

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PRUDENCIO NULLA, ALBERTO JIMENEZ, BEMBO CUNAG, AND
EFREN VELASCO (AT LARGE), ACCUSED-APPELLANTS.***G.R. No. 69346. August 31, 1987*

Ponente: NARVASA, J.

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On or about March 20, 1981 Agustin Mecaral, a merchant of some means, and the owner of a pump boat named "Two Brothers," caused the loading of 56 sacks of rice on the boat at barangay Agpangi, Naval, Leyte, and thereafter set sail to sell the rice at some nearby islands. With him on board were four crew members, namely: Prudencio Nulla, Bembo Cunag, Efren Velasco, and William Sanchez. They sold the rice at P160.00 per sack at the islands of Maripipi (Leyte), Sto. Nino (Samar), and Almagro (Samar). This done, they sailed back for home, with only 1 1/2 sacks left of their original cargo. The evening of March 22, 1981 found them near Maripipi Island (Leyte).

At about 7 o'clock that night, Mecaral was struck on the head twice with a bolo wielded by Prudencio Nulla, causing him to drop to the deck, senseless. The boat's anchor and a trailer (push cart) were then tied to Mecaral's body, after which he was thrown overboard. Mecaral slowly sank into the dark waters, never to be seen again. His money, that proceeds from the sale of the rice, was taken from him before he was cast into the sea.

Mecaral's crewmen continued on their voyage back to Naval, Leyte. They beached at barangay Aslom, Naval, at around 11 o'clock that same night. Here they met Alberto Jimenez; and here, too, were brought, on Nulla's instructions, his wife and their three children. Then Nulla and his family set sail for Cebu. With Nulla were Sanchez and Cunag, but not Velasco, who opted to part with the group at that point. Jimenez followed in another pump boat, but only up to Bigatangan Island.

Nulla and his companions landed the following day at Bito-on, Cebu. From there they proceeded to Cebu City on a Pantranco bus. After two days they boarded an inter-island vessel for Tagum, Davao where they stayed for a month, after which they returned to Cebu. They were arrested shortly upon their arrival at Cebu by P.C. soldiers, and brought to Leyte on the same pump boat belonging to their deceased employer, the "Two Brothers."

Velasco, after leaving his companions at Naval, went, to Tacloban City, and then to Calbayog City. From Calbayog, he sent a telegram to Mecaral's widow, Lourdes, advising of her husband's slaying.

Upon being investigated by PC officers at Naval, Leyte on September 24, 1981, Cunag, Nulla and Sanchez gave written statements, identified at the trial as Exhibits C, D, and 1, respectively. The statements were signed and sworn to before Judge Jose Patino, of the Municipal Trial Court of Naval, after the latter had apprised the trio of their constitutional rights and translated the contents of their statements to them in the vernacular. The Judge also conducted a preliminary investigation as regards Nulla and Velasco.[1]

The foregoing narrative is not subject of dispute. Indeed, it conforms substantially to the appellants' own versions

of the occurrences.[2] It is as regards the manner in which the killing of Mearal was done, and the immediately attendant circumstances, that the accused mainly take issue with the State.

In early December, 1981, the Provincial Fiscal filed with the Regional Trial Court an information charging Nulla, Cunag, Jimenez and Velasco with robbery with homicide, for having killed Agustin Mearal and robbed him of P10,000.00, Philippine Currency. The indictment also alleged that the crime was aggravated by the following circumstances, to wit:

1. That the act was committed with treachery and evident premeditation;
2. That the act was committed by outraging or scoffing at the corpse of the deceased Agustin Mearal;
3. That the crime was committed during nighttime and in an uninhabited place;
4. That the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission, that is, by tying the cadaver of the deceased ** to an iron trailer and anchor and then dumped (sic) the cadaver into the sea to prevent discovery."

Nulla pleaded guilty on arraignment, but later took the witness stand in an attempt to establish the justifying circumstance of self-defense. Cunag and Jimenez entered pleas of not guilty. Velasco was never arraigned and is at large to this day. Separate trials were held at the instance of the accused.

On September 12, 1984 the Trial Court¹ promulgated judgment declaring Nulla, Cunag and Jimenez guilty beyond reasonable doubt of the special complex felony of robbery with homicide under Article 294 (1) of the Revised Penal Code, and sentencing them as follows:

"Prudencio Nulla as principal has to pay his debt to society. His plea of guilty is offset by treachery, nocturnity, uninhabited place and cruelty. May the Lord have mercy on his soul. He is given the death penalty and ordered to indemnify the heirs of Agustin Mearal the sum of P20,000.00 without subsidiary imprisonment in case of insolvency and to pay half the costs. In the event that he is not executed he is credited with four-fifths of his preventive imprisonment.

