

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENTEM KINTUAN, ACCUSED-APPELLANT.***G.R. No. 74100. December 03, 1987*

Ponente: MELENCIO-HERRERA, J.

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On appeal is the judgment of the Regional Trial Court of Cotabato City, Branch XIII, in Criminal Case No. 799 for Murder with Multiple Frustrated Murder, convicting the accused Gentem KINTUAN, of the crime charged and sentencing him to suffer "life imprisonment", to pay a) indemnity of P12,000.00 to the heirs of the slain Norma Mastura, and P5,000.00 to the heirs of each of the four (4) children injured; b) moral damages and exemplary damages of P5,000.00; and c) the costs of litigation.

The incident in question occurred at past midnight on February 2, 1982 at Salimbao, Sultan Kudarat, Maguindanao, where the house of a Section Commander of the Civilian Home Defense Force (CHDF), Datu BUAGAS Mastura, who was then sleeping with his two (2) wives and seven (7) children at said place and time, was fired at by approximately twenty (20) persons using assorted high-powered weapons. BUAGAS exchanged fire with the attackers using his carbine until he ran out of ammunition. Thereafter, the attackers left in three (3) groups, one towards Piniring, another towards Limbo, and the third towards Polangi River. As a consequence of said raid, one of BUAGAS' wives, Norma Mastura, was mortally wounded, and four (4) of his children were seriously injured. Norma died at the Cotabato City Regional Hospital, while the four (4) children survived due to timely medical attention.

BUAGAS testified that he recognized accused-appellant Gentem KINTUAN, Monga Gani, Barra Pao and Mama Bedo as among the attackers because he already knew them before the incident, and because of the moonlight and the light coming from the mercury lamp on the highway, aside from the fact that some of the attackers got as near as four (4) to seven (7) meters from his house.

BUAGAS' testimony was corroborated by Kamlon Mamadra, another CHDF member and a neighbor residing about thirty (30) meters away who declared that he was awakened by gunshots. He gathered his family in one corner of the house for safety, got his garand rifle, and proceeded to the direction of the firing. He crawled and crossed the barangay road. The attackers, numbering about twenty (20), saw him and fired at him. He dove into the barangay road canal and fired back. After consuming four (4) magazines, he heard Monga Gani call KINTUAN to withdraw. He knew these two because both are residents of the same locality and had been detained at the provincial jail where he had once been a provincial guard. He actually saw them (KINTUAN and Gani) from a distance of only about five (5) meters. The attackers thereafter retreated in three (3) directions, one group going towards Piniring, another towards Limbo, and the third, towards Polangi River.

Another prosecution witness Pendatum Usman, the Executive Officer of the 2nd ICHDF Batallion of Sultan Kudarat, and a resident of Limbo, Sultan Kudarat, stated that he was still awake reviewing his thesis when he heard continuous and intense firing in the direction of Salimbao. He called his brother and brother-in-law who

lived nearby, also members of ICHDF, and instructed them to "make a block" at the mosque because that was the trail going to and coming from Salimbao. Two minutes after they had deployed at the side of the mosque, they saw men coming, and he shouted, "HALT" identifying themselves as ICHDF members. Instead of stopping, the men fired at them and they fired back. The encounter lasted for two minutes. Four (4) of the men in the group were hit. He then heard Monga Gani call on Gentem KINTUAN, "Sabanggi ako, nasugatan" (help me, I am wounded). The group thereupon retreated to Barangay Bulalo bringing their wounded but leaving a dead companion who was later identified as Commander Joy Desumangcop. The witness had known Monga Gani and KINTUAN when he (Usman) was still a member of the MNLF because they used to camp at Barangay Ibutigen where Monga Gani and KINTUAN resided.

The empty shells recovered from the scene of the crime by the police showed that the attackers used various high-powered weapons such as "armalite M-16, automatic rifle, J-I FAL, grenade launcher and carbine".[1]

An Information for Murder with Multiple Frustrated Murder was filed on May 12, 1982 with the then Court of First Instance of Cotabato, Branch III, Cotabato City, against Monga Gani, Gentem KINTUAN, Mama Bedo, Barra Pao and 20 John Does. Only accused-appellant KINTUAN was apprehended and stood trial.

In defense, KINTUAN denied any participation in the assault and declared that on the night of the incident, he was at his house at Ibutegin, Sultan Kudarat, Maguindanao, and that he did not see any of the persons attributed to have been with him that night. In a confrontation with BUAGAS, the latter wanted him to admit that he was one of the attackers so he could be utilized as a state witness. He was threatened that he would be killed should he not cooperate. When he told BUAGAS that he knew nothing about the incident, he was referred to Mayor Tacao Mastura, a cousin of BUAGAS, who told him to confess that it was Datu Udtong Baraguir and Ex-Governor Sangacala Baraguir who ordered them to attack BUAGAS' house. As he refused to do their bidding he was mauled by the Mayor's men and sustained injuries. Mayor Mastura disliked him because when both of them, together with others, returned to the folds of the law, he (the Mayor) wanted to get his firearm, but he (KINTUAN) refused to give it to the Mayor.

