

## **PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORLITO CARA, EMILIANO LORENZANA, ROBERT NATIVIDAD AND DIONISIO PAULO, ACCUSED-APPELLANTS.**

*G.R. Nos. 117483-84. December 12, 1997*

Ponente: PANGANIBAN, J.

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### **PANGANIBAN, J.:**

In deciding this appeal, the Court reiterates well-settled doctrines in the appreciation of conspiracy, the credibility of evidence and the legal characterization of a killing when committed “with the aid of armed men.”

#### **The Case**

Norlito Cara, Emiliano Lorenzana, Robert Natividad, and Dionisio Paulo appeal before this Court the June 24, 1994 Joint Decision [1] of the Regional Trial Court of Cauayan, Isabela, Branch 20, [2] in Criminal Case Nos. Br. 20-479 and Br. 20-369 convicting each of them of two counts of frustrated homicide and one count of murder.

On October 17, 1991, two Informations, both dated September 3, 1991, were filed by Third Assistant Provincial Prosecutor Elizardo I. Delmendo against appellants. The Information in Criminal Case No. 20-479 reads:

“That on or about the 30th day of June 1991, in the Municipality of San Guillermo, Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, said accused, together with Cpl. REYNALDO DUCAY [sic] whose case was forwarded to the JAGO, conspiring and confederating together, armed with long firearms, did then and there willfully, unlawfully and feloniously attack and shoot HERTULO NARIO [3] inflicting upon him gunshot wound in the left arm and goes [sic] to the armpit then to the left lung where slugs were recovered, with treachery and superior strength and as a result thereof, said Hertulo Nario died instantly.

CONTRARY TO LAW.” [4]

The Information in Criminal Case No. 20-369 reads as follows:

“That on or about the 30th day of June 1991, in the Municipality of San Guillermo, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, together with Cpl. Reynaldo Dugay whose case was forwarded to the JAGO, conspiring and confederating together, armed with long firearms, did then and there wilfully, unlawfully and fleoniously [sic] attack and shoot Bernardo Esquivel and Leonida Esquivel multiple ginshot [sic] wounds in the different parts of their body, which ordinarily would cause the death of said Bernardo Esquivel and Leonida Esquivel, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, the timely and able medical assistance rendered to the said Bernardo Esquivel and Leonida Esquivel which prevented their death.

CONTRARY TO LAW.” [5]

At the arraignment on May 22, 1992, the four accused, assisted by Counsel de Oficio Roberto U. Erese, pleaded not guilty to the charge of murder. [6] On January 31, 1992, with the assistance of Counsel de Oficio Juliana B. de

la Rosa, they also pleaded not guilty to the charge of double frustrated murder. [7] The trial court granted on June 29, 1992 the defense's prayer for the two criminal cases to be tried jointly. [8]

After trial in due course, the court a quo rendered its assailed Joint Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Court, finding the accused NORLITO CARA, EMILIANO LORENZANA, ROBERT NATIVIDAD and DIONISIO PAULO:

1. In Criminal Case No. Br. 20-369 – Guilty beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE for shooting and fatally wounding Bernardo Esquivel and without any mitigating or aggravating circumstance, the Court hereby sentences each of the accused to suffer an indeterminate penalty of SIX (6) YEARS of prision correccional as minimum to TEN (10) YEARS of prision mayor as maximum and to pay to the victim Bernardo Esquivel P20,000.00 as moral damages without any subsidiary imprisonment in case of insolvency; and

For shooting and fatally wounding Leonida Esquivel, the Court finds all the accused guilty beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE and absent any mitigating or aggravating circumstance, hereby sentences each of the accused to suffer an indeterminate penalty of SIX (6) YEARS of prision correccional as minimum to TEN (10) YEARS of prision mayor as maximum and to pay to the victim Leonida Esquivel P20,000.00 as moral damages without any subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. Br. 20-479 – Guilty beyond reasonable doubt of the crime of MURDER for the death of Gertulo Nario and absent any mitigating or aggravating circumstance, hereby sentences each of the accused the penalty of Reclusion Perpetua and to indemnify the heirs of the deceased Gertulo Nario P30,000.00 actual damages, P50,000.00 indemnity for the death of Gertulo Nario and P30,000.00 moral damages without subsidiary imprisonment in case of insolvency. Cost against the accused.

SO ORDERED.”

