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SECOND DIVISION

[G.R. No. L-39144. July 30, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO AREVALO, BERNARDO AREVALO, ERNITO AREVALO, and ROCEVAL AREVALO,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; CONSPIRACY; PRESENT IN CASE AT BAR.**— There has been established by the evidence, conspiracy among the accused by reason of the ambush they perpetrated and the concerted simultaneous attack they made on the victim, the four attackers suddenly coming out of the sugar plantation, with great stealth and cunning on a moonlight night and attacking the victim with bolos.

2. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ABSORBS THE AGGRAVATING CIRCUMSTANCES OF NIGHTTIME AND ABUSE OF SUPERIOR STRENGTH.**— The evidence for the prosecution conclusively established the qualifying circumstance of treachery to qualify the killing to murder. This qualifying circumstance absorbs the aggravating circumstances of nighttime and abuse of superior strength.

APPEARANCES OF COUNSEL

Salvador J. Baylen for accused-appellants.

Acting Solicitor General H. E. Gutierrez, Jr., Assistant Solicitor General O. R. Ramirez and *Solicitor N.P. de Pano Jr.* for plaintiff-appellee.

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DECISION

CONCEPCION JR., *J.*:

Appeal from a judgment of conviction for murder by the Court of First Instance of Capiz, Branch 1,[1] in Criminal Case No. 55, entitled "*People of the Philippines vs. Reynaldo Arevalo, Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo,*" the dispositive portion of which reads:

"The Court, therefore, finds the following facts conclusively established by the prosecution:

"That on the 3rd day of March, 1971, at about 7:00 o'clock in the evening in sitio Pinamolotan, barrio San Fernando, Pilar, Capiz, Abelardo Gonzales was attacked with bolos by the accused Reynaldo Arevalo, Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo, who, each armed with a fighting bolo inflicted physical injuries upon Abelardo Gonzales, which injuries caused his death. That the accused took advantage of their superior strength, they being four in number and each being armed with a fighting bolo.

"WHEREFORE, judgment is hereby rendered finding the accused Reynaldo Arevalo, Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo guilty beyond reasonable doubt as principals of the crime of murder, defined and penalized by Article 248 of the Revised Penal Code, without any aggravating or mitigating circumstance, and hereby sentence each of them to *Reclusion Perpetua*, to indemnify jointly and severally the heirs of the deceased in the amount of ₱12,000.00 without subsidiary imprisonment in case of insolvency.

"If the accused Reynaldo Arevalo, Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo has signed an agreement to abide by the disciplinary rules imposed on convicted prisoners while under confinement in the Provincial Jail, the preventive imprisonment undergone by the accused shall be deducted from the imprisonment imposed herein at its full extent; otherwise, they shall be credited to only four fifths of said term. Each accused is finally sentenced to pay one fourth of the costs.

"SO ORDERED.

"Roxas City, Philippines, June 3, 1974."

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[1] *Judge Pelayo v. Nuevo.*

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The four appellants were charged with the crime of murder in an information which read:

"That on or about the 3rd day of March, 1971, in the municipality of Pilar, province of Capiz, Philippines, and within the jurisdiction of this Court, said accused armed with fighting bolos (*talibong*) conspiring, confederating together and mutually helping one another and acting in common accord, did then and there with evident premeditation and treachery, willfully, unlawfully and feloniously taking advantage of nighttime and of their superior strength and number assault, attack, and bolo one Abelardo Gonzales, thereby inflicting upon the latter several mortal wounds on the different parts of his body which caused his death immediately thereafter; that due to the death of said Abelardo Gonzales, his heirs had suffered and are entitled to a death indemnity of ₱12,000.00, an indemnity for the consequent loss of the earning capacity of the deceased who had no permanent physical disability at the time of his death, moral damages for mental anguish and exemplary damages in consonance with the provisions of Art. 2206 of the Civil Code of the Philippines."

Upon arraignment, all the accused, assisted by counsel, pleaded not guilty.

