

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO PUNZALAN, VGET ISON, AND GUILBERT CUISON,
DEFENDANTS-APPELLANTS.***G.R. No. 54562. August 06, 1987*

Ponente: GANCAYCO, J.

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This is an automatic review of the decision dated September 7, 1979, rendered by Hon. Judge Onofre L. Villaluz, Criminal Circuit Court, Pasig, Metro Manila in Criminal Case No. CCC-VII-2639-Rizal, convicting all three (3) accused-appellants of the crime of murder as charged in the information and imposing upon them the death penalty for the fatal shooting of Cpl. Maximo de los Santos of the Paranaque police force in Paranaque, Metro Manila, on June 11, 1978. The dispositive portion of the decision in the vernacular reads in full as follows:

"Sa dahilang napatunayan ng Hukuman na sina Danilo Punzalan, Vget Ison at Guilbert Cuison ay nagkasala sa salang sinadyang pagpatay, ayon sa Articulo 248 ng Binagong Kodigo Penal, sila ay pinapatawan ng parusang KAMATAYAN. Magbabayad sila ng danyos perwisyong P12,000.00 sa mga naulila ng nasawi at P5,000.00 bayad pinsalang moral at P5,000.00 bayad pinsalang di dapat pamarisan at hati-hati sila sa gastos ng usapin.

IPINAGUUTOS.[1]

The original information, dated July 19, 1978 and filed with the trial court on July 27, 1978 charged only three (3) accused, namely, Ramon Jumawan, Danilo Punzalan and Vget Ison, with murder qualified by treachery, abuse of superior strength and cruelty. About four (4) months later, on November 21, 1978, the information was amended to include Guilbert Cuison as a fourth accused as a result of a preliminary investigation conducted by the Fiscal pursuant to the Order of the trial court dated August 11, 1978 issued upon motion of the private prosecutor on the strength of a supplementary sworn statement of one Arsenio Telmo dated August 9, 1978 (Exh. I) claiming that Guilbert Cuison was one of those he saw hitting the late Cpl. Maximo de los Santos with a chair.

Upon arraignment, the three (3) accused, Danilo Punzalan, Vget Ison and Guilbert Cuison pleaded not guilty to the charge and thereafter entered into trial. The other accused, Ramon Jumawan, was never arrested and remained at large. After trial, the lower court returned a verdict of guilty and sentenced the three (3) accused to death as earlier stated.

As set forth in the People's brief, the facts attendant to the commission of the crime charged are as follows:

"In the early evening of June 11, 1978, Cpl. Maximo delos Santos of the Paranaque Police Department, was inside the Nordel Restaurant in Sucat Road, Paranaque, Metro Manila. While he was there, a group of men composed of Ramon Jumawan, who remains at large, Danilo Punzalan, Vget Ison, Guilbert Cuison, Reynaldo Dandan, Angelito Bernardo, Cesar Llamas, Wally or Walfrido Punzalan, Benjamin Arciaga and Leon Allanigue occupied a round table at the restaurant drinking beer. Sometime later, Cpl. delos Santos approached the group saying: 'Mga padres, pulis ako, ibig ko lang alamin sa inyo kung sino ang may baril.' Whereupon, Wally Punzalan who was seated across the table, pulled out a .45 cal. pistol which his brother, Danilo, had

earlier slipped to him under the table. Cpl. delos Santos drew his service revolver and fired twice at Wally Punzalan before the latter could fire at him. Accused Ramon Jumawan then hit the policeman on the head with a chair. The policeman fell to the floor, face down. Appellants Danilo Punzalan and Guilbert Cuison followed suit hitting Cpl. delos Santos repeatedly with chairs on the head, back and arms. Appellant Vget Ison joined in and hit their victim with a beer bottle (Tsn, Jan. 10, 1979, pp. 6-20; Tsn, July 19, 1979, pp. 14-16; Exhs. E, F). The attack was so violent that the chairs and beer bottles which appellants used in hitting the policeman were broken. The broken chairs and fragments of broken glass were strewn on the floor (Tsn, Dec. 7, 1978, pp. 67-76; Exhs. C to C-16).

