

## **FIRST DIVISION**

**[ G.R. No. 136859, April 16, 2001 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICHARD BACUNAWA AND ERNESTO BACUNAWA, ACCUSED-  
APPELLANTS.**

### **D E C I S I O N**

**YNARES-SANTIAGO, J.:**

Accused-appellants, brothers Richard and Ernesto Bacunawa, were charged with murder in an Information<sup>[1]</sup> which reads:

That on or about January 19, 1994 in the evening thereof, at Barangay Canomay, Municipality of Dimasalang, Province of Masbate, Philippines within the jurisdiction of this Honorable Court, the above-named accused conspiring together and confederating with each other, with intent to kill by means of treachery and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab EMERSON LARGO, with a bladed weapon, inflicting upon him mortal wound which caused his death thereafter.

CONTRARY TO LAW.

Accused-appellants pleaded not guilty. Trial on the merits ensued.

At around 9:30 in the evening of January 19, 1994, prosecution eyewitness Gil Ortega and the victim Emerson Largo were on their way home when they passed accused-appellants Richard and Ernesto Bacunawa. Suddenly, Ernesto Bacunawa put his arms around Largo and Richard Bacunawa stabbed him with a one foot-long knife. Gil Ortega was three (3) arms length away from the victim when the stabbing took place. Thereafter, accused-appellants fled. Ortega was able to see accused-appellants' faces from the beam of the headlight of a motorcycle and the Coleman lamp at the house of one Melchor Arcueno, which illuminated a portion of the road approximately five arms length from where the victim was stabbed.

Prosecution witness Jeffrey Cervantes corroborated Gil Ortega's testimony. According to him, he and his wife were on their way to the town plaza of Canomay, Dimasalang, to watch the program in celebration of the town fiesta. Along the way, they passed by the house of Melchor Arcueno and saw accused-appellants standing at the side of the said house. Richard Bacunawa was carrying a knife and wearing a sleeveless shirt. Shortly thereafter, they met Gil Ortega and the victim Emerson Largo, who were on their way home to change clothes as they were planning to attend the dance being held at the plaza. After walking a few meters, Cervantes heard Emerson Largo shout for help, saying that he was hit. Cervantes went back

to help and saw the victim with a stab wound at the right side of his abdomen. He also saw the culprits running away as they were illuminated by the light of the motorcycle.

While the victim was at the hospital of Dr. Alino, he gave a dying declaration pointing to Richard Bacunawa as the one who stabbed him. He thumbmarked his dying declaration with his own blood. The declaration was witnessed by SPO2 Pedrito Afable and Christopher Capacio. Eventually, Emerson died.

Accused-appellants, however, had another version of the incident. According to Ernesto Bacunawa, he was looking for his brother Richard at the slaughterhouse where the latter worked. Not finding his brother there, he proceeded to Canomay, Dimasalang. As he passed by the road going to the church and the Zenaida Theater, which is about 150 meters from the scene of the crime, he heard and recognized the voice of his brother shouting for help. He rushed to where his brother was and found him being ganged upon by five men. He claimed that his younger brother was being punched and kicked even as he was already flat on his back. As Ernesto came to Richard's aid, the victim attacked and tried to stab him. He allegedly retaliated by stabbing him on the frontal part of his body. He claimed that he did not know the identities of the persons who attacked his younger brother. After stabbing the victim, he helped his brother while the victim's companions fled. The following morning, the brothers went to the farm of their uncle to help make copra. It was only there that they learned of the identity of the victim.

The trial court found the testimonies of prosecution witnesses Jeffrey Cervantes and Gil Ortega credible and, thus, rendered judgment as follows:<sup>[2]</sup>

WHEREFORE, the court finds and so holds that the accused Richard Bakunawa (*sic*) and Ernesto Bakunawa (*sic*) are guilty beyond reasonable doubt of the crime of Murder, and hereby sentences each of them to suffer imprisonment of *reclusion perpetua* with all the accessory penalties of the law, and to indemnify the heirs of Emerson Largo, the sum of P50,000.00 and the further sum of P50,000.00 as moral damages without subsidiary imprisonment in case of insolvency.

Accused-appellants interposed this appeal, claiming that the trial court erred:

I. IN HOLDING THAT RICHARD BACUNAWA STABBED THE VICTIM FOR THE TRUTH WAS THAT ERNESTO BACUNAWA REALLY STABBED THE VICTIM AND NOT RICHARD.

II. IN BELIEVING THAT ERNESTO BACUNAWA EMBRACED THE VICTIM FOR THE TRUTH WAS THAT THERE WAS NO EMBRACING OF THE VICTIM BEFORE THE STABBING.

III. IN BELIEVING THE THEORY OF THE PROSECUTION FOR THERE WAS NO QUARREL, GRUDGE, OR COMPELLING MOTIVE TO KILL.

IV. IN BELIEVING THE TESTIMONY OF JEFFREY CERVANTES THAT