

SECOND DIVISION

[G.R. No. 149372, September 11, 2007]

**RICARDO BACABAC, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

In the evening of December 23, 1990, Hernani Quidato (the victim) was at a dance hall in Purok 4, San Joaquin, Iloilo City in the company of Eduardo Selibio (Eduardo) and Melchor Selibio (Melchor). And so were Jonathan Bacabac (Jonathan) and Edzel Talanquines (Edzel).^[1]

Jonathan and Edzel left the dance hall. Not long after, the victim and his companions also left and on their way home, they encountered Jonathan and Edzel. It appears that the two groups then and there figured in a misunderstanding.

On his way home, Jesus Delfin Rosadio (Jesus), who was also at the dance hall, noticed a commotion. He soon saw that Melchor was "hugging" Edzel, and later "tying" Jonathan "with his hands." Still later, he saw the victim hit Edzel with a "stick."^[2] He thus told the victim and his companions that Edzel is the son of Councilor Jose Talanquines, Jr. (Jose), whereupon Eduardo^[3] told him (Jesus) to go away for they might shoot him. Jesus thus left and proceeded to Edzel's residence to report to his father what he had witnessed. In the meantime, Edzel and Jonathan managed to flee.

The victim and his companions thereafter headed for home in the course of which they met Pat. Ricardo Bacabac (herein petitioner), together with Edzel and Jonathan who are his nephews, and Edzel's father, Jose, his mother, and two sisters at the corner of M.H. Del Pilar and Sto. Domingo Streets. Petitioner and Jose were carrying M-16 armalites, while Jonathan and Edzel were carrying a piece of wood and a revolver, respectively.

Jesus thereupon pointed to the victim and his companions as the ones who had manhandled Jonathan and Edzel. The victim apologized, explaining that he and his companions mistook Jonathan and Edzel for other persons. Jesus blurted out, however, "You are just bragging that you are brave. You are only bullying small children."^[4] Petitioner, at that instant, fired his armalite into the air, while Jose fired his armalite ("as if spraying his rifle from right to left") at the victim and Eduardo, even hitting Jonathan in the thigh as he (Jonathan) "was on the move to strike [the victim] with a piece of wood." Eduardo fell. And so did the victim who was in a kneeling position, and as he was raising his hands in surrender, Jose shot him again.

Meanwhile, Melchor escaped.^[5]

The victim, Eduardo, and Jonathan were brought to the hospital. The victim was pronounced dead on arrival. Eduardo died two hours later.

Post-mortem examination showed that the victim sustained two bullet wounds in the thoraco-abdominal regions and one bullet wound in the extremities, and that he died due to "maceration of the internal organs due to bullet wounds."^[6] Eduardo sustained two bullet wounds in the thoraco-abdominal region, and died of "hemorrhage due to gunshot wounds."^[7]

Two Informations for Murder were filed with the Regional Trial Court (RTC) of Iloilo City against Jose, Edzel, Jonathan, Jesus, and the herein petitioner. The accusatory portion of the first Information, docketed as Criminal Case No. 35783, reads:

That on or about the 23rd day of December, 1990, in the Municipality of San Joaquin, Province of Ilo-ilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with two (2) M16 [a]rma-lite [r]ifles and one (1) nickel-plated revolver of unknown make and caliber, with deliberate intent and decided purpose to kill, with treachery and evident premeditation and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack and shoot one HERNANI QUIDATO with the firearms they were then provided, inflicting upon the latter gunshot wounds on the different parts of his body which caused the immediate and instantaneous death of said Hernani Quidato.

CONTRARY TO LAW.^[8]

The accusatory portion of the second Information, docketed as Criminal Case No. 35784, reads:

That on or about the 23rd day of December, 1990, in the Municipality of San Joaquin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with two (2) M16 [a]rma-lite [r]ifles and one (1) nickel-plated revolver of unknown make and caliber, with deliberate intent and decided purpose to kill, with treachery and evident premeditation and without any justifiable cause or motive, did then and willfully, unlawfully and feloniously assault, attack and shoot one EDUARDO SELIBIO with the firearms they were then provided inflicting upon the latter gunshot wounds on the different parts of his body which caused the immediate and instantaneous death of said Eduardo Selibio.