As the policeman lay prostrate and helpless on the floor, Ramon Jumawan grabbed the victim's service revolver and shot the latter four (4) times. All shots found their mark (Tsn, Jan. 10, 1979, pp. 16-17; Tsn, Dec. 7, 1978, pp. 28-33; Exh. A).

After the group saw that Cpl. Santos was already dead the group left together (Tsn, Jan. 10, 1979, p. 19). They helped each other in bringing the wounded Wally Punzalan to the hospital where he expired five days later (Tsn, July 17, 1979, pp. 75-78, 151-152). The jacket of Danilo Punzalan was left on the floor (Tsn, Dec. 7, 1978, pp. 80-81; Exh. C-4)."[2]

Three separate briefs by different lawyers were filed for the appellants: the first for all the appellants; the second for appellants Vget Ison and Guilbert Cuison; and the third, for appellant Vget Ison only. The defense advanced the following version of the incident:

"The undisputed facts are that at about 9:30 P.M. June 11, 1978, a group of ten (10) male persons was* at the Nordel Restaurant, Dr. Santos Street, Sucat, Paranaque, Metro Manila, for food and beer. The group included the four accused, Danilo Punzalan, Ramon Jumawan, Vget Ison, and Guilbert Cuison. Wally Punzalan, brother of Danilo Punzalan was also there. The owner of the restaurant, Adelaida Borinaga, was also present as was one Elizabeth Mendoza, waitress, who waited on the group. The ten persons seated themselves about a round table at the center of the eating place as they partook of the food and drinks.

Cpl. Maximo de los Santos, a traffic policeman of Paranaque, was also in the restaurant, in civilian clothes, drinking beer, seated at the counter some five meters away from the table of the group. He ordered a bottle of beer from Adelaida Borinaga.

All went well until Cpl. de los Santos suddenly left his place at the counter, went to the table occupied by the accused-appellants and their companions, and with his .38 caliber pistol, shot Wally Punzalan twice at close range felling the latter. In the ensuing rapid succession of action Ramon Jumawan hit Cpl. de los Santos on the head with a chair and gained possession of the policeman's gun and used it in shooting the policeman in turn three or four times.

The policeman sustained four gunshot wounds three of which caused his death. The fourth one was a mere grazing wound. He also had a lacerated wound on the head and other wounds and some contusions and abrasions. He died on the spot where he fell. The necropsy report (Exhibit A) gave the cause of death as severe hemorrhage secondary to gunshot wounds. He was brought to the Olivares General Hospital nearby where he expired six days later, on June 17, 1978, from peritonitis, generalized, secondary to gunshot wounds according to the necropsy report (Exhibit 6)."[3]

It appears from the foregoing narration that contrary to the trial court's findings that the gunplay was started by one of the members of the group. ("isa sa mga nakaupo ang nagbunot ng .45 cal. at binaril ang pulis x x x) what actually transpired was that it was the policeman (victim) who first shot Wally Punzalan.

With that backdrop, We shall now discuss the various assignments of errors raised by the defense which are summarized as follows:

1. The trial court erred in finding the existence of treachery and conspiracy among the accused;
2. The trial court erred in not crediting the defendants with the justifying circumstance of self-defense or defense of relative;
3. The trial court erred in giving credence to the testimony of the prosecution witness, Arsenio Telmo;
4. The trial court erred in failing to acquit all the defendants for failure of the prosecution to establish their guilt beyond reasonable doubt.

Anent the first assigned error, appellants maintain that the trial court erred in finding the existence of conspiracy and treachery among them.

