

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
VICTOR VILLAR, JR., ALIAS JUN FRUTO AND REYNALDO
REPULLOSO Y MONES, ACCUSED. REYNALDO REPULLOSO,
ACCUSED-APPELLANT.**

G.R. No. L-34092. August 21, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Reynaldo Repullosa appealed from the decision of the Court of First Instance of Camarines Sur, convicting him of robbery with homicide, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Domingo Estay in the sum of P2,000 as "actual, consequential and moral damages. [Criminal Case No. 9571). The judgment of conviction was based on the following facts:

In July, 1969 Reynaldo Repullosa, Victor Villar, Jr., alias Jun Fruto, and Elmer Barcelon worked in the railroad station at Naga City. They resided near its premises. Barcelon, who was then seventeen years old, was a classmate in grade school of Repullosa. They were intimate friends. Repullosa used to reveal to Barcelon the secrets of gangs or barkadas. Barcelon was a laborer in the station. Repullosa and Villar were baggage boys.

Between eight and nine o'clock in the evening of July 20, 1969 the trio, together with William Agravante, a seventeen-year-old jobless resident of Igualdad Street, Naga City, and a person named Kare, were having a drinking spree ("choose your wild") in Tiang Sima's store in another part of the city. They were drinking San Miguel or La Tondena gin ("the drink of the true man" or inumin ng tunay na lalake). Repullosa introduced Kare as a new member of his Little Speed Gang. He (Repullosa) also displayed a one-foot long kitchen knife.

After drinking one and a half bottles of gin, the members of the barkada, except Kare, boarded a trimobile (Exh. B) at the corner of Zamora and Igualdad Streets. Repullosa was seated behind the driver. Barcelon, Agravante and Villar were seated in the sidecar.

After passing the Tabuco bridge on General Luna Street, Barcelon and Agravante jumped off the trimobile because they had heard Villar saying that he was going to extort money from the driver ("kikilan ta an trimobile"). The vehicle proceeded to Plaridel Street and entered Lalaguna Street. When it reached the Anglo-Chinese School, the driver was stabbed and robbed of his earnings amounting to five pesos and his Banlon sweater. Repullosa and Villar left him in the trimobile mortally wounded.

At around nine o'clock on that same night, Doroteo Jamito, who was the regular driver of the trimobile owned by the spouses Pedro Estay and Josefa Azanes, was being driven in that vehicle by Domingo Estay, the owner's fourteen-year-old son, a high school student who was taking a course in electricity. After Jamito had alighted at the Bichara theater, Domingo continued to drive the trimobile. He was driving it for the first time. He had asked permission from his mother to drive it because he wanted to earn some money to be used in buying the things which he needed in school. His father did not give him money to buy those things. It was while the trimobile was

passing the intersection of Zamora and Igualdad Streets that it was flagged by Repuloso and his companions.

Someone informed the police in the morning of July 21st that a person was hovering between life and death inside a trimobile at Lalaguna Street. At about four-thirty in the morning two policemen repaired to that place. They found Domingo Estay in the trimobile. He was still alive. He identified himself and he told the policemen that he was stabbed by two unidentified persons, one of whom was wearing a T-shirt with an A-Go-Go design. He was divested of his earnings amounting to five pesos. His Banlon sweater was taken from him. The policemen brought him to the dispensary of the provincial hospital.

At six o'clock in the morning of July 21st, Barcelon met his crony, Repuloso, at the back of the canteen near Pama's carinderia at the railroad station, "outside the fence and across the road". Repuloso confided to Barcelon that he and Villar had "stabbed someone" on the night before ("last night we have stabbed somebody"). Repuloso demonstrated with his hand what he had done. He said that Villar slept in his house but when he (Repuloso) woke up, Villar was not there anymore. He had fled without leaving any trace.

