

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANTONIO BODUSO, DEFENDANT AND APPELLANT.***G.R. Nos. L-30450-51. September 30, 1974*

Ponente: ANTONIO, J.

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Automatic review, pursuant to Section 9 of Rule 122 of the Rules of Court, of the judgment in Criminal Case No. CCC-XI-32, Capiz, imposing upon appellant the penalty of death for the murder of Jose de Leon. The crime is qualified by the circumstance of treachery and aggravated by the circumstance of evident premeditation. Appellant is also ordered to indemnify the heirs of the deceased in the amount of P12,000.00. The same appellant was convicted for frustrated homicide in Criminal Case No. CCC-XI-33, Capiz, in having stabbed on the same occasion Rolando Regalado, and sentenced to suffer the indeterminate penalty of 4 years and 2 months of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum, and to pay an indemnity of P3,000.00.

It is not disputed that both Jose de Leon and Rolando Regalado were attacked and stabbed, one after another, while they were walking along Bilbao Street, Roxas City, at about nine o'clock on the evening of January 1, 1967. Jose de Leon, who was immediately brought to the Roxas Memorial Hospital after the stabbing incident, expired at 2:45 a.m. of January 2, 1967. Rolando Regalado also underwent three surgical operations and was confined in the hospital for about two months.

The only questions raised by appellant are the identity of the assailant of the two victims, and the nature of the offenses committed. Appellant denies any participation in the commission of the two crimes, attributing authorship thereof to one Danton Anisco. He also contends that the existence of both the qualifying circumstance of treachery and aggravating circumstance of evident premeditation, on the basis of which the trial court sentenced appellant to death, was not proven by the evidence. In any event, appellant claims that he should have been accorded the benefit of the mitigating circumstance of intoxication.

According to Rolando Regalado, only eyewitness of the prosecution, at about 8:30 p.m. on New Year's Day, January 1, 1967, he and his second cousin, Jose de Leon, were inside a karinderia near Bayot Theater, along Legaspi Street, Roxas City, drinking beer. At this juncture, appellant Antonio Boduso, whom Rolando had seen on three previous occasions in the public market of Roxas City, came in and sat with them. Apparently thinking that it would be embarrassing not to invite him, they offered to appellant a bottle of beer which the latter immediately accepted. After Rolando and Jose had finished drinking their bottles of beer and paid the bill for the three bottles, they stood up preparatory to their leaving the premises. Appellant, however, insisted that they stay and have some more drinks with him, but Rolando and Jose refused and, thereafter, the two left the premises. While they were leaving, Rolando heard appellant utter the following remarks: "We shall have no regrets."

The two cousins then walked towards the Sampaguita Theater along Legaspi Street, where they spent about ten minutes looking at the pictures displayed at the lobby of the movie house. Afterwards they proceeded to go home,

walking along Bilbao Street. It was at this instance when appellant, suddenly and without warning, stood in their way and, without much ado, stabbed Jose de Leon with a knife that is about 8-1/2 inches long, mortally wounding the victim in his lower abdomen. Upon being wounded, Jose attempted to run away from the appellant. Rolando, who was about a meter away and caught by surprise with this sudden attack by appellant, asked: "Tony, why is it that you are stabbing us?" Instead of answering the question, appellant immediately stabbed Rolando with the same knife. After Rolando collapsed to the ground as a result of the stab wound inflicted on his abdomen, the appellant fled from the scene.

Rolando, upon seeing that his assailant had fled, stood up and, noting that his intestines were protruding out of his abdomen, boarded a tricycle which brought him to the St. Anthony's Hospital, in Roxas City, where he was given immediate medical treatment by Dr. Dante Villareal. Jose de Leon, in turn, was brought to the Roxas Memorial Hospital where he was operated on by the Senior Physician, Dr. Hernando Alba. The victim died at about 2:45 a.m., of January 2, 1967 as a result of severe loss of blood, secondary to multiple intestinal perforations caused by a sharp and pointed instrument. According to the surgeon, the victim sustained a stab wound penetrating the lower abdomen, "the omental and intestinal loops coming out" (Exhibit "A").

Confined in the hospital for about two (2) months, Rolando Regalado underwent three surgical operations, the first, on January 1, 1967 on account of the penetrating wound on the abdomen and descending colon (large intestine) and ileum (small intestine) with feces all over his abdominal cavity which required the cleansing of his internal organs; the second on January 14, 1967 because fecal matter was coming out of the wound and draining on the abdomen, and a transverse colostomy had to be performed to divert the fecal stream from the fistula outside; and the third, on January 20, 1967 to repair the fistula. Medical expenses amounting to P3,000.00 were incurred by the victim.

