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The petitioner's delay in the filing of the action and its repeated failure to oppose the respondent's application both before the Bureau of Lands and the Register of Deeds also lead us to no other conclusion but that it is guilty of laches in pursuing whatever right it might have had over the land in dispute.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED for lack of merit. The questioned order of the lower court is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Paras, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 70306-07. July 30, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTORIANO GALO @ "TURING",** *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; NEGATED BY THE NATURE OF WOUND SUSTAINED BY THE VICTIM.**— Having pleaded self-defense, the accused necessarily admits the killing. The burden is on him, therefore, to establish the circumstances justifying the killing by clear and convincing evidence. Proof adduced in this respect by the accused is hardly persuasive. The accused claims that he accidentally hit the arrow with his elbow as he and one of the two unidentified persons, who later turned out to be the victim, were standing. The arrow then hit the person at his back who happened to be the victim. If this were true, the direction of the victim's injury would have been straight, which conflicts with the testimony of Dr. Dalmacio Javellana that the wound was "inwards and upwards toward the left breast". Moreover, mere hitting of the elbow

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backward would not likely have produced such a deep and fatal injury on the victim. In contrast, the direction of the injury, as testified to by the examining physician, lends more credence to the prosecution version that the victim was hit by the arrow while lying defenseless and asleep.

2. **ID.; MITIGATING CIRCUMSTANCES; INCOMPLETE SELF-DEFENSE; WHEN APPRECIATED.**— In respect of the charge for Attempted Homicide, however, incomplete self defense may be appreciated. It will be recalled that after the victim was hit by the accused and a fight for possession of the arrow ensued between him and Teofanes, the accused fled from the scene towards the public market. His flight after his weapon was wrested from him manifested a refusal to fight. Teofanes, however, who was then in possession of the arrow, pursued him and when he caught up, another struggle for possession of the death weapon followed. Teofanes then had become the unlawful aggressor. And, when after wresting back possession of the arrow, the accused injured Teofanes on the arm, the means employed by the accused to repel the aggression was reasonable under the circumstances. However, since the accused himself had given sufficient provocation for this incident, the third element of self-defense is wanting. It is likewise to be observed that intent to kill on the part of the accused was absent since he not only fled from the scene after the arrow-shooting incident but also desisted from hurting Teofanes more gravely although he had the upper hand, when Virgilio Boyles told him to stop.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; EVIDENCE IS NOT ADMISSIBLE WHICH SHOWS, OR TENDS TO SHOW THAT THE ACCUSED HAS COMMITTED A CRIME WHOLLY INDEPENDENT FROM THE OFFENSE FOR WHICH HE IS ON TRIAL.**— While, in fact, the Clerk of Court of the 6th Municipal Circuit Trial Court of Ubay testified that an Information for Theft had been filed in said Court against the Noval brothers, and a double Frustrated Murder case against them was pending before the then Court of First Instance, the same would not disprove the commission of the crimes charged against the accused in these two cases. It is a well-settled rule that evidence is not admissible which shows, or tends to show, that the accused in a criminal case has committed a crime wholly independent from the offense for which he is on trial. A man may be a notorious criminal, and may have committed many crimes and still be innocent of the crime charged in the case on trial.

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DECISION

MELENCIO-HERRERA, *J.*:

Accused, Victoriano Galo @ "Turing", appeals from the consolidated Decision of the Regional Trial Court, Branch I, of Tagbilaran City, convicting him of Murder and sentencing him to *reclusion perpetua* in Criminal Case No. 3722; and convicting him of Attempted Homicide, and imposing on him an indeterminate penalty, in Criminal Case No. 3723.

