

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILOMENO NOVELOSO, ALIAS AMIN, DEFENDANT-APPELLANT.***G.R. No. L-30251. February 14, 1980*

Ponente: AQUINO, J.

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This is a murder case. At around three o'clock in the early morning of March 2, 1967 the spouses Monica Valdez, 41, and Lucia Bumatay, 29, with their two small children, were asleep in their humble habitation in Barrio Tallaoen, Luna, La Union. Their abode was a hut three meters long and three meters wide, with cogon roof and bamboo walls and floor, about four feet above the ground, and with a four-step bamboo ladder and door made of nipa shingles.

They were aroused from their sleep by the tapping and knocking on the walls and door of the hut. Valdez sat on the mat, holding the three month-old baby named Elma while Lucia held the other child, Ofelia. Suddenly, the door was forcibly opened and a man, naked down to the waist, whom Lucia identified as Filomeno Noveloso (Amin), barged in. Noveloso, 39, a police corporal, residing about two hundred meters away from Monico's hut in the same barrio, was well-known to Lucia.

Without any preliminaries, Noveloso with his .45 cali-ber pistol shot Valdez who was seated on the mat with the baby in his arms. Valdez slumped on the floor, still holding the baby. Noveloso left the house, closing the door behind him. Lucia, who was also seated on the mat facing her husband, witnessed the shooting. A kerosene lamp lighted the place.

Lucia lighted another kerosene lamp in order to find out the actual condition of her husband. She saw that he was bloodied on the neck. Then, unexpectedly, Noveloso reentered the hut and fired at the forehead of Valdez, who was prostrate on the mat holding the baby. He died on the spot. Five shots were fired. After Noveloso had left, Lucia took Elma, who was bleeding in the head, and the other child to the house of her aunt and neighbor, Marta Esguerra. Elma died in Marta's house.

Valdez sustained an entrance gunshot wound at the right parietal region above the right ear. The wound penetrated the brain. The bullet exited at the occipital region behind the lower portion of the left ear. Valdez had another entrance gunshot wound one inch above the left eyebrow. That wound penetrated also his brain.

The baby, Elma, had an entrance gunshot wound at the right temporal region, which pierced the cranial cavity, and an exit wound at the root of her nose.

The motive for the killing was inferred from Noveloso's testimony on cross-examination. He revealed that Valdez was convicted of having killed Hilario Noveloso, a first cousin of the accused (their fathers were brothers), and served sentence in the New Bilibid Prison for that crime. Valdez was released when the accused was then the barrio lieutenant (347-348 tsn). The trial court surmised that the accused killed Valdez in order to avenge the death of his first cousin.

Four days after the killing, or on March 6, a Constabulary lieutenant filed in the municipal court a complaint for double murder against Noveloso based on Lucia Bumatay's affidavit dated March 3 which was sworn to before the mayor of Balaoan and later before the municipal judge of Luna. Noveloso waived the second stage of the preliminary investigation.

On January 9, 1968, the fiscal filed against him an information for double murder with the aggravating circumstances of treachery, evident premeditation, abuse of superiority, nocturnity, dwelling and taking advantage of his position as a police-man.

Noveloso, 39, a native of Barrio Tallaoen, a tobacco planter, unmarried but with a common-law wife, denied that he was the gunwielder. He testified that at the time of the shooting he was in the premises of the barrio schoolhouse, where on the preceding day there was a boy scout jamboree, called "camporal" (camporee). The program and dance held in connection with that jamboree lasted up to three o'clock in the morning of March 2, 1967 (when Valdez was shot).

Noveloso was the corporal of the detachment assigned to perform guard duty at the camporal. He was in civilian clothes. He carried a .45 caliber pistol. His companions were Patrolmen Patricio Collado, Luciano Ramirez, Marcelino Nomes and Bernardino Nazal. Noveloso declared that he was on guard duty from six o'clock in the morning of March 1 up to five o'clock in the afternoon of March 2. Then, he proceeded to the municipal building where he slept up to eight o'clock in the morning of March 3, 1967. When he woke up, he learned that he was suspected of having liquidated Valdez.

His alibi was corroborated by the mayor and by Patrol-man Collado and Sergeant David Sibayan. They confirmed Noveloso's testimony that policemen were not provided with .45 caliber pistols but with .38 caliber Smith & Wesson and Albion revolvers. The municipal treasurer testified to the same effect.

Noveloso further declared that he and Valdez grew up and went to school together. They were like brothers. He had no grudge against Valdez. Noveloso theorized that Lucia Bumatay imputed the killing to him because Lucia and her mother were mad at him because he refused to allow them to get water for their land from a spring by boring a hole through the cemented dam.