The defense did not deny that the victim Abelardo Gonzales was killed on March 3, 1971, one of the accused (Reynaldo Arevalo) admitting that he was the only one who inflicted the fatal injuries on the victim in self-defense, and the other three relying on the defense of alibi. The victim, Abelardo Gonzales, suffered injuries as indicated in Exhibit "A", as follows:

"MEDICO-LEGAL NECROPSY REPORT

NAME: ABELARDO GONZALES AGE: 40 yrs. old SEX: MALE

STATUS: Married DIED AT: San Fernando, Pilar, Capiz

DATE & TIME OF EXAMINATION: March 3, 1971 at 9:30 P.M.

POSTMORTEM FINDINGS

GENERAL APPEARANCE:	The cadaver is that of a male, fairly developed, lying on his back at the center of the road.

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PHYSICAL FINDINGS:.

(1) Incise wound, 2 ½ inches in length, cutting the whole thickness of the scalp along the mid-supero-occipital region.

(2) Incise wound, 12 inches long, 1 ½ inches in depth, along the superior border of both scapular region, cutting skin, muscles, blood vessels & nerves, and the spinal column.

(3) Incise wound, 10 ½ inches long, 1 ½ inches in depth, ½ inch below & parallel to wound No. 2; cutting skin, muscles, blood vessels, border of both scapular bones and the spinal column.

(4) Incise wound, 11 inches long, 1 inch in depth, 1 cm. below & parallel to wound No. 3; cutting skin, muscles, blood vessels, nerves and both scapular bones, and the spinal column.

(5) Stab wound, 1 ½ inches in width, 1 inch in depth, at the mid-superior border of the left clavicle, lateral side of the left side of the neck.

(6) Incise wound, 8 inches long, extending from the inferior border of the left nostrils, to the right lateral side of the neck, cutting completely the left wall of the mouth, 1 inch of the inferior left earlobe, and almost completely, the superior-posterior portion of the neck.

(7) Incise wound, 8 ½ inches long, 1 cm. below & parallel to wound No. 6; cutting almost completely the left lateral wall of the mouth and almost completely, the posterior portion of the neck.

(8) Incise wound, 7 inches long, 1 cm. below and parallel to wound No. 7; cutting completely, the lateral wall of the mouth in that level, and almost completely the posterior region of the neck.

(9) Lacerated wound, superficial, 1 inch in length at the dorsum of the distal 3rd of the right forearm.

CAUSE OF DEATH: Hemorrhage, severe secondary to the multiple incise wounds.

(SGD.) DR. FLORA BADANA-REY, M.D.
Rural Health Physician
Dulangan, Pilar, Capiz"

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The prosecution, through the testimonies of principal witnesses Juanito Benjamin[2] and Chito Gonzales[3] presented direct evidence of the participation of identified accused Reynaldo Arevalo, Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo in the killing of Abelardo Gonzales on March 3, 1971. The prosecution's version is as follows:

The fourteen year old son of the victim Abelardo Gonzales, Chito Gonzales, together with his younger brother, 3-year old Allan, were with the victim on March 3, 1971, at about 7:00 o'clock in the evening at Sitio Pinamolotan, Barrio San Fernando, Pilar, Capiz, walking on the trail going to their home. Victim Abelardo Gonzales carried 3-year old Allan and Chito Gonzales walked beside his father. They came from the store of Isias Agesta where they exchanged vinegar for empty bottles.

While walking, the victim Abelardo Gonzales was suddenly approached from behind by Reynaldo Arevalo who appeared by the wayside and boloed at the back the victim who fell forward and thus his 3-year old son Allan was thrown away from him. The two other accused Ernito Arevalo and Bernardo Arevalo, who also suddenly appeared simultaneously with Reynaldo Arevalo from the wayside, took turns with Reynaldo in striking the fallen victim with their fighting bolos. When the victim fell, fourteen year old Chito Gonzales took hold of his three year old brother Allan and ran away to the cane fields to escape. The fourth accused Roceval Arevalo likewise appeared in the scene and with his fighting bolo also struck blows, together with Reynaldo, Ernito and Bernardo, at the prostrate victim Abelardo Gonzales. The accused tried immediately afterwards to run after Chito and Allan Gonzales but the latter two disappeared among the sugar cane planted by the fields on the wayside. The tour accused then ran away.[4]

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[2] t.s.n., pp. 2 to 16, Terrestre, January 21, 1972.

