

SECOND DIVISION

[G.R. NO. 149652, March 24, 2006]

**EDUARDO L. BAXINELA, PETITIONER-APPELLANT, VS. THE
PEOPLE OF THE PHILIPPINES, RESPONDENT-APPELLEE**

DECISION

AZCUNA, J.:

Petitioner SPO2 Eduardo L. Baxinela assails his conviction for the crime of homicide by the Regional Trial Court of Kalibo, Aklan^[1] (RTC) in Criminal Case No. 4877, as affirmed with modification by the Court of Appeals (CA) in CA-G.R. CR No. 23348.

On February 19, 1997, an Information charging Baxinela with the crime of homicide was filed as follows:^[2]

That on or about the 19th day of October , 1996, early in the morning, at Poblacion, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a handgun, without justifiable cause and with intent to kill, did then and there wi[l]fully, unlawfully and feloniously attack, assault and shoot one RUPERTO F. LAJO, thereby inflicting upon the latter mortal wounds, to wit:

"A. EXTERNAL FINDINGS:

- = .56 cm entrance gunshot wound proximal third lateral aspect left arm with fracture of the left humerus.
- = 1 cm exit wound proximal third medial aspect left arm.
- = 1 cm entrance gunshot wound anterior axillary line 5th intercostals space left chest.

B. INTERNAL FINDINGS

- = One liter of flood left thoracic cavity
- = Perforated left diaphragm.
- = One — two liters of blood in the abdominal cavity.
- = 2 point perforation stomach
- = Multiple perforation small, and large intestines and mesenteries.
- = (+) Retroperitoneal hematoma

nonaDIAGNOSIS Gunshot wound left of arm with
:
fracture of teh humerus, penetrating
the (L) thoracic cavity perforating the
diaphragm, abdomen, stomach and,
intestines and retroperitoneum with
slugs lodging the vertebral colum[n].

CAUSE OF DEATH: Cardiopulmonary arrest Secondary to
severe bleeding Secondary to gunshot
wound.

as per Autopsy Report issued by Dr. Roel A. Escanillas, Medical Officer III,
Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, which wounds
directly caused the death of RUPERTO F. LAJO, as per Certificate of
Death, hereto attached as Annexes "A" and "B" and forming part of this
Information.

That as a result of the criminal acts of the accused the heirs of the
deceased suffered actual and compensatory damages in the amount of
FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.

On April 30, 1997, Baxinela was arraigned and pleaded NOT GUILTY.[3] During pre-trial, Baxinela informed the RTC that he would be claiming the justifying circumstance of self-defense.[4] In accordance with the Rules of Criminal Procedure, the defense was the first to present evidence.[5]

The first witness for the defense was **Insp. Joel Regimen**.^[6] He testified that on October 19, 1996, at about 12:35 a.m., he and Baxinela were walking along Toting Reyes Street in Kalibo, Aklan when they were approached by a civilian named Romy Manuba who informed them of a drunken person drawing a gun and creating trouble inside the Playboy Disco Pub located on the second floor of the Kingsmen building.^[7] They immediately proceeded to the reported place and, upon arrival, recognized a former colleague, SPO4 Legarda, who was with a companion. Legarda invited them to his table and the two obliged. Later, while seated at the table, they saw someone with a handgun visibly tucked at the back of his waist about 4 meters away. Regimen then instructed Baxinela to take a closer look at this person while he makes a call to the Kalibo police station but before Regimen could stand up, the man with a gun started to walk towards the door. As he passed by their table, Baxinela stood up, introduced himself as a policeman and asked the man why he had a gun with him. The man did not respond and, instead, suddenly drew out his gun. Baxinela then drew his sidearm and was able to fire first, hitting the man on his upper left arm. When the man fell down, Baxinela took his gun and wallet and handed them over to Regimen. Regimen then stated that he enlisted the services of the pub's security guard to bring the wounded man to the hospital while he and Baxinela proceeded to the Kalibo Police Station and reported the matter to SPO4 Salvador Advincula. They also went to Camp Pastor Martelino to report the matter to the Officer-in-Charge, Col. Bianson.

The second witness for the defense was **Romy Manuba**,^[8] who testified that on

October 19, 1996, at around 12:30 a.m., he was on the second floor of the Kingsmen building drinking liquor. While inside, he saw a drunken man wearing a white polo shirt accosting several persons with a gun. Fearing the man with the gun, he left the place to go home. On his way home he saw Regimen and Baxinela and he reported to them what he had seen earlier.