The prosecution summarized the testimonies of its witnesses Teofanes Noval, Virgilio Castro, Nestor Capisinio, and Dr. Dalmacio Javellana as follows:

"At 8:00 o'clock in the evening of October 18, 1983, Teofanes Noval went to fetch his brother, the late Godofredo Noval, Jr., who went to buy medicine at Poblacion, Ubay, Bohol. The town proper of Ubay is 3 kilometers from their residence at Biabas, Teofanes found Godofredo at Upang Alquizar's store where they waited for the last trip to Biabas. The St. Jude transportation bound for Biabas usually left the poblacion at 9:00 o'clock in the evening. No tricycle plied the route at that time. Godofredo dozed off while Teofanes stretched himself on top of a table at Mang Upang's store beside his sleeping brother, Teofanes heard a sound of slippers being dragged towards their direction. He instinctively opened his eyes and saw accused-appellant 'Turing' Galo releasing an arrow at his brother Godofredo. The arrow found its mark at the upper portion of the right waist of Godofredo. With the sticking arrow at his side, Godofredo suddenly woke up in pain and cried in anguish 'Help me, Noy'. Godofredo pulled out the arrow and dropped it on the ground. Appellant continued approaching the Noval brothers menacingly and tried to retrieve the arrow from the ground. Teofanes beat him into it and picked up the arrow. The wounding weapon was a piece of 3 feet long steel rod with a sharp pointed edge shaped like an arrow head. Teofanes waited for the next move of appellant, who wavered and ran. Teofanes went after him. Both snaked themselves through the market place until the premises of Virgilio Boyles. They grappled for the arrow. Being stronger, appellant grabbed the iron rod from Teofanes. He directed the arrow at the left chest of Teofanes who evaded the arrow, thus hitting his left arm instead. Teofanes already wounded became scared. He shouted for help bringing Virgilio Boyles to his rescue. Virgilio said to appellant: 'That is enough Boy because I know that Boy.' Appellant desisted from

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further assaulting Teofanes. He (Teofanes) thought of his wounded brother and returned to the crime scene. His brother Godofredo was dying. Teofanes again shouted for help. Pat. Escalante and another policeman came in a patrol car. They first reached Dr. Lita Cutamora's place but Godofredo was refused treatment because of his critical condition. They went to a certain Dr. Dalmacio Javellana. However, Godofredo expired (tsn, pp. 3-11, 15, 21, 24-26, June 7, 1984; tsn, pp. 3-6, June 8, 1984; tsn, pp. 10-14, July 10, 1984).

"The deceased sustained 'a stab wound, one half inch in width, with blunt borders, penetrating, directly medially inwards and upwards toward the left breast, measuring 8 inches in depth, situated about an inch below the right costal area, 4 1/2 inches from the middle line'. Godofredo Noval died of 'hemorrhage, severe, secondary to stab wound'. (Exhibit 'B', p. 1, Folder of Exhibits; tsn., pp. 3-4, 6-7, July 10, 1984).

"Dr. Dalmacio Javellana testified that the nature of the wound is not linear but a bolt. There was an avulsion of the skin probably caused by an arrow (Exhibit 'A') (tsn, p. 8, July 10, 1984)."[1]

The accused, on the other hand, invoking self-defense, and through his witnesses Pat. Policronio Escalante, Marlita Portes, Jacinto Sarmiento, Pedro Autentico and the accused himself Victoriano Galo, presented a different account of the incident, thus:

"That on October 18, 1983 at around 9 o'clock in the evening at Ubay, Bohol, the deceased Godofredo Noval, Jr. and Teofanes Noval arrived at the store of the accused located at the side of the public market of Ubay, Bohol, where dried fish are sold in order to buy wine but since the store does not sell any wine, the Noval brothers only stood by outside the store; later on, Godofredo Noval, Jr., ran away bringing with him the container of the money of the store and followed by Teofanes Noval; that the accused's daughter of Nimfa Galo fetched a policeman in the person of Pat. Policronio Escalante who made a follow-up of the robbery and after he was informed that it was Godofredo Noval, Jr. who stole the store's money, he searched for him and when he found him at around 10 o'clock in the evening, the latter was already lying on the ground seriously wounded.

"That accordingly, the accused was not in the store when the robbery was committed because he was sleeping in his house which is located at a distance of 200 meters from his store and was only awakened by his

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[1] Brief for Plaintiff-Appellee, p. 132, *Rollo*.

