

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DARWIN VELOSO Y MILITANTE, DEFENDANT-APPELLANT.

G.R. No. L-33132. August 06, 1979

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PER CURIAM:

Automatic review of the decision of the Court of First Instance of Camarines Sur finding the accused Darwin Veloso y Militante guilty of the crime of MURDER, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Darwin Veloso y Militante, guilty beyond reasonable doubt of the crime of MURDER with the attendance of five (5) aggravating circumstances, and hereby sentences him to suffer the maximum penalty of DEATH and to indemnify the heirs of the deceased, Jesus A. Diez, the sum of P12,000.00, Philippine Currency, as actual damages; the sum of P15,000.00, Philippine Currency, as moral, compensatory and exemplary damages and to pay the costs of this suit.

IT IS SO ORDERED."^[1]

It is of record that at about 8:00 o'clock in the evening of May 20, 1970, Andres Diez, a thirteen-year old lad from Barrio Sto. Tomas, Camaligan, Camarines Sur, was told by his mother, Alberta Aguillon Diez, to fetch his elder brother, Jesus, so that they could eat their supper. Andres found his brother talking with some persons in front of the store of Julian Dacian, located at the corner of Sto. Tomas and San Mateo Streets. Andres informed Jesus of his errand and both of them then left for home with Jesus walking ahead, followed by Andres and the latter's friend, Federico Agotilla.

On the way home, Jesus Diez encountered three men, one of whom was carrying a ukelele and the other, an attache case. Jesus stopped before them and asked: "From where are you boy?" Getting no answer, Jesus inquired: "Do you understand Bicol?" The questions were obviously resented by the three men for one of them said: "What if Bicol or Tagalog?" and immediately stabbed Jesus Diez with a dagger. Almost simultaneously, the other two men fired at Jesus Diez several times.^[2] Andres wanted to go to the aid of his brother, but was dissuaded by Federico Agotilla for fear that the armed men might turn against them. So, the boys hid behind a wall until the men left towards the barrio chapel.^[3]

Upon hearing the gunfire, Andres Servidad, the barrio captain went to investigate. While he was near the gate of the fence of their house, Servidad saw three men approaching, and as they came abreast of him, he heard one of them say: "Ang hirap sa iyo, para nakikiraan lang pinakikialaman ninyo." Noticing Servidad, the man pointed his gun at Servidad, demanding: "You are another?" Servidad raised his two hands and said: "Huwag kayo, pare, hindi ako nakikialam."^[4]

On reaching the barrio chapel, the armed trio saw the jeep driven by Herminio Rabina which they commandeered at gun point and went to barrio Keburac.^[5]

Informed of the shooting incident, Wenceslao Preconcillo, the chief of police of Camaligan, made an ocular inspection of the scene of the crime and recovered therefrom four (4) empty .45 cal. shells, one (1) empty .32 cal. shell and a .45 cal. slug.^[6]

An autopsy of the cadaver of Jesus Diez disclosed that the victim sustained four (4) gunshot wounds of different sizes and a stab wound in his abdomen.[7]

The next day, May 21, 1970, the house of former Vice-Governor Felimon Odiamar at Pacol, Naga City was robbed by three persons on which occasion, Henry Odiamar, the son of the said former Vice-Governor, was shot and killed.[8] Investigators subsequently learned that the accused Darwin Veloso y Militante was one of those who participated in the robbery and homicide. Theorizing that the robbery and the killing of Jesus Diez may have been committed by the same group of persons, the investigators showed a picture of Darwin Veloso[9] to the witnesses in the killing of Jesus Diez. Upon seeing the picture, Andres Diez readily identified the person in the picture to be the person who stabbed his brother Jesus Diez in the evening of May 20, 1979.[10] And so did Catalina Asico.[11] Darwin Veloso was apprehended in Makati, Rizal and brought to Naga City. Upon investigation, he confessed to the robbery in the house of former Vice-Governor Felimon Odiamar and the killing of Henry Odiamar, as well as to the shooting of Jesus R. Diez in the evening of May 20, 1970, at Barrio Sto. Tomas, Camaligan, Camarines Sur. He named Badong and Toti as his companions in the killing of Jesus Diez.[12]

As a result, an information charging Darwin Veloso y Militante with the crime of murder was filed before the Court of First Instance of Camarines Sur, committed as follows:

"That on or about the 20th day of May, 1970, at approximately 8:00 o'clock in the evening, in the barrio of Sto. Tomas, municipality of Camaligan, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, together with Badong Doe and Romy Doe who are still at large, cons-piring and confederating together and mutually helping one another, with intent to kill, taking advantage of nighttime, with the aid of armed men and also taking advantage of superior strength to better accomplish their purpose, did then and there wilfully and feloniously assault, attack, stab and shot one Jesus Diez, thereby inflicting upon the latter mortal wounds on the different parts of his body which directly caused his instantaneous death."[13]

After trial, judgment was rendered on November 7, 1970 finding the accused guilty of the crime of murder, attended by five (5) aggravating circumstances, and sentencing him to suffer the maximum penalty of death. It is for this reason that the case is before the Court for review.

