

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.
TIMOTEO CRUZ ALIAS CAPT. TOMMY, FELIPE DE LA CRUZ ALIAS
PHILIP, JOHN DOE AND RICHARD DOE, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-15369. April 26, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Manila convicting appellants Timoteo Cruz, alias Capt. Tommy, and Felipe de la Cruz, alias Philip, of the crime of murder with which they—together with two (2) unidentified persons, "John Doe and "Richard Doe", who have not been apprehended—are charged, and sentencing each to life imprisonment, to jointly and severally indemnify the heirs of Manuel Valencia in the sum of P6,000 and to pay one-fourth (1/4) of the costs.

While Manuel Valencia was before a fruit stand on the southern side of Azcarraga Street, between Ilaya and Tabora Streets, in Tondo, Manila, on August 9, 1955, at about 4:00 a.m., haggling with a vendor of "lanzones" about the price thereof, he must have felt that someone was behind him, for he turned his head left-ward to look around, and, as he did so, someone shot him at close range and inflicted upon him a gunshot wound under the left eye, thereby fracturing his maxilla and skull, with the consequent shock and cerebral concussion that resulted in his death soon thereafter. The issue is limited to the identity of the killer and his associates, if any.

It appears that Valencia was, at the time of the occurrence, accompanied by Eliseo Cruz, who then stood on the former's left hand side. As the shot rang and Valencia began to fall down, Eliseo noticed a man—then unknown to him and whom he later identified as appellant Felipe de la Cruz—several feet behind Valencia, with a drawn .45 caliber pistol. Thereupon, there was a second shot coming from another place. The bullet lodged on the front side of the fruit stand. Meanwhile, Felipe had aimed his pistol at Eliseo and, taking a step backward, pressed the trigger, but the firearm got jammed. As Eliseo bent over his fallen companion and tried to get a pistol tucked in his (Valencia's) waist, a man ran in front of him (Eliseo), whereupon Eliseo looked up and saw appellant Timoteo Cruz, with a drawn gun, standing in the railroad track at the middle of Azcarraga Street, several meters away. Realizing that several gunmen might be after him and Valencia, Eliseo ran away towards Tabora Street, until he was stopped by several policemen, including Patrolman Alfonso, whom he informed of the attack upon Valencia. The peace officers and Eliseo then went to the place where Valencia lay down, face upward, hovering between life and death. Patrolman Alfonso brought Valencia to the North General Hospital where he was pronounced dead on arrival.

In addition to the testimony of Eliseo Cruz, the prosecution introduced, also, that of Sgt. Rafael Redolfín of the Philippine Army, Federico Zamora and Bonifacio Leyva, among others.

Sgt. Redolfín declared that while waiting at the intersection of Azcarraga and Tabora Streets, on August 9, 1955, at about 4:00 a.m., for a bus bound for Tagaytay City, where his army unit was stationed, he saw a man whom he

later identified as appellant Felipe de la Cruz walking towards him, with hands inside his (Felipe's) pockets; that, several minutes later, he heard the report of a gun coming from the place to which Felipe had gone; and that, looking towards said place, he saw a man falling down, referring evidently to Manuel Valencia.

Similarly, Zamora stated that he was the conductor of a Halili bus parked, at the time of the occurrence, on the southern side of Azcarraga Street, between Ilaya and Juan Luna Streets; that upon hearing the report of a gun, he looked out thru the window of the bus and saw a car similar to that shown in the picture Exhibit A—which, admittedly, is that used then by appellant Timoteo Cruz—coming from Ilaya Street and going towards Azcarraga Street; that he (Zamora), likewise, saw two (2) men coming from the scene of the crime and running after said car, which they eventually boarded; that when the car passed alongside the bus, he (Zamora) heard one of said men—obviously appellant Felipe de la Cruz—remark that his gun had jammed; and that, thereupon, the car sped away.

Bonifacio Leyva, the driver of said Halili bus, corroborated Zamora's aforementioned testimony, as regards the presence of the bus at the place adverted to above, as well as the fact that said car passed alongside the bus, coming from Ilaya Street and heading towards Rizal Avenue.

As regards appellant Timoteo Cruz, his presence at the scene of the crime and his participation in the commission thereof were established by the testimony of Eliseo Cruz, and that of: (a) Sgt. Guillermo Abad of the Manila Police Department, who saw him pacing restlessly the railroad track above mentioned, before the body of Valencia was taken to the hospital; (b) Patrolman Jacinto Soliman, who stopped the car used by Timoteo Cruz and driven by Benjamin Cuchon, as it passed by Bambang Street, Manila, without any light, on August 9, 1955, at about 3:50 a.m.; (c) Federico Zamora, the conductor of the Halili bus above mentioned, who noticed said car on Azcarraga Street, coming from Ilaya Street, followed by two (2) men who ran after and then boarded it; and (d) Bonifacio Leyva, who noticed said car, as it passed alongside said bus, which was driven by him.

Appellant Felipe de la Cruz set up an alibi. He tried to prove that, through the assistance of Exequiel Segovia and Rosa Rosal, he succeeded in getting, on August 7, 1955, some blood needed for a surgical operation which his step father was to undergo; that in the afternoon of August 8, 1955, his mother told him that more blood was needed for said operation; that after informing an aunt (Imelda de Guzman) of the impending operation of his step father, as soon as sufficient blood shall have been secured, Felipe returned to his house at Kalimbas Street, Manila; that after taking his dinner, he went to bed, at about 9:00 p.m.; that the next morning, at about 6:00 a.m., his wife Purita Conor woke him up; and that he then took his breakfast, after which he proceeded to look for the additional blood needed by his step father, and which he (Felipe) got later that morning.

