

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MALLI BASARAIN, DEFENDANT-APPELLANT.

G.R. No. L-6690. May 24, 1955

Ponente: REYES, A., J.

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REYES, A., J.:

In this case we are to review a sentence of death imposed upon the accused Malli Basarain by the Court of First Instance of Sulu.

The accused was charged in the court below with double murder and frustrated murder committed, according to the information, as follows:

"That on or about November 30, 1952, in the Walled City, Municipality of Jolo, Province of Sulu, Philippines, and within the jurisdiction of this Court, the above accused, with intent to kill and by means of treachery, did then and there willfully, unlawfully, feloniously, unexpectedly and suddenly attack and fire with a pistol with which he has conveniently provided at a group of people thereby hitting and inflicting upon Milagros Fernandez and Bonifacio Pila physical injuries in different parts of their bodies which caused the instantaneous death of Milagros Fernandez and the death of said Bonifacio Pila two days later; and also inflicting physical injuries upon Teodosia Timbreza which would produce her death as a consequence but, which nevertheless did not produce it by reason of causes independent of the will of the said accused, that is, the timely intervention of third parties and prompt administration of medical treatment.

"That the commission of the foregoing offense was attended by the aggravating circumstance of superior strength, the crime was committed in the Catholic Church, a place dedicated to religious worship, evident premeditation and disrespect to sex, two of the victims being women."

Upon arraignment the accused, who was assisted by counsel de oficio, entered a plea of guilty. But on motion of the fiscal evidence was allowed to be presented to justify the imposition of capital punishment.

It appears that about 4 o'clock in the afternoon of November 30, 1952, the accused came to the Mt. Carmel catholic church in the municipality of Jolo, province of Sulu, on a car driven by himself. Alighting in front of the church, he headed for the main entrance, where a crowd was gathered waiting for the meeting of the Congregation of the Children of Mary, and then at close range he began firing into the crowd with a .45-caliber automatic pistol. The crowd rushed into the church, but the accused followed them inside and continued firing until he was seized, overpowered, and disarmed by an army sergeant who happened to be there. The accused, however, was able to flee and went into hiding in the house of an uncle, where he was found by the agents of the law in an unconscious condition after he had cut off his private parts in an obvious attempt at suicide.

Victims of the shooting were Milagros Fernandez, a 17-year old girl who was found dead inside the church with gunshot wounds in the head and other parts of the body; Bonifacio Pila, also found dead inside the church, with a bullet wound through the body at the level of the fifth rib; and Teodosia Timbreza, who received a gunshot wound in each thigh which according to the doctor, could have been cured in 2-1/2 months, barring complications.

The trial court declared the accused guilty of double murder and frustrated murder, with two aggravating circumstances-disregard of the sex of two of the victims and perpetration of the criminal acts in a place devoted to worship and, with only one aggravating circumstance offset by the plea of guilty, sentenced him to death.

Counsel de oficio does not question the facts. He, however, contends that the accused could not be held guilty of double murder but only of two separate murders, in addition to the frustrated murder. The Solicitor General concurs in this opinion, and we think it is correct. In convicting the accused of double murder the learned judge relies on the case of *People vs. Bersamin*. G.R. No. L-3098, March 5, 1951, where it was held that in the absence of a showing that the two victims in that case died from more than one bullet, the crime should be classified as double murder. In that case, however, this Court took note of the fact that there was no evidence as to how many wounds the victims received, and speculated that in the circumstances it was within the scope of possibility that they were killed by one and the same missile, considering that they were riding astride the same carabao and were met by the accused who fired at them. In the present case, however, Milagros Fernandez received three bullet wounds, Teodosia Timbreza two, and Bonifacio Pila one; and not only were the bodies of Milagros and Bonifacio found in different places but there was also no showing that they were so close to each other or so situated that they were hit by one and the same bullet. The evidence further shows that as to Timbreza she received the shot while hiding behind a baptismal font after Milagros had fallen.

We likewise agree with counsel de oficio and the Solicitor General that the accused is declared guilty of two separate crimes of murder and one frustrated murder and sentenced as follows: (1) for each of the crimes of murder, to suffer life imprisonment, with the accessory penalties prescribed by law, and to indemnify the heirs of Milagros Fernandez in the sum of P3,000 and the heirs of Bonifacio Pila in like amount; and (2) for the frustrated murder, to an indeterminate penalty of from 4 years, 2 months, and 1 day of prision correccional as minimum, to 12 years, 5 months and 11 days of reclusion temporal as maximum, also with the accessory penalties prescribed by law; the duration of all the penalties to be subject to the limitation provided for in article 70 of the Revised Penal Code. With Costs.

Pablo, Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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