Bembo Cunag as accomplice is sentenced to suffer and undergo reclusion perpetua, to indemnify the heirs of Agustin Mearal P10,000.00 without subsidiary imprisonment in case of insolvency and to pay half the costs. He is credited with the full term of his preventive detention.

Alberto Jimenez as accessory is sentenced to suffer and undergo imprisonment of from six (6) years of prison correccional as minimum to ten (10) years of prison mayor as maximum, to indemnify the heirs of Agustin Mearal the sum of P2,000.00 without subsidiary imprisonment in case of insolvency."

All three have appealed to this Court. They ascribe several errors to the Court a quo. The central issue that they raise, as might be expected, is one of credibility: they contend that their version of the material occurrences should have been accepted by the Trial Court as reflective of the truth. They also contend that the resolution of this basic question –

- 1) their extra-judicial confessions should be disregarded because taken in violation of their constitutional rights; and
- 2) the testimony of the State's "star witness," William Sanchez, one of the crew of the pump boat, "Two Brothers," should be disbelieved and discarded.

The appellants do not disclaim the killing of Agustin Mearal or the taking of his money, from which they benefited. They assert however that Mearal was killed by Nulla in legitimate defense of his person; and the taking of his money was merely an afterthought, having been done so that it would not be "wasted" by being

thrown into the sea together with Mecaral.

The correctness of the claim for the exclusion of the extra-judicial confessions of Nulla and Cunag must at the outset be declared. Quite apart from the confessants' affirmation that the confessions were wrung from them by violence and intimidation, an affirmation that the Trial Court rejected in the light of the testimony of MTC Judge Patino,¹ it is clear from the record that these confessions were made during their custodial interrogation by the P.C. officers without the assistance of counsel. As much is conceded by the Solicitor General.² Those two (2) confessions must therefore be rejected and disregarded, as this Court has rejected and disregarded similar confessions in *People v. Galit*, 135 SCRA 465, 472, and other subsequent cases.³

The elimination of the extra-judicial confessions leaves the testimony of William Sanchez, one of the crew members of the victim's pump boat, "Two Brothers", as the sole foundation for the verdict of guilt against the appellants. But Sanchez' testimony is not to be spurned out of hand merely because it stands alone against evidence by three other witnesses⁴ asseverating the contrary with respect to the actual killing. It is axiomatic that witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable.⁵

Sanchez' testimony negates any notion of self-defense in the killing of Agustin Mecaral. He describes the slaying as follows:¹

At that time, he and Mecaral were lying on top (the roof) of the boat's cabin. Prudencio Nulla came "from the rear portion of the motor launch (and) went up to the cabin, carrying ** a bolo" in his right hand, measuring "about eighteen inches including the handle". Nulla "went towards the back of Agustin Mecaral, ** suddenly raised his bolo and ** hacked Agustin" who was hit in the head twice. Mecaral "fell to the hull" (deck). Nulla then "ordered Boy Velasco by saying: 'Boy, you get the money.'" Velasco obeyed. He "got the money from the person of Agustin Mecaral" and "gave the money to Prudencio Nulla."

Nulla next "ordered Bimbo Cunag by saying: 'Bo, you get the trailer and the anchor.'" Cunag did so, bringing over the anchor and the trailer, both "made of iron" with a combined weight of 65 kilos. The trailer and anchor were tied to Mecaral's body by Nulla and Cunag with the "rope ** attached to the anchor." When this was finished, Nulla "ordered Efen Velasco to slow down the engine because they will drop the dead body." Nulla and Cunag then "threw the dead body to the sea," which "slowly sank."