CONTRARY TO LAW.^[9]

The cases were jointly tried.

By Decision of April 30, 1993, Branch 39 of the Iloilo RTC, finding the presence of conspiracy among petitioner and his co-accused,^[10] convicted them of murder

qualified by treachery.^[11] The dispositive portion of the decision of the trial court reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 35783, all the accused, namely; Jose Talanquines, Jr., Edzel Talanquines, Jonathan Bacabac, Pat. Ricardo Bacabac, and Jesus Delfin Rosadio are hereby found guilty beyond reasonable doubt of the crime of murder and there being no aggravating circumstances with one mitigating circumstance [immediate vindication for Jose and Jesus; voluntary surrender for Pat. Ricardo Bacabac^[12]], and applying the indeterminate sentence law, accused Jose Talanquines, Jr., Ricardo Bacabac and Jesus Delfin Rosadio are hereby sentenced each to suffer imprisonment for a period of 10 years and 1 day, as minimum, to 17 years, 4 months and 1 day as maximum; while accused Edzel Talanquines and Jonathan Bacabac who are entitled to the privileged mitigating circumstance of minority and the ordinary mitigating circumstance of immediate vindication of a grave offense are hereby sentenced each to suffer imprisonment for a period of four (4) years, 2 months, and 1 day, as minimum, to 10 years and 1 day as maximum. All the accused are ordered to pay jointly and severally the heirs of the deceased Hernani Quidato, the amount of P50,000.00 for his wrongful death; P20,000.00 for moral damages; P10,000.00 for attorneys fees; and the costs of the suit. (Underscoring supplied)

In Criminal Case No. 35784, judgment is hereby rendered as follows:

All the accused, namely; Jose Talanquines, Jr., Edzel Talanquines, Jonathan Bacabac, Pat. Ricardo Bacabac and Jesus Delfin Rosadio are hereby found guilty of the crime of Murder and there being no aggravating circumstance with one mitigating circumstance, accused Jose Talanquines, Jr., Ricardo Bacabac and Jesus Delfin Rosadio are hereby sentenced each to suffer imprisonment for a period of 10 years and 1 day, as minimum, to 17 years, 4 months and 1 day, as maximum; while accused Edzel Talanquines and Jonathan Bacabac who are entitled to the privileged mitigating circumstance of minority and the ordinary mitigating circumstance of immediate vindication of a grave offense, are hereby sentenced to suffer imprisonment for a period of 4 years, 2 months and 1 day, as minimum to 10 years and 1 day as maximum. All the accused are ordered to pay jointly and severally the heirs of the deceased Eduardo Selibio, the amount of P50,000.000 for his wrongful death; P20,000.00 for moral damages; P10,000.00 for attorney's fees; and the costs of the suit. (Underscoring supplied)

Accused Jesus Delfin Rosadio, who is detained, is hereby credited with the number of days he spent under detention, if he is qualified.

SO ORDERED.^[13]

While petitioner and his co-accused filed a Notice of Appeal^[14] which was given due course,^[15] only petitioner filed a Brief, albeit beyond the extensions granted to him, drawing the Court of Appeals to dismiss his appeal.^[16] The conviction of petitioner's co-accused had thus become final and executory.

Petitioner's Motion for Reconsideration^[17] of the dismissal of his appeal having been denied,^[18] he filed a Petition for Review with this Court which, by Resolution of October 22, 1997, directed the Court of Appeals to reinstate petitioner's appeal.^[19]

By Decision^[20] of June 28, 1999, the Court of Appeals affirmed the trial court's decision. Entry of final judgment was made by the Court of Appeals on July 22, 1999.^[21]

The trial court thereafter issued a February 7, 2000 Order directing the issuance of warrants for the arrest of the accused.^[22] Except petitioner, all were arrested.^[23]

On February 24, 2000, petitioner filed before the appellate court a Petition for Relief from Judgment, Order, and/or Denial of Appeal^[24] which was granted,^[25] hence, the Entry of Judgment issued by the appellate court on July 22, 1999 was set aside. He thereafter filed a Motion for Reconsideration^[26] of the appellate court's June 28, 1999 Decision which was denied by Resolution of August 8, 2001;^[27] hence, the present Petition for Review on Certiorari.^[28]

Petitioner assails the Court of Appeals' decision as follows:

First: Contrary to its *conclusion* on the basis of the facts of the case, Petitioner may **not be deemed to be in conspiracy** with the other Accused.

