

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DESIDERIO ALIOCOD Y GARAN AND FLAVIANO DAIRO Y GALINATO, DEFENDANTS-APPELLANTS.*G.R. Nos. 78359-60. November 23, 1988*

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-78359-60/>**GANCAYCO, J.:**

In the early morning of December 26, 1983, Desiderio Aliocod and Flaviano Dairo together with Pio Aliocod, armed with long firearms and hunting knives, went to the house of Jose Galope and his son Edgardo Galope at Sitio Pangian, Apo Macote, Malaybalay, Bukidnon. The three men brought Jose and Edgardo with them to a hill some distance from their house. There, Jose and Edgardo were encircled by no less than fifty (50) armed men. Minutes after Jose and Edgardo had left the house, Teofanisa Galope, the wife of Jose, tried to follow them but she was met at the mid-point between their house and the hill by her son Edgardo. Her son had returned from the hill to inform her that they (Jose and Edgardo) would be going to the top of the hill. Thus, she went home where she awaited their return. As Jose and Edgardo failed to return after some time, she decided to look for them. She sought the assistance of her neighbors Gerardo Quinlog and Elmer Micabalo, and her grandson David Galope. They went up the hill. Upon reaching the top, they saw the headless bodies of Jose and Edgardo on the ground. The grass around the vicinity was flattened and the bodies sustained wounds. With the help of some neighbors, they brought the bodies to Impalambong, Malaybalay, Bukidnon where the said bodies were embalmed by Chief Sanitary Inspector Ernesto Abejuela, Sr. Abejuela noticed that there were several stab wounds sustained by the victims and that their heads were cut in the neck. He prepared an anatomical sketch of the victims.[1] Considering the nature of the wounds sustained by the victims, he averred that the weapons used were sharp bladed instruments.

At about 7:00 o'clock in the evening of the following day, December 27, 1983, Elias Aquilam was invited to a drinking session by Desiderio Aliocod at the store of Flaviano Dairo. While they were drinking, Desiderio disclosed to Elias, in the presence of Flaviano that they killed two (2) persons alleged to be NPA members on December 26 and that after the killing they cut the necks of the two persons with rattan instruments. Desiderio also said that they ate the ears of the victims while they were drinking wine.

Sometime in the first week of January, 1984 Desiderio called for a meeting of all the barrio inhabitants so that he could obtain their signatures attesting that the two persons they killed earlier were members of the NPA. He was frustrated. The people turned down his request because they knew the victims to be farmers just like them.

While Desiderio and Flaviano were under detention in the municipal jail of Malaybalay, Bukidnon, Desiderio disclosed to Patrolmen Rene Quizo and Leopoldo Rosal that he, together with his companions, killed said victims and after killing them, they severed the heads from the bodies and buried them at Malayan. They proceeded to said place to recover the heads of the victims. Desirio exhumed the heads of the victims and the police officers brought the same to the Malaybalay Police Station. The family of the victims was informed about the matter.

In the morning of February 8, 1984, Charlie Galope, another son of the victim Jose Galope, identified the skulls that were recovered by the police officers as that of his father and brother, respectively, in view of the sunken portion of the forehead of his father and the big teeth and profile of the face of his brother.

In due course, two separate informations for the murder of Jose and Edgardo Galope were filed, against Desiderio Aliocod and Flaviano Dairo, together with Pio Aliocod and Fausto Bernales by the Assistant Provincial Fiscal of Bukidnon. After the arraignment where the accused Desiderio and Flaviano interposed the plea of not guilty and the joint trial on the merits of said two cases, the trial court rendered separate decisions for each case on October 30, 1986, finding Desiderio Aliocod and Flaviano Dairo guilty beyond reasonable doubt of the crime of murder and, considering the aggravating circumstance of employing means which add ignominy to the natural effects of the crime, imposing upon them the penalty of reclusion perpetua. They were also ordered to indemnify the offended parties in the sum of P100,000.00 for moral damages, P30,00.00 for actual damages, without subsidiary imprisonment in case of insolvency, and P10,000.00 for attorney's fees with costs against the accused in each case.

Not satisfied therewith, both accused interposed this appeal alleging that the trial court committed the following errors:

I - THE COURT ERRED IN FINDING THAT THE TWO ACCUSED-APPELLANTS WERE FULLY IDENTIFIED BY THE TWO PROSECUTION WITNESSES ELMER MICABALO AND GERARDO QUINLOG.

