

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIOSDADO DE ATRAS ALIAS “DADING”;
DEFENDANT-APPELLANT.**

G.R. No. L-32423. October 29, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal by accused Diosdado de Atras from the decision of the Court of First Instance of Occidental Mindoro in Criminal Case No. R-837, convicting him of the crime of Murder.

Hermogenes Cruz, minister of the Iglesia ni Kristo (INK) in San Jose, Occidental Mindoro, and concurrently provincial treasurer of the INK was shot while sleeping in his house located inside the INK compound in San Jose, Occidental Mindoro, at about 1:30 A.M. on December 20, 1963. Members of the INK residing in the compound were awakened by a woman shouting "Ka Collantes, Ka Collantes, my husband is dead." The shout came from the house of Hermogenes. The wounded minister was rushed to the St. Francis Hospital where he died at about six o'clock in the morning of the same date. His body was then returned to the office of the INK where it was autopsied by the Municipal Health Officer, Dr. Ricardo Pascasio, Jr. The autopsy report, Exhibit "D", states:

"1.

The body was that of a well-built, slightly obese individual, measuring 70 inches from heel to head, in beginning state of cadaveric rigidity;

2.

A small circular gunshot wound was noticed at the right chest, 7-1/2 cm. below and medial to the right nipple 5 cm. from the median line with blackish discoloration surrounding the area of the wound and a tapering abrasion on top of said wound measuring 1 cm. in length. Point of entrance is 0.5 cm.

3.

In opening the abdomen, it was filled with blood measuring approximately 1,500 cc.

4.

Course of the bullet wound was noted as follows:

From the chest it was directed from above-downwards going inward, passing thru the soft parts of the chest, penetrating the costochondral of the tenth rib anteriorly, thru the diaphragm, right side, puncturing the upper border of the liver, resulting into the rupture of the inferior surface of the liver, duodenal portion of the stomach, penetrating the omentum and finally lodging in the anterior portion of the second lumbar vertebra where a Cal. 38 slug was found and removed.

In my opinion, the cause of death was due to severe internal hemorrhage due to rupture of the vital organ, the liver."

The Philippine Constabulary conducted an investigation of the shooting between 4:00 to 5:00 o'clock that same morning, but the result was negative. No one could tell who the assailants were or name any suspect inspite of assurances of protection given by the Provincial Commander and the presence of PC soldiers.

It was only on February 21, 1964, after a lapse of two months when Sgt. Luis. C. Sumajit, a Chief Investigator of the Philippine Constabulary, filed with the Municipal Court of San Jose, Occidental Mindoro, a complaint for murder against Rodolfo Bernardo, Jaime Asuncion and other persons unknown for the death of Hermogenes. (Exh. "7".) After a preliminary investigation had been conducted by Judge Leandro P. Reyes, he issued a warrant of arrest on March 5, 1964, for the arrest of Rodolfo Bernardo only. The warrant of arrest was not served for seven months and Judge Reyes had to call the attention of the Philippine Constabulary to such fact. (Exh. "8-D".)

On May 17, 1966, more than two years after the filing of the original complaint, Rodolfo Bernardo had not yet been arrested but Capt. Salvador L. Señeres of the Philippine Constabulary filed an amended complaint so as to include among the accused Diosdado de Atras alias "Dading", Pat. Aroste Callanga alias "Oste", Pat. Macario Gorospe alias "Mac", Pat. Faustino Valeroso alias "Tino", Jose Encarnacion alias "Peping", John Doe, Richard Doe, Alan Doe, and Peter Doe. (Exh. "8-G".) It is to be noted that Jaime Asuncion was not included in the amended complaint. After a preliminary examination, those newly accused were arrested but they waived their right of preliminary investigation.