In view of the penalty imposed, the appeal was filed directly with this Court. [9]

## The Facts

### According to the Prosecution

The facts of the case as summarized by the trial court are as follows:

“From the evidence presented, it appears that on the night of June 29, 1991, there was a program of the induction of officers of the Green Ladies and Kabataan in the Community Center of Barangay Colorado, San Guillermo, Isabela. There were many people who attended the program. Barangay Captain Abelardo Esquivel was present to induct the officers. Also present were the Municipal Secretary George Prudenciano who represented the Mayor and the Rural Sanitary Inspector Ernesto Nacino who represented the Rural Health Unit.

While the induction program was going on in the Barangay Hall, there was a gun report coming from behind. Barangay Captain Esquivel went to verify who fired. He found out that it was the accused Dionisio Paulo who was with Cpl. Reynaldo Dugay and their companions, accused Robert Natividad, Norlito Cara and Emiliano Lorenzana, all members of the Civilian Armed Forces Geographical Unit (CAFGU). The accused and Cpl. Dugay were all drunk. Barangay Captain Esquivel told them not to fire their guns because the people in the Community Center might be frightened. He further told them that if they were drunk it would be better that they go home to their camp. Cpl. Dugay and the accused left and went to their camp. The dance and the induction of the officers of the Kabataan and the Green Ladies continued.

Not long after, Cpl. Dugay and his CAFGU's accused Norlito Cara, Robert Natividad, Emiliano Lorenzana and Dionisio Paulo came back to the Community Center. They were all in full battle gear. Cpl. Dugay and the accused danced with their firearms slung on their shoulders.

Barangay Captain Esquivel went to Cpl. Dugay and the accused. He reprimanded them for dancing with their firearms. Apparently, Cpl. Dugay was slighted because he pointed his gun at Barangay Captain Esquivel. The accused were all angry at him.

Sensing trouble, Barangay Captain Esquivel called his wife and his visitors George Prudenciano and Ernesto Nacino to go home. He instructed the acting Barangay Captain to later on stop the dance because it was already past midnight. Barangay Captain Esquivel and his companions including his wife as well as his visitors proceeded to his house. Cpl. Dugay and the accused followed them and surrounded the house of the Barangay Captain.

When Barangay Captain Esquivel and his companions and visitors were already inside his house, he heard the angry voice of Cpl. Dugay calling for him to come out of his home. His visitors, however, prevailed upon him not to go out. But his son, Bernardo Esquivel, went out of the house to talk to Cpl. Dugay. Bernardo Esquivel told Cpl. Dugay that they would talk the following day. Cpl. Dugay grabbed Bernardo Esquivel but he was not able to take hold of him because he ran towards their house. It was at this juncture that all the accused, following the order of Cpl. Dugay to fire, fired at Bernardo Esquivel. Bernardo Esquivel was hit and fell on the ground. Witness Romeo Chan who was then urinating at the edges of the house of the Barangay Captain saw the accused fire at Bernardo Esquivel. He was only six (6) meters away from them. George Prudenciano who peeped through the window also saw the accused fire their guns at Bernardo Esquivel. They were only ten (10) meters away from the house. The night was bright because it was full moon.

Romeo Chan went towards Bernardo Esquivel to help him but he was fired upon. He ran inside the house. Then Leonida Esquivel, seeing her son Bernardo fell on the ground, ran out of the house to help him. The accused fired at her. She shouted that she was hit. Barangay Captain and his visitors did not rescue her because they were afraid of the gunfire coming from the accused.

Leonida Esquivel and her son Bernardo managed to go inside the house. Bernardo Esquivel was hit on his back while Leonida Esquivel was hit on her forehead and right shoulder.

Barangay Captain Esquivel shouted for help. His neighbor Felicitas Guba and his brother-in-law came. A hammock was brought to bring the wounded to the hospital. It was while Gertulo Nario and his companions Ernesto Nacino and Juanito Lazaro were tying the hammock that Gertulo Nario was hit by a bullet fired by the accused. Gertulo Nario fell and died on the spot.

Leonida Esquivel suffered 'multiple gun shot wounds on the left shoulder, anterior chest left side on the waist, lacerated wound on the vertex area 8-10 cm. in diameter' (Exhibit "I"). Dr. Willie Magdamo of the Sanitarium declared that the wounds of Leonida Esquivel were fatal. Without medical assistance she would have died.