II - THE COURT ERRED IN FINDING THAT THE TWO ACCUSED-APPELLANTS TOOK OR ABDUCTED THE VICTIMS JOSE AND EDGARDO GALOPE.

III - THE COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT DESIDERIO ALIOCOD DISCLOSED THE FACT OF KILLING TO ELIAS AQUILAM, PATROLMEN QUIZO AND ROSAL.

IV - THE COURT ERRED IN FINDING THAT ACCUSED-APPELLANTS ADMITTED THEIR GUILT BEFORE MAYOR TUAZON.

V - THE COURT ERRED IN ITS FAILURE TO APPRECIATE OTHER VITAL CIRCUMSTANCE(S) THAT WOULD NEGATE ANY SEMBLANCE OF GUILT." (Pages 5-6, Memorandum for the Accused; pages 63-64, Rollo.)

The appeal is devoid of merit.

Under the first assigned error, the appellants assail the finding of the trial court that prosecution witnesses Elmer Micabalo and Gerardo Quinlog identified them as the assailants. They pointed out that Micabalo admitted that he did not recognize the three (3) persons who went to the house of the victims in the morning of December 26, 1983. They also argued that Quinlog was mistaken in testifying that the said three persons were in fact the appellants because they (the appellants) were not in the vicinity of the house of the victim on the said date and time.

Micabalo was not able to recognize the three (3) persons because his line of vision was obstructed by plants.[2] Moreover, he was at a considerable distance from said persons who by then had just arrived.

On the other hand, Quinlog recognized the appellants together with Pio Aliocod to be the persons who fetched the victims from their house and who brought them to the top of the hill on the said date and time because Quinlog was then fetching water at a well near the house of the victims.[3] He was positive in his identification as he was at a distance of about twenty (20) meters only and there was no obstruction to his line of vision.[4] There is nothing improbable as to the testimony of Quinlog that he woke up as early as 6:00 o'clock in the morning to fetch

water from the well near the house of his neighbor. This is an ordinary practice in the countryside.

Moreover, no evidence was adduced to show any ulterior motive of this witness to testify falsely against the appellants. In the absence of such contrary evidence, the only logical conclusion is that no such motive existed and that his testimony is worthy of full credence.[5]

The attempt of the appellants to discredit the testimony of Quinlog by his alleged contradictory testimony is without basis. Appellants claim that on direct examination, Quinlog said that the appellants together with Pio Aliocod were all armed with firearms but later, on direct examination, he allegedly said that they did not carry any firearms. The appellants must be referring to the portion of the testimony of said witness as follows:

"ATTY. FABRIA ON RE-DIRECT EXAMINATION:

Q:

When you saw Jose Galope and Edgardo Galope taken by the accused, the accused Desiderio Aliocod, Falviano Dairo and the third one, did you notice anyone of them bringing a weapon?

A: None. (TSN, 19, December pp. 10-11)"

From the nature of the question of the private prosecutor, it is clear the witness was asked whether or not the victims, and not the appellants, were armed and his answer was in the negative.

Appellants then called attention to the apparent difference between the sequence of events as narrated by Quinlog as against that stated by Micabalo as corroborated by the widow of the victim, Teofanisa. This must be because the prosecution witnesses occupied separate vantage points from which they viewed the unfolding of the incident. Micabalo was at the farm which was about 80 meters from the three (3) persons whom he did not even recognize. Teofanisa was inside the house when she saw the appellants together with Pio Aliocod arrive to take away her husband and son. Quinlog was fetching water from a well near the house of the victims at a distance of about 20 meters when he saw the appellants with Pio Aliocod near the said house.

Although there may be some inconsistencies in the testimonies of said prosecution witnesses such inconsistencies relate to minor details and the fact remains that there is no disagreement among them as to the identities of the malefactors. They are sure that appellants were the assailants. Such inconsistencies, if at all, demonstrate their testimonies are spontaneous and unrehearsed.

Appellants also point out that Quinlog did not reveal to the widow, Teofanisa, nor to the police authorities the identity of the persons who went to her house. The initial reluctance of witness in this country to testify in a case and their unwillingness to be involved or dragged in an investigation is a common occurrence and has been judicially declared not to affect the credibility of witnesses.[6] The failure of prosecution witnesses to immediately mention the accused as a suspect is reasonable, particularly where the silence of the witnesses was due to fear of reprisal.[7]

The second assigned error that it was not the appellants who took the victims from their house is untenable in the light of the positive identification of the appellants by the prosecution witnesses. Desiderio was the barangay captain of Malayanan, San Fernando, Bukidnon and team leader of the CHDF while Flaviano Dairo was also a member of CHDF in the area. They were well known to the prosecution witnesses Quinlog and Micabalo. There can be no mistake in their identification of the appellants.

