

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GUILLERMO SANCHEZ @ "GENARO" GENARO,
ACCUSED-APPELLANT.**

G.R. No. 88750. July 18, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Appellant Guillermo Sanchez @ "Genaro," barangay captain of Baybay Lopez, Binmaley, Pangasinan, was charged with Murder for the fatal shooting of Fernando Visperas. The information alleges:

"That on or about the 9th day of March, 1987, in the evening in barangay Baybay Lopez, municipality of Binmaley, province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously shoot Fernando Visperas with a firearm inflicting upon him the following injuries:

- gunshot wound, 3mm in width, between the right clavicle and nipple, fracturing the upper third of the right (sic) 3rd rib, hitting the upper and middle lobes of the right lung, causing massive internal hemorrhage, passing to the back at about the level of the lower third of the right 6th rib with a 5 mm in width of the excite (sic) wound.
- gunshot wound, 1/2 cm in width hitting the lateral aspect passing to the medial aspect of the lower third of the arm, right and hitting also the skin of the abdomen, 1 1/2 inches below the right nipple and bleeding.

which caused his death as a consequence, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code." (p. 8, Rollo.)

After the trial, the court a quo rendered a decision on February 7, 1989, finding him guilty as charged and sentenced him:

"x x x to suffer the penalty of RECLUSION PERPETUA with the accessories provided for by law and to pay the costs.

"He is also ordered to indemnify the heirs of the victim in the amount of Thirty Thousand Pesos (P30,000.00) without subsidiary imprisonment in case of insolvency.

"Considering the gravity of the offense committed (being heinous [sic] in nature) no bail bond is recommended for his provisional liberty pending review by the Supreme Court.

"Let a copy of this decision be furnished the surviving heirs of Fernando Visperas for their guidance and reference." (p. 44, Rollo.)

The accused has appealed to this Court alleging that the trial court erred:

1. in not finding that the death of the deceased was accidental, caused by the illegal acts and aggression of the deceased himself; and

2. in finding him guilty of the crime of Murder.

As summarized by the Solicitor General in his brief for the State, the facts are as follows:

"At around 11:00 o'clock in the evening of March 9, 1987, a dance was held in the auditorium of Barangay Baybay Lopez, Binmaley, Pangasinan to celebrate the annual fiesta of the barangay (p. 16, tsn, April 11, 1988).

"A commotion erupted inside the auditorium, prompting appellant, the barangay captain, to fire his gun in the air. The trouble stopped and the dance continued (pp. 9-10, tsn, February 10, 1988).

"Appellant proceeded outside the auditorium and saw Fernando Visperas, the victim. Without any warning, appellant shot the victim twice. Before falling down, the victim told his son, Hadji, to run away. Several barangay tanods grabbed the gun of appellant and led him away (pp. 16-18, tsn, April 11, 1988).

"The victim was loaded into a Ford Fiera van and brought to the Pangasinan Medical Center in Dagupan City where he died (pp. 18-19, tsn, ibid.).

"Hadji Visperas ran from the auditorium to their house and informed his mother of the incident. When they returned to the auditorium, they were informed that the victim was already brought to the hospital (pp. 4-8, tsn, April 20, 1988).

"Upon request of the victim's wife, Dr. Teodoro Lomibao, Rural Health Physician of Binmaley, Pangasinan, conducted an autopsy on the victim. He issued an autopsy certificate (Exhibit C) containing the following findings:

"1. Clothing - wearing colored white and red T-shirt, wet with blood, torn at the front and back and maong pant.

"2. Gun Shot Wound - 3 mm in width, between the right clavicle and nipple. Fracturing the upper third of the right 3rd rib, hitting the upper and middle lobes of the right lung, causing massive internal hemorrhage, passing to the back at about the level of the lower third of the right 6th rib with a 5 mm in width of the exit wound.

"3. Blood - clotted blood found inside the right thoracic cavity.

"4. Gun Shot Wound - 1/2 cm in width hitting the lateral aspect passing to the medial aspect of the lower third of the arm, right and hitting also the skin of the abdomen, 1 1/2 inches below the right nipple and bleeding (Exh. C)." (pp. 4-7, Appellee's Brief.)

Appellant contends that the victim's death was accidental and that the proximate and only cause thereof was the attempt of the deceased to wrest his gun from him.

According to the accused, he had taken his supper together with other barangay tanods in the house of barangay tanod Francisco Mendoza, near the auditorium in the evening of March 9, 1987. At ten o'clock that night, someone passing by shouted that there was trouble in the auditorium. Accompanied by the barangay tanods, he rushed to the auditorium. Upon reaching the place, they came upon Fernando Visperas and his four companions, namely, Pepito Visperas, Samuel Visperas, Abraham Visperas and John Bataoil, mauling a soldier and trying to disarm another outside the auditorium.

The accused tried to stop them saying, "that's enough, that's enough my son, stop the trouble." When Fernando Visperas and his companions paid no heed to his plea, the accused pulled out his gun and fired once in the air.

Instead of obeying, the deceased grabbed the gunhand of the accused saying, "Bauninam capitan" (meaning: vulva of your mother, captain) and tried to take away his gun. While they were grappling for possession of the gun, the firearm accidentally went off twice and the deceased fell to the ground (pp. 4-5, Appellant's brief).

Domingo Infante, a barangay tanod, 30 years old, married, a carpenter by trade, and a resident of Baybay Lopez, Binmaley, Pangasinan, corroborated the accused.

