

SECOND DIVISION

[G.R. No. 124670, June 21, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PATROLMAN DOMINGO BELBES, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

Before the Regional Trial Court of Tabaco, Albay, Branch 18, Patrolman Domingo Belbes stood charged of Murder. The information against him reads:

"That on or about the 16th of February, 1990 at 9:00 o'clock in the evening, more or less, inside the campus of Pili National High School, at Barangay Pili, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, taking advantage of nighttime, employing means to insure or afford impunity, with the use of high powered firearm, and with intent to kill, did then and there willfully, unlawfully, feloniously, suddenly, unexpectedly and without any warning, attack, fire and shoot successively with an armalite rifle (M-16) FERNANDO B. BATALLER while the latter was intoxicated, thereby hitting and inflicting upon him multiple serious and mortal wounds on his head, at the right lower face, the chest (front) at the left antero lateral approximately 5 cm. below but lateral to the left nipple, at the left lateral waistline, thereby lacerating the liver, hitting the stomach portions of the large and small intestines and lower vertebrae, and the chest (back) at the middle back and another at the left back, lateral level of the lower rib, which caused Fernando B. Bataller's direct and instantaneous death, to the damage and prejudice of his legal heirs.

ACTS CONTRARY TO LAW."^[1]

When arraigned, he pleaded not guilty.

The facts established during trial by the prosecution is summarized by the appellee in its brief, thus:

"In the evening of February 16, 1990, appellant Pat. Domingo Belbes and Pat. Jose Pabon were assigned by the Bacacay Station Commander to maintain peace and order at the Junior and Senior Prom of Pili Barangay High School, Pili, Bacacay, Albay.

Around 9:00 p.m. while Teacher-In-Charge Mila Ulanca, appellant, Pat. Pabon and Elmo Bes were watching the dance, two students, Riselle Banares and Juliana Basaysay, approached Mrs. Ulanca and said "Mam, it

seems that there is somebody making trouble." Appellant and Pat. Pabon, armed with an armalite rifle and a .38 caliber revolver, respectively, responded forthwith. Moments after the two police officers left, bursts of gunfire-- "Rat-tat-tat-tat-tat" filled the air. Fernando Bataller, a graduating student of Pili Barangay High School, was hit on different parts of his body and died.

Moments before the gruesome incident, Fernando Bataller, then drunk, was in the company of Carlito Bataller and Rosalio Belista. While Fernando was vomiting and holding on to the bamboo wall of the school's temporary building, the bamboo splits broke. At this instance, appellant and Pat. Pabon appeared. Without warning, appellant fired his gun. Fernando slumped on the ground, bathed with his own blood. Appellant and Pat. Pabon fled from the crime scene.

Fernando was pronounced dead on arrival at the hospital. As shown in the autopsy report, Fernando suffered the following gunshot wounds: (1) head, located at the right lower face, skin, muscles, blood vessels, nerves, bone torn away; (2) chest (front, located at left, antero lateral approximately 5 cm. below but lateral to the left nipple, another gunshot wound on the same location with tattooing located at left lateral waistline; (3) chest (back) located at the middle back at the level of the lowest rib, skin and superficial muscles torn away, another gunshot wound located at the left back, lateral level of the lowest rib, with tattooing. (Citations omitted)"^[2]

In his defense, the accused-appellant presented his version of the fatal incident, summed up by the trial court as follows:

"The accused, Domingo Belbes in his defense testified that he was at Pili Barangay High School with P/Cpl. Jose Pabon because they were detailed by their Station Commander. x x x At 9:00 p.m. two female students reported to them and Mrs. Ulanca that somebody was making trouble at the back of the temporary building. They were requested by Mrs. Ulanca to see what happened and they went to the place. There they came upon somebody who was making trouble and destroying the wall of the temporary building. He came to know that it was Fernando Bataller. Fernando Bataller had some companions, Carlito Bataller and certain Belista. Fernando Bataller was more than 20 years old at that time and Carlito was about Fernando's age. He saw Fernando destroying the wall of the temporary building which was made of bamboo splits. Pabon was in front of him. The two companions were prevailing upon Fernando. Fernando was drunk or a little bit tipsy. He was not vomiting but he smelled of wine. They approached Fernando and identified themselves as policemen. Fernando did not mind them. Fernando stabbed Pabon with a knife. Belbes knew because he saw the glint of the blade when the thrust was made on Pabon. Pabon and Bataller were about one (1) meter away from each other. Pabon was not hit, for he was able to move backward. Fernando made two thrusts on Pabon. After Pabon retreated because of the knife thrusts, he (Belbes) was also stabbed by Fernando. He was hit on his lower left shoulder. He was able to hold Fernando's hand because he wanted to get the knife from him. His firearm was slung on his

shoulder. Fernando was able to free himself. Fernando made another thrust and Belbes moved to his left. Then he made a warning shot. After the warning shot, Fernando suddenly grabbed his firearm. Belista was quite aggressive at that moment, while Carlito wanted to kick him. Fernando was able to hold the barrel of the armalite. They struggled with each other and the gun went off considering that his armalite was semi-automatic, with one squeeze of the trigger one shot came out. During the process of grappling for the armalite he could not recall how many shots came out. When his service armalite went off he saw Fernando fall to the ground. When Fernando fell, he took the knife from his hand. The people gathered around them. They asked that Fernando be brought to the hospital. After one hour, the police mobile car arrived. They proceeded to the Police Station. There they turned over the knife to the Desk Officer. The knife is now with the Provincial Command."^[3]

Defense witness Jose Pabon, also a policeman, who was present when the incident happened, corroborated the testimony of the appellant. However, on cross-examination, Pabon belied the fact that the appellant fired a warning shot. Pabon likewise failed to mention anything about aggression on the part of the companions of the deceased, namely Carlito Bataller and Rosalio Belista. He only recalled that said companions ganged up on Belbes after he shot the deceased.

Finding the defense weak, while the evidence for the prosecution sufficiently strong, the trial court convicted the appellant of murder and sentenced him to *reclusion perpetua*.

In this appeal, counsel *de officio* raised one issue:

WAS THE TRIAL [Court] CORRECT IN HOLDING ACCUSED-APPELLANT GUILTY OF MURDER?^[4]

We shall now consider this matter as well as the more basic issues of self-defense claimed by appellant and the credibility of the witness for the prosecution. Appellant policeman admits firing the fatal gunshots that hit the deceased student. But he claims that he did so in self-defense. He contends that he was only performing his official functions when he responded in the course of police duties to the information that somebody was making trouble and disturbing the peace. Being in charge of maintaining peace and order within the vicinity, he ascertained the veracity of the information given by the students concerned. He asserts that in the absence of intent and voluntariness, he cannot be faulted for the death of the deceased.

At the outset, we note that appellant questions the credibility of the sole eye-witness for the prosecution, Carlito Bataller. He states that Carlito is the cousin and friend of the deceased. In his view, Carlito had strong motive to falsely testify against him. Moreover, appellant says that Carlito kindled some moral guilt because he contributed to the sudden death of his cousin. Appellant alleges that if only Carlito had prevailed over Fernando (instead of tolerating the hostility of the deceased), he could have prevented the shooting incident.

Regrettably, appellant offers no material evidence to sufficiently support his claim of self-defense on the face of mortal danger while on police duty. The cross-