With respect to Bernardo Esquivel, he suffered 'multiple lacerations at the back scapula area, right side which is deep seated 7-8 cm, the other two 2 cm. in diameter with other superficial lacerations on the waist level' (Exhibit "H"). Metal fragments were recovered from the right side of his eyeball and at the back posterior neck. Dr. Magdamo declared that without medical treatment Bernardo Esquivel would have died because his wounds would cause infection resulting to death.

Dr. Mary Ruth Gumpal, RHU of San Guillermo, Isabela who conducted the autopsy on the body of the deceased Gertulo Nario, declared that the accused of his death is hemorrhage secondary to gunshot wound (Exhibits "G" and "F"). There was only one (1) gunshot wound found in the body of Gertulo Nario. A slug was recovered from the blood clot in his lungs.

From the evidence of the prosecution, there is no doubt that Gertulo Nario died on the night of June 30, 1991,

at Barangay Colorado, San Guillermo, Isabela. The cause of his death was internal hemorrhage secondary to gunshot wound. Bernardo Esquivel and her mother Leonida Esquivel were also seriously wounded that night at the same place. They suffered gunshot wounds which, according to Dr. Willie Magdamo, would have caused their death were it not for medical treatment.” [10]

### According to the Defense

The defense’s version of the facts, as presented in the appellants’ four- page Appeal Brief [11] dated February 20, 1996, reads:

“Records show that in June, 1991[,] all the accused were members of the CIVILIAN ARMED FORCES GEOGRAPHICAL UNIT (CAFGU) under the leadership of a certain Cpl. Reynaldo Dugay. They were sent to Barangay Colorado, San Guillermo, Isabela, to man the detachment of the army in said place as during those days the NPAs were very active in said barangay;

On the night of June 29, 1991, there was an induction program and ball at the Community Center of said Barangay Colorado. The affair was the induction of officers of the Green Ladies and Kabataan in the Community Center of said Barangay. In attendance were Barangay Captain Abelardo Esquivel who was to induct the officers; the Municipal Secretary, George Prudenciano and Rural Sanitary Inspector, Ernesto Nacino who represented the Municipal Mayor and the Rural health Unit respectively. Cpl. Dugay of the Army detachment in said Barangay also attended the affair including his man (sic) which included the CAFGU’s; Norlito Cara, Emiliano Lorenzana, Robert Natividad and Dionisio Pulo, the appellants.

During the dance[,] there was a misunderstanding between Cpl. Reynaldo Dugay and Barangay Captain Abelardo Esquivel[.] Cpl. Dugay who was insulted got angry to (sic) the Barangay Captain Abelardo Esquivel.

After the dance the Barangay Captain, his wife Leonida Esquivel and his son Bernardo Esquivel and many others went to their house. Cpl. Dugay together with the herein appellant and other soldiers also left the dancing place and proceeded to their camp in Barangay Colorado. When they passed by the house of Barangay Captain, Cpl. Dugay who was angry with the Barangay Captain stopped and fired his armalite to the direction of the house of the Barangay Captain. The appellants were ordered to fire by Cpl. Dugay but instead of firing at the house of the Barangay Captain fired their firearms in the air upwards, After the firing[,] it was discovered that Gertulo Nario was sprawled on the yard of the Barangay Captain already dead. Bernardo Esquivel, son of the Barangay Captain were also found sprawled on the ground wounded. They were rushed to the hospital and very fortunately they survived.”[12]

### Errors Assigned

Appellants assign two errors against the trial court:

“1. That the trial court erred in holding that the appellants conspired with Cpl. Reynaldo Dugay in firing at the house of the Barangay Captain;

2. That the trial court erred in holding that the four appellants fired at the victims.”

In the main, appellants admit that they fired their guns. They deny, however, that they aimed them at the victims. They also deny that they conspired with Corporal Dugay, to whom alone they impute the crimes. The key issue is the presence (or absence) of conspiracy.

### The Court’s Ruling

The appeal is not meritorious.

Main Issue:

### Was Conspiracy Sufficiently Proven?

Appellants argue that conspiracy was not proven because (1) “the leader of the group [that] night was Cpl. Dugay,” (2) “the appellants had no ax to grind against [the] [b]arangay [c]aptain or anybody in the barrio as they were residents of said Barangay, and so they kn[e]w particularly all the people in said place,” and (3) “after the confrontation between Barangay Captain Esquivel and Cpl. Dugay there was no moment that Cpl. Dugay and the appellants xxx agreed to do harm to the [b]arangay [c]aptain or anybody in said place.” [13] The Court is not persuaded.