Appellant was charged in two separate cases, one for murder for the death of Jose de Leon (Criminal Case No. CCC-XI-32-Capiz) and the other for frustrated murder for the attack upon Rolando Regalado (Criminal Case No. CCC-XI-33-Capiz).

The theory of appellant is that at about 9:00 o'clock on the evening of January 1, 1967, while he was coming out of the Bayot Theater, he met Danton Anisco whom he allegedly noticed as having a breath that smelled of liquor. He invited Anisco to go with him to the Sampaguita Theater. When they were about to reach the Sampaguita Theater, they met two persons whom Danton suddenly attacked and stabbed. After stabbing the two, Danton shouted to him, "Ton, you run away, because I have stabbed." Whereupon, he ran towards his home in Culasi, Roxas City, and there related the incident to his uncle, Feliciano Aprueba, a brother of his mother. He failed, however, to report the Matter to the police authorities because the following day Danton went to his house and warned him not to report it, otherwise, he would implicate him as one of those who took part in the stabbing of the two persons and also in the other criminal cases which were pending against Anisco.

Feliciano Aprueba, uncle of the appellant, attempted to corroborate appellant, claiming that at about 2:00 o'clock in the early dawn of January 2, 1967 he was informed by his nephew that Danton Anisco had stabbed Rolando Regalado and Jose de Leon. He did not bother, however, to report the matter to the police authorities when he learned that his nephew was arrested for the crime in question, considering that such information could be of assistance to his nephew in establishing his innocence.

In rejecting the version of appellant in favor of that of the prosecution, the trial court, noting that Rolando Regalado, a-19-year old merchant, had impressed the court with his trustworthiness by his straightforward, clear and composed manner on the witness stand, stated:

"The identification of the accused by the lone witness of the prosecution cannot be doubted. Before the

incident at bar, witness Rolando Regalado knew by face the accused because he had seen him three times at the Public Market of Roxas City before January 1, 1967, although he did not know his name. In fact he came to know the nickname of the accused only when he offered the bottle of beer to him at the carenderia. It was at that time that Antonio Boduso introduced himself as 'Tony' to Rolando. The fact that Rolando was face to face with Antonio Boduso at the carenderia a few minutes back, undoubtedly afforded him the proper means to identify the accused as the assailant. According to Rolando the place at Bilbao Street where he and his companion Jose de Leon were waylaid by the accused, was not so dark as there was a moon, and they could recognize faces. All these circumstances, certainly enabled Rolando to identify and point out positively Antonio Boduso as the assailant. The evidence as to the identification of the accused hardly, if at all, leaves room for doubt.

"Rolando Regalado from the evidence of record has no reason to falsely testify against the accused. No ill-will or misunderstanding existed between him and Antonio Boduso. This being so, there could be no other motivation that impelled Rolando to point at accused as the person responsible for the stabbing, than the truth. No base motive has been shown why Rolando Regalado would falsely impute to the accused such horrible crime. The accused himself testified that he and Rolando have no misunderstanding.

"In weighing the defense evidence, the Court at the outset like to make note of what it has observed: that accused does not hesitate to tell a falsehood. When asked if the case at bar is the only criminal case he is facing, without batting an eyelash, answered in the affirmative. When pressed to tell the truth by the prosecuting fiscal, he admitted that he has another criminal case for killing one and wounding another now pending in Branch I of the Capiiz Court of First Instance. This is the accused whose testimony the Court will presently assess.

"Accused Antonio Boduso averred that it was Danton Anisco who stabbed two persons on January 1, 1967. He did not report the stabbing to the police authorities because according to him he was threatened by Danton the following morning. But on the night of the incident at bar, when he was not yet threatened by Danton, why did he not tell the police about the two persons supposedly stabbed by Danton Anisco, especially so because he did not know where Danton went after he fled from the scene of the stabbing? This he could have easily done if indeed he was not the author of the stabbing since he was free from any danger coming from Danton Anisco. And when he was under the custody of the police authorities of Roxas City, why did he not reveal to the police that it was Danton Anisco who stabbed two persons on the night of January 1, 1967? And when he was given a chance to prove his innocence during the preliminary investigation, why did he not tell the examining fiscal that it was Danton Anisco and not he who stabbed Jose de Leon and Rolando Regalado?