As provided in paragraph 2, Article 8 of the Revised Penal Code, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Since in conspiracy, the act of one becomes the act of all, all persons taking part in the crime are held guilty as principals. Because of its far-reaching consequences, the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy. Thus, it must be shown to exist as clearly and convincingly as the commission of the offense itself,[4] in order to uphold the fundamental principle that no one shall be found guilty of a crime except upon proof beyond reasonable doubt.[5]

While it may be true that direct proof is not essential to prove conspiracy,[6] and it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged, nonetheless, the evidence to prove the same must be positive and convincing.[7]

A close scrutiny of the records in the present case shows that there is not a shred of evidence to establish the existence of conspiracy between appellants. From the evidence presented by the prosecution it is clear that the incident at the Nordel Restaurant on June 11, 1978 was unplanned and spontaneous.

First, admittedly, appellants were together drinking and eating in the company of other persons before the incident happened. This circumstance alone does not suffice to prove the existence of a common criminal design. Mere suspicion, speculation, relationship or association and companionship do not establish conspiracy, for proof thereof must be positive and convincing.[8] In the instant case, it is neither alleged nor shown that appellants' meeting at the Nordel Restaurant at that particular time was planned. Nor is there evidence that any of the appellants knew that the victim was going to be in that particular place or that such meeting was purposely sought for by them. No doubt the encounter was purely accidental. In fact, had the victim not approached the appellants, no untoward incident could have happened.

Second, it appears that it was the deceased Maximo de los Santos who approached the table of appellants and was the first to fire the two shots at Wally Punzalan, when he attempted to draw his gun. The fact that the attack was commenced by Maximo de los Santos negates the theory that appellants conspired to kill him. It was only after Wally Punzalan was gunned down that appellants reacted and ganged up on the victim. Ramon Jumawan hit the victim at the back so his gun fell. Jumawan then picked up the gun which he used in killing the victim.[9]

The fact that the appellants struck and hit the victim with the chairs and beer bottles did not make them conspirators thereby. The evidence shows that appellants acted on impulse, without prior deliberation, planning or design. The appellants must have felt threatened by the deceased who killed their companion. Hence their spontaneous response to the real and determined acts of the victim must have been motivated by a desire to repel the aggression if not to prevent any further harm the victim may inflict on any of them.

The simultaneous attack of appellants cannot be considered as amounting to a conspiracy to kill the deceased.

Neither joint and simultaneous action nor relationship is per se a sufficient indicium of conspiracy.[10] A common design must further be shown to have motivated such action.[11] Indeed, it is the gunshot wounds that led to the death of the victim. The injuries inflicted by appellants were superficial to serious but not fatal.[12] In the absence of clear proof that the killing was in fact envisaged by them, they cannot be held responsible for the death of the victim.

With respect to treachery, the attendance of this aggravating circumstance is found in the concurrence of two conditions: (1) the employment of means, method or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given to the latter to do so,[13] and (2) that such means, method or manner of execution was deliberately or consciously chosen.[14] Thus, it is not enough that the means, method or form of execution tends directly and specially to facilitate the commission of the offense without danger to the offender arising from the defense or retaliation that might be made by the offended party. It is further required, for treachery to be appreciated, that such means, method or form was deliberated upon or consciously adopted by the offender.[15]

The first of the two conditions aforesated appears to be present in the instant case. It has been adequately established that appellants delivered blows to the victim when the latter was down on the floor after being struck by Ramon Jumawan - which fact insured their safety from any defensive or retaliatory act from the victim. However, the second condition is wanting.

From the rapid succession of events, it appears that the means employed were not deliberated upon by appellants. The act of the appellants in assaulting the victim appears to be impelled by the instinct of self-preservation if not retaliation for the shooting of their comrade. Such deliberate or conscious choice of the means was held non-existent where, as in this case, the attack was the product of an impulse of the moment,[16] and where the defendants did not make any preparation to assault the victim.[17] The decision to attack the victim was accidental.[18] The attack arose from a chance encounter and quarrel.[19] Treachery therefore is not present in this case.