The information for murder filed on June 1, 1966, against DIOSDADO DE ATRAS alias "DADING", PAT. AROSTE CALLANGA alias "OSTE", PAT. MACARIO GOROSPE alias "MAC", PAT. FAUSTINO VALEROSO alias "TINO", JOSE ENCARNACION alias "PEPING", RODOLFO BERNARDO, JOHN DOE, RICHARD DOE, ALAN DOE, and PETER DOE, reads:

"That on or about the 20th day of December, 1963, at about 1:00 o'clock A.M. (night time) in San Jose, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named defendants who are armed with deadly weapons, to wit: guns and/or firearms, conspiring, confederating together and helping one another by means of treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attacked and shot with a 38-caliber Revolver, HERMOGENES CRUZ, thereby inflicting upon him a gunshot wound at the right chest 7-1/2 centimeters below and medial to the right nipple, 5 centimeters below the median line with blackish discoloration surrounding the area of the wound and a point of entrance of five (5) centimeters, which injuries caused the instantaneous death of said HERMOGENES CRUZ.

CONTRARY TO LAW with the qualifying circumstance of treachery and the aggravating circumstance of:

- (1) That the crime was committed at night time which was purposely sought in the commission thereof;
- (2) That the accused took advantage of their superior strength; and
- (3) That the accused committed the crime inside the dwelling of the victim without the latter having given provocation thereof."

On September 12, 1966, while trial of the case was in progress the prosecution filed a motion to discharge Rodolfo Bernardo for the purpose of utilizing him as a government witness. Upon denial of the motion, the prosecution appealed to Us by certiorari but the appeal was denied in G.R. No. L-27267, May 29, 1969. Thereafter, counsel for Bernardo filed a motion for the separate trial which was granted. However, upon motion of the prosecution the case against Bernardo was dismissed on the ground that there was no evidence to link him to the crime.

In a decision, dated June 16, 1970, all the named defendants, with the exception of Diosdado de Atras, were

acquitted.

Aroste Callanga and Jose Encarnacion were acquitted on the defense of alibi. According to the trial court, they "adduced a positive, clear and convincing evidence of alibi, supported as it were, with documentary proofs, and corroborated by disinterested and unbiased and natural witnesses, with no relation whatsoever with the said two accused."

Faustino Valeroso was acquitted because his identity was not "established beyond reasonable doubt by the lone prosecution witness Salvador Tumbagahan, and in the absence of conspiracy, he could not be made answerable for the act committed by his co-accused."

Macario Grospe was acquitted because, according to the trial court "without proof of conspiracy, mere passive presence at the scene of another's crime does not constitute complicity (People vs. Silvestre, 56 Phil. 353; People vs. Samano, et al., 43 O.G. 2043)."

As to Diosdado de Atras, the trial court said: "With respect to accused Diosdado de Atras, the prosecution evidence proved satisfactorily and beyond the cavil of doubt that he was the trigger man, with his identity also established beyond question. The court believes and so holds that the guilt of the accused Diosdado de Atras has been established beyond reasonable doubt. Wherefore, Diosdado de Atras is hereby convicted for the crime of murder in the killing of Hermogenes Cruz."

Hence, this appeal by Diosdado de Atras only.

The principal witnesses for the prosecution were Dr. Ricardo Pascasio, Jr., 35 years old, married, physician employed as Municipal Health Officer of San Jose, Occidental Mindoro; Luciano Omos, 38 years old, married, janitor-guard at the INK Compound; Antonio Collantes, 52 years old, married, Provincial Minister of the INK at the time of the incident; Salvador Tumbagahan, 36 years old, married, fisherman; and Guillerma Ortiz Vda. de Cruz, 41 years old, widow of the deceased, residing at time of trial at Tikiw, San Antonio, Nueva Ecija.

Dr. Ricardo Pascasio, Jr. testified on his autopsy report. He also made a sketch of what he thought could have been the relative position of the victim and the assailant as indicated in Exh. "C" which shows the assailant standing over a half-rising victim.

Luciano Omos, one of the alleged eyewitnesses to the shooting of the deceased testified that in the evening of December 19, 1963, he was inside the INK compound as one of the ten guards for the night. His shift was from 10:00 o'clock in the evening to 2:00 o'clock in the morning. The members of his shift were Salvador Tumbagahan and Pastor Jordan. Luciano narrated that at about 1:00 o'clock in the morning of December 20, 1963, he was posted between the house of Hermogenes Cruz and a "calumpang" tree when he heard a voice say, "Do not move," coming from inside the house of Hermogenes. He immediately ran to the balcony and peeped through the door which was made of bamboo and nipa thatches, and somewhat already dilapidated. By the light of a bright gas lamp, he saw three persons standing by the kitchen door, each with a hand gun. One of them lifted the mosquito net where Hermogenes was sleeping with his family. He then shot Hermogenes with a "de bola" (revolver) while the latter was trying to stand up. As the faces of the three persons were uncovered he recognized all of them. He recognized the gun wielder as Diosdado de Atras and the other two persons as Aroste Callanga and Macario Grospe which he pointed in open court. The person pointed as Macario Grospe, however, gave his name as Cesario Grospe.

