



## APPENDIX 2.9

**EXCERPTS FROM *GENEROSO N. SUBAYCO, ALFREDO T. ALCALDE, AND ELEUTERIO O. IBAEZ, PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS, G.R. NOS. 117267-117310, 22 AUGUST 1996***

The full title of this criminal case is Generoso N. Subayco, Alfredo T. Alcalde, and Eleuterio O. Ibaez, petitioners, vs. Sandiganbayan and People of the Philippines, respondents. It can also be called the Escalante Massacre case. The decision was penned by Justice Reynato S. Puno. It does not state when the adverse Sandiganbayan decision against the accused (Subayco, Alcalde, and Ibaez, all members of the Philippine Constabulary, or PC) was rendered, though a footnote indicates that that decision was promulgated within or after 1987. Originally, forty-five “civilian government officials, personnel from the Philippine Constabulary and the Integrated National Police [INP], and from the para-military group Civilian Home Defense Force” were charged for the Escalante Massacre. Due to the death of one of the accused and the fact that “others remained at large,” only twenty-eight—all members of the PC and the INP—were arrested and tried. Only the three petitioners in this case were convicted, specifically of sixteen counts of murder, ten counts of frustrated murder, and fourteen counts of attempted murder. The others who were tried were acquitted because “the evidence against [them was found] to be insufficient to establish their liability.”

The year was 1985, the month, September. The Marcos government was fast sliding into its sunset days. Yet, it was again set to celebrate with pomp, September 21, the day it proclaimed martial law some thirteen (13) years ago. The people, however, were not in the mood to be joyous. They planned massive public protests in different parts of the country. One of the biggest protest rallies was blueprinted as a Welganging Bayan at Escalante, Negros Occidental. It ended in tragedy which will not easily recede in the mist of our history. Twenty (20)

## SECOND DIVISION

[G.R. Nos. 117267-117310. August 22, 1996]

**GENEROSO N. SUBAYCO, ALFREDO T. ALCALDE, and ELEUTERIO O. IBAEZ, petitioners,  
vs. SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES, respondents.**

**DECISION**

PUNO, J.:

The year was 1985, the month, September. The Marcos government was fast sliding into its sunset days. Yet, it was again set to celebrate with pomp, September 21, the day it proclaimed martial law some thirteen (13) years ago. The people, however, were not in the mood to be joyous. They planned massive public protests in different parts of the country. One of the biggest protest rallies was blueprinted as a Welga ng Bayan at Escalante, Negros Occidental. It ended in tragedy which will not easily recede in the mist of our history. Twenty (20) demonstrators were shot dead and twenty-four (24) others were wounded by the military and para-military forces of the Marcos government. Of several persons charged with various counts of murder and frustrated murder, only three (3) were convicted. Generoso N. Subayco, Alfredo T. Alcalde and Eleuterio O. Ibaez were convicted by the respondent Sandiganbayan. They now come to this Court insisting on their innocence and pleading to be set free. We deny their petition and we warn our military and police authorities that they cannot shoot people who are exercising their right to peacefully assemble and petition the government for redress of grievance.<sup>11</sup>

As aforesaid, twenty (20) demonstrators were killed and twenty-four (24) others were seriously wounded by gunshots during the *Welga ng Bayan* held on September 20, 1985 at Escalante, Negros Occidental. Twenty (20) counts of Murder and twenty-four (24) counts of Frustrated Murder<sup>22</sup> were filed with respondent Sandiganbayan against those allegedly responsible for the death and injuries of the victims. Charged were several civilian government officials, personnel from the Philippine Constabulary and the Integrated National Police, and from the para-military group Civilian Home Defense Force (CHDF), namely:

1. Ex-Mayor Braulio P. Lumayno,
2. Ex-Governor Armando C. Gustilo,<sup>13</sup>
3. Danilo Nonoy Jimenez,
4. Capt. Modesto E. Sanson, Jr.,
5. C1C Alfredo T. Alcalde,
6. C1C Eleuterio O. Ibaez,
7. C2C Rufino L. Lerado,
8. C2C Carlos L. Santiago,
9. T/Sgt. Generoso N. Subayco,
10. S1/Sgt. Quirino L. Amar,
11. Sgt. Rolando A. Braa,
12. P/Capt. Rafael C. Jugan,
13. P/Pfc. Mariano C. Juarez, Jr.,
14. P/Pfc. Alfonso Birao,
15. P/Pfc. Wilfredo Carreon,
16. P/Pfc. Rogelio Pea,
17. P/Pfc. Iluminado D. Guillen,
18. Pat. Ludovico Cajurao,
19. Pat. Luisito T. Magalona,
20. Pat. Alex Francisco M. Liguaton,
21. Pat. Porfirio Q. Sypongco,
22. Pat. Prudencio M. Panagsagan,

Figure 1. A screenshot from the Supreme Court of the Philippines website.