Anent the second assigned error, appellants maintain that the trial court erred in not crediting the appellants with the justifying circumstance of self-defense or defense of relative.

Self-defense[20] and defense of the rights of another[21] are recognized circumstances justifying an offense and exempting the perpetrator from criminal liability.

It appears that all the elements of self-defense and defense of a stranger are present under the facts and circumstances of the case at bar.

It was shown that the policeman was the aggressor. The assault was sudden and totally unexpected so that he succeeded in pumping two bullets unto the chest and stomach of his unsuspecting victim Wally Punzalan, giving the latter no chance or time to defend himself or evade the aggression.

After gunning down Wally Punzalan, the policeman's aggression did not stop there. While the policeman stood there menacingly with his gun, the peril to the life of Wally Punzalan and all his companions continued. Faced with this real and imminent danger to their own life, and in obedience to the dictates of the instinct of self preservation, appellants together with Ramon Jumawan, mauled the policeman to immobilize him. And when the latter was disarmed, Jumawan picked the gun and shot him four times. Although this Court cannot in all reason condone the shooting of a person who is already helpless and lying prostrate on the floor, so that Jumawan who is at large must be held to account for his acts, as to the appellants, this Court is mindful of the following discourse it made on the subject, thus:

"The law does not require, and it would be too much to ask of the ordinary man, that when he is defending himself from a deadly assault, in the heat of an encounter at close quarters, he should so mete out his blows that upon a calm and deliberate review of the incident, it will not appear that he exceeded the precise limits of what was absolutely necessary to put his antagonist hors de combat; or that he struck one blow more than was absolutely necessary to save his own life; or that he failed to hold his hand so as to avoid inflicting a fatal wound where a less severe stroke might have served his purpose. Of course, the victim of an unlawful aggression may not lawfully exceed the bounds of rational necessity in repelling the assault. But the measure of rational necessity in cases of this kind is to be found in the situation as it appears to the victim of the assault at the time when the blow is struck; and the courts should not and will not, in the light of after events or fuller knowledge, hold the victims of such deadly assaults at close quarters, to so strict a degree of accountability that they will hesitate to put forth their utmost effort in their own defense when that seems to them to be reasonably necessary." [22]

"The reasonableness of the means employed to prevent an aggression depends upon the nature and quality of the weapon used by the aggressor, his physical condition, his size, his character and the surrounding circumstances vis-a-vis those of the person defending himself. It is also well-settled that in emergencies which imperil the life and limb of a person, human nature acts not upon processes of formal reason but in obedience to the imperious dictates of the instinct of self-preservation. xxx the protective mantle of the law shields not only him who repels actual aggression but as well as him who prevents an aggression that is real and imminent. And the killing of the aggressor would be justified at a time when all the elements of self-defense are present." [23]

"In emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation, and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and to hold the actor irresponsible in law for the consequences." [24]

Except for the shooting of the victim by Jumawan, We find that the appellants employed reasonable means to repel the aggression of the policeman.

The final requisite for complete self-defense, lack of sufficient provocation of the person depending himself, is also present. The evidence shows that Wally Punzalan and his companions had not done anything to invite the ire of the policeman and provoke the latter's aggression. It also appears that the companions of the slain Wally Punzalan were not motivated by revenge, resentment or other evil motive in defending themselves and Wally Punzalan.

The appellants having acted in self-defense and/or in defense of their companion, acted justifiably and are hereby exempt from criminal liability.

As to the third assigned error, the testimony of prosecution witness Arsenio Telmo is sought to be discredited because he gave his statement implicating appellants to the police only four (4) days after the incident.