The attendant aggravating circumstances found by the trial court are nighttime, abuse of superior strength, use of an unlicensed firearm, the offense was committed with the aid of armed men, and that the accused is a habitual delinquent and/or a recidivist.

Although the crime was committed at nighttime, nocturnity cannot be considered as an aggravating circumstance in this case because it is not shown that the accused and his companions purposely sought the cover of the darkness of the night to consummate their evil designs. The record shows that the accused and his companions were on their way to rob the owner of a ricemill ("molino") when they met by accident Jesus Diez who asked them where they came from. The meeting of the accused and the victim was thus accidental and the attack was made on the impulse of the moment as a sequence of the unexpected turn of events.

The use of an unlicensed firearm cannot also be considered to aggravate the offense because it is not one of those enumerated as aggravating circumstances under Article 14 of the Revised Penal Code.[14]

Recidivism, as well, cannot be appreciated to aggravate the offense since there is no allegation of recidivism in the information although the prosecution made an attempt to prove the same. Hereunder is what transpired in the court below:

"FISCAL CAJOT:

Q Are you the same Darwin Veloso, the accused before the Court of First Instance of Albay, Branch 3 in Criminal Case No. 4056 for Assault upon an Agent of Person in Authority, in which you were sentenced to suffer indeterminate penalty of four (4) months and one (1) day arresto mayor, to 3 years, 6 months and 21 days of prision correccional, and to pay a fine of P100.00 with subsidiary imprisonment in case of insolvency and to pay the cost, which decision dated July 8, 1966 is marked Exhibit B and attached in Criminal Case No. 110 of Branch 3 of this Court?

"ATTY. ALFORTE:

That is not alleged in the information, we object to the question, and they are not supposed to prove anything not alleged in the Information.

"COURT:

That is too late now.

"FISCAL:

To test the credibility of the witness if he is truthful.

"COURT:

For the credibility only.

"WITNESS:

Yes, sir."[15]

In U.S. vs. Tieng Pay,[16] the Court ruled that if there is no allegation of recidivism in the complaint or information, it would be error for the trial court to allow evidence on such fact over the objection of the defendant.

For this same reason, the special penalty for habitual delinquency cannot be applied. Like recidivism, habitual delinquency must be alleged in the information and should be specific and detailed. A general statement of habitual delinquency is not sufficient. The dates of the commission of the previous crimes, of the last conviction or release, and of the other previous convictions or release must be alleged.[17]

The circumstance of abuse of superior strength qualified the crime to murder. There is abuse of superior strength because the accused and his two companions, all of them armed with deadly weapons, attacked the deceased together and took advantage of their greater number and greater power to overwhelm their unarmed victim.[18] Under the circumstances, We can no longer consider as present the aggravating circumstance that the crime was committed with the aid of armed men. From the evidence of record, the attack on the victim was committed with treachery. While it is true that treachery is not alleged in the information, it can still be considered as a generic aggravating circumstance.^{18a}

The crime committed is murder, qualified by abuse of superior strength, and with the aggravating circumstance of treachery not offset by any mitigating circumstance.

Counsel de oficio assails the trial court for relying upon the testimony of Andres Diez and Roque Custodio to establish the identity of the accused as the perpetrator of the crime. Counsel de oficio impugns the testimony of Andres Diez because of his relationship with the deceased Jesus Diez; his age, and that his assertion is contrary to the natural course of human events. Counsel cites a portion of the testimony of this witness which allegedly makes the entire testimony unworthy of belief.

Mere relationship, however, is not sufficient to destroy the testimony of a credible witness, especially where there

is no showing that this witness has testified merely by reason of relationship or alleged interest in the case other than a desire to see that justice is done. In other words, when there is no showing of improper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit.¹⁹ Here, no such improper motive has been established.

With respect to his age, We find that although Andres Diez was only thirteen (13) years old when he testified, his simple and straightforward testimony appears to be sincere and honest and indicative of his intelligence and capacity to perceive and make known his perceptions. His testimony is not punctured with serious inconsistencies as to lead one to believe that he was coached. His assertion claimed to be contrary to the natural course of human events by counsel de oficio is a trivial matter and cannot be considered an attempt to distort the truth.

In the case of Roque Custodio, this witness testified that three (3) armed men boarded their jeep near the barrio chapel of Sto. Tomas, Camaligan, at about 8:00 o'clock in the evening of May 20, 1970, and directed the driver of the jeep to proceed to barrio Keburac, at gunpoint. This witness further stated that he did not recognize any of the three (3) men as it was dark.²⁰