Source: Supreme Court of the Philippines. 1996. "Generoso N. Subayco, Alfredo T. Alcalde, and Eleuterio O. Ibaez, petitioners, vs. Sandiganbayan and People of the Philippines, respondents, G.R. Nos. 117267-117310, 22 August 1996." Republic of the Philippines. <http://sc.judiciary.gov.ph/jurisprudence/1996/aug1996/117267.htm>.

demonstrators were shot dead and twenty-four (24) others were wounded by the military and para-military forces of the Marcos government. Of several persons charged with various counts of murder and frustrated murder, only three (3) were convicted Generoso N. Subayco, Alfredo T. Alcalde and Eleuterio O. Ibaez were convicted by the respondent Sandiganbayan. They now come to this Court insisting on their innocence and pleading to be set free. We deny their petition and we warn our military and police authorities that they cannot shoot people who are exercising their right to peacefully assemble and petition the government for redress of grievance.<sup>1</sup>

<sup>1</sup>Section 4, Article III of the Constitution.

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Petitioners now come before us by way of certiorari raising the following issues:

1. Whether respondent Sandiganbayan committed serious error of law in convicting the petitioners based merely on alleged implied conspiracy to perpetrate the crimes charged and not on clear, positive and convincing proof of conspiracy; and

2. Whether respondent Sandiganbayan committed serious error of law in convicting the petitioners despite that the quantum of evidence required for a finding of guilt that is proof beyond reasonable doubt was not satisfied.<sup>5</sup>

The petition must fail.

<sup>5</sup>Petition, Rollo, p.18.

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We therefore uphold the respondent court in ruling that the following circumstances proved the existence of an implied conspiracy among the petitioners in the cases at bar:

1. After the Escalante firetruck exhausted its supply of water, it withdrew from the scene.

2. The Cadiz City firetruck took over hosing the crowd. It also ran out of water, tried to back out but was prevented by the logs and rocks strewn behind it.

3. The weapons carrier then moved behind the Cadiz City firetruck.

4. Teargas canisters were thrown into the crowd. Jovy Jaravelo, a rallyist, picked up one of the canisters and threw it back to where it came from. At this juncture, CHDF Alfredo Quinatagcan a.k.a. Pidong Bagis shot Jaravelo. Successive gunfire followed.

5. The seventy-nine (79) empty shells recovered from the scene of the crime were traced to four M-16 rifles issued to CHDF Caete,

CHDF Parcon, C2C Lerado and C1C Ibaez. Caete and Parcon were on board the weapons carrier while Lerado and Ibaez were on board the Cadiz City firetruck.

6. The other personnel who were also on these two vehicles were also scene [sic] to have fired at the crowd.

All these circumstances intersect to show a community of purpose among the petitioners and their companions, that is, to fire at the demonstrators. This common purpose was pursued by the petitioners and their companions who used firepower against the rallyists. As proved, the plan to disperse the demonstrators did not include the use of guns, yet, petitioners and their cohorts did. At the first crack of gunfire coming from CHDF Alfredo Quinatagcan (a.k.a. Pidong Bagis), petitioners and their companions commenced firing at the demonstrators, as if on signal. They fired indiscriminately toward the demonstrators who were then already lying prone on the ground. There was no imminent danger to their safety. Not just one or a few shots were fired but several. The firing lasted a few minutes and cost the lives and limbs of the demonstrators. We agree with the respondent court that the collective acts of the petitioners and their companions clearly show the existence of a common design toward the accomplishment of a united purpose.<sup>15</sup> They were therefore properly convicted for all the crimes they were charged with.

The use of bullets to break up an assembly of people petitioning for redress of grievance cannot but be bewailed. It is bound to happen again for as long as abuses in government abound. Precisely to help put a brake on official abuses, people empowerment was codified in various provisions of the 1987 Constitution. It is high time to remind our officials that under our Constitution power does not come from the barrel of a gun but from the ballots of the people. It is thus important to know the unexpurgated will of the people for in a republican government, it is the people who should truly rule. Consequently, the right of the people to assemble peacefully and to petition for redress of grievance should not be abridged by officials momentarily holding the powers of government. So we expressly held in the early case of *US v. Apurado*.<sup>16</sup>

It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling it always brought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary

control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would become a delusion and a snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising.

The Constitution did not engage in mystical teaching when it proclaimed in solemn tone that sovereignty resides in the people and all government authority emanates from them.<sup>17</sup> It should be clear even to those with intellectual deficits that when the sovereign people assemble to petition for redress of grievances, all should listen, especially the government. For in a democracy, it is the people who count; those who are deaf to their grievances are ciphers.

Our affirmance of the conviction of the petitioners does not give complete justice to the victims of the Escalante massacre, subject of the cases at bar. Until today, sixteen (16) of the other accused have successfully eluded arrest by the authorities. Not until they have been arrested and tried will justice emerge triumphant for justice cannot come in fraction.

<sup>15</sup>See *People vs. Carizo*, 233 SCRA 628 (1994).

<sup>16</sup>7 Phil. 422.

<sup>17</sup>Section 1, Article II.

