

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DATU LAGUIA UNDONG, ET AL., DEFENDANTS, SULAYMAN UNDONG,
DEFENDANT AND APPELLANT.**

G.R. No. L-32641. August 29, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

This is an automatic review of the decision of the Court of First Instance of Cotabato, Branch IV, in Criminal Case No. 4244-4247, entitled "People of the Philippines vs. Datu Laguia Undong, et al." imposing upon accused-appellant Sulayman Undong the supreme penalty of DEATH, with accessory penalty provided for in Article 40 of the Revised Penal Code and sentencing him to indemnify the heirs of the deceased in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency, with costs de oficio.

On December 5, 1962, accused-appellant Sulayman Undong, together with Datu Laguia Undong, Pasandalan Undong, Edsil Butukan and Malik Butukan, was charged with the crime of MURDER with DOUBLE FRUSTRATED MURDER allegedly committed as follows:

"That on or about October 17, 1962, in the Sitio of Mapayag, Municipality of Datu Piang, Cotabato, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together, and mutually helping one another, armed with carbine rifles, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and fire at the house of one Magco Bituan, and as a result thereof Awal Magco sustained mortal wounds which directly caused his death, and Abdul Tipas and Badtog Abdul sustained serious injuries which should have produced the crime of triple murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of the accused, that is by the timely and medical assistance rendered to said Abdul Tipas and Badtog Abdul which prevented their death.

Contrary to law, especially Article 248 in connection with Article 6 of the Revised Penal Code with the aggravating circumstances of nocturnity which was purportedly sought by the accused to insure the commission of the crime charged and dwelling."

Arraigned, accused Edsil Butukan, Sulayman Undong, Laguia Undong and Pasandalan Undong pleaded not guilty to the charge.

However, before his trial, accused Laguia Undong died. On the other hand, accused Edsil Butukan was discharged from the information to be utilized as a state witness^[1] while accused Pasandalan Undong was acquitted. Accused Malik Butukan could not be tried as he was at large. And so, only accused-appellant Sulayman Undong was tried.

On February 26, 1970 before the prosecution could have rested its case after it was through with its evidence, accused Sulayman Undong, through his counsel, petitioned the trial court to allow him to withdraw his former plea of "not guilty" to that of "guilty".^[2] The petition was granted. Accused Sulayman Undong was rearraigned

under the same information which was translated to him in the Muslim dialect and to which he pleaded: "I am guilty sir because I was just taking revenge of the death of my uncle." [3] Whereupon, the lower court instead of imposing upon the accused-appellant the corresponding penalty for the crime charged, proceeded to receive evidence on the guilt of the accused-appellant, his participation in the commission of the crime and the circumstances that would possibly aggravate or mitigate his guilt.

Thus, three witnesses were called upon to testify: Dr. Benjamin Gulo, Dr. Eduardo Mariano and Sgt. Cosme Celestial.

Dr. Benjamin Gulo, a resident physician of Cotabato Public Hospital, testified that while he was on duty on October 18, 1962, at 3:00 o'clock in the morning, Abdul Badtog and Abdullah Tipas were brought to the hospital injured. He examined their injuries and thereafter issued their respective medical certificates (Exhs. "A" and "B"). Abdul Badtog allegedly sustained the following injuries:

- Circular wound, about 1/2, cm. diameter middle 3rd posterior aspect right thigh.
- Wound, lacerated about 1 inch middle 3rd lateral aspect right thigh.
- X-ray result: Negative for fracture and/or any dislocation.

Abdullah Tipas, on the other hand, suffered the following injuries:

- Lacerated wound about 1/2 cm. right side back posteriorly.
- Lacerated wound about 1 inch, right side back posteriorly.
- X-ray result: Chest essentially normal.

According to Dr. Gulo the wounds of Abdullah Tipas and Abdul Badtog were normal which, in his opinion, would not, per se, cause their deaths. [4]

Dr. Eduardo Mariano, the Municipal Health Officer of Dinaeg, Cotabato, who conducted a post-mortem examination on the body of the deceased, Awal Magco, testified that, as shown in his medical report, Awal Magco suffered:

"Wound, gunshot, neck, through and through. Point of entrance — Wound, gunshot, right neck, one inch from upper border of neck, one and one-half inches from the hollow behind clavicle running parallel to folds of neck (horizontal) three-fourths inch long, directed across neck and slightly downwards.

Point of exit — Wound, gunshot, diamond-shaped, three-fourths inch long, one-half inch wide, the bone of neck just above left clavicle two inches from the midline.

