

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TOMAS SALCEDO, ROBERTO ESGUERRA, ROBERTO MADAYAO, AND
ALBERTO LEBAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-48642. June 22, 1987

Ponente: YAP, J.

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YAP, J.:

Under review is the decision of Judge Onofre A. Villaluz of the then Circuit Criminal Court of Pasig, Metro Manila, dated August 30, 1977, convicting the accused Tomas Salcedo, Roberto Esguerra, Roberto Madayao and Alberto Leban, of the crime of Murder and Multiple Frustrated Murder.

The offenses charged in the information took place inside the National Penitentiary, also known as the New Bilibid Prison, in Muntinlupa, Metro Manila. The accused and the victims in this case are all convicted prisoners, serving final sentences in the New Bilibid Prison. The accused were members of the Sigue-Sigue Sputnik gang, who were confined in Brigade Dormitory No. 4-D, while the victims were Members of a rival gang known as the G.I.G. (Genuine Ilocano Gang), who were quartered in Brigade Dormitory No. 13.

As shown in the record, the fatal incident took place at about 10:00 o'clock in the morning of September 24, 1975. Six prisoners belonging to the G.I.G. who were then assigned as kitchen boys, namely, Rodolfo Querrer, Virgilio Domingo Jose Obanil, Cirilo Monroy, Aniceto Nino and Pacifico Catabay, came to Dormitory No. 4-D to deliver breakfast rations to the inmates in that cell. They parked their truck about three meters from the dormitory. While Catabay was supervising the unloading of the food from the truck, all of a sudden members of the notorious Sigue-Sigue Sputnik gang who were quartered in the said dormitory rushed out with improvised deadly weapons and, upon command of their leader, Generoso Dungca, alias "Boy Kamatis ", who shouted "Kill them all", attacked the kitchen boys. Order was restored only upon the arrival of prison guards who after quelling the melee immediately brought the injured and wounded kitchen boys to the prisons hospital NBP Hospital for treatment. One of the injured prisoners, Cirilo Monroy, died that very morning, due to "hemorrhage, acute, massive, secondary to multiple stab wounds, caused by sharp, pointed, single-bladed instrument", as found by the Medico-Legal Officer, Dr. Bienvenido Munoz of the NBI. The other injured prisoners, Rodolfo Querrer, Virgilio Domingo, Jose Obanil, Aniceto Nino and Pacifico Catabay, sustained stab wounds which, according to Dr. Luz Alma Santos of the NBP Hospital, could have caused their death if it were not for timely medical intervention.

In the investigation that followed, the attackers were identified and charged with Murder and Multiple Frustrated Murder in the information filed by the Provincial Fiscal of Rizal, dated February 3, 1977. Charged in the information were the following accused Generoso Dungca, Tomas Salcedo, Roberto Esguerra, Roberto Madayao and Alberto Leban.

The accused, Tomas Salcedo, Roberto Esguerra, Roberto Madayao and Alberto Leban, were arraigned on February 10, 1977. All of the said accused, except Tomas Salcedo, pleaded not guilty. Generoso Dungca, the leader of the gang, was not arraigned because he had escaped from prison on April 23, 1976, and to date, has

remained at large. The trial court ordered mandatory presentation of evidence against Tomas Salcedo who pleaded guilty, and ordered trial on the merits with respect to those who pleaded not guilty.

After trial, the court a quo rendered a decision, dictated and promulgated in open court on August 30, 1977, finding the accused Tomas Salcedo, Roberto Esguerra, Roberto Madayao and Alberto Leban, guilty beyond reasonable doubt of the crimes charged in the information, and sentencing each of them, for the death of Cirilo Monroy, "to suffer the penalty of death; to indemnify the heirs of Cirilo Monroy in the amount of P12,000.00; to pay moral damages in the amount of P5,000.00; another P5,000.00 as exemplary damages, jointly and severally; and to pay their proportionate shares of the costs". With respect to the charge of Multiple Frustrated Murder, each of the accused was sentenced "to suffer the penalty of from seventeen (17) years, four (4) months and one (1) day of reclusion temporal, minimum, to twenty (20) years of reclusion temporal, as maximum; to pay moral damages in the amount of P5,000.00; another P5,000.00 as exemplary damages, jointly and severally; and to pay their proportionate share of the costs".