Second: Contrary to its conclusion, there was no treachery.

Third: Contrary to its *conclusion*, Petitioner, assuming in gratis *argumenti* the correctness of the pronouncement of guilt, should have been credited with the **mitigating circumstance of immediate vindication of a grave offense**, in the same manner that the other Accused were so credited.

Fourth: Contrary to its *conclusion*, the guilt of the Petitioner has not been proved beyond reasonable doubt; hence, by the *equipoise rule*, should have been acquitted.

Fifth: Contrary to its *conclusion*, Petitioner is **not civilly liable**.^[29]
(Emphasis in the original)

The Court notes that the first, second, and fifth arguments of petitioner were, in the main, raised before the appellate court.^[30]

During the pendency of the present petition, petitioner, through counsel, filed before the trial court an "Urgent Ex Parte Alternative Motions (Re: Pat. Ricardo Bacabac's

Motion for Reconsideration and/or to Vacate the Order dated February 7, 2000 [directing the arrest of the accused] and to Recall the Warrant of Arrest Dated the Same Date in so far as the Accused Pat. Ricardo Bacabac Only is Concerned)."[31] The trial court denied[32] the motion as it did deny[33] petitioner's motion for reconsideration,[34] drawing petitioner to file before this Court on October 5, 2006 a "Motion to Vacate Order for the Arrest of the Accused and the Warrant of Arrest Issued by the Regional Trial Court (Branch 39) of Iloilo City." [35]

In his "Motion to Vacate Order for the Arrest of the Accused and the Warrant of Arrest Issued by the Regional Trial Court . . . ," petitioner argues that

[T]he basis of the RTC's Order of **February 7, 2000** was the **Entry of Judgment** by the **Court of Appeals** dated **25 November 1999**. [36] **BUT THE SAID ENTRY OF JUDGMENT was ALREADY VACATED and SET-ASIDE BY THE COURT OF APPEALS ITSELF ON ITS RESOLUTION DATED 13 DECEMBER 2000.** Therefore, the RTC's Order of 7 February 2000 was *ipso facto* vacated. [37] (Emphasis in the original)

and that

[T]he **second sentence** of Section 7, Rule 65 of the Rules of Court cited by the Order of 13 July 2006 does **not apply** to the case at bench **because** the **main case on the merits** which originated in the RTC as Criminal Cases Nos. 35783-84, went to the Court of Appeals as CA-G.R. No. 16348 and is now pending in the Supreme Court (Third Division) as G.R. No. 149372 because of the *Petition for Review On Certiorari* filed by Movant herein x x x. **THE MAIN CASE IS NO LONGER PENDING IN THIS HONORABLE COURT [sic]. THEREFORE, THE RTC HAS NO JURISDICTION TO REITERATE AND EXECUTE THE ORDER OF 7 FEBRUARY 2000.** [38] (Emphasis in the original)

As this Court hereby affirms petitioner's conviction, resolution of his "Motion to Vacate . . ." is rendered unnecessary.

Petitioner, denying the presence of conspiracy on his part, argues:

[The petitioner] affirms that he was at the scene of the incident and **merely fired a warning shot into the air to respond to a public disturbance,** and his firing a warning shot into the air was intended **to avert further acts of violence;** both circumstances, therefore, being merely and solely in pursuance to his avowed duty to keep peace and order in the community and clearly not to be part of any alleged community of design to kill the victims.

x x x x

Another indication that there was **no unity of purpose and of execution** in so far as the Petitioner is concerned **is his conduct after Jose Talanquines, Jr. shot the victims.** Eyewitness accounts state that after that lone warning shot, closely followed by Jose Talanquines, Jr. firing at the victims, the petitioner merely stood there and did nothing and said nothing. This is obviously because he was himself stunned by