Indeed, it cannot be gainsaid that Roque Custodio did not identify the accused to be one of those three (3) persons who killed Jesus Diez in the evening of May 20, 1970 in barrio Sto. Tomas, Camaligan, Camarines Sur. But, the judgment of conviction is not based solely upon the identification of the accused made by Andres Diez and/or Roque Custodio. The identity of the accused has also been established by the uncontested testimony of Catalina Asico, as well as the defendant's extrajudicial confession. Catalina Asico declared that she was cooling herself in their yard on that fateful night when he saw Jesus Diez in the street, in front of their house, talking with three (3) persons, one of whom she later named to be the accused Darwin Veloso y Militante. She heard Jesus Diez ask: "From where are you boy? Do you understand Bicol?" When one of the trio exclaimed angrily: "What if Bicol or Tagalog?" she interjected, saying: "Noy, just talk it over," after which she turned to go to their house. No sooner had she turned her back than she heard gunfire from the street.²¹

Counsel also contends that the trial court erred in finding that a conspiracy existed in the killing of Jesus Diez. Counsel did not elucidate on this statement, but We suppose that counsel has probably in mind the prosecution evidence that the accused stabbed the deceased in the abdomen and the testimony of the medical examiner that said stab wound is not fatal,²² so that in the absence of a conspiracy, the accused should be held responsible only for the consequences of his own act.

If this is what counsel has in mind, the contention is without merit because the evidence clearly shows a unity of purpose and concert of design since the companions of the accused almost simultaneously fired at the deceased after the accused, who apparently resented the questions of the deceased, stabbed the deceased in the abdomen and, thereafter, the accused and his companions left the scene of the crime together to commit another crime the following night.

Counsel further contends that the prosecution failed to establish the motive or motives of the accused in committing the crime, which failure is fatal to the case for the prosecution.

Motive, as distinguished from criminal intent, is not an essential element of a crime, and, hence, need not be proven for purposes of conviction.²³ Motive is essential to conviction in murder cases only when there is doubt as to the identity of the culprit,²⁴ something which does not obtain in this case as the accused Darwin Veloso y Militante was positively identified by the prosecution witnesses, Andres Diez and Catalina Asico.

There is a statement that the accused is "a poor man, who because he has no means to vindicate his rights became

not only a victim of circumstances but was also denied a fair trial resulting in his conviction of the crime of murder and the imposition of the maximum penalty of death."²⁵

As stated by the Solicitor General, this assertion is preposterous and with absolutely no basis in fact since the record very well shows that the accused was attended by counsel and was substantially given a fair trial in the court below.

The information filed in this case was ill-prepared. There are a number of important and necessary allegations which the fiscal did not make which restricted the prosecution in the presentation of its evidence during the trial of the case.

WHEREFORE, the accused is found guilty of murder qualified by abuse of superior strength, with the aggravating circumstance of treachery, and is hereby sentenced to DEATH, to indemnify the heirs of Jesus Diez in the amount of P12,000.00 and to pay the costs.

Let a copy of this decision be furnished the Minister of Justice so he may take note of the actuations of the prosecutor concerned.

SO ORDERED.

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

Fernando, C.J., based on the principle that every element of an aggravating circumstance should be as clearly proven as the offense itself, he is unable to concur in the view that the existence of alevosia should be considered in meting out the penalty. The appropriate sentence for him then is one of reclusion perpetua.

Antonio, J., took no part being the Solicitor General at the time.

Aquino, J., concurs. The confession, Exh. E, corroborated by evidence of the corpus delicti leaves no room for doubt as to the guilt of the accused.

Santos, J., on leave.

Abad Santos, J., took no part.

[1] Record, p. 106.

[2] p. 10, t.s.n., Cipriano.

[3] Exh. 1-A, p. 13, Orig. Record; also p. 38, t.s.n., Bulao.

[4] p. 13, t.s.n., Brazal.

[5] pp. 68-69, t.s.n., Bulao.

[6] p. 17, t.s.n., Brazal.

[7] Exh. A, p. 2, Orig. Record.

[8] Exh. E, p. 38, Orig. Record.

[9] Exh. C, p. 36, Orig. Record.

[10] pp. 31-32, t.s.n., Bulao.

[11] p. 15, t.s.n., Cipriano.

[12] Exh. E, p. 38, Orig. Record.

[13] p. 28, Orig. Record.

[14] People vs. Zapartero, L-31960, Aug. 15, 1974, 58 SCRA 451.

[15] p. 29, t.s.n., Brazal.

[16] 42 Phil. 212.

[17] Aquino, The Revised Penal Code, 1976 ed., Vol. 1, p. 615.

[18] People vs. Boyles, L-15308, May 29, 1964; 11 SCRA 88.

18a People vs. Collado, 60 Phil. 610.

19 People vs. Ricaplaza, L-25856, April 29, 1968, 22 SCRA 374; People vs. Malilos, L-16568, July 29, 1968, 24 SCRA 133; People vs. Alcantara, L-26867, June 30, 1970, 33 SCRA 812.

20 p. 68, t.s.n., Bulao.

21 pp. 10-11, t.s.n., Cipriano.

22 p. 8, t.s.n., Bulao.

23 People vs. Ramponit, 62 Phil. 248; People vs. Caggauan, 94 Phil. 118.

24 People vs. Verzo, L-22517, Dec. 26, 1967, 21 SCRA 1403.

25 p. 3, Appellant's Brief.

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