Marta Esguerra, who as a prosecution witness testified that Lucia told her that Noveloso shot Valdez, later testified as a defense witness, identifying her affidavit of January 27, 1969. She stated therein that she doubted whether Noveloso shot Valdez because Lucia herself told her (Marta) that the gunwielder wore a mask and could not be recognized because it was dark and she (Lucia) merely suspected that the intruder was Nove-los0 but she was not sure of his true identity (Exh. 4). Marta is illiterate. Her affidavit is in English.

The trial court concluded that the testimonies of Nove-los0 and his witnesses as to his defense of alibi are unbelievable and insufficient to support his defense of alibi. The trial court took into account the fact that the schoolhouse was about three hundred meters away (one hundred fifty yards, according to Sergeant Victorino H. Godoy) from the scene of the crime.

Moreover, according to the trial court, the defense of alibi cannot prevail over the positive and certain identification made by the victim's wife who was not more than five feet away from the gunwielder who entered the hut twice and was seen two times by her.

The trial court imposed the death penalty on the accused because the killing was qualified by treachery and aggravated by nocturnity, dwelling, cruelty and taking advantage of his position as a policeman. Without saying so, the trial court treated the double murder as a complex crime but did not mention the complex character of the offense as the justification for imposing the death penalty. It ordered the accused to pay as indemnity twelve

thousand pesos each to the heirs of the two victims.

The accused appealed from that decision. His arguments, which raise factual issues and involve the credibility of the pro-prosecution witnesses, are based on speculations and conjectures. His counsel contends that the trial court erred in basing its judgment of conviction on the testimony of Lucia Bumatay because the latter in her testimony did not declare that she informed Marta Esguerra that Noveloso had shot her husband.

That deficiency in her testimony does not impair her credibility because Marta Esguerra testified that Lucia told her that Valdez and their child were shot by Aming, the accused Noveloso (34 tsn January 16, 1969).

Appellant wonders why Juanito Valdez, the victim's brother, reported the killing to the Constabulary only on March 3 and not on March 2, when it was perpetrated. That trivial detail cannot weaken the prosecution's case. Juanito Valdez could have assumed that the police would handle the investigation. But on realizing that the suspect was a policeman, he thought that it was advisable that the Constabulary should intervene in the case.

Appellant argues that the trial court should have accorded probative value to the affidavit of Marta Esguerra who became hostile to the prosecution, testified later for the defense and tried to rectify her testimony.

Marta was not an eyewitness to the shooting. Her volte-face meant that she was not a credible witness.

Discarding her testimony as a prosecution witness would not in anyway create any reasonable doubt as to appellant's guilt. The principal evidence against the accused is the eyewitness-testimony of Lucia Bumatay who twice saw the assassin shooting the victims, and during the second time, two kerosene lamps lighted the small place where the assassination was perpetrated.

Appellant assails the conclusion of the trial court that the motive for the murder was revenge for the killing of Hilario Nove-loso by Valdez. We have conscientiously reflected on this point and we find the trial court's ratiocination to be plausible or credible.

The case was thoroughly investigated by a Constabulary team composed of Lieutenant Biglete and Sergeants Godoy, Jose R. Alvero, Maximo M. Galsim and one Ancheta. It cannot be assumed that these experienced peace officers framed up Nove-loso.

The case was pending preliminary investigation in the fiscal's office for several months. Had Noveloso a valid and substantial defense, he could have easily convinced the prosecutor of his innocence.

We agree with the trial court that the guilt of the accused-appellant was established beyond reasonable doubt. However, the trial court erred in imposing only one death penalty or in assuming that the double murder was a complex crime. It was not established that Valdez and his daughter were killed by only one shot.

In *People vs. De los Reyes*, 86 Phil. 355, 359, it was held that since "no hay prueba de que un solo tiro haya causado la muerte de los dos occisos," "debe ser condenado, por tanto, el acusado-apelante, no por un solo delito sino por dos asesinatos". That observation is appropriate for this case.

The accused, having fired five shots at the two victims, committed two distinct and separate murders qualified by treachery which absorbs nocturnity. Dwelling is aggravating. There being no mitigating circumstances, the maximum of the penalty for murder, which is death, was imposed by the trial court (Arts. 64[3] and 248, Revised Penal Code).

However, for lack of necessary votes, the death penalty cannot be affirmed.

WHEREFORE, the trial court's judgment is affirmed with the modification that the accused-appellant is sentenced to two reclusion perpetuas. Costs de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Aquino, J., certify that Mr. Justice Abad Santos voted for the imposition of the death penalty in this case.

Teehankee and Antonio, JJ., took no part.

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