"When the accused was under the custody of the police of Roxas City certainly he was not under any threat or pressure from anybody and that being so he could not have forgotten to mention, let alone emphasize, a point which if true, was his only possible salvation from prosecution and a stiff sentence. His silence could not have been due to fear or reprisals because he was under the custody of the police authorities the prime function of which is to arrest and prosecute felons and outlaws. If he reported the matter to the police, Danton Anisco could have been arrested and prosecuted and the truth brought to light. (Pls. see *People vs. Magno Quinto*, O.G., Vol. 46, No. 5, May 1950, pp. 2101-2102).

"The Court cannot accept with precipitate credulity the version of the accused for it is not only weak; it is absolutely fantastic. There is no easier way to escape responsibility than to pass that responsibility to another. Accused's alibi that he did not stab Jose de Leon and Rolando Regalado does not deserve any consideration. It is incredible that a person who looks intelligent like the accused would keep secret the fact that it was Danton Anisco who stabbed two person for almost a year and especially when he was held responsible for such stabbing. The normal reaction of a person charged with a grave offense is to reveal the author of the crime in order to escape liability. But Antonio Boduso did not do this at a time when revealing the alleged fact that it was Danton who stabbed two persons in the night in question might have saved him from being prosecuted. The fact however that he related this story only during the trial makes the Court suspect that this could be an

afterthought, a tardy attempt to avoid the inexorable mandate of the law. The story spawned by the accused is full of frivolous details, hence underserving of consideration. This story of the accused is basically improbable, too far-fetched to be believed; rather it belongs more to the realm of fantasy than to the narration of the truth."

We find no error in the trial court's refusal to accord credence to the version of appellant. The attitude of utter indifference shown by appellant in connection with the alleged attack by Danton Anisco is so unnatural. He was not even curious to know why Anisco stabbed the two victims. In spite of the fact that he was already charged with the commission of the offense, he never bothered to inform the Fiscal when he was investigated that he was innocent as the assailant was in reality Danton Anisco. Apart from the foregoing, his utter lack of concern during the trial, as he was even chided by the trial judge for laughing while Rolando Regalado was testifying, is evidentiary of his lack of sincerity.

"FISCAL PESTANO:

Q

Now, the following day when Danton went to your house, did you not ask him why he stabbed the two persons?

A

I did not ask him, but Danton Anisco threatened me that if ever I will tell that he was the one who stabbed those two persons he will include me in his many cases.

Q

Why did you not ask him the reason why he stabbed those two persons since there was danger that you would be implicated in that incident?

A

I did not ask him because he immediately went away -

Q

Do you remember having appeared before our office in criminal investigation of these two cases?

A

Yes, sir, I appeared before him (witness pointing to the prosecuting fiscal, Asst. City Fiscal Sergio Pestano).

Q

Do you remember also that I asked you if the charges against you was true or not?

A

You asked me that but I answered that I'll just answer that in Court.

Q

You did not tell me in that investigation that it was Danton Anisco who stabbed Rolando Regalado and his companion?

A

No, sir.

Q

You did not say that it was Danton Anisco who actually committed the acts attributed to you notwithstanding the fact that the preliminary investigation conducted by me Rolando Regalado was present and pointed to you that you were the one who stabbed him and his companion?

A

Yes, sir, he testified.

Q

You also did not tell the detective and other police officers who arrested you that it was Danton Anisco who committed the acts being attributed to you?

A

Because they did not also ask me.

Q

But this police officer informed you that you are being accused or charged with having stabbed Rolando Regalado and his companion on January 1, 1967?

A

No, the detective did not tell me that.

Q

You did not ask them why you were being arrested?

A

They did not also tell me that the charge against me is murder.

Q

Now, while you were being detained, did you not inquire to the police officers why you are being detained?

A

I also ask, but the policemen told me that you are really the one who killed.

"COURT:

Killed who?

WITNESS:

About the happenings here in Capiz.

FISCAL PESTANO:

Q

And when the police told you that you were the one who killed, you did not tell the police that it was Danton who killed?

A

No, sir.

COURT:

Q

You know that this Danton Anisco is a very bad boy because he has been killing persons?

A

I knew that because we were living together in Culasi.

Q

You also know that fact before January 1, 1967?

A

Yes, Your Honor.

Q

But you went with him on January 1, 1967 from the eatery near Bayot Theater?

A

I went with him because he did not also tell me that he has had bad intentions during that time, Your Honor.

Q

Yes, that is true, but as you said you knew that he was a bad egg, did you not excuse yourself that you do not want to go?

A

I did not refuse him, I also went with him, Your Honor.

Q

Why did you not refuse him, is it because he is your friend?

A

I knew him because we were from the same place, Your Honor.

Q

Why are you so acting in such manner when you answer questions, you seem to be brave and in bad temper?

A

No, Your Honor, I am only answering the right answer.