Nulla, on the other hand, gives a quite different story. According to him²

" ** At past 6:00 o'clock in the afternoon the four of them, namely, Agustin Mecaral, Cunag, Sanchez and he (Nulla) were gathered on top of the cabin eating supper. They were seated in a circle. Cunag and Sanchez reached/grabbed for the boiled (tinula) fresh fish but Mecaral boxed them. Mecaral stood up and he also stood up and went around but Mecaral boxed him twice in his abdomen. He writhed in pain. His eyes went blurred and when they cleared, he saw that Mecaral was about to pick up his bolo so he beat Mecaral to it and immediately hacked the latter once on the forehead. Mecaral fell near the mast pole while he remained standing motionless and speechless for quite some time. Velasco came out of the cabin, called for Sanchez to take over the steering wheel and asked Cunag whether Mecaral was still breathing. Velasco then ordered Cunag to get the rope and bring over the anchor and trailer (push card) where they tied the body of Mecaral. It was then that Velasco thought of getting the money from the pocket of Mecaral saying that 'I get this money because if the body of Agustin Mecaral will fall to the sea the money will be wasted' (TSN, hearing of October 25, 1983, pp. 23). Then they dumped the body of Mecaral in the sea where it "slowly sank."

From Nulla's account, which the other appellants do not at all question, there is some indication that Agustin Mecaral might not have died from the single bolo wound inflicted on him. Velasco, for one, felt impelled to ask if he was "still breathing", as was not at all improbable. What is certain is that not one of the three appellants, Nulla,

Cunag and Velasco, even attempted to minister to the wounded Mecaral. On the contrary, they were obviously all one in the intention that Mecaral should die one way or the other, that he should not survive the bolo wound, and that they should try to prevent discovery of Mecaral's body by weighing it down and dumping it into the sea. So, too, it is certain from an examination of their testimony that they never entertained any thought of turning over Mecaral's money to his widow. On the contrary, they immediately proceeded to spend it by sojourning in different places for more than a month, and showed no compunction whatever in using their employer's pump boat to take them part way on their journey, although vacation or junket might be the more appropriate term.

Conduct such as this is utterly inconsistent with innocence, or the justifiable infliction of injury upon another in legitimate self-defense. On the contrary, it discloses on appellants' part a willingness to kill, to appropriate and obtain illicit benefit and gratification from property belonging to another, and to employ stratagems to avoid or delay detection of their nefarious acts.

It does not furthermore appear to the Court to be credible that Mecaral would fly into a fit of uncontrollable rage and start boxing three (3) of his crew men, simply because two of them had "grabbed" some fish which they were all having for supper anyway.

This Court cannot therefore accept appellant Nulla's plea of justifiable self-defense, and sustains the findings of the Court a quo on the matter as correct, not only because of the time-honored doctrine that great respect shall be accorded to a trial court's conclusions on the credibility of witnesses because it is in a better position to observe directly and at first hand the mien and demeanor of witnesses while giving testimony,¹ but also because the veracity of those findings is confirmed by this Court's own review and assessment of the proofs.

In the first place, by Nulla's own testimony, he had foiled Mecaral's attempt to get hold of a bolo by getting ahead of Mecaral and taking it. There was thus no need at all for him to use the bolo on Mecaral, as the Trial Court has pointed out, citing *People vs. Ciria*, 106 SCRA 381; and as further observed by that Court, there was at the time no unlawful aggression on the part of the victim and hence, in view of the absence of this primordial element, there can be no "self-defense, complete or incomplete."¹

Moreover, a person having no intention to kill anyone, with no thought in mind except to protect himself from being boxed by another, and who succeeds in preventing the latter from getting hold of a bolo by himself taking it -- this being the factual situation described by the appellants -- would surely, not immediately and unhesitatingly use the bolo to strike a blow at so vital a part of a person's body as the head, absent, as here, any showing that the victim, on being frustrated in the attempt to get the bolo, sought to obtain another weapon or otherwise to continue with his assault against three full-grown, able-bodied men -- an extremely unlikely assumption, to be sure -- and specially where, as here, those three (3) able-bodied men could reasonably be expected to subdue their assailant should he persist in trying to harm them. Surely, after having wounded and completely disabled an alleged assailant in lawful self-defense, the first impulse of innocent men would have been to attend to the injured assailant and give him such medical attention as was available at the time, not forthwith to weigh down the hapless victim with heavy objects and without waste of time drop him into the sea, thus effectively eliminating all possible chance of survival the latter might otherwise have had. Surely, the immediate decision of the appellants to make free with the victim's money and motor launch in order to go on a trip, either for enjoyment or to escape the consequences of their acts of the illegality of which they could not but be fully aware, is entirely and irreconcilably inconsistent with a profession of innocence, and lack of community of purpose or design.