The Revised Penal Code provides in its Article 8, second paragraph, that “(a) conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” To establish conspiracy, direct proof of the accused’s previous agreement to commit a crime is not indispensable; this fact “may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such point to a joint purpose and design, concerted action and community of interest.”[14]

After a thorough review of the records of this case, the Court finds no reason to overturn the conclusion of the trial court that appellants conspired to shoot the victims. All four appellants admit that they were with Corporal Dugay that fateful evening when they attended the dance at the barangay hall, and that together they later proceeded to the house of Barangay Captain Abelardo Esquivel. The appellants do not deny firing their rifles at Corporal Dugay’s command. It was this first volley that wounded Bernardo Esquivel. Afterwards, Leonida Esquivel, who braved the bullets to help her son, was likewise seriously wounded by succeeding gunshots. Indeed, appellants were present at the locus criminis all this time and until Nario, who tried to assist the two victims, was himself fatally shot.

Manifestly, they were not mere innocent bystanders. As shown by their actions, they were one with Corporal Dugay in his overt act of revenge for the embarrassing public reprimand he (and they) received from the barangay captain at the dance hall. All these glaringly and sufficiently show conspiracy.

The fact that Corporal Dugay led them, or that they knew the victims, does not in any way disprove conspiracy or their participation in said crimes. Parenthetically, we stress that the corporal’s order to fire was not a lawful one; in fact, it was patently unlawful. As members of the CAFGU which was an adjunct of the AFP, they should know that they were duty-bound to obey only lawful orders of their superiors.

Appellants’ claim that they fired their rifles upwards and did not actually shoot at or hit the victims is not credible. But, at the very least, it constitutes a damning admission of their participation. In any event, conspiracy has been clearly established, and it is immaterial who among the accused actually gunned down Bernardo Esquivel, Leonida Esquivel and the deceased Nario. “In conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.”[15] Conspiracy renders appellants liable as co-principals “regardless of the extent and character of their participation because in contemplation of law, the act of one conspirator is the act of all.”[16]

Appellants’ claim of having fired upwards appears to be a mere afterthought, a desperate attempt to defend their untenable position. During trial, they claim to have passed by Barangay Captain Esquivel’s house where they were suddenly and successively fired upon from said house. [17] This narration is hardly in accord with common sense or ordinary human experience. We cannot believe that the barangay captain would risk his family and home by foolishly firing upon a group of numerically superior armed men. It is hornbook doctrine that evidence, to be believed, must come not only from a credible witness but must in itself be credible, since there is “no test of the

truth of human testimony, except its conformity to our knowledge, observation, and experience.” [18]

As aptly found and stated by the trial court,

“Furthermore, in his testimony, accused Dionisio Paulo admitted that he and his co-accused including Cpl. Dugay fired their firearms in front of the house of Barangay Captain Esquivel that night of June 30, 1991. Of course, the witness said that they fired their guns because they were being fired upon by persons inside the house of the Barangay Captain. According to him, they fired their guns into the air because their purpose was only to scare the persons inside the house of the Barangay Captain who were firing at them. The Court does not believe him. This is simply ridiculous, absurd and a lie. The Court does not also believe the claim of the accused Emiliano Lorenzana that his rifle did not fire because it was defective. Considering the gravity of the offenses with which he is charged, he should have brought to court his gun so the Court could appreciate his claim.

All told, all the accused are liable for the death of Gertulo Nario and the fatal wounding of Bernardo Esquivel and Leonida Esquivel. There is conspiracy among them. Slighted when the barangay captain scolded them for scaring the people by firing their guns all the accused went to their camp only to return in full battle gear and then in utter disrespect, danced with their firearms on their shoulders causing the barangay people to complain. Their attention called by the barangay captain, they all got angry at him. Cpl. Dugay pointed his gun to the barangay captain. When the barangay captain and his visitors went home, the accused followed them and surrounded his house. They stayed in front of the house of the barangay captain while Cpl. Dugay called for him to come out of the house. Then Cpl. Dugay gave the command to fire, all the accused fired their firearms. These concerted acts unmistakably show a community of purpose, design and intent to kill using as they did their weapons.”

In any event, the question regarding the direction of the appellants’ line of fire is factual. Basic is the rule that factual findings of trial courts are entitled to great respect by appellate courts. [19] While there are some exceptions to this doctrine, appellants have miserably failed to demonstrate the presence of one in this case. Hence, this Court affirms the foregoing findings of the court a quo.

