

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERHELITO DAYAG, ALIAS DIEGO, JUAN MANALO (APPEAL
WITHDRAWN) AND VICTOR DAYAG, DEFENDANTS-APPELLANTS.**

G.R. No. L-35416. June 25, 1980

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PER CURIAM:

Charged with robbery with homicide in the Court of First Instance of Isabela, Herhelito Dayag, alias Diego, Victor Dayag and Juan Manalo were, after trial, sentenced as follows:

"WHEREFORE, judgment is hereby rendered finding (a) accused Victor Dayag and Herhelito Dayag guilty beyond reasonable doubt as principals of the crime of robbery with homicide and sentencing both to suffer the penalty of death, to indemnify jointly and severally the heirs of the deceased Gelacio Frio the sum of P16,000.00 as moral and exemplary damages and to pay GERALDA Macanan Frio and Rufina Guzman P700.00 representing the amount of subject of the robbery, without subsidiary imprisonment in case of insolvency, and each to pay the proportionate costs, and (b) accused Juan Manalo guilty beyond reasonable doubt as an accomplice of the crime of robbery with homicide and sentencing him to suffer a penalty of imprisonment of TEN (10) YEARS and ONE (1) DAY of prison mayor as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal as maximum, with the accessory penalties provided for by law, to indemnify the heirs of the deceased Gelacio Frio the sum of P8,000.00 without subsidiary imprisonment in case of insolvency, and to pay his proportional share of the cost."

This case was accordingly brought up to this Court for automatic review of the death sentence imposed on Herhelito Dayag and Victor Dayag, who are the only remaining appellants, after Juan Manalo had withdrawn his appeal, expressing "due respect to the court that decided the case." [1]

The evidence of the prosecution which was sustained by the trial court, is, as stated in the People's brief, as follows:

"At about 7:00 o'clock on the night of July 3, 1970, the spouses, Gelacio Frio and GERALDA Macanan, together with Emiliano Frio and his wife, Rufina Guzman, Lope Macanan and his wife Wilma Macanan and their three children were in their house situated at barrio Udiao, San Mariano, Isabela (pp. 4-5, 36-37, 136-137, t.s.n., January 12, 1972). The spouses Emiliano Frio and Rufina Guzman were living in the house of Gelacio Frio and GERALDA Macanan, while the spouses Lope Macanan and Wilma Macanan and their children were in Gelacio's house in order to refresh themselves after working in their land which was near Gelacio's house (pp. 4-5, 137, t.s.n., January 12, 1972).

"While Lope Macanan was trying to refresh himself by the main door of the house and GERALDA Macanan and Rufina Guzman were cooking in the kitchen, three (3) men whom they recognized to be Herhelito Dayag, Victor Dayag and Juan Manalo suddenly entered their yard (pp. 6, 38, 39, 59, 139, 140, 141, t.s.n., January 12, 1972). When the three intruders were already about five (5) meters inside the yard, Juan Manalo returned to the gate while Herhelito and Victor proceeded to the house (pp. 8, 40, 58, 59, t.s.n., January 12, 1972). Herhelito stopped by the window outside the house while Victor went inside and asked for water (pp. 6, 8, 38, 61, 140, t.s.n., January 12, 1972). GERALDA Macanan gave Herhelito a glass of water while Rufina Guzman gave a glass

of water to Victor (pp. 61, 161, t.s.n., January 12, 1972). After drinking, Victor and Herhelito without much ado pulled out their guns and demanded for their money (pp. 7, 8, 142, t.s.n., January 12, 1972). At this juncture, Herhelito held the arm of Gelacio Frio and brought the latter inside the house, after which, together with Victor, they brought Gelacio outside the house (pp. 7, 40, 62, 67-68, 144, t.s.n., January 12, 1972). Afterwards, Victor returned to the house and ordered Lope Macanan and Emiliano Frio to lie down face downward on the floor near the door and threatened the other occupants with his gun (pp. 9, 42, 146, t.s.n., January 12, 1972). While Victor was guarding the other occupants of the house inside, Herhelito brought Gelacio Frio to a place about eight (8) meters away from the door of the house where he shot him three times (pp. 7, 9, 10, 11, 31-33, 42, 144, 146, t.s.n., January 12, 1972). After gunning down Gelacio, Herhelito and Victor returned to the house and both ordered the occupants to lie down after which they demanded for their money (pp. 11, 43, 149, t.s.n., January 12, 1972). Fearful of being killed like Gelacio, Rufina Guzman readily accompanied Herhelito up the house. There she took their money in the amount of P700.00 from the trunk and gave it to Herhelito (pp. 12, 13, 43-44, 149-150, t.s.n., January 12, 1972). Thereafter, Victor joined Herhelito in counting the money after which they demanded for more, but Rufina meekly replied that the amount she delivered was all that they have (p. 150, t.s.n., January 12, 1972). Not satisfied with this answer, Herhelito and Victor went to the place where the trunk was and opened it, but finding no money therein, they returned to where the occupants were (pp. 150-151, t.s.n., January 12, 1972). After putting out the light, the intruders departed from the scene of their depredation but not before they had warned their victims that they would return if the incident were reported to the authorities (pp. 13, 46, 151, 152, t.s.n., January 12, 1972).

