

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. SANTIAGO CLEMENTER, FEDERICO CLEMENTER, ELISEO CLEMENTER, AND CARLITO CLEMENTER, ACCUSED. ELISEO CLEMENTER, ACCUSED AN...

G.R. No. L-33490. August 30, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is a murder case. The evidence for the prosecution shows that at about ten or eleven o'clock in the evening of November 23, 1969, Concordio Saraos, his wife, Dalmacia Melgar, their eight children and a nephew were resting in their house at Sitio Kiawal, Barrio Base Camp, Maramag, Bukidnon. The children were fast asleep. At that late hour, the spouses were still awake because they were talking about life's trials and tribulations.

They heard the barking of their dog. Saraos peeped through a horizontal slit in the wall of his two-story house, measuring eighteen inches long and three inches wide (Exh. B-2-D). He saw eight persons in the yard. He recognized among them the five Clementer brothers named Federico (Piding), Santiago (Tiago), Carlito, Eliseo (Esing) and Dominador (Doming). He had known them for five years. They used to be his friends. They were only at a distance of three meters from his house (Exh. 2-B). A bright moon illumined their figures. The moonlight and their close proximity to the house enabled Saraos to recognize them.

Saraos heard Federico shouting: "All of you come down, we will not harm you. Do not be afraid, this is the authority. You are under arrest. There is a warrant of arrest for you." Saraos inquired: "Who are you" (kinsa man kamo?) and Federico answered: "This is Noning". Federico, who pretended to be Noning, a policeman, urged Saraos to leave his house by assuring him: "Do not be afraid, this is Noning. This is the authority. We will not harm you." Saraos countered: "Noning, come near, let us talk as we have no fault." Irritated by Saraos' answers, Federico gave him an ultimatum: "You talk too much. Come down if you do not want to die."

When Saraos could not be persuaded to go down, Federico uttered a last ominous threat: "So, you will not come down. I'll shoot you". Suiting his action to his threat, Federico fired at the place in the house where he sensed that Saraos was stationed, judging from the direction where his voice originated. Federico was armed with a long gun similar to the homemade gun, Exhibit A.

At that juncture, Saraos' wife, Dalmacia Melgar, in obedience to an impulse, suggested to him: "Doy, I can go down to answer their questions because, since I am a woman, they will not harm me." She did not want her eight children (all below fifteen years of age) to be hurt. She thought that she could mediate and pacify the malefactors. Saraos said nothing. Thereupon, as if constrained by fate, she went down. She was immediately seized by Eliseo Clementer. Her plea for mercy was not heeded. Eliseo dragged her to the nearby dinog tree (See Exh. B-2) where Saraos' carabao was tethered, tore her blouse so that she was naked above the waist (Exh. B) and tied her hands behind her back with the rope of the carabao (Exh. B-1, B-3). Then Eliseo shot her at the back. After his wife was shot, Saraos left the place where he was peeping. Federico fired at him (Saraos), hitting him on the wrist, right

thigh and on the right hip. Saraos took the gun of his brother and fired back at Federico but missed him. Federico's companions ran away. After the malefactors had left, Saraos went down and found his half-naked wife prostrate on the ground. There was a fatal gunshot wound at her back (See photos, Exh. B, etc.). She was already dead.

The killing was reported to the municipal authorities the next day. On November 24th, the chief of police and his policemen repaired to Saraos' house. A photographer took pictures of the body of Dalmacia Melgar and the scene of the crime (Exh. B, etc.).

Doctor Consuela Mendoza-Lagahit, the municipal health officer examined the body of the thirty-seven-year old Dalmacia Melgar and found the following:

"1. The body was that of a fairly well-nourished, fairly well-developed, light complexioned, good-looking Filipino female. She was almost naked with no dress in the upper portion of the body, with the white skirt dress pushed as far as the symphysis pubis. Both hands were led together at the back at the region of the wrists. Both hands were cyanotic due to the tightness of the rope. She was barefooted.

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4. At the right side of the lower portion of the back of the body 2-1/4 centimeters from the median line to the right and 1 foot below the 7th cervical vertebral was a punctured contused, depressed, lacerated wound of entrance, measuring the 1.8 centimeters in diameter, and 11 centimeters deep, directed upwards to the left, penetrating, hitting and destroying the vertebral column at the lumbosacral region, the lower portion of the ribs of the left and right back, part of the right but most of the left lungs and heart.

