

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESTANISLAO BATAS Y AUSTRIA AND JULIUS MONTANEZ Y DE LA
CRUZ, ACCUSED-APPELLANTS.**

G.R. Nos. 84277-78. August 02, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Batangas City, Branch 3, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered as follows:

"In Criminal Case No. 2160-3 for Murder, the accused Estanislao Batas y Austria and Julius Montañez y dela Cruz are hereby sentenced to suffer the penalty of RECLUSION PERPETUA (Life Imprisonment), to indemnify jointly the lawful heirs of the deceased Aniceto Hernandez in the sum of Thirty Thousand Pesos (P30,000.00) and for actual and moral damages in the amount of Twenty Five Thousand Pesos (P25,000.00) and to pay the costs; and

"In Criminal Case No. 2168-3 for Frustrated Murder, the accused Estanislao Batas y Austria and Julius Montañez y dela Cruz are hereby sentenced to suffer the indeterminate penalty ranging from FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY of prision correccional, as minimum, to NINE (9) YEARS, FOUR (4) MONTHS AND TWENTY (20) DAYS OF prision mayor, as maximum, to pay jointly the victim Petronio Rosales the sum of Ten Thousand Pesos (P10,000.00) for actual, moral and exemplary damages, and to pay the costs.

"Both the accused are entitled to the full credit of their preventive imprisonment pursuant to existing laws.

"Furthermore, it is understood that the penalties imposed by the court shall be served by the two accused successively, commencing with the penalty imposed in Criminal Case No. 2160-3 for Murder." (Rollo, pp. 37-38)

In Criminal Case No. 2160-3, the information filed against the accused alleged:

"That on or about the 20th day of August, 1984, at about 10:15 o'clock in the evening, at Barangay Taysan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with gulukan and fan knife, commonly known as balisong, conspiring and confederating together, acting in common accord and mutually helping each other, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said deadly weapons one Aniceto Hernandez y Rosales, suddenly and without warning, thereby inflicting upon the latter multiple stab wounds on the different parts of his body, which directly caused his death." (Rollo, pp. 5-6)

In Criminal Case No. 2168-3, the information filed against the accused alleged:

"That on or about the 20th day of August, 1984, at around 10:15 o'clock in the evening, at Barangay Taysan, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and fan knife (balisong), conspiring and confederating together, acting in common accord and mutually helping each other, with deliberate intent to kill and without any justifiable cause, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault, hack and stab with said bolo and fan knife one Petronio Rosales y Villela, suddenly and without warning, thereby inflicting upon the latter hack and stab wounds on the different parts of his body, which injuries required medical attendance and prevented him from performing his customary work for a period of six (6) weeks, the said accused thus performing all the acts of execution which should have produced the crime of murder as a consequence, but which nevertheless did not produce it by reason of some cause independent of the will of the perpetrator that is due to timely and able medical attendance rendered to the said offended party which prevented his death." (Rollo, pp. 7-8).

In addition, both informations also alleged that accused Estanislao Batas is a recidivist, having been convicted by final judgment on August 26, 1969 for Murder in Criminal Case No. 2519 by the Court of First Instance of Batangas, Branch 4, now Regional Trial Court of Batangas, Branch 12, Lipa City.

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is as follows:

The first prosecution witness, Petronio Rosales testified that:

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"x x x [H]e and his first cousin, Aniceto Hernandez, were drinking beer at the Toyet Restaurant located in brgy. Taysan, San Jose, Batangas on August 20, 1984 at around 9:00 o'clock in the morning; that he and his first cousin arrived at the Toyet Restaurant at about 9:00 o'clock in the evening on August 20, 1984, with other people already inside the restaurant, but only Julius Montañez and Estanislao Batas were known to them (Petronio and Aniceto), because Estanislao Batas is also from their place, San Jose, Batangas, while Julius Montañez, though from Nueva Ecija, is working as a poultry boy in San Jose, Batangas and Petronio often sees him at the cockpit; that Petronio and Aniceto arrived at the restaurant ahead by more or less ten minutes of Estanislao Batas and Julius Montañez, occupying a separate table about one meter from that of the former. Petronio was talking about his life in Saudi Arabia and told Aniceto that in Saudi there is no tough guy (walang barako). That upon hearing this, Batas and Montañez stood up, approached Petronio and Aniceto and asked the latter whether they were the ones referred to in that statement as 'barako', but Petronio answered the two that they were not the one.

