

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR ABUDA Y INCESO, DEFENDANT-APPELLANT.

G.R. No. L-30009. February 27, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This case is before the Court for automatic review of a decision of the Circuit Criminal Court, Sixth Judicial District, convicting defendant Victor Abuda y Inceso of the crime of murder, and sentencing him to the extreme penalty and to indemnify the heirs of the deceased Rodolfo Bermejo in the sum of P12,000, as well as to pay the costs.

It is not disputed that as Rodolfo Bermejo was leaving the Summer Place Restaurant at Magsaysay Boulevard, Sampaloc, Manila, on April 7, 1968, at about 4:00 a.m., several men ran after him from said restaurant and stabbed him on different parts of the body, particularly on the back, thereby inflicting upon him several injuries, two (2) of which caused his death soon after. On May 8, 1968, an information was filed with the Court of First Instance of Manila, charging Victor Abuda y Inceso with murder, as one of the killers of Bermejo. It is alleged in said information:

"That on or about April 7, 1968, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name and identity are still unknown, and helping each other, with treachery and with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one Rodolfo Bermejo by then and there stab-bing him several times with a sharp bladed ins-trument on different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death moments thereafter."

After arraignment, an ex-parte urgent motion for postpone-ment of the trial was filed, on July 6, 1968, in the name of the Citizens' Legal Assistance Committee, as counsel for the accused, by Gonzalo W. Gonzalez and Associates. The motion, signed by Atty. Mario A. Aguinaldo, was granted on July 8, 1968, and the case reset for trial on August 13, 1968. On motion of Atty. Aguinaldo, the trial was, on the date last mentioned, postponed, once more, to September 17, 1968. Thereafter, the case appears to have been transferred to the Circuit Criminal Court of the Sixth Judicial Dis-tribt. On November 28, 1968, the latter court caused the case to be set for trial on December 5, 1968. The corresponding notice of hearing was served upon Gonzalo W. Gonzalez & Associates on December 3, 1968. When the case was called for hearing in the morning of December 5, 1968, neither Atty. Aguinaldo nor any other attorney appeared as counsel for the accused. The Circuit Criminal Court, accordingly, required Atty. Aguinaldo to show cause why he should not be dealt with for contempt of court. It, moreover, designated, as counsel de oficio for the accused, Atty. Lupino Lazaro, who forthwith conferred with his client. After a while, the trial took place.

The prosecution introduced the testimony of: 1) Camilo Casaclang, the physician, in the Medico-Legal Division of the Manila Police Department, who examined the body of Bermejo; 2) Uy Siong, kitchen manager of the aforementioned restaurant, who identified the defendant herein as one of those who had stabbed Rodolfo

Bermejo; and 3) Patrolman Ramon A. Padre, of said Police Department, who investigated the occurrence and apprehended defendant herein, in Caloocan City, on May 7, 1968, or one month after the occurrence. The only evidence for the accused was his own testimony to the effect that he was at No. 50-D Oxford Street, Cubao, Quezon City, cooking corn, at the time of the occurrence. After the presentation of such testimony, defendant's counsel de oficio stated that he had another witness, namely, one Urbano Parana, and that since the latter was not present in court and his testimony would be corroborative in nature, he (counsel) was constrained to dispense with such evidence and, accordingly, rested his case. Thereupon, the decision appealed from was rendered in open court.

The next day, December 6, 1968, Atty. Aguinaldo filed a motion to set aside said decision and for a new trial, upon the ground that, although notice of the hearing scheduled for December 5, 1968 had been served upon his office on December 3, he did not receive it until December 6, the notice having been placed on the table of another attorney, who did not see it because he was then in Mindoro; that on December 5, Atty. Aguinaldo was in Pasig, Rizal attending another hearing which had been scheduled before the case at bar; that none of his associates in the law office could attend the trial of defendant herein, because they had hearings scheduled on the same date; and that the accused had several witnesses to corroborate the alibi set up by him, namely, Urbano Parana, Elpidio Gachol and Alejandro Inceso, whose respective addresses were given in the motion, which was denied. Moreover, Atty. Aguinaldo was found guilty of contempt and fined P150, apart from being given a warning. Thereupon, the records of the case were forwarded to this Court for automatic review, in view of the penalty meted out to the accused.

Considering that defendant herein is charged with a capital offense; that the notice setting this case for trial on December 5, 1968 was not seasonably received by his counsel of record, Atty. Mario A. Aguinaldo; and that the accused was assisted in said trial by a counsel de oficio, who, having been designated as such, on the same date, shortly before the trial, had very limited time to prepare therefor, the Court feels that, in the interest of justice, it would be best to remand this case to the lower court for the reception of such additional evidence as the parties may have, and the rendition of another decision based upon such evidence and those introduced on December 5, 1968, which need not be retaken.

WHEREFORE, the decision appealed from is hereby set aside and the case remanded to the lower court for further proceedings, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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