After trial, the lower Court found KINTUAN guilty as charged and decreed:

"WHEREFORE, GENTEM KINTUAN is hereby found guilty beyond reasonable doubt and applying recidivism as an aggravating circumstance and the element of passion and obfuscation as a mitigating circumstance, he is hereby sentenced to suffer LIFE IMPRISONMENT.

"He is ordered to pay the heirs of Norma Mastura the amount of P12,000.00 for the death of Norma Mastura and P5,000.00 for the heirs of each of the injured children, namely: Naribai Mastura, Uko Mastura, Sadat Mastura and Aladin Mastura.

"He should also pay the heirs of the victims the amount of P5,000.00 as moral and exemplary damages.

"He shall pay the cost of this litigation."

In this appeal, KINTUAN maintains:

"1) The trial court erred in giving credence to the testimonies of the prosecution witnesses which are riddled with inconsistencies and incredibilities in violation of the rules of evidence.

"2) The trial court erred in ignoring the testimonies of accused-appellant which is supported by the medical certificate duly (showing or attesting to) the injuries inflicted by the police under Mayor Tacao Mastura."

It is not disputed that BUAGAS' house was fired upon by a group of men, numbering about twenty (20), using various kinds of high-powered weapons, which resulted in the death of his wife Norma, and serious injury to four

(4) of his children. The issue is whether or not KINTUAN was one of the perpetrators of said offense.

The rule consistently adhered to in criminal prosecutions is that in the matter of credibility of witnesses, the findings of the trial Court are given weight and the highest degree of respect by Appellate Courts[2] because the former is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.[3] No compelling reasons exist in this case to disturb the Trial Court's findings in this regard.

The defense argues that the testimonies of prosecution witnesses were incredible and inconsistent with one another, hence, unworthy of credence. No specific showing was made, however, as to which testimonies are at variance. Consequently, such testimonies, in the absence of improper motives, are worthy of full faith and credit.[4]

But even if we examine the testimonial evidence presented by the prosecution we find no such inconsistencies. On the contrary, the testimonies corroborate one another and complete the whole scenario.

BUAGAS and Kamlon Mamadra positively identified KINTUAN as one of those who raided the former's house. They could identify him because he was only several meters away from them, respectively, added to the fact that it was a moonlight night and there was illumination from a nearby mercury lamp post. Both witnesses gave a similar estimate of the number of attackers, approximately twenty (20). One of the raiders, Monga Gani, was also separately identified by them. Witness Pendatum Usman further corroborated the above narrations by testifying that he, with other CHDF members, had an encounter with the retreating group of men who had attacked BUAGAS' house among whom are KINTUAN and Monga Gani.[5] Usman also positively identified KINTUAN and Monga Gani as among the group. Positive identification of the accused by prosecution witnesses prove the commission of the crime,[6] and denial of the same by the accused cannot prevail over such identification.[7]

We find nothing incredible nor contrary to human experience in BUAGAS' testimony that he saw KINTUAN at a distance of about three (3) to four (4) meters and that the latter and his group simply retreated when BUAGAS stopped firing. As correctly pointed out by the Solicitor General, this can be explained by the fact that when BUAGAS stopped firing because he had run out of ammunition, the attackers must have thought that he was already dead and accordingly left.

In his testimony, KINTUAN also declared that BUAGAS' declaration should be received with caution because of his interest in the case being an appointee and first cousin of Mayor Tacao Mastura, the arch political rival of Ex-Governor Sangacala Baraguir, KINTUAN's leader. BUAGAS' interest, if not concern, over the case is to be expected for after all, he and his family had been the target of the raid. It was his wife who had been killed, and his four children, seriously wounded. It does not follow, however, that he is a biased witness. His relationship to the victims neither disqualifies him from testifying, nor does it render his testimony utterly devoid of belief, in the absence of improper motive actuating him to testify falsely against the accused.[8] No such improper motive has been established in this case.

KINTUAN's claim that he was mauled by the Mayor's men due to his refusal to admit the commission of the crime and to testify that the attack against BUAGAS was upon the order of Ex-Governor Sangacala Baraguir, neither persuades us. For one thing, KINTUAN had not executed any extrajudicial confession. For another, the medical certificate and the x-ray plate, which could have attested to the injuries allegedly sustained by him, were not presented in evidence, the justification being that they were allegedly in the possession of a certain Datu Kabo and Datu Monib who had both since died.[9] Ultimately, KINTUAN submitted a plain xerox copy of a medical certificate[10] in their formal offer of evidence, but the same was objected to by the prosecution for lack of proper

identification and was consequently rejected by the Trial Court.[11]

The attack on BUAGAS' family was attended with treachery, the shooting being sudden and unexpected[12] and in the dead of night when they were already fast asleep.[13] Likewise, the aggravating circumstances of superiority and nocturnity are present, but they cannot be considered because they are deemed absorbed in treachery.[14] The crime was also aggravated by dwelling because BUAGAS and his family were assaulted in their house.[15]

Although not alleged in the Information, the Trial Court also appreciated the aggravating circumstance of recidivism, KINTUAN having admitted during the trial[16] that he had been previously convicted of Robbery in Band with Homicide and Multiple Attempted Homicide on May 14, 1980 in Criminal Case No. 25 of the Court of First Instance of Maguindanao, Branch III, Cotabato City,[17] and of Robbery in Band with Attempted Rape in Criminal Case No. 27 of the same Court.[18] This is a reversible error. A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same Title of the Revised Penal Code.[19] Both crimes for which KINTUAN was previously convicted fall under Title 10 of the Code listing Crimes Against Property. The present crime of which he now stands charged is embraced in Title 8 covering Crimes Against Persons. Recidivism, therefore, cannot be considered in this case.