There was no wound of exit. There was burning of the skin around the wound to a distance of 2 centimeters. The powdered grains of the gun were found embedded in the skin around the wound to a distance of 2 centimeters. The undersigned was able to recover one small pellet from the body.

5. Hematoma at the tip of the nose and both sides of the forehead, just above both eyebrows.

Conclusion — The cause of death was hemorrhage secondary to gunshot wound of entrance" (Exh. C)."

Doctor Lagahit clarified that the wound of entry was located at the back, below the right shoulder, near the waistline. It was caused by a gunshot. The pellet (Exh. D) was found in the hole of the wound. The victim's death was instantaneous. The burning of the skin around the wound indicated that the victim was shot at close range or at a distance of twenty-five centimeters.

The killing was provoked by a grudge which the Clementer family harbored against Saraos. On November 19, 1969, or four days before Dalmacia Melgar was shot, Andres Clementer, an elder brother of Eliseo, was killed by Washington Basadre, a nephew of Saraos (his mother is his elder sister). The Clementer brothers suspected that Saraos had concealed Manuel Basadre who is also a nephew of Saraos, being a brother of Washington, and who was involved in that killing (See Exh. 2-B and 3-B). Washington later pleaded guilty. On the night of November 23, 1969, when the Clementer brothers appeared at the yard of araos' house, Federico shouted to Saraos: "You are the one who hid the person who killed in Base Camp".

On November 26, 1969 the chief of police filed a complaint for murder against the five Clementer brothers, Rudy Menaje and John Doe. At the preliminary examination Saraos described how he and his wife were shot. Jovencio, his fifteen-year-old son, also testified regarding the shooting. Santiago, Eliseo, Federico and Carlito were arrested on that date, November 26. They waived the second stage of the preliminary investigation. On December 24, 1969 a Special Counsel filed in the Court of First Instance an information for murder against them. The case was transferred to the Circuit Criminal Court.

After trial, the lower court rendered a judgment, finding Eliseo Clementer guilty of murder, sentencing him to

reclusion perpetua and ordering him to indemnify the heirs of Dalmacia Melgar in the sum of P12,000. His brothers, Santiago, Federico and Carlito, were acquitted (Criminal Case. No. CCC-XV-98). Eliseo appealed.

In this appeal, appellant's four assignments of error may be reduced to the issue of credibility. He contends that the trial court erred in giving credence to the testimonies of Saraos and his son Jovencio and in not believing his (appellant's) alibi. His brief does not contain a complete statement of facts.

Eliseo Clementer, thirty-five years old, declared that, at the time Dalmacia Melgar was shot, he, with his brothers Carlito and Federico, was in his own house where a novena was held for his dead brother, Andres, who, as already stated, was killed on November 19, 1969 or four days before Dalmacia Melgar was shot. He prepared the refreshments. After the prayers were said, the games of verso and bordon were played up to one o'clock in the morning of the next day, November 24. On the night in question he and his two brothers never left his house. He was attending to the visitors. He admitted that he had known Saraos for sometime. He knew where Saraos' house was located. It was about two kilometers away from his own house. His alibi was corroborated by Tomas Capuno, the barrio captain, and by Eladia Gotal, who acted as prayer-leader in the novena.

Concordio Saraos the principal eyewitness, unerringly recognized and identified Eliseo Clementer, a person whom he had known for a long time, as the gunwielder who ruthlessly shot his wife near the dinog tree. That eyewitness-identification cannot be nullified by Eliseo's manufactured alibi. The trial court noted that, according to the calendar, there was a full moon on November 24, 1969 and a "round moon" on the preceding night, when Dalmacia Melgar was shot. Saraos' testimony that there was a bright moon appears to be truthful.

Inasmuch as Eliseo's house was only two kilometers away from the scene of the shooting, it was easy for him to commit the crime and thereafter return to his house. To establish an alibi, the accused should show that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*People vs. Resayaga*, L-23234, December 26, 1974, 54 SCRA 350, 354).

