

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO BALANSI ALIAS “BAN-OS”;
DEFENDANT-APPELLANT.**

G.R. No. 77284. July 19, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The accused-appellant stands charged with the murder of Elpidio Dalsen on January 30, 1984 at Balinciagao, Pasil, Kalinga-Apayao. The Information alleged that he, armed with a Garand rifle, went inside the house of the victim, then allegedly fast asleep, where he shot him twice and killed him. Treachery was held to be present, and so were evident premeditation and employment of means to weaken the defense of the victim.[1]

The accused-appellant was then the Barangay Captain of Balinciagao Norte, Pasil, Kalinga-Apayao, and a member of the Civilian Home Defense Force (CHDF), while the victim was the Provincial Development Officer of Kalinga-Apayao.[2] The incident took place during a wedding celebration at Balinciagao Sur, Pasil, at or about 5:30 or 6:00 o'clock in the afternoon. The prosecution presented eight witnesses. The defense placed two on the stand.

The trial court found the accused guilty as charged and sentenced him to die and to pay a total of P590,000.00 in actual (P540,000.00 for loss of the victim's earning capacity) and moral damages, plus costs.[3]

It appears that the victim, a nephew of the appellant, was then sleeping at the house of his parents located opposite the house where the wedding celebration was being held. At or about 5:00 o'clock in the afternoon, Beatrice Canao, a Balinciagao resident, saw the accused, her uncle, standing at the door of the house of the victim's parents, also her relatives, armed with a gun. She inquired what he was doing there and he allegedly replied that he was waiting for the victim. She then entered the premises to locate an old newspaper with which to wrap food, a rice cake when she saw the victim asleep. When she left, she saw the accused at the doorway. After disposing of her rice cake (which she gave to a certain Fr. Medina), she heard two gunshots, fired at an interval of two or three seconds, emanating apparently from the house, to which she shortly rushed. She allegedly met the accused at the steps leading to the second floor, brandishing his rifle.[4]

She allegedly shouted "putok, putok!"[5] She then reported the matter to the police.

Yulo Asbok, a fellow CHDF member of the accused and likewise a Balinciagao resident, also heard two gunshots ring that afternoon. He said that he was three meters from the house where the gunshot sounds seemed to have originated. He allegedly proceeded there but was met by the accused at the steps. They allegedly grappled for possession of the rifle, which, he alleged, was still warm and reeked of gunpowder. He was able to wrest possession, after which, the accused allegedly ran away and fled to Pogon, also in Balinciagao. He later learned that the victim had been shot and that he died at Lubuagan Hospital.[6]

Rosalina Dalsen, the victim's wife was enjoying the wedding celebration when she heard two gunshots. She made

inquiries subsequently and was informed that the victim was her husband. She claimed that she saw the accused standing at the entrance of her parents-in-law's house prior thereto.[7]

Dr. Nicolas Balais, a dentist by profession, was also at that celebration when he heard the shots. He then went to the victim's parent's house where they, the shots, rang out from. He did not allegedly have in mind that somebody had actually been fired upon but thought that maybe there had been a burglary. He ascended the steps of the house where the accused earlier met Beatrice Candao and Yulo Asbok, and entered the second floor. He saw the victim lying in his room, whom he initially believed to be merely sleeping, but who was, in fact, dead.[8]

The prosecution also presented Simeon Valera, principal of Pasil Central School, and Artemio Dalsen, the victim's brother, who sought to establish a motive for the killing of the victim, a motive they imputed to the accused. Valera testified that revenge was supposedly a tradition among Kalingas (of which both the accused and victim were members), which, however, could be prevented by the *dusa*, meaning, apparently, intervention and mediation by community elders.[9] Meanwhile, Dalsen claimed that the accused had nursed a long-standing grudge against the victim, whom he accused of delaying on alleged award for the construction of a bridge in Balinciagao in 1979.[10]

After the prosecution rested, the defense presented its evidence. It presented two witnesses, the accused himself and Masadao Jose, who lived in Samangana, Balinciagao.