This Court is thus convinced not only that Nulla had failed to discharge the burden reposed on him by the law to prove self-defense in justification of the killing admitted by him,² but also that the evidence does establish beyond doubt that Nulla attacked Mecaral without warning, without the latter having any intimation that such an attack

was forthcoming, and without his having any opportunity whatever to defend himself against the assault; that the killing was not a senseless, or suddenly provoked act, but was deliberately planned, the motive being to take the victim's money amounting to what no doubt seemed to the accused to be quite a tidy sum, the proceeds of sales of rice which Nulla and his companions knew beforehand the victim would vend in different places and in the sale of which they had in fact assisted. In other words, Nulla killed Mearal by reason, and as part of his plan to rob the latter. He has thus committed the special complex crime of robbery with homicide, defined and penalized by paragraph 1, Article 294 of the Revised Penal Code.¹

This Court is also in agreement with the Trial Court that the crime was attended by the aggravating circumstances of treachery, in that the attack was sudden and unexpected, done in a manner tending directly and specially to insure execution of the crime without risk to the offender arising from the defense which the offended person might make;² of nocturnity, in that the darkness of evening was taken advantage of in the commission of the offense and in truth facilitated it;³ and of uninhabited place, in that the felony was perpetrated in the open sea, where it no help could be expected by the victim from other persons and the offenders could easily escape punishment.⁴ There being no adequate proof of whether or not Mearal was still alive when he was thrown into the sea, indeed, the constant reference is to his "dead body" in the testimony of prosecution witness Sanchez, the aggravating circumstance of cruelty will not be appreciated against Nulla.

Cunag's participation in the crime is also proven beyond reasonable doubt. Without hesitation or protestation of any sort, he immediately lent assistance and cooperation to Nulla after the latter had rendered the victim hors de combat. He fetched the anchor and the steel cart or trailer and helped Nulla attach this to Mearal's unconscious and unresisting person and afterwards throw the unfortunate man into the deep sea. He willingly took part in the taking and use of the victim's pump boat, and in the use and enjoyment of his money; and he accompanied Nulla on a month-long sojourn in various places, no doubt spending the victim's money in the process. These acts may not suffice to adjudge him liable as a co-conspirator, or a co-principal, lacking proof of a prior act or statement evincing his prior knowledge and approval of Nulla's evil intent. They definitely suffice to make him responsible as an accomplice within the contemplation of Article 18 of the Revised Penal Code, as a person who, not being a principal as defined in Article 17 of said Code, nonetheless cooperated in the commission of the offense by simultaneous or contemporaneous acts.

Upon the foregoing considerations, the Court pronounces as without merit the argument that the offenders should be found liable not for the special complex crime of robbery with homicide but for the separate felonies of homicide and robbery. There is no question in the Court's mind that the prosecution has satisfactorily proved that the killing of Mearal was done by reason or on occasion of the taking of his money. Similarly, the Court declares as unmeritorious the contention that William Sanchez, the State's "star witness" is biased, who succumbed by reason of his youth and illiteracy to promises of immunity or other benefit in consideration of becoming a prosecution witness.¹ Nothing in the testimony of either Nulla or Cunag even remotely reveals any act on his part in the commission of the offense. There was hence no crime for which he could be charged, and in relation to which he could be promised immunity. And nothing in the record shows him to be motivated by other than the desire to tell the truth in testifying against his companions.

Respecting the third appellant, Alberto Jimenez, the Solicitor General recommends acquittal. The evidence as to him is that when the motor launch of the murdered Mearal ran aground at the shore of Sto. Nino, Naval, Leyte, Jimenez was there with a flashlight and a bolo; that Jimenez asked Nulla, "Is it through?" and Nulla had answered, "Don't worry, it is already finished"; that this was followed by another question from Jimenez, "Where is my share?" in response to which Nulla had said, "Don't you worry about your share, I have it here"; that Jimenez had given Nulla and his companions a gallon of gasoline; and that when Nulla and his companions sailed away,

Jimenez followed in his own motor launch "up to near Higatangan." Nothing however can be read into the fact that Jimenez met his co-accused at the beach, considering that Jimenez' house was only "five or 6 arms length" (about 15 meters) from the spot where the boat stopped. And his questions are, as the Solicitor General argues, susceptible of two interpretations: as an inquiry of whether the robbery and killing had been accomplished, or as inquiring whether the sale of the rice had been completed and whether his share in the proceeds was forthcoming. Under the circumstances, this Court will absolve Jimenez on reasonable doubt, in application of its earlier rulings, invoked by the Solicitor General, viz:

"If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction."²

"It is better to acquit a man upon the ground of reasonable doubt, even though he may, in reality, be guilty than to confine in the penitentiary a person who may be innocent."³

The Trial Court sentenced appellant Nulla to death, appreciating against him the aggravating circumstances of nocturnity, uninhabited place, and treachery,⁴ offset only by the single mitigating circumstance of voluntary plea of guilt. It however ultimately reduced that penalty to reclusion perpetua in view of the abolition of the death penalty by the 1987 Constitution.¹ This is correct. The Solicitor General opines that even without appreciating any aggravating circumstance against Nulla, the result would be the same since the impossible penalty, on account of the mitigating circumstance of plea of guilt, would be the minimum of that prescribed, reclusion perpetua to death; in other words, reclusion perpetua. just the same.

With respect to the penalty to be imposed on Bembo Cunag, the Solicitor General makes the following observations and recommendation:

"The penalty prescribed ** is reclusion perpetua to death **. Under Article 52 of the Revised Penal Code, the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony. Since the penalty next lower in degree to that of reclusion perpetua to death is reclusion temporal (12 years and 1 day to 20 years), then this penalty should be meted to appellant Bembo Cunag. Applying the Indeterminate Sentence Law, the minimum penalty shall be that within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, that is, prision mayor (6 years and 1 day to 12 years), and the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code (Sec. 1, Act No. 4103 as amended by Act No. 4225, **).

"Considering the presence of aggravating circumstances, we therefore recommend that appellant Bembo Cunag be sentenced to an indeterminate penalty of 10 years and 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum."

This Court accepts and approves the recommendation as a correct application of the law.

WHEREFORE, the appealed judgment of the Regional Trial Court is affirmed in so far as appellant Prudencio Nulla is concerned; as regards Bembo Cunag, it is modified so as to reduce the sentence of imprisonment to an indeterminate term of from 10 years and 1 day of prision mayor as minimum, to 17 years, 4 months and 1 day of reclusion temporal as maximum, and affirmed in all other respects; and with respect to appellant Alberto Jimenez, said judgment is reversed and Jimenez is acquitted on reasonable doubt. Costs are charged: 2/3 against appellants Nulla and Cunag 1/3 de oficio.

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

[1] Exh. E; pp. 8-9, original record

[2] See Jimenez' brief: rollo, pp. 30-31; Nulla's brief: rollo, pp. 88-89

1 Branch XVI, RTC at Naval, Subprovince of Biliran, Leyte: Judge Adriano R. Villamor, presiding

1 See footnote 1 and related text at page 2, *supra*

2 Appellee's Brief, p. 19

3 *Peo. v. Sison*, 142 SCRA 219; *Peo. v. Navoa*, 143 SCRA 513; *Peo. v. Poyos*, 143 SCRA 542; SEE Sec. 12, ART. III, 1987 Constitution

4 The appellants, of course

5 *Peo. v. Nabaunag*, 79 SCRA 33

1 TSN, June 2, 1983, pp. 28-37

2 At pp. 6 and 7, his brief: pp. 88-89 of the rollo; see also, Jimenez' brief (pp. 30-31, rollo)

1 *Peo. v. Payao*, 68 SCRA 70, 73-74; *Peo. v. de Leon*, 128 SCRA 121

1 Par. I, Art. 11, Revised Penal Code

2 *Peo. v. Pay-an*, 84 SCRA 353; *Peo. v. Lebunfacil, et al.*, 96 SCRA 573

1 See *U.S. v. Villorente*, 30 Phil. 59; *Peo. v. Pacala*, 58 SCRA 370; *Peo. v. Libre, et al.*, 93 Phil. 5, cited in Reyes, L.B., *The Revised Penal Code (Criminal Law)*, 1981 ed., Book II, pp. 606-607

2 Par. 16, ART. 14, Revised Penal Code

3 *U.S. v. Perez*, 32 Phil., 163; *Peo. v. Pineda*, 565 Phil. 641

4 *Peo. v. Rubia*, 52 Phil. 172

1 Nulla's brief, p. 95, rollo; pp. 7-8, Cunag's brief

2 *Peo. v. Pacana, et al.*, 47 Phil. 48, citing *U.S. v. Maano*, 2 Phil. 718

3 *Peo. v. Manoji*, 68 Phil. 47, citing *Peo. v. Asinas*, 53 Phil. 59, 71

4 Apart from cruelty

1 Sec. 19 [1], ART. III

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