The initial reluctance of witnesses in this country to volunteer information about a criminal case and their unwillingness to be involved in or dragged into a criminal investigation is common and has been judicially declared not to affect credibility. [25] Telmo, a witness to the incident, was actually asked to go to the police headquarters on the night of June 11, 1978 but he refrained because he was scared. However, he readily gave his name, address and residence certificate to the police. There is nothing in the record that would prove he had an ax to grind against appellants. He is therefore a disinterested witness. Also, his presence at the night of the incident was confirmed by the restaurant owner. [26]

The fact that it was only on August 9, 1978 that Telmo executed a supplemental affidavit implicating Guilbert Cuison for the first time is explained by the fact that it was only on that date that he was made to confront Cuison

when the latter gave himself up to the authorities at Camp Crame. On that occasion, Telmo readily identified Cuison as one of those who hit the victim.[27]

Anent the last assigned error, from our view of the evidence, the participation of herein appellants in mauling the policeman cannot be denied. However, as earlier discussed, their acts were justified.

From the evidence on record, this Court is convinced that herein appellants did not intend to kill the victim; that the circumstances where they found themselves provoked the action they took; their friend dead, shot by another who happened to be a policeman, who at that time was in plain clothes but was holding a gun. It is easy to imagine and feel the intense passion, fear and apprehension in everyone's heart at a time like that. In appellants' eyes, he was a common enemy, killer of their friend and a possible threat to their lives. Accused appellants cannot therefore be faulted since self-preservation is still the first law of nature.

Considering the above disquisitions, this Court is of the opinion that appellants should be acquitted of the charges against them.

WHEREFORE, the judgment of conviction is hereby set aside and appellants are acquitted of the crime charged with costs de oficio. Their immediate release from custody is ordered, unless they are otherwise detained for some other legal cause. However, the authorities must exert all efforts for the apprehension and prosecution of Ramon Jumawan for this killing.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Page 4, Decision, p. 18, Rollo.

[2] Pp. 2-3, Appellee's brief, p. 65, Rollo.

* should read "were"

[3] Pages 5-7, Appellants, p. 76, Rollo.

[4] People vs. Purtugueza, 20 SCRA 901; People vs. Tumulip, 60 SCRA 303, 317-318; People vs. Custodio, 47 SCRA 289, 302; People vs. Llamera, et al., 51 SCRA 48, 60; People vs. Geronimo, 53 SCRA 246, 254; People vs. Tumulip, et al., 60 SCRA 303, 317; People vs. Macatanaw, 62 SCRA 516, 527; People vs. Vistido, et al., 79 SCRA 616, 620.

[5] People vs. Tividad, 20 SCRA 549

[6] People vs. Cabiling and Lopez, 74 SCRA 285, 299; People vs. Roncal and Gabrieles, 79 SCRA 509, 516.

[7] People vs. Peralta, 25 SCRA 759; People vs. Sosing, 111 SCRA 377.

[8] People vs. Sosing, 111 SCRA 368, 377.

[9] T.S.N., pp. 6-7, January 10, 1979.

[10] People vs. Caballero, 53 Phil. 585; People vs. Bartolay, 42 SCRA 1.

[11] People vs. Tividad, 20 SCRA 549.

[12] Exhibit 6.

- [13] People vs. Ramos, 20 SCRA 1109.
- [14] People vs. Clemente, 21 SCRA 261.
- [15] People vs. Dadis, 18 SCRA 699.
- [16] People vs. Macalisang, 22 SCRA 699.
- [17] People vs. Delgado, L-24884, Aug. 31, 1968.
- [18] People vs. Macalisang, *supra*.
- [19] People vs. Clemente, 21 SCRA 261.
- [20] Article 11, No. 1, Revised Penal Code.
- [21] Article 11, No. 3, Revised Penal Code.
- [22] U.S. vs. Singson, 41 Phil. 53, 56.
- [23] People vs. Zambarrano, 54 O.G. 8455.
- [24] People vs. Lara, 48 Phil. 153.
- [25] People vs. Kipte, 42 SCRA 199.
- [26] T.S.N., December 7, 1978; Exhibit "A".
- [27] T.S.N., pp. 31-36, July 17, 1979.

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