Luciano also said that when Hermogenes was hit, he fell to the floor on his back. Diosdado de Atras then approached him trying to make him lie on his belly. At that moment, Mrs. Cruz stood up to cradle her husband on her lap but as she did so she was kicked by Aroste Callanga. Mrs. Cruz then shouted, "Ka Collantes, Ka Collantes,

my husband is dead." This prompted the three men to leave immediately. He then called up the religionist area and when his brothers in the faith started arriving he went with them inside the house to help Mrs. Cruz bring her husband to the St. Francis Hospital.

Luciano further testified that he had known Aroste Callanga, Diosdado de Atras and Macario Grospe for more or less five years. When he was queried why he did not seek help when he saw the three armed men, Luciano answered that all of the security guards inside the compound were not armed and had no weapons. Furthermore, he added, the three persons were men of then Mayor Tirso Abeleda of San Jose, Occidental Mindoro.

Luciano did not tell anyone, not even the PC investigators, that he had witnessed the killing of Hermogenes for fear of reprisal. He revealed what he knew in 1965 because at that time the death of Hermogenes was made a political issue. Moreover, he was bothered by his conscience. He revealed what he saw to a brother in the faith, Fidencio Rea, who accompanied him to their provincial minister but who advised them to keep quiet in the meantime because the INK was not on friendly terms with the local administration which they did not support in the 1963 elections.

Antonio Collantes, the provincial minister of the INK in Occidental Mindoro at the time of the incident testified that in the local elections of 1963 the INK voted for the Nacionalista Party - Mr. Medalla for Governor and Johnny Santos for Mayor against Gov. Villarosa and Mayor Tirso Abeleda, respectively.

Collantes added that at about 1:30 A.M. of December 20, 1963, he was sleeping in the tower of the chapel in the INK compound in San Jose, Occidental Mindoro, when he heard a gunshot and then the shout, "Ka Collantes, Ka Collantes, my husband is killed." He peeped from his window and he saw about five persons going out of the compound through the fence about one meter away from the house of Hermogenes Cruz. He wanted to go out of the chapel but was prevented by his wife. Later he asked Mrs. Cruz if she recognized the killers but the latter answered that she would give their names only in Manila.

Testifying further, Collantes said that the Philippine Constabulary conducted an investigation on the death of Hermogenes early in the morning so he did not look into the matter anymore. Besides, he feared for his own personal safety. He did not give the names of the guards to the investigators because they did not ask for them.

Mrs. Guillerma Ortiz Vda. de Cruz testified that on December 20, 1963, between 1:00 o'clock and 2:00 o'clock in the morning, she was at home inside the INK compound in San Jose, Occidental Mindoro, sleeping beside her husband and their three children when she felt her husband wake up. She saw a man lift their mosquito net and who then shot her husband. He fell on his back. Then the person who shot him untied their mosquito net and told him to lie on his belly, with his face downward. She tried to get up in order to help him but was kicked by one of the two companions of the person who shot her husband. The two companions were standing by the kitchen door both armed with guns. When she shouted, "Ka Collantes, Ka Collantes, my husband is dead," the three persons immediately left the house. Her husband was then brought to the St. Francis Hospital where he died.

Mrs. Cruz also said that she recognized the person who shot her husband as well as his companions although she did not know their names at that time because there was a gas lamp in the house and by its light she saw them very well.

She identified in court the gun wielder as Diosdado de Atras, the person who kicked her as Aroste Callanga and their other companion as Max Grospe. She came to know their names only when she returned to San Jose on May 13, 1966, to get the things they left in 1963. She saw Aroste Callanga at the pier where she disembarked. The following morning she went to market and saw Diosdado de Atras. Later she saw Max Grospe. On May 15, 1966, she reported her discovery to the Philippine Constabulary and her statement was taken by Capt. Señeres.