[3] t.s.n., pp. 2 to 26, Apuang, February 9, 1972.

[4] t.s.n., pp. 2-7, Apuang, Feb. 2, 1972; Exh. 2-A, Translation of the sworn statement of Chito Gonzales.

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During the occurrence of the aforementioned incident, Juanito Benjamin, who was then in the vicinity, very near where the crime occurred, watching his sugar cane from a cane car, saw the offense committed, and when Juanito Benjamin saw what was happening he hid behind the cane car so that the four accused did not notice his presence.[5]

A while after the crime was committed, Chito Gonzales, with his brother Allan, ran to his house at Sitio Pinamolotan and reported the incident to his aunt and sister. The group returned to the scene of the crime and found Abelardo Gonzales already dead. They then proceeded to the house of Igmedio Alabata who accompanied the group to the Police Station where the crime was reported.[6]

The doctor who conducted the post-mortem examination of the victim's body (Dra. Flora Badana-Rey, Rural Health Physician, Dulangan, Pilar, Capiz) testified that she did so at 9:30 o'clock in the evening of March 3, 1971.[7]

The version of the defense, although admitting the killing of Abelardo Gonzales on the evening of March 3, 1971, denies and contradicts the prosecution's version, as follows:

Accused Reynaldo Arevalo admitted that he was the one who boloed and killed the victim Abelardo Gonzales on March 3, 1971, in the evening, but he alleged that he did so in self-defense. While on the road at Sitio Pinamolotan, Barrio San Fernando, Pilar, Capiz, he met the victim Abelardo Gonzales who gave him wine to drink, which he did. Abelardo Gonzales asked money from Reynaldo Arevalo and when the latter pleaded that he had no money, victim Abelardo Gonzales drew a locally made gun "*pugakhang*" and threatened to shoot accused Reynaldo even if the latter refused to fight. When Abelardo Gonzales was about to shoot Reynaldo Arevalo, the latter pushed Abelardo and boloed him between the eyes and nose. The

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[5] t.s.n., pp. 2-15, Terrestre, Jan. 21, 1972; Exh. 4-A, sworn statement of Juanito Benjamin.

[6] t.s.n., pp. 7-8, Apuang, Feb. 9, 1972.

[7] t.s.n., pp. 18-19, Terrestre, Jan. 21, 1972; Exh. "A", Medico Legal Neuropsy Report of Dra. Flora Badana Rey.

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accused then struck Abelardo with his bolo three times on the face and neck and grabbed the "*pugakhang.*" Victim Abelardo Gonzales ran away and Reynaldo boloed him three more times at the back and once at the left forearm. Reynaldo ran to his house where he heard shouts and a commotion. He had a grudge against the victim Abelardo Gonzales because three months before March 3, 1971, the latter accused Reynaldo Arevalo of having stolen coconuts in the plantation where Gonzales was in charge. Accused Reynaldo Arevalo was not on speaking terms with the victim before March 3, 1971. He could not produce the gun he allegedly grabbed from the victim Abelardo Gonzales during the ihcident, because the gun accidentally fell from Reynaldo Arevalo when he ran away from the scene of the incident upon the coming of the relatives of the victim. He was not able to report the incident to the *barrio* captain nor to the police authorities because the relatives of the victim were looking for him. The victim during the incident was only accompanied by his son Chito Gonzales but not by his son Allan.[8]