Q

The Court noticed you during the testimony of Rolando Regalado that you were laughing at the witness while he was testifying, why did you do that? The Court is watching your manner in the courtroom, why did you do that?

A

That is my natural.

Q

That is your manner of respecting people?

A

That is my manner."

(T.s.n., Feb. 28, 1969, pp. 16-20).

Upon the other hand, We find the testimony of Rolando Regalado more credible. There is no question that the testimony of a single witness, when it is reasonable and credible, is sufficient to convict. Corroborative evidence is necessary when there are reasons to suspect that the witness falsified the truth, or there exist inherent incongruities in his testimony, or there is probability that his observation has been inaccurate. We find no fact or circumstance that would detract from the credibility of Regalado's testimony. This Court will not interfere with the conclusions of the trial court concerning the credibility of witnesses in the absence of a showing that some facts and circumstances of weight and influence were overlooked, or misapplied, or that their significance was misunderstood by the lower court. In the case at bar, We find no cogent reason to disregard the findings of the trial court.

It is true that there has been some delay in the filing of this case, but this was satisfactorily explained. The only eye-witness was so seriously wounded that he had to be operated on three times. Evidently, the delay could be explained by the fact that this witness was, in the interim, preoccupied with his struggle for survival.

In ascertaining the nature and character of the offense, We find that the crime is qualified by treachery. When an assault is made with a deadly weapon upon an unarmed and unsuspecting victim who has given no immediate provocation for the attack and under conditions which made it impossible for him to evade the attack, flee, or

make defense, the act is properly qualified as treachery, and the homicide resulting therefrom is classified as murder. In the case at bar, both victims were unarmed. No immediate provocation for the attack was made. The attack upon them was so sudden that it was almost impossible for them to flee or make any defense from sudden assault of the aggressor. It is true that in *People vs. Tumaob*,^[1] We said that "a sudden and unexpected attack does not necessarily constitute the element of *alevosia*, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself." In *Tumaob*, the meeting between the victim and the aggressor was purely accidental. There was absolutely nothing personal between the accused and the victim. In the present case, the meeting between the appellant and the two victims was not accidental. It is evident that appellant followed Jose de Leon and Rolando Regalado, when the latter refused appellant's invitation to have some more alcoholic drinks. It is not improbable that appellant was piqued by the rejection of his invitation, hence his sudden assault upon their persons.

We agree, however, that the crime is not aggravated by the circumstance of evident premeditation. There is no showing from what point of time appellant meditated and reflected upon his decision to kill the victim. To warrant the application of the circumstance of evident premeditation, it is necessary to establish the time when the offender decided to commit the crime; a notorious act manifestly indicating that he has clung to his determination; and a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act. As has been pointed out, there is no showing in the evidence that appellant had meditated, reflected upon and persistently followed his criminal purpose.

We cannot, however, consider the application of the mitigating circumstance of intoxication. In order that an accused may be entitled to the mitigating circumstance of intoxication, it must be shown that (a) at the time of the commission of the criminal act, he has taken such quantity of alcoholic drinks as to blur his reason and deprive him of a certain degree of control,^[2] (b) that such intoxication is not habitual, or subsequent to the plan to commit the felony.^[3]

It is evident, however, that appellant was under 18 years of age at the time of the commission of the crime on January 1, 1967. He is, therefore, entitled to the mitigating circumstance of minority.

Considering, therefore, his minority, the imposable penalty for the crime of murder (Criminal Case No. CCC--XI-32-Capiz) shall be the penalty next lower than that prescribed by law, but always in the proper period. (Article 68, Revised Penal Code).

The penalty for murder is reclusion temporal in its maximum period to death. Appellant having committed the crime while he was under 18 but over 15 years of age, is entitled to the penalty next lower than that prescribed by law, which is prision mayor in its maximum period to reclusion temporal in its medium period to be applied in its medium period. (Art. 64, [1]; *People vs. Ong Ta*, 70 Phil., 583). Applying the indeterminate sentence law, the appellant should suffer the indeterminate penalty of from eight (8) years of prision mayor (medium) as the minimum of the penalty to fourteen (14) years of reclusion temporal (maximum) as the maximum of the penalty.

WHEREFORE, modified as above indicated, the judgment under review is hereby affirmed.

Makalintal, C.J., Castro, Fernando, Teehankee, Barredo, Esguerra, Fernandez, Munoz Palma, and Aquino, JJ., concur.

Makasiar, J., took no part.

[1] 83 Phil., 738.

[2] *People vs. Noble*, 77 Phil., 93, 102.

[3] People vs. Apduhan, 24 SCRA, 800, 813.

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