She gave the motive for the killing of her husband as politics since the INK did not help the Liberal Party in the local elections of 1963. They voted Nacionalista. Her husband was the one who distributed copies of the circular containing the names of candidates whom the members of INK voted for in the elections of 1963. In that circular (Exh. "F") the INK supported J. Santos for Mayor as against his rival, Tirso Abeleda of the Liberal Party. The accused were always with the mayor during the aforesaid election period.

She often saw Diosdado de Atras whose house is just across the INK compound. She saw him whenever she passed his house but she did not know his name. She saw Aroste Callanga occasionally. He lived in Caminawit. She also used to see Max Grospe in the Post Office whenever she mailed letters. She admitted having executed an affidavit (Exh. I, prosecution; 2, defense) on December 20, 1963, when she was questioned by the Philippine Constabulary.

She described the man who shot her husband as more or less 5 feet tall, not so fat, not so thin; the one who kicked her as more than five feet tall and slender; and their other companion as of ordinary height, not so fat but healthy. All were in black clothing.

Salvador Tumbagahan testified on the presence of Faustino Valeroso and Jose Encarnacion inside the INK compound on the night Hermogenes Cruz was killed. He saw two persons poke their guns at the back of Pastor Jordan whose hands were raised. When the spot-light outside the chapel was switched on the two armed men turned their faces towards the light and that was how he was able to recognize them as Peping (Jose) Encarnacion and Faustino Valeroso. He, however, revealed the information to Capt. Señeres only in October, 1965.

Since only Diosdado de Atras was convicted, we shall limit our attention to his defense.

Diosdado de Atras testified that he was employed as driver-examiner at the local office of the Land Transportation Commission, located in the municipal building of San Jose. In the evening of December 19, 1963, he was at home. He left his office at 5:00 o'clock in the afternoon and proceeded to the Divine Word College where he was an A. B. student, to attend his class in Sociology. From school he went home directly to No. 82 Dunkel St. about 600 meters from the INK compound. He never left the house that evening of December 19, 1963. He had never been inside the INK compound. He was familiar with the face of Mrs. Cruz as she was often a passenger in the two passenger jeeps (Nenita I and Nenita II) that he was then operating. He used to drive one of the jeeps but stopped driving in 1962, when he was employed by the local office of the Land Transportation Commission. That gave him time to drive only on Saturdays and Sundays. He denied entering the house of Hermogenes Cruz with Aroste Callanga and Cesario Grospe in the early morning of December 20, 1963. He denied shooting Hermogenes Cruz. According to him the only possible reason why he was included in the instant criminal case by the INK was that in January, 1965, he filed a criminal complaint for Serious Physical Injuries thru Reckless Imprudence, against Nemesio Lumogda who was the driver of a jeep owned by Alipio Agorilla, a member of the INK. The victim of that serious physical injury case was his mother. It was amicably settled when Alipio Agorilla paid P900.00. He said he belonged to the Roman Catholic faith.

In rejecting appellant's defense of alibi, the trial court said:

"But with respect to accused Diosdado de Atras, the gun wielder and triggerman, the court believes that the evidence is clear that his identity has been convincingly established. As the triggerman, more attention must have been focused on his person by prosecution witnesses (Omos and Mrs. Cruz), which discard the possibility of error as to his identity. There being no doubt that he was the gun wielder and the triggerman, he alone should be made responsible for the death of Hermogenes Cruz, in the absence of conspiracy. The court believes that his guilt therefore has been established beyond reasonable doubt."

Appellant questions the credibility of the prosecution's witnesses and the Solicitor General agrees so that both

appellant and appellee pray for the reversal of the judgment of conviction.

We have carefully examined and analyzed the record and we agree with the Solicitor General who says:

"The conviction of appellant by the lower court is based entirely on the testimonies of Luciano Omos and of Mrs. Guillerma Cruz, both of whom at the trial pointed to appellant as the trigger man who was in the company of Arroste Callanga and Macario Grospe (t.s.n., pp. 72-73; 388-390), the last two being acquitted.