"Immediately after their tormentors had left, the occupants of the house rushed to the place where Gelacio Frio was lying bleeding and prostrate and found him already dead (pp. 14, 46, t.s.n., January 12, 1972)." (pp. 3-5).

Appellants' defense insofar as the robbery is concerned, is one of bare denial; while as to the killing of Gelacio Frio, self-defense was pleaded, with their version, as stated in Herhelito's brief,[2] running as follows:

"The accused, HERHELITO DAYAG, testified on his own behalf, and for his co-accused Victor Dayag. He denied the alleged robbery, in fact on that incident he went to collect the debt of the deceased from him in view of the latter's failure to deliver the bamboo which he paid in advance. He testified that he is a merchant that is the very reason he was there at Udiao, San Mariano, Isabela, engaged in the buying and selling of bamboos and bananas. Upon the arrival of Herhelito Dayag and Victor Dayag at the house of the deceased the latter was not there but his wife sent somebody to fetch him, while the two waited inside the house of the deceased. Upon the arrival of the deceased, he greeted the two "It is good you came". And Herhelito answered him that the two went to ask for the bamboos and asked him if they are ready for delivery. But the deceased got mad and said in a loud voice, "you distrust me?" However, despite of those words, Herhelito Dayag insisted on collecting the bamboos which he has already previously paid for P150.00. But when there was no bamboo the wife instead handed them the P150.00 and as a result there was an exchange of heated words. But the wife of the deceased apologized for the attitude of her husband, and after that the two bade goodbye and left, but when they were about 5 meters away from the house of the deceased, Gelacio Frio, the latter followed them and asked them to wait because he wanted to tell them something. When the two waited, the deceased told them to return the money and if they refused he will kill them and immediately thereafter the deceased drew his firearm and poked the same to Herhelito Dayag, but Victor Dayag immediately dispossessed him of his arm and used the same in shooting the deceased Gelacio Frio." (pp. 5-7, Appellant Herhelito's Brief). (pp. 6-7).

In his separate brief, Herhelito Dayag assigns the following errors:[3]

I

"THE TRIAL COURT ERRED IN CONVICTING HERHELITO DAYAG FOR ROBBERY WITH HOMICIDE BECAUSE HIS CO-ACCUSED VICTOR DAYAG ADMITTED AND OWNED THE FIRING OF THE THREE FATAL SHOTS UPON THE DECEASED GELACIO FRIO.

II

"THE TRIAL COURT ERRED IN ITS FINDINGS AND CONCLUSION THAT THERE EXISTS CONSPIRACY IN THE COMMISSION OF THE ALLEGED CRIME, AND ADMITTING THE FACE VALUE OF THE EXTRAJUDICIAL CONFESSIONS WHICH WAS ACQUIRED BY PROMISED OR REWARD, DURESS AND FORCE."

For his part, Victor Dayag makes the following assignment of errors:

I

"THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT'S INTENT TO ROB WAS PROVED BEYOND REASONABLE DOUBT.

II

"THE LOWER COURT ERRED IN NOT FINDING THAT, AT LEAST WITH RESPECT TO CRIMINAL INTENT, THE APPELLANT'S VERSION OF THE INCIDENT IS MORE CREDIBLE AND PROBABLE.

III

"THE LOWER COURT ERRED IN FINDING THE APPELLANT GUILTY OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE." (p. 3, Brief, p. 81, Rollo).

As may be seen, the errors assigned by both appellants may be reduced to the question of credibility, as to whose evidence is more worthy of belief as between that of the prosecution and that of the defense.