Under the third assigned error, the appellants assail the evidence to the effect that Desiderio admitted the killing to Aquilam, Patrolmen Quizo and Rozal. They argue that Aquilam was not listed in the information. This Court has ruled that the prosecution is not precluded from calling a witness who was not listed in the information.[8]

They also allege that Aquilam is not a credible witness because he came out to testify only after being shot in the arm by Desiderio on January 27, 1984, to get even with the latter. This incident does not thereby disqualify Aquilam from testifying nor does it necessarily render his testimony incredible. It was during a drinking spree when Desiderio, in the presence of Flaviano, confided to Aquilam on December 27, 1983 that they killed two NPA members. The wine he took must have loosened his tongue.

As to Patrolman Quizo, he categorically stated that when Desiderio was at the police headquarters, the latter verbally admitted to him having killed Jose and Edgardo Galope and that he buried the severed heads of the two.[9] The admission was made by Desiderio to Quizo in the course of their conversation when appellant was inside his cell and the patrolman was outside, and not in the course of a custodial investigation.

Patrolman Rozal was also unequivocal in asserting that it was Desiderio who accompanied them and pointed to them where the two heads of the victims were buried in Malayan. [10] Said police officers are disinterested witnesses. There appears to be no reason why they should testify falsely against the appellants.

As to the affidavit of appellant Desiderio [11] subscribed and sworn to before Mayor Tuazon admitting his guilt, suffice it to state that the same was not executed with the assistance of a lawyer and as such, the same is not admissible as evidence against him. Nonetheless, even without considering the said confession, the evidence on record is more than sufficient to support the conviction of the appellants for the crime murder. Thus, the fifth assigned error must necessarily fail.

The appeal revolves on the question of the credibility of the witnesses and the too well-known rule is that the determination of this matter is addressed to the trial court because of its peculiar advantage in observing the conduct and demeanor of witnesses while testifying and the conclusions of the trial court on this matter cannot be disturbed on appeal unless some facts or circumstances may have been overlooked which will affect the result of the case.

The appellants maintain, however that they could not have inflicted the stab wounds as described in the autopsy report because they were armed with firearms.[12] No less than Desiderio himself admitted that the members of his group were armed with Garand rifles and that two of them were armed with hunting knives.[13] These hunting knives must have been used by appellants in killing the victims.

Appellants then assert that since the prosecution established that there were 50 men who surrounded the victims when they were brought to the top of the hill, thus these persons should be the ones prosecuted and not the appellants. However, it must be remembered that Desiderio was the barangay captain and CHDF team leader whose orders, are followed by his group. Thus, even if it was any other member of his group who committed the offense, the appellants cannot evade criminal liability thereby. Moreover, the evidence tending to show that the appellants were the assailants is clear and convincing.

Appellants then alleged that no motive has been established for the killing. Motive is essential only when there is doubt as to the identity of the culprits and not when they have been positively identified as the assailants.[14] Indeed, there was motive enough when it was shown that Desiderio stated that the victims were NPA members who were being hunted by the CHDF.

Appellants then argue that there was no eyewitness who saw the actual killing, including the place, the time and the manner of its execution. Be that as it may, the circumstantial evidence on record proves the guilt of the

appellants beyond reasonable doubt. The facts and circumstances of this case constitute an unbroken chain which leads to a fair and reasonable conclusion that the appellants are guilty of the offense charged.[15]

WHEREFORE, The decision appealed from is **AFFIRMED** in toto, with costs against appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits B and C.

[2] Tsn., October 23, 1984, page 80.

[3] Tsn., November 18, 1984, pages 53-55, 57.

[4] Tsn., December 19, 1984, pages 3-7.

[5] *People v. Angeles*, 92 SCRA 432 (1979).

[6] *People vs. Estocada*, 75 SCRA 295 (1977).

[7] *People vs. Pascual, Jr.*, 109 SCRA 197 (1981).

[8] *People vs. Bagsican*, 6 SCRA 400 (1962).

[9] Tsn., May 16, 1985, pages 58-62.

[10] Tsn., May 16, 1985, pages 31-33.

[11] Exhibit F.

[12] Exhibits B and C.

[13] Tsn., March 5, 1986, pages 93-94.

[14] *People vs. Ferrera*, 151 SCRA 113 (1987).

[15] *People vs. Modesto*, 25 SCRA 36 (1968)

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