The accused claimed that he was also at the wedding celebration on that fateful afternoon when he too heard two gunshots break in the air. As a member of the CHDF, he allegedly took it upon himself to investigate the matter. He said that he went to the direction where the shots came from and was on his way to the entrance of the house when Yulo Asbok allegedly prevented him from doing so, who grabbed the firearm he was carrying. He did not allegedly know at that time that the victim had been shot and allegedly learned of it only on the following day. He admitted having ran away but allegedly because he had been implicated. Four days later, he voluntarily turned himself in to the police. Masadao Jose corroborated his statement.[11]

In returning a verdict of guilty, the trial judge observed: "While there is no eye witness who testified to having seen the accused Bonifacio Balansi shoot the victim, yet all the circumstances pointed to him as the perpetrator of the crime." [12]

The circumstantial evidence referred to came primarily from the lips of Yulo Asbok and Beatrice Candao, as well as the accused himself, who admitted having been at the scene of the crime. Obviously, the judge did not lend credence to the accused's defense.

The accused-appellant now contends that the judge erred, first, in appreciating circumstantial evidence, second, in appreciating treachery, and third, in rejecting his defense of alibi.

We affirm, with modification, the decision appealed from.

While there was no eyewitness account, the web of circumstantial evidence points to no other conclusion than that the accused was guilty of shooting the victim, Elpidio Dalsen, to death in the afternoon of January 30, 1982. These circumstances are as follows: (1) He was seen standing by the entrance of the house where the victim had sojourned, armed with a long rifle, minutes before gunshots were heard. Three witnesses saw him: Beatrice Canao, Yulo Asbok, and Rosalina Dalsen. (2) Moments later, two shots rang out, one after the other. Four witnesses heard them: Canao, Asbok, Dalsen, and Nicolas Balais. (3) Thereafter, Canao saw him descending from the steps of the house. Asbok also saw him there, whom he wrestled for the possession of the rifle. (4) He fled and hid for four days.

Under Rule 133, Section 5, of the Rules of Court:

SEC. 4. Circumstantial evidence, when sufficient. -- circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[13]

As we glean from the evidence, there is no one, other than the accused-appellant, who could have perpetrated the offense.

The accused-appellant, as we said, disagrees. He insists that he was there, precisely, to investigate the matter, and armed himself for the purpose, but was stopped by Yulo Asbok. His protests notwithstanding, we too must reject this defense. Two reasons persuade us. First, he has not ascribed any motive to Yulo Asbok as to why he, Asbok, should testify falsely against him. Second, he admits having fled immediately thereafter. If he were truly innocent, he would not have done so. We have held time and again that flight is a silent admission of guilt.[14] As aptly put: "The righteous is brave as a lion, but the wicked man fleeth." [15]

If he were moreover truly innocent, and that it was Yulo Asbok who had something to do with the killing and who had meanwhile tried to stop him from conducting an inquiry, it would have been he, the accused, to be the first to make a report to the authorities so that Asbok could be brought to the bar of justice. If the latter did try to prevent him from performing his duties, as he claimed,[16] he should have gone to lengths to implicate Asbok, because that too was his duty.

We also reject his claims of inconsistency on the part of the prosecution's witnesses, notably Asbok, who stated that he was the first to be in the victim's house after the shooting (aside from the accused), in the face of Canao's testimony that she also had been there. The Court is not convinced that an inconsistency exists. For obviously, Asbok had been mistaken. Canao had earlier been there.

The Court sees no need to make an inquiry on the admissibility of testimonies attributing motive to the accused-appellant. We are sufficiently persuaded that even without any successful showing of a motive, the circumstantial evidence on hand nevertheless suffices to warrant a conviction beyond reasonable doubt.

The Court, however, is not convinced that the accused-appellant had committed murder arising from treachery, evident premeditation, and means employed to weaken the defense of the victim. As to treachery, jurisprudence is ample that the manner of attack must be shown. While there are testimonies to the effect that the victim was "fast asleep", we can not safely presume that he was still in that condition when the accused sprung his attack. And since nobody saw the actual shooting, we can not justifiably say that the victim was still actually still asleep at that time.[17]

Neither is evident premeditation a qualifying circumstance. In appreciating evident premeditation, it is necessary to show: (1) the time when the offender determined to commit the offense; (2) an act manifestly indicating that the culprit had clung to his determination; and (3) a sufficient interval of time between the determination and execution.[18] The prior determination of the accused to do away with the victim has not been sufficiently demonstrated by the prosecution.

That the accused also employed means to weaken the victim's defenses is likewise missing in this case. As we said, there was no actual eyewitness to the killing and hence, we can not say for sure, based on the evidence before us, that the appellant did employ means to weaken the defense of the victim.