"After the exchange of remarks, Batas and Montañez returned to their own table, imbibed the contents of their bottle and thereafter left the place. Petronio and Aniceto stayed in the restaurant about fifteen to twenty minutes more after Batas and Montañez left, but they left Toyet Restaurant before 10:00 o'clock in that evening. Thereafter, they walked together abreast towards the direction of the poblacion leading to their residence, Petronio on the north and Aniceto was on the south, but not far from each other on the said road. While approaching near the bridge, they saw figures of two persons at a distance of six meters walking towards their direction and they continued walking towards the opposite direction of said two figures. Petronio recognized the two persons coming from the opposite direction as Julius and Estanislao only when they met each other at a distance of three (3) meters already. That when they met each other and without any word that intervened between Petronio and Aniceto on the one hand, and Julius and Estanislao on the other, the latter jointly and immediately stabbed Aniceto Hernandez. Petronio was not able to do anything to aid his cousin to help him but in the process, Julius and Estanislao turned against him ganged him (sic) and stabbed him, hitting him for the first time on the left breast and the second on his right breast, both by Julius, the third one by Estanislao hitting him on his left forearm, sustaining three wounds, two by Julius and the third one by Estanislao on his left forearm.

"Petronio showed in court when required the three scars, one on the left side about four inches below the left nipple, one on the right breast about two inches from the right nipple and another scar on the left forearm. After sustaining stab wounds, he ran towards the municipal building which is about fifty to one hundred twenty-meter distance from the crime scene near the bridge; that he recognized their assailants because the place was bright as there was light coming from the electric post near the place, but he did not fully identify the weapon used, but it is a pointed weapon." (Rollo, pp. 23-24)

The second prosecution witness, Rodolfo Carandang testified that:

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"xxx [O]n August 20, 1984 at about 10:15 in the evening, he was at the parking lot in front of the municipal building of San Jose, Batangas waiting for available passengers; that while he was waiting for available passengers, he saw a man running and shouting 'pulis, pulis, tulungan ninyo ako', he recognized this man to be his Kuya Petring (Petronio Rosales), so he followed him up to the municipal building where he noticed his Kuya Petring covered with blood and telling those people around that he and Kuya Sito (Aniceto Hernandez) were stabbed by Estanislao Batas and Julius Montañez. He hurriedly boarded his tricycle and looked for his Kuya Sito, who when found by him was lying prostrate near the road; that spectators assisted him in lifting and placing inside his tricycle his Kuya Sito, whom he believed already dead. When a jeep arrived, his kuya Sito was transferred into that jeep and was brought to the hospital; that he did not go to the hospital with his Kuya Sito, instead, he went to their relatives and reported the incident. Before he parked his tricycle in the parking lot in front of the San Jose Municipal building where he first saw his Kuya Petring running, full of blood and shouting for help, he came from Palanca, San Jose, Batangas where he brought a passenger. On his way back from Palanca going to said parking lot, he saw Estanislao and Julius by the bridge, although the two peeped in his tricycle, but he was not stopped by them who were then walking towards the west direction. The bridge is between the municipal building and Toyet Restaurant. The municipal building is east of the bridge and the bridge is east of Toyet Restaurant." (Rollo, pp. 24-25)

The third prosecution witness, Isidro Marquez, a Municipal Health Officer of San Jose, Batangas, testified:

"That he conducted a post mortem examination on the person of Aniceto Hernandez on August 21, 1984; that in his post mortem findings (Exhibit "E"), the deceased sustained twenty-one (21) wounds, with wounds No. 4 and No. 5 appearing as the most fatal and marked as Exhibits "F-1" and "F-2", respectively, in the anatomical sketch, Exhibit "F", Except Wounds No. 1 and No. 2, the rest, including the most fatal wounds, Wounds No. 4 and No. 5, were caused by sharp-edged and sharp-pointed instrument. Wounds No. 1 (lacerated) and No. 2 (abrasion) could have been possibly caused either by blunt instrument or by falling to the ground. Wounds No. 6, No. 7 and No. 8 could have been inflicted when assailant and the victim were facing each other or the assailant was at the side of the victim (deceased). Wound No. 8 (superficial) could have been sustained while the victim (deceased) was parrying the blow, while Wounds No. 3 and No. 20 were also superficial wounds that involve the whole thickness of the skin (gasgas). Wound No. 21 at the back, 8 cm. depth or 2 inches (pasikwat) anterior and upward; that if stab wounds No. 4 and No. 5 were the first inflicted on the victim, he could still run but not far and will possibly still live but no longer than one hour." (Rollo, page 25)

Both accused raise the following assignment of errors in this appeal, to wit:

I

"THE TRIAL COURT ERRED IN FINDING THAT IN CRIMINAL CASE NO. 2160-3 FOR MURDER, THE EVIDENCE OF THE PROSECUTION IS CLEAR, ADEQUATE AND CONVINCING THAT THE CRIME OF MURDER HAS BEEN COMMITTED BY THE TWO ACCUSED AND COMMITTED THE SAME BY STABBING TO DEATH ANICETO HERNANDEZ, WITH THE QUALIFYING CIRCUMSTANCE OF EVIDENT PREMEDITATION AND WITH THE AGGRAVATING

CIRCUMSTANCES OF TREACHERY AND RECIDIVISM, AND FURTHER, COMMITTED THE SAME WITH THE ELEMENT OF CONSPIRACY OR COMMON ACCORD BY AND BETWEEN THE TWO ACCUSED.

II

"THE TRIAL COURT ERRED IN FINDING THAT IN CRIMINAL CASE NO. 2168-3 FOR FRUSTRATED MURDER, THE CORRESPONDING EVIDENCE PRESENTED BY THE PROSECUTION IS LIKEWISE CLEAR, ADEQUATE AND CONVINCING THAT THE CRIME OF FRUSTRATED MURDER HAS BEEN COMMITTED BY THE ACCUSED AND PERPETRATED THE SAME WITH INTENT TO KILL BY STABBING PETRONIO ROSALES, WITH QUALIFYING CIRCUMSTANCE OF TREACHERY AND RECIDIVISM AND, FURTHER, COMMITTED THE SAME WITH THE ELEMENT OF CONSPIRACY BY THE TWO ACCUSED." (Rollo, pp. 60-61)

In the two assigned errors, the appellant questions the trial court's appreciation of the evidence presented by the prosecution.

As the two assigned errors are interrelated, this Court will discuss them together.

There is no doubt that both the accused killed Hernandez and would have killed Rosales if not for the timely medical attendance rendered to him. While admitting the stabbing, the two accused claim self-defense.

This claim, however, must fail.

There are three requisites to prove the claim of self-defense as stated in paragraph 1 of Article II of the Revised Penal Code, namely: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

The accused testified that the victims were the unlawful aggressors. We agree with the trial court in not giving credence to the testimonies of the accused as said testimonies are not only inherently improbable but in conflict with each other. There is no showing of any injuries sustained by the accused if indeed the victims were the aggressors. Thus, there is no self-defense to speak of as the appellants failed to prove that there was unlawful aggression on the part of the victims. Furthermore, the location, number and seriousness of the stab wounds inflicted on the victims belie the claim of self-defense. Hernandez alone sustained twenty one (21) wounds. The fact that the accused did not surrender themselves and the weapons they used to the police authorities whose office was just a few meters away from the scene of the crime helps negate the claim of self-defense.

As held in the case of *Ebajan v. Court of Appeals*, G.R. Nos. 77930-31, February 9, 1989:

"A person who seeks justification for his act must prove by clear and convincing evidence the presence of the necessary justifying circumstance for having admitted wounding or killing his adversary, and he is criminally liable unless he is able to satisfy the court that he acted in legitimate self-defense."