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wife who informed him of the said robbery; that upon being informed, he asked his wife whether the culprit was apprehended and when his wife told him that they were not apprehended because they run away, accused decided to go to the municipal building of Ubay, Bohol, in order to report the incident to the police authorities.

"That on his way to the municipal building, accused saw two persons standing at the parking lot which is near the public market of Ubay, Bohol, and he asked them whether they have seen a policeman and when they answered that they did not see any policeman, accused turned his back in order to proceed to the municipal building when he was struck by one of the said two persons hitting him on his forehead, so he faced them in order to ask why he was struck but after facing them, he was met with a stabbing t(h)rust by that person using a steel rod (Exh. A) but he was not hit because he was able to parry the blow and they grappled; that later on he attempted to run away but his shoulder was held and the collar of his shirt was torn; due to the tearing of his shirt, the force made him move(d) backward and in the process, his elbow hit that steel rod (Exh. A) and that person at his back was hit with it; that after that, he run away but upon reaching his house, he was overtaken by one of the two persons, who immediately struck and stabbed him with the steel rod which were all parried by him and in the process he injured his left ring finger (Exh. 2) and they grappled in the premises of his house over the possession of the steel rod; then, he was stabbed again with the steel rod but accused was able to hold that person's hand and that person boxed him which he parried again with his left hand and that person hit his right forearm so he twisted his right arm and that person released accused's forearms from his bit (grip), but in the process, he heard that person cried 'agoy' (an exclamation when a person is in pain) and that person run away and the steel rod was left with him; after that accused went upstairs and while thereat he was asked by his wife what happened to his forehead because it was bleeding and he told his wife that he was not able to reach the municipal building because he was attacked by two persons and he told her that he would proceed to the municipal building but when he came out from his house, he saw Pat. Cutanda with two companions in his premises she told him that they were looking for him and afterwards he was accompanied by one of the companions of Pat. Cutanda to the municipal building where he was placed inside the municipal jail."[2]

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[2] Brief for the Appellant, p. 124, *Rollo*.

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After trial, the lower Court convicted and sentenced the accused as follows:

"WHEREFORE, judgment is hereby rendered:

1. In Crim. Case No. 3722, finding the herein accused Victoriano Galo alias Turing GUILTY beyond reasonable doubt for the crime of Murder, said accused is hereby sentenced to suffer the penalty by imprisonment of *Reclusion Perpetua* and to pay the amount of P12,000.00, by reason of the death of Godofredo Noval, Jr., to his legal heirs, without any subsidiary imprisonment in case of insolvency;

2. In Crim. Case No. 3723, finding the herein accused Victoriano Galo alias Turing Guilty beyond reasonable doubt of the crime of Attempted Homicide, said accused is hereby sentenced to suffer the indeterminate penalty by imprisonment from FOUR (4) MONTHS of *Arresto Mayor* as minimum to TWO (2) YEARS and FOUR (4) MONTHS of *Prision Correccional* as maximum with the accessories of the law; and

3. To pay the costs in both cases.

"Being a detention prisoner in these cases, the herein accused is entitled to be credited in the service of his sentence in both cases. full time during which he has undergone preventive imprisonment."[3]

Before us, the accused now alleges:

I

"The Honorable lower Court erred in finding that the version of the accused as to the circumstance which gave rise to the case at bar is contrary to the ordinary course of events.

II

"The lower Court erred in finding that the accused is guilty of the crime of murder despite absence of evidence to support the crime of murder.

III

"The Honorable lower Court erred in finding the accused guilty of attempted homicide notwithstanding evidence that accused was the one chased by complaining witness Teofanes Noval and said accused acted only in self-defense.

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[3] p. 110, *Rollo*.

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IV

"The Honorable lower Court erred in not acquitting the accused in both case."[4]

Basically, the issue rests on credibility, and after examining the conflicting versions of the prosecution and the defense, like the Trial Court, we find the prosecution account deserving of more credence.