Point of exit — Wound, superficial, beneath skin and abrading, connected to previous wound, to and one-fourth inches long and one inch wide running from right to left.

CAUSE OF DEATH:

Wound, gunshot, neck."

Sgt. Cosme Celestial, a staff sergeant of the 70th PC Company stationed at Cotabato City, testified that upon receiving a report about the alleged shooting at 1:00 o'clock in the morning of October 17, 1962, he immediately repaired to the scene of the crime together with some PC rangers. Upon arrival they conducted an investigation at the house of Magco Bituanan and a nearby house which were allegedly fired upon. At Magco's house, they saw the body of Awal Magco and the two injured victims Abdul Badtog and Abdullah Tipas. According to Sgt. Celestial, the father of Magco told him that a group of persons composed of Datu Laguia Undong, Sulayman

Undong, Pasandalan Undong, Malik Butukan and another by the family name of Butukan[5] fired at his (Magco's) house.

Badtog Abdul testified that in the afternoon of October 17, 1962, he went to the house of Bapa Edsil Bentilan Bituanan to ask from the latter something about the elopment of a certain woman. As it was already late he spent the night in Bituanan's house. At early dawn in the following day, Bituanan's house was suddenly fired upon. To avoid being hit he lay down in a swimming position. Nonetheless he was hit by a stray bullet on his right thigh. He then managed to cling to the wall and tried to peep into a hole and there he allegedly saw in the yard Pasandalan Undong, Sulayman Undong and Laguia Undong armed with carbines and rifles, Badtog Abdul declared that these three shot him.[6]

Edsil Butukan, another witness, also testified that accused Laguia Undong and Sulayman Undong personally requested him to accompany them to the house of Bituanan Magco; that as soon as they arrived at the place, they positioned themselves and then accused Sulayman Undong and Laguia Undong fired at Magco's house, resulting in the death of Magco and causing injuries to Abdul Tipas and Badtog Abdul.[7]

After all the witnesses for the prosecution have testified, accused-appellant Sulayman Undong took the witness stand and testified:

"Q.

Now, you have pleaded guilty to the information filed having admitted that you participated in the killing of Awal Magco and the wounding of Abdul Tipas and Badtog Abdul, more than seven years ago, will you please tell the Honorable Court who were your companions when this incident happened at Mapayag, Datu Piang, Cotabato?

A. Laguia.

Q.

Will you please inform the Honorable Court the complete name of this Laguia?

A.

Datu Laguia Undong.

Q.

Is he related to you?

A.

He is my elder brother.

Q.

Where is Datu Laguia Undong now?

A.

He is already dead.

x x x x x x x x

Q.

When you and Datu Laguia Undong fired at the persons of Awal Magco, Abdul Tipas and Badtog Abdul, did you actually see them personally at the time of the firing?

A. I saw sir, because they were just near each other, with Laguia.

Q. Did you fire at his house?

A.

I fired sir because he ordered me to fire.

Q.

Who ordered you to fire?

A.

Laguia.

x x x x x x x x

Q.

You admitted having perpetrated this crime, will you please tell this Honorable Court why did you have to do this?

A.

I was invited by Laguia Undong to take revenge because of the death of our uncle who was killed by Awal Magco, Abdul Tipas and Badtog Abdul."

Accused-appellant, when cross-examined readily revealed his possible motive for committing the crime:

"Q. And you know for a fact that Badtog Abdul, Abdul Tipas and Awal Magco are the persons responsible for the death of your uncle, is that correct?

A. Yes, sir (pp. 4-5, 9-10 and 14-15, tsn., March 5, 1970."

Accused Pasandalan Undong saw the accused-appellant fired his gun. He testified thus:

"Q. Who fired in the house?

A. Datu Laguia Undong.

Q. How about Sulayman?

A. He fired also because he was ordered by Datu Laguia" (p. 10, tsn., March 10, 1970).

Accused-appellant blames the lower court for imposing upon him the penalty of death without first observing the proper procedure required by the Supreme Court whenever the offense charged is punishable by death. We are not unaware of the case of *People vs. Apduhan*, wherein this Court warned trial judges to refrain from accepting with alacrity an accused's plea of guilty, for the reason that while justice demands a speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction^[8] and the case of *People vs. Solacito*, wherein it was held that in all cases especially those involving capital offenses, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him; that in every case under the plea of guilty, where the penalty may be death, the court should call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant.^[9] However, in the case before Us, the trial court excelled in complying with the strictures set forth in the *Apduhan*, *Solacito* and other cases before imposing upon accused-appellant the penalty a death. In the aforementioned cases, shortly after the accused were arraigned and were allowed to make their pleas of guilty or to change their pleas of "not guilty" to "guilty", the trial court without even asking questions from the accused or asking them only few questions, or without any formal hearing to determine their guilt or their participation in the crime charges, imposed the verdict of death. This did not happen in the case before Us. Accused-appellant cannot therefore, claim that he was the victim of an improvident plea.