The defense introduced the testimony of Purita Conor and Candelaria Reyes—who claimed to stay in the house of appellant Felipe de la Cruz, although she worked as housemaid of another person—to corroborate Felipe's testimony concerning his presence in said house from 9:00 p.m. of August 8, 1955, to 6:00 o'clock of the next morning. Exequiel Segovia, his wife (Lourdes A. Segovia) and Rosa Rosal were, likewise, presented by the defense to confirm the testimony of said appellant relative to their participation in obtaining blood for his step father.

It is obvious, however, that the testimony of Felipe de la Cruz, his wife and Candelaria Reyes as to his whereabouts at the time of the occurrence cannot prevail over that of Eliseo Cruz and Sgt. Rafael Redolfin, who stated positively that he was then at the scene of the crime. It should be noted that these witnesses for the prosecution did not know him prior thereto, and, had, therefore, no possible motive to falsely impute to him so grave a crime as that charged in this case. There can be no doubt, therefore, as to the guilt of appellant Felipe de la Cruz.

Appellant Timoteo Cruz maintains that on August 9, 1955, from 12:30 to 7:00 a.m., he, as alleged superintendent of the Golden Taxicab Company, was busy inspecting different parking places of units thereof, in a car driven by Benjamin Guchon, with Urbano Tigie in the back seat. More specifically, he would have us believe that from the house of Cuchon, they headed for Aurora Boulevard. After passing by Pasadena Night Club, they proceeded to Rizal Avenue and then went to the Ambassador's Club, where a party of the Manila Taxicab Association was allegedly held. Thence, they repaired to the Bayside Club at Dewey Boulevard. Their next stop was the Sta. Ana Club, from whence they went to the "Bayside" and the "Kapit Bahay", at Dewey Boulevard. Still later, they proceeded to the Trocadero Night Club in Sta. Cruz. Then they dropped again at the Pasadena Night Club, passing by Rizal Avenue. As they cruised later along Bambang Street, they were stopped by Patrolman Jacinto Soliman. After a while, they headed for the North Harbor, via Tayuman, Dagupan and Moriones Streets. Then they cruised on Del Pan Street and then Azcarraga Street. Upon reaching its intersection with Tabora Street, they noticed a group of persons at the scene of the occurrence. Having been informed of the attack upon Valencia and the fact that he had been brought to the North General Hospital, they proceeded thereto, but were told therein that Valencia was dead already. After going, subsequently, to other parts of Manila, he returned home at about 7:00 a.m.

It is apparent to us that the aforesaid testimony of Timoteo Cruz is insufficient to offset that of Eliseo Cruz, who saw him at the scene of the occurrence immediately after Valencia was shot by Felipe de la Cruz and after a second shot had rang. It should be noted, that judging from the trajectory of the bullet found imbedded on the fruit stand in front of which Valencia stood before he fell mortally wounded, the aforementioned second shot must have been fired from the very place—in the railroad track at the middle of Azcarraga Street—in which Timoteo Cruz was then seen standing with a drawn gun. Again, the theory of the prosecution appears to be corroborated by the testimony of Bonifacio Leyva and Federico Zamora, who saw the car of Timoteo Cruz pass by said place immediately after the shooting. Indeed, the very evidence for the defense shows that Timoteo Cruz was in the vicinity of Azcarraga and Tabora Streets when the crime charged was committed.

There is ample evidence in the record of persistent attempts—by officers of the police department of Manila, acting on behalf or for the benefit of appellant Timoteo Cruz—to suppress, or tamper with, important evidence for the prosecution, or to influence—even to intimidate—some of its main witnesses. Needless to say, these attempts, condemnable as they are, in general, become more reprehensible coming as they did from members of the very agency charged specially with the duty to maintain peace and order and to assist in the administration of justice. Even if made in the earnest belief that said defendant is innocent of the crime charged, they tend to impair the faith of the people in the law enforcing organs of the government.

It has, also, been intimated that Eliseo Cruz may have been the killer of Valencia, which is manifestly improbable, not to say impossible, for the latter had a pistol tucked in his waist, whereas the former was unarmed. We are, moreover satisfied that the participation of appellants in the commission of the crime charged has been established beyond reasonable doubt and that the lower court did not err in holding that the offense committed is murder, qualified by treachery, it appearing that Manuel Valencia was fired upon from behind, without any warning, thus insuring the execution of the crime without any risk arising from the defense which he might make.

Although there is no direct proof of conspiracy between the appellants, the simultaneous presence of both at the scene of the crime, the shot fired by appellant Timoteo Cruz immediately after Valencia had been shot by Felipe de la Cruz, and the circumstance that, forthwith thereafter, the latter boarded the former's car, which was there ready for the get away, leave no room for doubt as to the existence of unity of action and purpose between them.

Inasmuch as Felipe de la Cruz is a recidivist, he having been previously convicted of attempted robbery with homicide, the proper penalty for him should be the extreme penalty, which cannot be imposed, however, for lack

of the number of votes necessary therefor.

Wherefore the decision appealed from is hereby affirmed, with costs against appellants Felipe de la Cruz and Timoteo Cruz. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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