Corroborating Teofanes Noval's testimony, essentially as previously summarized, Nestor Capicinio, a 20-year old 1st-year high school student, who was waiting for a ride at the bus terminal about five meters from the store where the Noval brothers were resting, narrated that at about 7:00 P.M. of October 18, 1983, he saw the accused pass in front of him carrying an iron rod, a rubber sling and a piece of bamboo; the accused approached two men who were lying down in the store and without saying anything, shot the arrow at one of them; the latter was hit on the right side of his body a little above the waist line; the victim pulled the arrow from his side at the same time asking for help; as the arrow fell, the victim's companion, later on identified as Teofanes, and the accused each tried to get possession; the accused ran away followed by Teofanes who succeeded in taking hold of the arrow; and that as the truck he was waiting for arrived, he boarded it for home, relating to the passengers therein that somebody had been hit by an arrow.

Virgilio Castro, Sr., 34, a market collector, testified that at about 7:00 P.M., on October 18, 1983, he saw the accused on the way to his (accused's) store outside the public market of Ubay, Bohol. At the time, the witness was at the side of the store where dried fish was displayed. When the accused reached his store and seeing it in disarray, he inquired what had happened and his children replied that the store had been ransacked and that the victim was the culprit. The accused silently left, entered the public market and got his "pana." Seeing this, the accused's wife became apprehensive and

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[4] Brief for Plaintiff-Appellee, pp. 4-5.

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reported it to Pat. Escalante. Thereafter, the latter, accompanied by the accused's wife and the witness proceeded to the Galo store where they saw the accused and Teofanes chasing each other, while at the corner of the street nearby, they heard the victim shouting for help because he had been hit by a "pana." Pat. Escalante and Virgilio Castro then approached the victim and together they took the latter to a doctor. Pat. Escalante, a defense witness who testified as to the alleged robbery, corroborated that it was Virgilio Castro who had asked him to bring the wounded victim to the doctor.

Piecing the evidence together, the sequence of the happening would show that, contrary to the defense version, at around 8:00 P.M. of the night in question, the accused was informed by his children, who were tending their store, that it was the victim Godofredo Noval, who had robbed them of the proceeds of their day's sales. Angered, he set out to look for the culprit, arrow in hand, and when he saw the latter asleep on a table in a stall, open on the sides, he shot him with an arrow. He met resistance from Teofanes Noval, the victim's brother, so the accused fled with Teofanes in pursuit.

Teofanes' testimony then completes the story in that he chased the accused up to somewhere near the store premises of Virgilio Boyles; thereat, he and the accused grappled for possession of the arrow and having been wounded by the accused, he got scared and shouted for help at which point Virgilio Boyles intervened and saved him from further injury.

The accused, however, would have us believe that he was sleeping at home earlier in the evening of October 18, 1983; that he was awakened by his wife after 9:00 P.M., who informed him of the robbery but who did not reveal the name of the culprit; that he went to the municipal building to report the robbery to the authorities but on the way he was assaulted by two persons carrying an arrow, they hit him on the forehead and it was while defending himself and one of the aggressors had pulled him back that he accidentally hit the arrow with his elbow and hurt the one behind him, later identified as the victim; that he ran home with another person following behind who caught up with him, and with the arrow hit his finger. Grappling for the weapon, the arrow was

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released when the accused twisted the same with both hands. His attacker shouted "aguy" and fled leaving behind the arrow. He rushed home with a bleeding forehead and informed his wife that he did not reach the police station because of the assault on him; that he intended to go again to the municipal building but when he went down his house the police were already there and arrested him for seriously wounding the victim. Dr. Javellana treated the accused for superficial wounds on the forehead and finger.

The following considerations constrain us from lending faith and credence to the story of the accused; (1) it is, indeed, contrary to human experience that the victim's wife would not have informed him of the identity of the culprit considering that it was the accused's daughter, Nimfa, who reported the robbery to the police and revealed that the victim was the one culpable;

(2) In point of time, it was much too soon for the police to arrest the accused if the sequence of the occurrence were as he narrated. He had just had his encounter with the attackers but the policemen were already at his doorsteps.