We, however, affirm the trial court insofar as it appreciated dwelling. Although the victim was not shot in his house (his parents owned it) it has been held that the dwelling place need not be owned by the victim.[19] In that case, it was held:

La circunstancia agravante de morada, aunque no fuese la casa propia de los occisos, debe estimarse porque--segun el Tribunal Supremo de España--"no solo por el respeto que el domicilio ajeno merece, como especie de complemento de la personalidad, y por el que es debido al hogar de la familia, sino por el no menor de que es digna la residencia privada de cualquier ciudadano, y por el mayor grado de malicia que revela quien busca a su victima alli en donde se encuentra con la confianza y abandono propios del lugar elegido para el descanso y las intimidaciones de la vida; razon por la cual habla el Codigo penal en el art. 10, no de domicilio en sentido legal, sino de morada en su acepcion real, que no es otra que la del paraje en donde una persona hace estancia de asiento, * * * a titulo de nuedped, o por otro cualquiera." (S. de 25 de Junio de 1886, 2 Viada., 5. ed., 329.)[20]

In the Basa case, the victims were killed while sleeping as guests in the house of another. Dwelling there was held to be aggravating.

According to earlier cases, including U.S. v. Bredejo,[21] our ruling was that the dwelling place must be owned by the offended party. In another decision, People v. Celespara,[22] dwelling was not appreciated as an aggravating circumstance in the absence of proof that the victim owned the dwelling place where he was killed. In People v. Guhiting,[23] morada was not likewise considered for the same reasons.

However, more recent cases have since followed the lead of Basa, notably People v. Galapia[24] and People v. Sto. Tomas.[25]

"Dwelling" is considered an aggravating circumstance because primarily of the sanctity of privacy the law accords to human abode. According to one commentator, one's dwelling place is a "sanctuary worthy of respect"[26] and that one who slanders another in the latter's house is more guilty than if he who offends him elsewhere. However, one does not lose his right of privacy where he is offended in the house of another because as his invited guest, he, the stranger, is sheltered by the same roof and protected by the same intimacy of life it affords. It may not be his house, but it is, even for a brief moment, "home" to him. He is entitled to respect even for that short moment.

It is with more reason in this case. The late Elpidio Dalsen died in the house of his very parents, who raised him until he could be on his own.

Under the circumstances, we affirm the lower court, but only insofar as it held the accused-appellant responsible for taking the life of Elpidio Dalsen. We hold him liable for simple homicide aggravated by dwelling. Under the Revised Penal Code, he must suffer reclusion temporal in its maximum period, there being no mitigating circumstances and one aggravating circumstance.[27]

WHEREFORE, the appeal is DISMISSED. The accused-appellant is sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal. The grant of damages is affirmed.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Original Records, 1.

[2] Rollo, 64.

- [3] Id., 79-80.
- [4] Id., 67-68.
- [5] Original Records, id., 9.
- [6] Rollo, id., 66-67.
- [7] Id., 64.
- [8] Id., 65-66.
- [9] Id., 68-70.
- [10] Id., 71-72.
- [11] Id., 74-76.
- [12] Id., 76.
- [13] RULES OF COURT, Rule 133, sec. 5, now sec. 4 of the REVISED RULES ON EVIDENCE.
- [14] See *People v. Espinosa*, No. 62613, January 17, 1986, 141 SCRA 110.
- [15] See *People v. Guevarra*, G.R. No. 65017, November 13, 1989.
- [16] T.s.n., Session of July 18, 1985, 177.
- [17] *People v. Antugop*, 94 Phil. 1046 (1954), (Unrep.)
- [18] 1 AQUINO, THE REVISED PENAL CODE 352 (1987 ed.)
- [19] *People v. Basa*, 83 Phil. 622 (1949)
- [20] *Supra*, 624-625.
- [21] 21 Phil. 23 (1911).
- [22] 82 Phil. 399 (1948).
- [23] 88 Phil. 672 (1951).
- [24] Nos. L-39303-05, August 1, 1978, 84 SCRA 526.
- [25] Nos. L-40367-69, August 22, 1985, 138 SCRA 306.
- [26] AQUINO, id., 315.
- [27] REV. PEN. CODE, art. 64, par. 3.

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