#### Crime Committed

The Court notes that the appellants were convicted of one count of murder and two counts of frustrated homicide. The trial court opined that the information charging the accused-appellants with double frustrated murder did not allege any qualifying circumstance. [20] We cannot sustain this opinion. The information alleged that the accused were “armed with long firearms.” [21] Under paragraph 1, Article 248 of the Revised Penal Code, “the aid of armed men” qualifies a killing to murder. [22] So also, had it not been for the timely medical attendance accorded Bernardo and Leonida, they would have died from the gunshot wounds inflicted on them, a fact not disputed by the defense. Clearly, then, the offense cannot be characterized merely as “attempted” but “frustrated” murder.

Due to this conspiracy, each of the appellants is deemed guilty as principal in two separate counts of frustrated murder. The penalty imposed for consummated murder at the time the crime was committed is reclusion temporal in its maximum period to death. Thus, in accord with Article 50 of the Revised Penal Code, the penalty imposable for frustrated murder is one degree lower, which is prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law, the minimum penalty imposable “shall be within the range of the penalty next lower to that prescribed by the Code for the offense” [23] which in this case is prision correccional maximum to prision mayor medium.

#### No Proof of Moral Damages

Finally, moral damages cannot be awarded without factual basis or proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar

injury. [24] In the instant case, we searched the record for the factual basis of the trial court's award of moral damages but found none.

WHEREFORE, the questioned Joint Decision is hereby AFFIRMED in regard to Crim. Case No. Br. 20-479, insofar as it found appellants guilty of murder and sentenced each of them to reclusion perpetua and to pay jointly and severally the heirs of Hertulo Nario the sum of P50,000 as civil indemnity and the proven sum of P30,000 as actual damages. However, said Decision is hereby MODIFIED in regard to Crim. Case No. Br. 20-369 where we find appellants guilty beyond reasonable doubt of two counts of frustrated murder, without any generic aggravating or mitigating circumstances, and sentence each of them to the indeterminate penalty of six (6) years, one (1) month and eleven (11) days of prision mayor, as minimum, to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as maximum, for each count of frustrated murder. The award of moral damages is DELETED.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

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[1] Rollo, pp. 28-34.

[2] Judge Henedino P. Eduarte presiding.

[3] Spelled "Gertulo Nario" in the trial court's Joint Decision.

[4] Record, Criminal Case No. Br. 19-479, p. 2.

[5] Ibid., Criminal Case No. Br. No. 20-369, p. 2.

[6] Ibid., Criminal Case No. Br. 19-479, p. 24.

[7] Ibid., RTC Criminal Case No. Br. 20-369, p. 28.

[8] Ibid., p. 61.

[9] The case was deemed submitted for resolution upon receipt by this Court of Appellee's Brief, dated July 31, 1997, on August 1, 1997.

[10] Decision, pp. 2-4; Rollo, pp. 29-31.

[11] Rollo, pp. 85-88. Filed by Atty. Eligio A. Labog who was also fined by the Court for failing to submit the brief within the prescribed period (Rollo, pp. 52 & 79).

[12] Appellants' Brief, pp. 1-2; Rollo, pp. 85-86.

[13] Appellants' Brief, p. 3; Rollo, p. 87.

[14] People vs. Sion, G.R. No. 109617, p. 14, August 11, 1997, per Davide, Jr., J.

[15] People vs. Azugue, G.R. No. 110098, p. 16, February 26, 1997, per Panganiban, J.

[16] People vs. Rodico, 249 SCRA 309, 321, October 16, 1995, per Narvasa, C.J. See also People vs. Cogonon, 262 SCRA 693, 705, October 4, 1996, per Panganiban, J.

[17] See TSN, p. 7, March 28, 1994.

[18] People vs. Abellanosa, G.R. No. 121195, p. 12, November 27, 1996, per Panganiban, J.

[19] See People vs. Bacalto, G.R. Nos. 116307-10, p. 6, August 14, 1997, per Narvasa, C.J.

[20] Decision, p. 6; Rollo, p. 33.

[21] Supra.

[22] See *People vs. Ortiz and Lopez*, 103 Phil. 944, 949, (1958), per Montemayor, J.

[23] Section 1, Indeterminate Sentence Law.

[24] Article 2217, Civil Code of the Philippines. See *People vs. Teodoro*, G.R. No. 111194, p.18, per Panganiban, J.

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