24] Art. 61, par. 3, Revised Penal Code.

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