However, since it has been proven by the evidence that when KINTUAN was charged in 1982 of the present offense, he was already serving sentence for Robbery in Band with Attempted Rape, but that he escaped from jail in 1980,[20] quasi-recidivism may be appreciated.[21] Quasi-recidivism is a special aggravating circumstance where a person, after having been convicted by final judgment, shall commit a new felony before beginning to serve such sentence, or while serving the same, in which case he shall be punished by the maximum period of the penalty prescribed by law for the new felony,[22] and this special aggravating circumstance cannot be offset by any ordinary mitigating circumstance.[23]

Reversible error was further committed by the Trial Court in appreciating the mitigating circumstance of passion and obfuscation on the ground that raids and counter-raids were being committed by one rival political group against the other and the incident involved could have been one of them. We find, however, that such mitigating circumstance cannot be appreciated since KINTUAN committed the offense in a spirit of lawlessness. Furthermore, the very nature of the crime committed and the number of offenders indicate that it had been planned and meditated before its execution.[24]

Considering that KINTUAN is a quasi-recidivist, the penalty for this complex crime would have been imposable in its maximum period, or death, regardless of the presence or absence of mitigating or aggravating circumstances.[25] However, with the abolition of capital punishment by the 1987 Constitution (Section 19, Article III), the penalty for Murder would now be reclusion temporal, maximum, to reclusion perpetua, which should be imposed in its maximum period, or, reclusion perpetua.

WHEREFORE, judgment is hereby rendered sentencing the accused Gentem Kintuan, to reclusion perpetua, to indemnify the heirs of the deceased Norma Mastura in the amount of P30,000.00; the four (4) injured children, Naribai Mastura, Uko Mastura, Sadat Mastura and Aladin Mastura, in the sum of P5,000.00 each and to pay the costs.

SO ORDERED.

Yap (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

- [1] T.s.n., July 2, 1982, p. 5; August 11, 1982, p. 11.
- [2] *People vs. Sarol*, L-66240, Oct. 8, 1985, 139 SCRA 125.
- [3] *People vs. Garcia*, L-44364, April 27, 1979, 89 SCRA 440.
- [4] *People vs. Valdemoro*, L-51367, Jan. 22, 1981, 102 SCRA 170.
- [5] T.s.n., Dec. 9, 1982, pp. 6-7, 18, 26-27.
- [6] *People vs. Perez*, L-44188, Jan. 21, 1981, 102 SCRA 352.
- [7] *People vs. Tuscano*, L-66570-71, June 24, 1985, 137 SCRA 203.
- [8] *People vs. Abejuela*, L-32702, August 6, 1979, 92 SCRA 503; *People vs. Veloso y Militante*, L-33132, August 6, 1979; 92 SCRA 515.
- [9] T.s.n., December 7, 1984, pp. 12-13; December 6, 1984, p. 22.
- [10] Exhibit 3, Folder of Exhibits, RTC Records.
- [11] T.s.n., February 6, 1985, pp. 11-13.
- [12] *People vs. dela Fuente*, L-63251-52, Dec. 29, 1983, 126 SCRA 518.
- [13] *People vs. Baseloy*, L-38012, June 19, 1985, 137 SCRA 39.
- [14] *People vs. Araja*, L-24780, June 29, 1981, 105 SCRA 33; *People vs. Tirol*, L-30538, Jan. 31, 1981, 102 SCRA 558.
- [15] See *People vs. Romero*, L-38786, Dec. 15, 1982, 119 SCRA 236.
- [16] T.s.n., December 7, 1984, pp. 22-26.
- [17] Exhibit H, Folder of Exhibits, RTC Records.
- [18] Exhibit G, *ibid.*
- [19] Art. 14, par. 9, Revised Penal Code.
- [20] T.s.n., Dec. 7, 1984, pp. 19-20, 26-28.
- [21] Art. 160, Revised Penal Code; see *People vs. Macariola*, L-40757, Jan. 24, 1983, 120 SCRA 92.
- [22] *Ibid.*; see *People vs. Jose*, L-35280, Aug. 12, 1983, 124 SCRA 89.
- [23] *Ibid.*; *People vs. Aro*, L-38141, May 15, 1984, 129 SCRA 216.
- [24] *People vs. Pagal*, L-32040, Oct. 25, 1977, 79 SCRA 570.
- [25] *People vs. Dioso*, L-38346-47, Oct. 23, 1984, 132 SCRA 616.

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