After Visperas fell wounded, the accused said: "Wait, I am going to the town to report." Infante and his other tanod companions left while the struggle for possession of another soldier's armalite was still going on. Upon arriving home, he related the incident to his wife. He is the godfather of Hadji Visperas, a son of the deceased, Fernando Visperas.

We find appellant's version of the shooting incredible.

The death of the victim was not accidental. As disclosed by the victim's son, Hadji Visperas, who was an eyewitness, his father was gunned down twice by the appellant (p. 14, tsn, February 8, 1988). His testimony was corroborated by Abraham Visperas who declared that appellant treacherously shot the victim without warning (p. 16, tsn, April 11, 1988).

In his counter-affidavit (Exh. H) appellant alleged that while grappling for possession of the gun, the victim was able to wrest it from him. The victim was accidentally hit by two (2) shots coming from an armalite rifle which was also the subject of another struggle. Significantly, the appellant did not utilize at the trial that plainly concocted story in his counter-affidavit. As a matter of fact, the entries in the police blotter, made at his request, did not mention any shooting or struggle for possession of a gun. All that was stated in the police blotter was that appellant was dragged and mauled by the victim and his companions, prompting him to run away. The entries indicate that appellant went to the police station twice, first at 12:00 o'clock midnight and again fifteen (15) minutes later, to report that he had been mauled by Visperas. The Certification dated July 15, 1988 prepared by SGT. GRACIANO G. AQUINO INP Dep. Stn. Commander (Exh. I) recites the following:

"This is to certify that it appear in the Police Blotter Volume V, Series of 1986 the following entries to wit:

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Entry No. : 3243

Date : 3/10/87

Time : 2400 H

"Barangay Capt. G. Sanchez of Baybay Lopez this town reported to this office, that at the height of the Brgy. Fiesta, he was dragged by Fer, Pong and three others surname (sic) Visperas into a dark place and was mauled. The Brgy. Capt. alleged that he run away and a certain Sgt. Bernardo Bautista, PA, who was standing therein was allegedly attacked by the Visperas family who mauled the Brgy. Captain. According to Sgt. Bautista, after he was hit he also run away proceeded to their camp near the beach and reported to his CO, and they proceeded to this office together with Brgy. Captain. Case under further inves.

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Entry No. : 3244

Date : 3/10/87

Timer : 0015 H

"Brgy. Capt. Genaro Sanchez of Baybay Lopez, this mply., together with Major de Vera, PA, CO, of the Engineering BN station at Baybay Lopez and his men, came in this office and according to Brgy. Capt. Sanchez, while he went outside the dancing Hall he was allegedly drag (sic) into a distance and was mauled by Fer, Pong and three others whose family names one Visperas, and after he free himself from his attackers, he

run away knowing nothing of what else happen. Sgt. Bernardo Bautista, PA who was allegedly present at the place wherein Brgy. Fiesta of Baybay Lopez is being held, he saw Brgy. Capt. Genaro Sanchez being mauled he shouted purposely to pacify but instead he was allegedly boxed twice by suspect unknown to him, so he ran to their HQS, and reported to his CO, causing Major de Vera and his men to appear in this office. Both Sanchez and Bautista were advice (sic) to undergo Medical treatment at the Terrado's clinic. Case under further inves." (p. 130, Original Record.)

The Court is inclined to believe that the mauling of the appellant by the deceased and his companions had preceded the shooting. After being manhandled by Visperas, the appellant went home to arm himself and thereafter returned to the auditorium to avenge the injury to his person and his pride.

We find no reason to depart from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses should be accorded the highest respect because it had the advantage of observing the demeanor of the witnesses and to discern if a witness is telling the truth (*People vs. Orita*, 184 SCRA 105). When there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit (*People vs. Claro, Jr.*, 165 SCRA 695). Mere relationship of the prosecution witnesses to the victim does not necessarily vitiate their otherwise credible testimonies nor does it impair their positive and clear testimonies, in the absence of proof of improper motive (*People vs. Aguinaldo*, 165 SCRA 682; *People vs. Santos*, 183 SCRA 27).

Inasmuch as the shooting of the deceased was preceded by an assault upon the appellant, a barangay captain, hence, a person in authority (Art. 152, Revised Penal Code; *Justo vs. Court of Appeals*, 99 Phil. 453), and, as the autopsy report showed that the shooting of the deceased was frontal as both wounds of entry were located in front of his body, we rule out the presence of treachery. The crime committed by the accused was only homicide, attended by the mitigating circumstance of sufficient provocation on the part of the offended party immediately preceding the act (Art. 13 subpar. 4, Revised Penal Code). The penalty for homicide is reclusion temporal (Art. 249, Revised Penal Code). The imposable penalty, in view of the presence of a mitigating circumstance in the commission of the crime, should be the minimum period of reclusion temporal. Applying the Indeterminate Sentence Law, the accused is entitled to an indeterminate penalty of imprisonment ranging from five (5) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. However, the civil indemnity of P30,000 for the death of Fernando Visperas should be increased to P50,000 in accordance with the Court's recent decisions (*People vs. Sison*, G.R. No. 86455, Sept. 14, 1990; *People vs. Bartulay*, G.R. No. 83696, Dec. 13, 1990).

WHEREFORE, the Court finds the appellant, Guillermo (alias Genaro) Sanchez, guilty beyond reasonable doubt of homicide with one mitigating circumstance, and hereby sentences him to suffer an indeterminate penalty of imprisonment ranging from five (5) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, with the accessory penalties provided by law and to pay civil indemnity of P50,000 to the heirs of the deceased, Fernando Visperas, plus costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Gancayco, J., on official leave.

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