Accused Roceval Arevalo testified that he did not participate in the killing of Abelardo Gonzales. On March 3, 1971, at 7:00 o'clock in the evening he claimed he was at Barrio Dulangan, Pilar, Capiz, working in the *hacienda*, cutting sugarcane and putting them in the tractors. He was surprised when he was arrested and he learned that Abelardo Gonzales died because he fought with Reynaldo Arevalo. The place where he worked is three kilometers from Sitio Pinamolotan where the incident happened. He claims he did not leave the place where he was working on March 3, 1971, because he was making arrangements for the cane cars to load sugarcane. He also claims that he was implicated by witness Juanito Benjamin because the latter had a grudge against Roceval.[9]

Accused Ernito Arevalo denied participation in the killing of Abelardo Gonzales and claimed that during the incident he was on the farm with his in-laws in San Fernando in the hills. He was a laborer in a fishpond located at Barrio Binarubawan, Pilar, Capiz. On March 3, 1971, he reported to the fishpond

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[8] t.s.n., pp. 2 to 7, 8 to 16, Apuang, March 21, 1972.

[9] t.s.n., pp. 30 to 37, Terrestre, Sept. 6, 1972.

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and worked up to noon. Afterwards, he went home, slept and went to his in-laws at 7:30 in the evening up to 9:00 o'clock. When he returned home at 9:30, he was informed by his mother that Reynaldo Arevalo killed someone, so he went to the house of Reynaldo and conversed with the latter. He was arrested on March 6, 1971. The distance between the scene of the incident to his house at Sitio Pinamolotan is 1-1/2 kilometers. The distance from his father-in-law's place to the scene of the incident is one kilometer and the distance from the scene of the incident to the fishpond where he worked is two kilometers.[10]

Accused Bernardo Arevalo testified that he was a fishpond watcher at Barrio Botacol, Panay, Capiz. The distance is five kilometers. He started working in the fishpond on March 4 of a year he could not remember. On March 3, 1971, he worked in the fishpond from morning up to afternoon and evening. On March 4 and 5 he continued working in the fishpond and went home only on Saturday afternoon. He did not participate in the killing of victim Abelardo Gonzales because he has no grudge against the latter. As a matter of fact, he was his friend. He stayed at Barrio Botacol temporarily and visited his family once a week. Witness Pantaleon Aligno corroborated the testimony of Bernardo Arevalo.[11]

The trial court gave much credence to the testimonies of Juanito Benjamin, who had no reason to testify falsely against the four accused, and Chito Gonzales who testified in a simple straightforward manner as to how his father was suddenly attacked and boloed from behind by Reynaldo Arevalo, followed by Ernito Arevalo and Bernardo Arevalo who boloed the fallen Abelardo Gonzales, and also by Roceval Arevalo who used his bolo on the victim when the latter was prostrate and helpless.

The trial court made a very careful scrutiny of evidence of both the prosecution and the defense and found the evidence for the prosecution, consisting of the unbiased testimony of eyewitness Juanito Benjamin who actually saw from a distance

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[10] t.s.n., pp. 54 to 61, Terrestre, December 20, 1972.

[11] t.s.n., p. 64 to 73, Terrestre, January 9, 1973.

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of three brazas from his vantage point on a cane car the attack made by all the four accused, Reynaldo Arevalo, Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo upon the victim Abelardo Gonzales, pointing out in detail the participation of each of the four accused, and clearly identifying each, conclusively established that the four accused participated in inflicting bolo wounds upon Abelardo Gonzales. There was no evidence produced by the accused to show any reason why witness Juanito Benjamin should testify against them falsely, hence, he must be telling the truth.[12] There has been established by the evidence, conspiracy among the accused by reason of the ambush they perpetrated and the concerted simultaneous attack they made on the victim, the four attackers suddenly coming out of the sugar plantation, with great stealth and cunning on a moonlight night and attacking the victim with bolos.[13]

This Court finds no compelling reason to disturb the trial court's findings on the credibility of witnesses who testified in this case. The theory of the defense that accused Reynaldo Arevalo killed the victim Abelardo Gonzales in self-defense when the latter, allegedly after giving wine to Reynaldo, drew his home-made gun and asked money from Reynaldo, with a threat to kill him, is very difficult to believe, unsupported as it is by any other evidence other than Reynaldo's testimony, and in the face of the testimonies of Juanito Benjamin and Chito Gonzales.[14]

Reynaldo Arevalo could not even produce the gun he was supposed to have taken from the victim and his explanation that it was lost when he ran away hardly deserves credence.[15] Reynaldo Arevalo could not even explain why, if it was true that he killed in self-defense, he did not report the matter

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[12] pp. 157-158, Original Record.