We now proceed to the correctness of the judgment arrived at by the trial court against accused-appellant.

In his first assignment of error, the lower court is faulted for having considered the aggravating circumstance of nighttime against accused-appellant. Accused-appellant contends that although the prosecution has alleged nighttime in the information as having been availed of by him in order to insure the commission of the crime, yet, no evidence was adduced that he purposely sought nighttime to facilitate its commission. Nighttime can only be appreciated as an aggravating circumstance when it facilitated the commission of the crime, was specially sought for, or taken advantage of by the accused for the purpose of impunity^[10] Not one of these circumstances was present in the case at bar. It has been established that accused-appellant Sulayman Undong only came to know of the plan to kill the victim when his brother, Laguia, went to see him at his house in the evening of the commission of the offense. From his house, he and Laguia proceeded to the house of Pasandalan Undong to fetch the latter and from there they passed for Edsil Butukan who was then residing in another barrio before proceeding to the scene of the crime. It took them a long time on their way that they were even caught by the darkness of the night when they reached the place.

Nighttime per se is not an aggravating circumstance.^[11] To be an aggravating circumstance, the accused must have planned and sought darkness to prevent him from being recognized. In the present case there is nothing in the records to show that the accused-appellant purposely planned and sought nighttime to prevent him from being recognized. Here the darkness of the night was merely incidental. But even granting that the aggravating circumstance of nocturnity attended the commission of the crime, the same was deemed absorbed in the treachery that actually attended the commission of the crime. If nighttime was absorbed in treachery, then it should not have been considered separately^[12] as such circumstance forms part of the peculiar treacherous means and manner

adopted to insure the execution of the crime.[13]

With respect to the aggravating circumstance of abuse of superior strength found by the lower court, We believe that like nighttime it should not have been considered separately. It is a well established doctrine that when treachery is already taken into account as a qualifying circumstance in murder, it is improper to consider the generic aggravating circumstance of abuse of superior strength, since the latter is necessarily included in the former[14] and that it cannot be separately and independently considered from the other.[15] This circumstance therefore should not be appreciated against accused-appellant.

What about the contention of accused-appellant that the lower court should have considered his plea of guilty as a mitigating circumstance? It appears on record that accused-appellant decided to change his plea from "not guilty" to "guilty" only after the prosecution has presented its witnesses. The Court in *People vs. Manibpel*, [16] ruled that a plea of "guilty" made after the prosecution has presented its witnesses cannot be considered as a mitigating circumstance.

But accused-appellant's claim of lack of instruction and education[17] as a mitigating circumstance can be sustained. The records show that accused-appellant is ignorant and unschooled. This the prosecution has not only failed to refute but even conceded it as a fact. The same was elicited during the examination of the accused by his counsel.

There can be no doubt that treachery attended the commission of the crime, for the offenders here have availed themselves of the means to insure the execution of the crime without risk to themselves arising from the defense that may come from the victims. The records show that Laguia and his companions fired at the house of the victim without warning and without hesitation.[18] However, while the prosecution was able to prove treachery, it was not able to prove evident premeditation on the part of the accused-appellant. Precisely accused-appellant knew of the plan only when his elder brother Datu Laguia Undong told him, of the matter. In fact, he was only ordered to fire at the house of Awal Magco by Laguia Undong[19] and that he was reluctant to agree with the plan of his brother.[20] True he admitted firing at the house of the victim, but this was upon order of his elder brother. Evident premeditation obtains where the accused had sufficient time to reflect on his determination to commit the crime.[21] In the case before Us, accused-appellant did not know until he was ordered by Laguia Undong to go with him to the house of Awal Magco. He did not have sufficient time to reflect on what he was to do.