Appellant's counsel points to certain alleged inconsistencies in Saraos' testimony, such as his declaration that he did not know how to handle guns and yet was able to fire the homemade gun, Exhibit A or 6, and his contradictory statement as to the use of the bow and arrow. Those contradictions refer to trivial details. They do not impair his credibility as to his main testimony that he saw Eliseo Clementer grabbing his wife, tearing her blouse, tying her hands and shooting her with a short gun near the dinog tree.

Appellant Clementer regards it as unusual that, after Dalmacia Melgar was shot, Saraos continued to pretend that he did not recognize the Clementer brothers and that he did not display any visible reaction. There was nothing unnatural in Sarao's behavior. He thought that discretion was the better part of foolhardy valor. He knew that the odds were against him and that, for him to come out of his house and face his eight adversaries, would not only be senseless but would also jeopardize the safety of his eight children and his nephew.

Eliseo Clementer evinces surprise at the failure of Dalmacia Melgar to shout the name of her assailant. The explanation for that omission is that she was stunned by the suddenness of Eliseo's assault and the pitilessness of his unexpected attack. She had not given any offense to the Clementer family. Words might have been exchanged between her and Eliseo which, considering that Saraos was inside the house, were not audible to him. Saraos at least heard his wife pleading for mercy and saying: "Please do not burn our house, have pity to the children as they might be harmed." (50 tsn).

Appellant's theory is that the eight persons who appeared in the yard of Saraos' house wore masks and were concealed behind the trees. He concedes that Saraos logically concluded that among those assailants were "the Clementer family" because they were looking for Manuel Basadre who was implicated in the killing of Andres

Clementer. The appellant theorizes that, because the malefactors threatened to kill Dalmacia Melgar, Saraos fired at them. That overt act supposedly provoked the malefactors to retaliate by killing Dalmacia Melgar. The appellant then surmises that the killers were Dominador Clementer, Rudy Menaje, a police character who was wounded, and Romeo Cornelia who all disappeared soon after the shooting.

The flaw in that theory is that, since Eliseo Clementer and Dominador Clementer are brothers, Eliseo could have easily ascertained the whereabouts of Dominador and persuaded him to surrender and admit the crime which had been imputed to Eliseo so as to obviate a miscarriage of justice. The fact that Eliseo did not bother to locate Dominador and did not even testify that Dominador Clementer, Rudy Menaje and Romy Cornelia were the killers of Dalmacia Melgar, makes appellant's theory implausible. It is easy to impute a crime to fugitives from justice who have securely placed themselves beyond the reach of the law.

The information charges the Clementer brothers with murder. Evident premeditation, abuse of superiority, nocturnity and cruelty were alleged as aggravating circumstances. The circumstance that the victim was hogtied and undressed was alleged. The trial court appreciated only the qualifying circumstance of abuse of superiority. It found that Eliseo Clementer took advantage of his superior strength (it acquitted the other three Clementer brothers). It may be noted that he was emboldened to assault the victim with impunity because of the presence of his seven companions.

Since the thirty-five-year old Eliseo Clementer was armed and Dalmacia Melgar was unarmed and she guilelessly approached the group of eight persons, without the least inkling that any harm would befall her, abuse of superiority was employed in liquidating her. (Art. 14[15], Revised Penal Code; U.S. vs. Consuelo, 13 Phil. 612; People vs. Quesada, 62 Phil. 446). She was not able to offer any resistance. In a sense, there was treachery because she was first reduced to helplessness before she was shot (U.S. vs. Elicanal, 35 Phil. 209, 218; U.S. vs. Canete, 44 Phil. 478, 480). There was also disregard of sex because her blouse was needlessly removed, a circumstance that is absorbed in treachery (People vs. Mangsang, 65 Phil. 548; People vs. Limaco, 88 Phil. 35). Treachery and nocturnity are absorbed in abuse of superiority. As found by the trial court, evident premeditation and cruelty were not proven.

There being no generic mitigating and aggravating circumstances, the penalty for murder, which is reclusion temporal maximum to death, was properly imposed in its medium period, which is reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code).

The trial court's judgment is affirmed with the modification that appellant Eliseo Clementer is entitled to full credit for his preventive imprisonment if the conditions indicated in article 29 of the Revised Penal Code as amended by Republic Act No. 6127 are satisfied (66 O.G. 7796). The trial court, overlooking the amendatory law, erroneously gave him credit for only one-half of his preventive imprisonment. Costs against the appellant.

SO ORDERED.

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

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