The third witness for the defense was **SPO4 Nepomuceno Legarda (Ret.)**.^[9] He testified that on October 18, 1996, at about 11:00 p.m., he was inside the Superstar Disco Pub drinking beer with a companion named Toto Dalida. At about 12:40 a.m., Legarda saw Regimen and Baxinela enter the pub and he invited them over to his table. Later, as they were seating on the table, he noticed Regimen whisper something to Baxinela and, at the same time, pointing to a man with a handgun visibly tucked at the back of his waist. He then observed the armed person heading for the door. But as he passed by their table Baxinela stood up, approached the man from behind and said "Why do you have a gun. I am a policeman." The man did not reply and, instead, turned around and drew his gun. As the man was turning, Baxinela also drew his gun and was able to fire first, hitting the man on his left arm. After the man fell on the floor, Baxinela grabbed the other man's firearm and handed it over to Regimen. Regimen then requested one of the security guards to transport the wounded man to the hospital. Regimen and Baxinela then proceeded to the Kalibo Police Station while Legarda and Dalida went home.

Baxinela took the witness stand as the last witness for the defense.^[10] He testified that he and Regimen were walking along Toting Reyes Street, looking for a tricycle to take them home, when they were met by Manuba. Manuba reported to them that there was an armed person, drunk inside the Superstar Disco Pub and creating trouble. They then proceeded to the pub to verify the report. Once there, they saw Legarda occupying a table near the entrance with a companion named Toto Dalida. Legarda invited them to sit at his table. As they were sitting down, Regimen whispered to him that there was a man with a gun tucked at the back of his waist and told him to watch that person while he tries to look for a telephone to call the Kalibo Police Station. As Regimen was about to stand, the armed man started to walk towards the entrance. When he passed their table, Baxinela stood up, introduced himself as a policeman and asked why he had a gun. The man did not respond but turned to face Baxinela, drawing his gun. Baxinela immediately drew his firearm and beat him to the draw, hitting the man on his left arm. When the man fell to the floor, Baxinela picked up the man's gun and handed it over to Regimen. Baxinela also took his wallet for identification. Regimen then told one of the security guards to bring the wounded man to the hospital. Thereafter, Baxinela and Regimen went to the Kalibo Police Station to report the incident and turned over the wallet. Next, they proceeded to Camp Pastor Martelino and also reported the incident to Col. Bianson.

To rebut the claim of self-defense, the prosecution presented as its first witness, **Abelardo Alvarez**.^[11] Alvarez was a security guard assigned to the Kingsmen building during the incident in question. He testified that he was already acquainted with Baxinela and that he saw him, together with Legarda and Regimen, already in the Superstar Disco Pub as early as 11:00 p.m. of October 18, 1996 drinking. At around 12:00 a.m. to 12:30 a.m. there was a minor altercation between the deceased Sgt. Lajo and another customer at the pub but eventually the two were able to patch things up. Lajo was then on his way out when Baxinela followed Lajo

with a gun already drawn out. Then, from behind, Baxinela held Lajo's left arm and said "Ano ka hay? Mam-an may baril ka?"^[12] He then heard Lajo respond "I am a MIG, Pare" after that Alvarez heard an explosion coming from Baxinela's gun. Baxinela then got a gun from Lajo's waist and handed it over to Regimen. Afterwards Baxinela held both of Lajo's arms, who was still standing, and pushed him against the wall and repeated his question. Lajo answered "Why did you shoot me? I am also a military." At this point Lajo got out his wallet and gave it to Baxinela. Baxinela opened the wallet and looked at an ID. Afterwards Baxinela and Regimen just left and did nothing to aid Lajo. Alvarez and his fellow security guard, Rolando Gabriel, then picked up Lajo and boarded him on a tricycle. Gabriel brought him to the hospital, while Alvarez remained at his post.