Doctor Honesto V. Marco, a resident physician of the Camarines Sur Provincial Hospital, who examined the victim in the afternoon of July 21st, certified that he died due to hemorrhage caused by stab wounds in the chest and abdomen. The incised wound on the right side of his chest below the nipple was one inch long and three and one-half inches deep. It penetrated the chest medially and downward. The doctor detected the "presence of bubbling rales all over the right-lung field", meaning that there was fluid in the lung. The incised wound in the navel or epigastric region was one inch long "with the omentum and colon coming out". The exploratory laparotomy disclosed that the abdominal wound lacerated the "ligamentum teres and greater omentum" (Exh. A).

Doctor Marco explained that the two wounds were caused by a double-bladed instrument. The abdominal wound was fatal. The chest wound, although not fatal, contributed to the victim's death. Considering the location of the wounds, the assailant, who was on the victim's right, must have struck him frontally. The victim was still breathing when he was brought to the hospital. He died a few hours later (Exh. C).

On July 22nd a Special Counsel filed in the City Court against Villar and Repuloso an information for robbery with homicide. Repuloso was arrested on that date. Villar was never apprehended. At the preliminary examination conducted by the City Judge on July 22nd Elmer Ordonez executed a statement wherein he revealed that at around six o'clock in the morning of July 21st Repuloso confessed to him that "they" had stabbed somebody. William Agravante also executed a statement, affirming that Repuloso and Villar were left in the trimobile driven by Domingo Estay at around eleven o'clock in the evening of July 20th. Pedro Estay in his statement disclosed that in the morning of July 21st, after his son Domingo died in the hospital, he was informed by the police that his son was stabbed by Villar and Repuloso while driving his trimobile at Lalaguna Street, Naga City.

Detectives Romeo S. Mandigma and Tomas M. Rentoy, executed sworn statements on July 22nd, regarding the result of their investigation.

Repuloso waived the second stage of the preliminary investigation. The City Fiscal filed another information for robbery with homicide dated October 14, 1969. After trial, the lower court rendered the judgment of conviction already mentioned.

Appellant Repuloso (who was nineteen years old when the crime was committed) contends in this appeal that the trial court erred in not believing his testimony and in finding him guilty beyond reasonable doubt of robbery with homicide. He testified that he was a sidewalk vendor like his father. He had been arrested for vagrancy. Asked whether he robbed and killed Domingo Estay, he answered: "I have no fault over that crime". He said that Villar

stabbed Domingo in the abdomen when the trimobile was at the back of the Anglo-Chinese School near the railroad station. After the stabbing, Villar warned him that if he would squeal, Villar would harm him (cacastahan taca). He ran home. It was past midnight.

Repuloso admitted that the foregoing version was recounted by him for the first time in court and that it was different from the version which he gave to the police. He denied that he confessed to Barcelon that he had stabbed the trimobile driver. He said that the knife, which he showed to Barcelon and his companions at Tiang Sima's store, belonged to Kare. The trial judge asked him the following questions:

Q. Is it true that Jun Villar, William Agravante, Elmer Barcelon and you were riding in a trimobile that night of July 20, 1969 on the way to the PNR station from Zamora Street and then you changed the direction of that trimobile and Boy Villar told all of you and within hearing distance inside the trimobile that they were going to extract money from the trimobile driver, Domingo Estay, and at that time Elmer Barcelon jumped off the trimobile but you and Boy Villar remained? Is that correct? — A. Yes, sir. When they jumped, I did not know. They just vanished.

Repuloso said that, because he was afraid of Villar, he did not inform the police that it was Villar who stabbed Domingo and that he (Repuloso) had no complicity in the killing.

A painstaking review of the evidence justifies the conclusion that Repuloso was implicated in the killing of Domingo Estay on the occasion of the robbery. Repuloso's own admission that he was with Villar when the latter stabbed the hapless driver, coupled with his confession to his intimate friend, Barcelon, that he and Villar stabbed the driver, establishes his guilt to a moral certainty.

If he did not make any confession to Barcelon, the latter would surely testify to that negative fact because he and Barcelon were close friends. The fact that Barcelon testified that Repuloso had made a confession to him indicates that his desire to tell the truth and to avoid a miscarriage of justice was stronger than the close ties of friendship. Barcelon must have been horrified by the ghastliness of the robbery with homicide. He felt that, in conscience, he could not keep silent as to Repuloso's admission of guilt. The admissions of a party charged with a crime, deliberately made, are always admissible to show his guilt (People vs. Hernane, 75 Phil. 554, 558).