In her sworn statement (Exhibit 2) made not many hours after the incident, Guillerma Ortiz vda. de Cruz, widow of the deceased victim, said, "Hindi ko po kilala ang bumaril na lalaki at hindi ko rin alam kung bakit siya binaril" (I do not know, sir, the man who shot him nor why he was shot). She added, "Hindi ko gasinong binigyan ng mabuting pagkilala ang mga mukha nila sapagkat ang aking pong napagukulan ng pansin ay ang asawa kong naghihirap bagaman sila ay walang piring" (I did not pay much attention to their faces because my attention was directed toward my suffering husband, although they were not masked). She ended her sworn statement with a declaration:

Iyon lang po ang talagang naganap maliban sa nais ko sanang kilalanin ang tatlong lalaking ito ngunit tuwing iaangat ko ang ulo ko upang kilalanin nga sila subalit ako'y inutusan na ibaba ang aking ulo at iyon naman nga ang ginawa sapagkat takot ako na baka barilin ako kung kaya hindi ko sila napagkilala, datapwat kung sakaling makita sila ay maaring masabi na sila nga ang pumasok sa aming bahay at binaril ang aking asawa.

(That is all, sir, that happened but I would like to add that I wanted to recognize these three persons but everytime I would raise my head in order to recognize them they would order me to lower my head and that is what I did because I was afraid they might shoot me and that is why I did not get to recognize them, however should I see them again I may be able to say that they were indeed the ones who entered our house and shot my husband.)

The concluding part of Mrs. Guillerma Cruz' statement implies that she had never before seen the faces of the men who entered her house on the night of December 20, 1963, but that if she should see them again she might be able to recognize them.

Yet, on the witness stand, Mrs. Guillerma Cruz stated on direct examination that when her husband was shot she recognized the face of the person who fired the shot and of his companions although she did not then know their names (t.s.n., pp. 388-389). She even admitted on cross examination that she had seen appellant many times before the election of 1963 and at least three times said that she knew his face but not his name (t.s.n. pp. 413-415; 724-726; 729-730).

In the light of her admission that even before the killing of her husband she had already seen the face of appellant but did not know his name, it is obvious that had she really seen appellant shoot her husband she would have disclosed the fact in Exhibit 2 that she had seen his face before, instead of saying simply that she did not know or recognize who shot her husband, adding that she did not pay much attention to the faces of the men who entered the house because her attention was on her suffering husband and, moreover, she was ordered to lower her head every time she would raise it in order to recognize the men. More revealing of the truth, asked whether she had been seeing the faces of the men in and around San Jose, she replied that she could not say so because she had not been long in San Jose and especially since she was not in the habit of going around and so did not know anybody in town (Exhibit 2). This is miles away from her testimony in court that she recognized the face but did not know the name of appellant. Her explanation that she made a mistake in her sworn statement cannot explain away the inconsistency.

For his part, Luciano Omos who, claimed to be an eyewitness to the crime charged against appellant, incredibly held his peace from the time of the commission of the crime on December 20, 1963 to June 14, 1966 when he testified in court. This in spite of the fact that he claimed to have been standing guard in the Iglesia ni Cristo

compound on the night of December 20, 1963 (t.s.n., p. 67), and therefore would naturally have disclosed, if not to the PC investigators, at least to the widowed Mrs. Guillerma Cruz the identity of the killer, whom he had known for at least five years before and had seen very often (t.s.n., pp. 83-84). His facile explanation that he told no one, neither the PC investigators nor Mrs. Guillerma Cruz, because he was afraid rings false than vows made in wine.

Applicable here, *mutatis mutandis*, is this court's observation in *People vs. Alto*, L-18660 and L-18661, November 29, 1968. 'The long continued silence of Salvador - for a duration of almost five years - before he suddenly volunteered to testify for the prosecution, engenders serious doubts as to his motive and renders his testimony suspect.'

Only to be brief, other matters already taken up in appellant's brief are not repeated here. But the foregoing are the principal reasons which prevent appellee from being persuaded that the identity of appellant as the killer has been shown beyond reasonable doubt. There ought to be grounds more relative than appear in the record before appellant may be deprived of his liberty for the rest of his natural life."

WHEREFORE, the judgment of the lower court convicting the appellant is hereby reversed. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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