The second witness of the prosecution was **Rolando Gabriel**.^[13] Gabriel substantially corroborated the testimony of Alvarez on what occurred on the night in question. He testified that he noticed the presence of Lajo inside the pub at around 10:30 p.m. of October 18, 1996 while he first saw Baxinela, Regimen and Legarda there as early as 11:00 p.m. At around 12:45 a.m., he witnessed Lajo going towards the entrance of the pub where Baxinela was already standing and holding a .45 caliber pistol. Baxinela approached Lajo from behind and held his left shoulder asking "Who are you?" Lajo responded "I am MIG." Afterwards he was shot by Baxinela. Baxinela then got Lajo's gun from his waist and gave it to Regimen. Thereafter, Baxinela, with both hands, pushed Lajo against the wall and again asked "What are you?" Lajo got his wallet from his back pocket and handed it over to Baxinela. After opening the wallet Baxinela and Regimen left the disco pub. Lajo, still standing, took two steps and then fell down. Gabriel and Alvarez then picked Lajo up and carried him to a tricycle which took him to the hospital. Gabriel also stated that ten minutes before the shooting incident there was another incident where Lajo accosted some customer but afterwards he saw that the two shook hands and embraced each other.

The third witness for the prosecution was **Salvador Advincula**, the PNP Desk Officer who entered in the police blotter the incident that occurred in Superstar Disco Pub. He also testified on the events that occurred inside the precinct wherein the gun of Lajo accidentally fell on the table and fired.

The last witness for the prosecution was the wife of Lajo, **Janet O. Lajo**, who testified as to damages.^[14]

As a sur-rebuttal witness, the defense presented **Ronald Nahil** who testified that he was on the ground floor of Kingsmen building with Alvarez and Gabriel when they heard a shot ring out from the second floor.^[15]

After receiving all of the evidence, the RTC found the version of the prosecution, that Baxinela shot Lajo as the latter was turning around and without having drawn his gun, more convincing, and rendered a decision convicting Baxinela. The RTC, however, considered in favor of Baxinela the mitigating circumstances of voluntary surrender and provocation. The dispositive portion of the decision is as follows:^[16]

WHEREFORE, the court finds the accused SPO2 EDUARDO BAXINELA guilty beyond reasonable doubt of the crime of Homicide, and considering the mitigating circumstances of voluntary surrender and provocation, and

applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of 4 years of *prision correccional* medium as minimum, to 8 years and 1 day of *prision mayor* medium as maximum.

The accused is further ordered to pay a) the sum of P50,000.00 as civil indemnity for the death of Sgt. Ruperto F. Lajo; b) then sum of P81,000.00 as actual and compensatory damages; and c) the sum of P30,000.00 as moral damages; plus costs of suit.

SO ORDERED.

On appeal, the CA modified Baxinela's conviction by disallowing the mitigating circumstance of sufficient provocation. Accordingly, the dispositive portion of the appellate court's decision reads as follows:^[17]

IN LIGHT OF ALL THE FOREGOING, the Decision appealed from finding the Appellant guilty beyond reasonable doubt of the crime charged is **AFFIRMED**, with the **MODIFICATION**, that the Appellant is hereby meted an indeterminate penalty of from EIGHT (8) YEARS and ONE (1) DAY OF *Prision Mayor*, as Minimum, to TWELVE (12) YEARS, TEN (10) MONTHS and TWENTY ONE (21) DAYS of *Reclusion Temporal*, as Maximum.

SO ORDERED.

Baxinela filed the present petition for review on certiorari citing the following grounds:

- A. THAT THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT ERRED IN GIVING CREDENCE TO THE VERSION OF THE PROSECUTION.
- B. THAT THE COURT OF APPEALS ERRED IN DENYING THE JUSTIFYING CIRCUMSTANCES OF SELF DEFENSE OR IN THE ALTERNATIVE THE LAWFUL PERFORMANCE OF OFFICIAL DUTY UNDER ARTICLE 11 PARAGRAPHS 1 AND 5, RESPECTIVELY, OF THE REVISED PENAL CODE.
- C. THAT THE COURT OF APPEALS AND REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED.
- D. THAT THE COURT OF APPEALS AND REGIONAL TRIAL COURT ERRED IN NOT CONSIDERING THE QUALIFIED MITIGATING CIRCUMSTANCES IN FAVOR OF THE ACCUSED.

Resolution of the petition will entail an initial determination of which version of the incident will be accepted. The defense alleges that Baxinela proceeded to the Superstar Disco Pub in response to the information given by Manuba that there was an armed drunken man accosting several people inside the pub. Once they arrived, they saw Lajo with a handgun visibly tucked behind his waist. When Baxinela introduced himself as a policeman and asked why he had a handgun, Lajo suddenly drew on him prompting Baxinela to pull out his gun and fire upon Lajo, critically