(3) Having pleaded self-defense, the accused necessarily admits the killing. The burden is on him, therefore, to establish the circumstances justifying the killing by clear and convincing evidence. Proof adduced in this respect by the accused is hardly persuasive. The accused claims that he accidentally hit the arrow with his elbow as he and one of the two unidentified persons, who later turned out to be the victim, were standing. The arrow then hit the person at his back who happened to be the victim. If this were true, the direction of the victim's injury would have been straight, which conflicts with the testimony of Dr. Dalmacio Javellana that the wound was "inwards and upwards toward the left breast". Moreover, mere hitting of the elbow backward would not likely have produced such a deep and fatal injury on the victim. In contrast, the direction of the injury, as testified to by the examining physician, lends more credence to the prosecution version that the victim was hit by the arrow while lying defenseless and asleep.

(4) It is true that Pedro Autentico, a defense witness, testified that at about 7:00 P.M., he went fishing with the use of a torch at the sea, which is about 10 to 12 kilometers from his house. He

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witnessed the accused being chased by someone whom he did not recognize and when he went home at 9:00 P.M., he informed a policeman, later identified as Pat. Escalante, to proceed where there was an ongoing fight. Such testimony, however, sheds no light whatsoever on the killing itself besides the fact that since we have discredited the accused's version of the incident, this witness' testimony corroborating it deserves no credence either.

(5) Pat. Policronio Escalante, also a defense witness, testified that while he was manning the police outpost at the public market on October 18, 1983, at around 9:00 P.M., Nimfa Galo, the accused's daughter tending their store, reported that "Ega", the victim's nickname, carted away the container filled with coins representing the proceeds of the sale of her store. He then instructed his men to look for the victim and that at about 8:00 P.M., they found the latter seriously wounded. This testimony, however, concentrates only on the robbery aspect, with nothing disclosed about the arrow shooting.

(6) While, in fact, the Clerk of Court of the 6th Municipal Circuit Trial Court of Ubay testified that an Information for Theft had been filed in said Court against the Noval brothers, and a double Frustrated Murder case against them was pending before the then Court of First Instance, the same would not disprove the commission of the crimes charged against the accused in these two cases. It is a well-settled rule that evidence is not admissible which shows, or tends to show, that the accused in a criminal case has committed a crime wholly independent from the offense for which he is on trial. A man may be a notorious criminal, and may have committed many crimes and still be innocent of the crime charged in the case on trial.[5]

In respect of the charge for Attempted Homicide, however, incomplete self defense may be appreciated. It will be recalled that after the victim was hit by the accused and a fight for possession of the arrow ensued between him and Teofanes, the accused fled from the scene towards the public market. His flight after his

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[5] *People vs. Asinas*, 53 Phil. 68-69 (1929).

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weapon was wrested from him manifested a refusal to fight.[6] Teofanes, however, who was then in possession of the arrow, pursued him and when he caught up, another struggle for possession of the death weapon followed. Teofanes then had become the unlawful aggressor. And, when after wresting back possession of the arrow, the accused injured Teofanes on the arm, the means employed by the accused to repel the aggression was reasonable under the circumstances. However, since the accused himself had given sufficient provocation for this incident, the third element of self-defense is wanting.

It is likewise to be observed that intent to kill on the part of the accused was absent since he not only fled from the scene after the arrow-shooting incident but also desisted from hurting Teofanes more gravely although he had the upper hand, when Virgilio Boyles told him to stop.

Absent intent to kill, the crime committed is Less Serious Physical Injuries since the lacerated wound on Teofanes' left forearm, 3 1/2 inches in length, which affected the muscles, would require medical attendance for a period of 14 to 18 days. To be appreciated is the mitigating circumstance of incomplete self defense.

WHEREFORE, the appealed judgment (1) in so far as Criminal Case No. 3722 for Murder is concerned, is hereby affirmed with the modification that the indemnity is increased to P30,000.00; and (2) in respect of Criminal Case No. 3723, the accused is found guilty of Less Serious Physical Injuries and sentenced to two (2) months of *arresto mayor*. Costs against accused-appellant Victoriano Galo.

SO ORDERED.

Yap (Chairman), Narvasa, Cruz, and *Paras, JJ.*, concur.

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[6] *People vs. Alviar*, 56 Phil. 98 (1931).