Because of the death penalty imposed, the decision was elevated to this Court for automatic review. This case was considered submitted for decision on January 8, 1981, without appellants' reply brief.

Accused-appellant, Roberto Esguerra, died in prison on January 8, 1981 of "massive hemoptysis, secondary to pulmonary tuberculosis, moderately advanced". The death was reported to this Court by the then Acting Director of the Bureau of Prisons Vicente R. Raval, in a letter dated August 2, 1982. Required to comment on the letter, the Solicitor General confirmed the death of the accused Roberto Esguerra and recommended dismissal of the case against him insofar as his criminal liability was concerned, without prejudice to the determination of his civil liability, to be recovered from his estate. In view thereof, the Court, in its resolution dated September 28, 1982, dismissed the case insofar as the criminal liability of the accused-appellant Roberto Esguerra is concerned.

The lone assignment of error raised in appellants' brief is that the trial court allegedly "failed to prove the crimes charged in the information with clear and convincing evidence beyond reasonable doubt".

From the evidence adduced at the trial, the court a quo, found that the accused Tomas Salcedo, Roberto Esguerra, Roberto Madayao and Alberto Leban were the assailants who attacked the victims in the morning of September 24, 1973; that the attack, planned beforehand, was evidently premeditated; that the action was concerted and was made so suddenly as to throw the victims off-guard when they were about to deliver breakfast rations to the inmates of Brigade Dormitory No. 4-D, where the accused were quartered; that the accused were armed with improvised deadly weapons which they must have prepared secretly for some time for the purpose of committing the crime. The trial court found the elements of treachery, evident premeditation and recidivism sufficiently established by the evidence.

The accused interposed self-defense. Their version was capsulized by the trial court in its decision, as follows:

From their testimonies, it appeared, as they would want to establish that at about 9:00 to 10:00 in the morning of September 24, 1975, Cirilo Monroy, belonging to the Gang of Brigade 13, with a container of wine went to brigade 4-D, and as usual, invited his friend Tomas Salcedo for a drink; that when both were loaded of the wine, Salcedo and Monroy had an altercation about the change (sukli) of the former until it became worst and Monroy launched (sic) on Salcedo with a knife, but the latter was able to parry, got hold of the said knife and struck Monroy. Monroy died. When the kitchen boys saw this incident they all rushed to rescue Monroy and there was a free for all fight. There were exchanges of stones and bottles and all that the accused did was to defend themselves. In the case of Alberto Leban he was about to come Out from his brigade because he heard a commotion when he was met by stones and he retaliated until he happened to pick up a knife from the opposite gang and struck the same on him although he could not recognize who that prisoner was."

The trial court did not give credence to the theory of self-defense put up by the accused, inasmuch as there was no evidence that the victims were armed during the incident. It was also noted by the court that none of the accused were injured during the incident, while the victims were the only ones who sustained fatal or serious injuries. The court found sufficient evidence to establish that the accused were the ones who were armed with deadly weapons, including a spear, several pieces of IDW (ice picks) and darts which were surrendered to the prison guards by Generoso Dungca and by an unidentified inmate from Dormitory No. 4-D; some were recovered near the water tank of the said building.

We find no reason to disturb the findings of the trial court. A complete review of the record raises no doubt in our mind that the decision of the court is supported by the evidence adduced at the trial.

The case against Roberto Esguerra was dropped on September 28, 1982, on account of his death, but only with respect to his criminal liability.

WHEREFORE, judgment is rendered affirming in toto the decision of the trial court dated August 30, 1977, except as to the amount of indemnity for the death Cirilo Monroy which is hereby increased to P30,000.00. Inasmuch as under the 1987 Constitution, the death penalty has been abolished until such time as Congress may decide to reimpose the same^[1], the sentence of death imposed in the decision of the trial court is hereby automatically commuted to reclusion perpetua.

The Provincial Fiscal of Rizal is hereby directed to make the necessary arrangements with the appropriate authorities for the apprehension of the accused Generoso Dungca who has escaped and is at large, so that he may be brought to trial.

SO ORDERED.

Teehankee, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, and Gancayco, JJ., concur.

[1] Sec. 19, Article II.

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