It results that only the qualifying circumstance treachery was proven, which absorbs nocturnity. The aggravating circumstance of dwelling is offset by the mitigating circumstance of lack of instruction and education. Inasmuch as the evidence shows that two carbines were used in the killing of the victim and in injuring the other two victims, and there were several shots fired, the proven crimes of murder and frustrated murder cannot be considered as complex crimes but are separate and distinct from each other. In *People vs. Pineda*, 40 SCRA 748, the Court ruled:

"When various victims expire from separate shots, such acts constitute separate distinct crimes. Thus, where the six defendants, with others (armed with pistols, carbines and also a submachinegun and Garand rifles), fired volleys into a house killing eleven and wounding several others, each of said accused is 'guilty of as many crimes of murder as there are deaths (eleven)' x x x". At a commencement exercises of an elementary school, 'shot suddenly rang out' followed by a 'series of shots' — from a pistol. Two persons lay dead and a third seriously wounded but who later on also died. This court there ruled that they were 'three distinct and separate murders' committed by appellant Juan Munes. And finally, in *People vs. Gatbonton*, L-2435, May 10, 1950, the spouses Mariano Sebastian and Maxima Capule - who were asleep — were killed by one burst of machinegun fire, and then, by a second burst of machinegun fire, two of the couple's children — also asleep — were killed. The accused, Tomas Gatbonton, was found guilty by the trial court of quadruple murder. On

appeal, this court declared that 'appellant must be declared guilty of four murders'.

Accordingly, as there are multiple offenses in the case before Us, necessarily multiple penalties must be imposed. The penalty for murder is reclusion temporal in its maximum period to death;^[22] but since there remains no aggravating circumstance nor mitigating circumstance, the penalty to be imposed should be in its medium period which is reclusion perpetua.^[23] As for the frustrated murder, the maximum range of the indeterminate sentence should be taken from prision mayor maximum to reclusion temporal medium, while the minimum range should be taken from prision correccional maximum to prision mayor medium.

WHEREFORE, the lower court's decision is modified and the death penalty imposed on appellant Sulayman Undong for the killing of Awal Magco is reduced to reclusion perpetua. The indemnity of P12,000.00 imposed by the lower court is correct.

For each of the two frustrated murders, appellant Sulayman Undong is sentenced to an indeterminate sentence of eight (8) years of prision mayor, as minimum, to fourteen (14) years of reclusion temporal, as maximum, with the accessory penalties provided by law, to pay an indemnity of P6,000.00 to each victim and to pay the costs.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Teehankee, Barredo, Makasiar, Esguerra, Muñoz Palma, Aquino, and Concepcion, Jr., JJ., concur.

Antonio, J., is on leave.

[1] Record, p. 141.

[2] tsn., pp. 4-5, Hearing of February 26, 1970.

[3] tsn., p. 5, Hearing of February 26, 1970.

[4] pp. 6-7, 9, tsn., Sept. 8, 1965.

[5] p. 21, tsn., Sept. 8, 1965.

[6] p. 4, tsn., March 4, 1969.

[7] pp. 10-13 and 17-18, tsn., Feb. 26, 1970.

[8] 24 SCRA 798.

[9] 29 SCRA 61; see also *People vs. Simeon*, 47 SCRA 129; *People vs. Daeg*, 49 SCRA 221; *People vs. Ricalde*, 49 SCRA 228; *People vs. Martinez*, 50 SCRA 509; *People vs. Busa*, 51 SCRA 317.

[10] *People vs. Pardo*, 79 Phil. 568; *People vs. Billedo*, 32 Phil. 574; *People vs. Matbagon*, 60 Phil. 887.

[11] *People vs. Boyles*, 11 SCRA 88

[12] *People vs. Sespene*, 102 Phil. 199

[13] *People vs. Pardo*, 79 Phil. 568; *People vs. Corpus et al.*, G.R. No. 12718, Feb. 24, 1950; *People vs. Bolinas*, G.R. No. 9045, Sept. 28, 1956; *People vs. Antonio, et al.*, G.R. No. L-3458; *People vs. Chan Lim Wat*, 50 Phil. 191; *People vs. Yan*, G.R. No. L-2161.

[14] *U.S. vs. Estopia*, 28 Phil. 97; *U.S. vs. Oro*, 13 Phil. 548; *U.S. vs. Vitug*, 17 Phil.

[15] People vs. Sespene, supra.

[16] G.R. No. 15077, Dec. 29, 1962.

[17] People vs. Limaco, 88 Phil. 335; People vs. Hubero, 61 Phil. 64; People vs. Talok, 65 Phil. 696.

[18] p. 9, March 5, 1970.

[19] p. 9, March 5, 1970.

[20] p. 14, tsn., March 5, 1970.

[21] People vs. Hanasan, 29 SCRA 534.

[22] Art. 248, Revised Penal Code.

[23] Art. 64 (1), Ibid.

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