The State counted with three eyewitnesses all testifying to the respective acts of the appellants in the commission of the crime. Herhelito was pointed to as the real gun-wielder, while Victor merely covered with his gun the other persons who were made to lie down face downward inside the house when the victim was brought outside the house about eight meters away from the main door, where he was shot by Herhelito. These state witnesses were very positive in their testimony, and the trial court gave full credence to them, a finding We find absolutely no reason to disturb, considering the trial judge advantage to gauge the witness' credibility through personal observation of his demeanor and manner of testifying.[4]

There is no conceivable reason, and none was intimated, why the state witnesses should point to Herhelito as the gun-wielder, if Victor, by his own admission, did the killing. What the witnesses, particularly the widow of the victim, are concerned with is to see that the culprits, specially the actual killer, is meted the proper punishment. It should make no difference to them who as between Herhelito and Victor shot the deceased, as long as the real culprit or culprits are brought to justice, for to them, the truth is of compelling force as a natural trait in every man. It is in the nature of man to adhere to the truth, and shun falsehood, where there is no overpowering reason to falsify the truth, as in the instant case.

Once the prosecution witnesses are accorded full faith and credit, as the trial court correctly found them so deserving, the defense version necessarily stares totally unworthy of belief. By itself, the defense version does not induce credence. If Herhelito is innocent and guiltless as his testimony would portray him, why should he surrender, instead of himself bringing Victor to the authorities if the latter is the actual killer as he owned the shooting? The reason given is that he had to send Victor to his hometown, Sta. Maria, Isabela, to give P280.00 to his mother, leaving only P60.00 for himself. If Herhelito had no complicity in the crime, he should have had no fear of possible detention that would keep him from going home himself to give money to his mother. He should not have given a confession in which he himself admitted the killing and the robbery, implicating Victor and Juan Manalo in the commission of the offense. Incidentally, Juan Manalo's presence and participation as testified to by

the prosecution witnesses was denied by appellants. Yet, Manalo despite the severity of the penalty imposed upon him, chose not to pursue his appeal, giving due respect to the court's decision, as he stated in his letter withdrawing his appeal, a strong indication that what the state witnesses testified to against him were true, thus giving verity to the confession of Herhelito. This makes the latter's repudiation of his confession, which he alleged to have been forcibly extracted, futile and unavailing.

The self-defense plea of Victor Dayag who owned the killing likewise, necessarily becomes entirely worthless, under the completely credible version of the prosecution which points to Herhelito as the gun-wielder, not Victor. In any event, even assuming as true that Victor wrested the gun from the deceased, when the latter pointed the weapon at Herhelito to frighten the latter to give back the P150.00 given him by the victim's wife, self-defense may not be in-voked since there was no more aggression to repel or to stop, when Victor shot and killed the deceased, then already unarmed, alone and defenseless against two adversaries.

Appellant's claim of absence of conspiracy is entirely without basis. Under the facts as positively proven by the evidence of the prosecution, conspiracy is very patent. All three accused were together when they went to, and arrived at the victim's house. Each of them was armed, and in a well-timed unison of action, they drew their guns, each doing his part evidently as previously planned, all tending to the accomplishment of a common object.

The argument that if they intended to commit robbery there was no need to kill anyone is without force. The purpose of the killing was to frighten the persons who were witnesses to the commission of the crime against reporting to the authorities since appellants were not unknown to said witnesses, but were quite familiar specially to the victim, whom they had more reasons to silence forever. It is like-wise, contended as unnatural that the culprits allegedly counted the money they took while still in the course of committing the robbery. It is not so. In their desire to get the most out of their daring act, they wanted to make sure that the loot was worth the risks inherent in committing so heinous a crime as that charged.

The crime was aggravated by the circumstance of dwelling and treachery, the latter absorbing that of abuse of superior strength, if not also nighttime, as clearly established by the evidence.

WHEREFORE, the judgment appealed from has to be, as it is hereby, affirmed. Cost de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., did not take part.

[1] p. 62, Rollo.

[2] p. 129, Rollo.

[3] p. 83, Rollo.

[4] People vs. Villagonzalo, August 21, 1979, 92 SCRA 707; People vs. Balili, August 6, 1979, 92 SCRA 552; People vs. Rapada, October 28, 1977, 80 SCRA 63; People vs. Sarile, June 30, 1976, 71 SCRA 593.

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