In the case at bar, the accused did not present clear and convincing evidence for the court to sustain the claim of self-defense. The trial court was convinced that one of the victims, Petronio Rosales, was telling the truth when he testified on the circumstances of the assault on him and his cousin. We see no reason from the records why we should reverse this finding. We agree with the trial court that there was conspiracy. The evidence presented by the prosecution clearly indicates that the acts and behavior of the accused reveal their common purpose to assault and inflict harm upon the deceased and that there was a concerted execution of that common purpose. (*People v. Bacho*, G.R. No. 66645, March 29, 1989) The existence of a concerted effort by the accused can be further inferred from the fact that both accused were together when provoked at the restaurant, were still together when they met the victims and without any word, jointly and immediately stabbed the deceased Hernandez and then

turned against Rosales and simultaneously ganged-up on him and stabbed him. The trial court stated:

"If the statements in court by accused Estanislao Batas is true that he alone and no other person participated in stabbing the deceased, except he, and that accused Julius Montanez was also alone in stabbing Petronio Rosales, why is it that deceased Aniceto Hernandez suffered twenty-one (21) wounds, of which 13 were stab wounds and 8 were hack wounds? From the very nature and appearance of said wounds (Exhibit F), there could be no better conclusion for the court to give, except that the 21 wounds were inflicted by at least two persons with two kinds of weapons." (Rollo, p. 36)

This Court, then, does not see any reason to disturb the factual findings of the trial court. In *Navarro v. Court of Appeals*, (G.R. No. 84423, January 31, 1989) this Court stated that:

"While it is true that it is the presence of the concurrence of minds which is involved in conspiracy, the conspiracy may be inferred from proof of facts and circumstances."

Likewise, we agree with the trial court's finding that there was treachery. In the case of *People v. Gimongala*, G.R. Nos. 62968-69, February 27, 1989:

"We sustain the finding of treachery against them as it is clear that they had adopted means and methods to insure the commission of the offenses without risk to themselves from any defense their unwary victims might make. It bears stressing that their victims were totally unprepared for their sudden attack and also without weapons to resist it."

In the case at bar, the assault and the stabbing were done in a sudden manner on the unarmed and defenseless victims.

Regarding the trial court finding that there was evident premeditation, this Court finds that the prosecution failed to show clear and convincing proof relative to (1) the time when the appellant determined to commit the crime; (2) an act manifestly indicating that the two clung to that determination; and (3) sufficient lapse of time between determination and execution to allow them to reflect upon the consequences of their act (*People v. Almario*, G. R. No. 69374, March 16, 1989) as to indicate that evident premeditation attended the killing of Hernandez. The trial court ruled that the qualifying circumstance of evident premeditation was present because the anger or ill-will of the two accused started when they were still at the Toyet's Restaurant; that both accused made their final determination to execute their criminal intent, as they did, after the lapse of more than half an hour since the ill-feeling started at said restaurant and the time they actually performed their criminal acts. (Rollo, p. 32) We find inadequate basis for this conclusion.

As stated in the case of *People v. Garachico*, (133 SCRA 131):

"To authorize the finding of evident premeditation, it must appear not only that the accused had made a decision to commit the crime prior to the moment of its execution but that this decision was the result of meditation, calculation or reflection or persistent attempt. In the case at bar, the lapse of thirty minutes between the determination and execution of the crime is not sufficient time for the accused to reflect upon the consequences of their act."

We apply the *Garachico* case as controlling as the elapsed time was more or less thirty minutes. The prosecution evidence shows that the victims stayed at the restaurant fifteen to twenty minutes more after the accused left and thereafter met the accused.

The crimes are still murder and frustrated murder with treachery considered as the qualifying circumstance, recidivism as a generic aggravating circumstance and with no mitigating circumstance to offset the same.

WHEREFORE, the guilt of the accused having been proved beyond reasonable doubt, the appealed decision is

hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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