[13] pp. 6, 8, 11, 13 t.s.n., Jan. 21, 1972; pp. 5-6, t.s.n., Feb. 9, 1972; pp. 7-8, t.s.n., Feb. 9, 1972; *People vs. Tapac*, 28 SCRA 191, 198-199.

[14] p. 158, Original Record.

[15] p. 159, Original Record.

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immediately to the *barrio* captain or the police authorities. His version of the incident is likewise very difficult to believe.

The proven presence of numerous wounds, so many of them fatal, on the body of the victim Abelardo Gonzales eloquently manifests the truth in the prosecution's version of the crime that the four accused took turns in using their fighting bolos on the victim even when he was already prostrate from the sudden attack of Reynaldo Arevalo who hit him from his back. Reynaldo Arevalo, himself, admitted that he was not on speaking terms with the victim before the incident of March 3, 1971 and that there was a grudge between Abelardo Gonzales and Reynaldo because three months before March 3, 1971, Abelardo accused Reynaldo publicly of stealing coconuts from the plantation where Abelardo was in charge. Accused Reynaldo Arevalo, wittingly or unwittingly, provided the motive for the sudden attack of the four accused on the victim during the incident in question.

The contention of the defense that Roceval Arevalo was not really one of the assailants of the victim on the evening of March 3, 1971, because Chito Gonzales did not mention him in his affidavit[16] and Roceval was not included in the original complaint, is to Our mind not worthy of merit, because an examination of the sworn statements of Chito Gonzales and Juanito Benjamin[17] readily shows that Chito Gonzales made no mention of Roceval Arevalo in his sworn statement given to the police authorities immediately after the incident because Roceval Arevalo came to the scene and boloed the fallen victim after Chito Gonzales took his younger brother Allan and ran away to hide. By the narration of Juanito Benjamin in his sworn statement, Chito Gonzales could not have seen the accused Roceval Arevalo striking the victim with his bolo because that happened after Chito Gonzales fled with his 3-year old brother from the scene of the crime.

There is no merit in the two assignments of error allegedly committed by the trial court because it correctly rejected the

[16] Exhibit "2-A".

[17] Exhibits "2-A" and "4-A".

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defense version that accused Reynaldo Arevalo killed the victim Abelardo Gonzales in legitimate self-defense, and in finding that the other accused Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo participated in the crime. Furthermore, the evidence for the prosecution conclusively established the qualifying circumstance of treachery to qualify the killing to murder.[18] This qualifying circumstance absorbs the aggravating circumstances of nighttime and abuse of superior strength.

There being no aggravating nor mitigating circumstance in the commission of the crime, the trial court correctly imposed the penalty of *reclusion perpetua*.

WHEREFORE, the judgment appealed from, being in accordance with the law and the evidence, is AFFIRMED *in toto*.

SO ORDERED.

Barredo C.J., Antonio, Aquino, and *De Castro, JJ.*, concur.

Santos and *Abad Santos, JJ.*, are on leave.

FIRST DIVISION

[G.R. No. L-41432. July 30, 1979]

IVOR ROBERT DAYTON GIBSON, *petitioner, vs.* **HON. PEDRO A. REVILLA, in his official capacity as Presiding Judge of Branch XIII, Court of First Instance of Rizal, and LEPANTO CONSOLIDATED MINING COMPANY,** *respondents.*

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[18] pp. 18-19, *rollo*.