Appellant's counsel de officio argues that there is an inconsistency between Barcelon's testimony, that Repuloso exhibited a knife with a handle, and the testimony of Detective Mandigma that a knife without a handle was found at the scene of the crime. The truth is that no knife was presented in evidence. So, it is not correct to say that, because of that discrepancy, Repuloso "cannot be linked to the murder weapon". As already noted, Repuloso himself testified that Villar stabbed Domingo Estay. Since the prosecution's evidence shows that Repuloso admitted that "they" (Villar and himself) stabbed Domingo, it is obvious that whatever weapon was used would be immaterial. What are decisive are the stabbing and Repuloso's admitted involvement therein as a co-conspirator or co-principal by direct participation.

Counsel's contentions as to the position of the assailant, based on the conjectures of Doctor Marco, cannot exculpate Repuloso. The exact manner as to how Domingo was killed was not proven by the prosecution. What was proven was that he was killed, that Villar and Repuloso were in the trimobile at the time of the killing, and that Repuloso, due to remorse, revealed to his friend, Barcelon, that he took part in the killing.

Appellant's counsel argues that Repuloso did not tell the police that Villar was the assailant because he was afraid of the latter. That was not a sufficient excuse for concealing the truth. Repuloso was aware of the gravity of the charge against him. If it were true that Villar was the only perpetrator of the robbery with homicide, then the sensible course of action for Repuloso would have been to tell the authorities that Villar was the only culprit. Repuloso knew that Villar was hiding and would not risk being caught by attempting any retaliatory action

against him. Repuloso's failure to tell the police immediately that only Villar stabbed the driver gives to his version a fabricated character.

Counsel's arguments regarding the failure of the police to offer in evidence Repuloso's statement have no important bearing on Repuloso's innocence. As noted by counsel, Repuloso himself, by admitting that he was in the trimobile when Villar allegedly stabbed the driver, strengthened the prosecution's evidence against him and fortified the conclusion that he took part in the commission of the crime (page 8 of brief).

The trial court found that the crime was attended with the aggravating circumstances of nocturnity and abuse of superiority but it imposed only reclusion perpetua. The Solicitor General agrees with that finding but recommends that the death penalty be imposed because no mitigating circumstances were present.

A close perusal of the prosecution's evidence does not establish conclusively that Repuloso and his confederate purposely sought the cover of night for the purpose of robbing and killing the trimobile driver with impunity. Detective Rentoy testified that the scene of the crime, Lalaguna Street, was well-lighted at the time the dastardly crime was committed (31 tsn). Hence, it cannot be assumed that nighttime facilitated its commission (U.S. vs. Balagtas and Jaime, 19 Phil. 164, 173; People vs. Matbagon, 60 Phil. 887).

With respect to abuse of superior strength, it should be noted that no eyewitness testified as to how the actual killing was perpetrated. It cannot be stated with certitude that Repuloso and his companion took advantage of their combined strength in order to subdue the victim and consummate the crime. Numerical superiority does not always mean abuse of superiority. An aggravating circumstance must be clearly proven. Due to insufficiency of evidence, abuse of superiority cannot be appreciated in this case.

The fourteen-year old trimobile driver was earning an honest living up to the late hours of the night. His modest aim was to raise money for his school expenses. His brutal killing in cold blood, just to deprive him of his meager earnings and his sweater worth thirty pesos, transfixes the soul with horror and revulsion at the atrocious character of the crime. However, we cannot impose the death penalty because we are bound by the technical rules of evidence and the rigoristic rules of the penal law. The case has to be decided according to the strength of the prosecution's evidence on the environmental circumstances of the killing. That evidence is deficient on the presence of aggravating circumstances that would justify the imposition of the death penalty.

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity should be increased to twelve thousand pesos. Costs against the appellant. So ordered.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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