

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SILVERIO LOPEZ, CRIS-PULO ZAMORA, JUAN DAVIS, FORTUNATO
DAVIS, AND BONIFACIO DAVIS, DEFENDANTS-APPELLANTS. D E C I S
I O N**

G.R. No. L-29752. October 28, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the judgment of the Court of First Instance of Cebu finding the accused Silverio Lopez, Crispulo Zamora, Juan Davis, Bonifacio Davis and Fortunato Davis guilty of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, except the accused Fortunato Davis who was convicted of murder and taking into account the mitigating circumstance of voluntary surrender, was sentenced to suffer an indeterminate penalty ranging from 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum, with the accessory penalties of the law; to indemnify the heirs of the deceased Rufino Datuin in the sum of P6,000.00; and to pay the costs of the suit.

On November 3, 1965, a novena was said in the house of Roman Villajuan, situated at Barrio Mabasa, Argao, Cebu, to celebrate the end of the one-year period of mourning for his mother-in-law, Juana Albores. As local custom dictated, food and refreshments were served to the guests after the prayers. Among those who attended were Rufino Datuin,[1] Angkoy Davis, Gildo Datuin, Aguedo Davis, Atilano Davis, and Potenciana Mamolo, the latter being the sister-in-law of Villajuan. Rufino Datuin arrived at the house of Villajuan at about noontime and after eating, he suggested that they hold a cockfight, to which some acceded.

At about 4:00 o'clock in the afternoon, the accused Silverio Lopez, Crispulo Zamora, Juan Davis, Fortunato Davis, and Bonifacio Davis, all armed with various kinds[2] of weapons, arrived at the makeshift cockpit. After a "soltada" and while Rufino Datuin was cutting off the leg of a vanquished gamecock as his prize for the use of one of his spurs or gaffs, Fortunato Davis boxed Rufino Datuin from behind, hitting him on the nape, and causing the latter to fall. Rufino Datuin stood up to face his assailant, and then fled.[3] The five accused gave chase and at the same time pelted Rufino Datuin with stones. About 150 meters from the house of Villajuan,[4] the five accused overtook Rufino Datuin and Bonifacio Davis hacked him on the right shoulder. When Datuin fell, the five accused took turns in assaulting him until he died. Then the five accused left the scene.

The incident was reported to the authorities of Argao and the next day, members of the municipal police force arrived to conduct an investigation. After a picture of the deceased was taken as he lay on the ground,[5] the cadaver was brought to the poblacion of Argao, Cebu, where Dr. Carlos L. Fortuna, the medical health officer, conducted an autopsy. His Report[6] showed that the deceased sustained eleven (11) wounds, described as follows:

“(1) Wound, clean-cut, scalp, forehead, almost horizontally placed, 5" long 1 3/4" deep with fracture of the frontal bone, with the lateral end at the fronto-temporal region 2 inches posterior and above the lateral end of

the right eyebrow. The medial end at the middle portion of the left eyebrow. The right frontal lobe of the brain is cut.

“(2) Wound, clean-cut, scalp, temporo--frontal region, left, horizontally placed, with fracture of the temporal bone. It is 4 1/2" long and 1 1/2" deep with the anterior end at the lateral end of the left eyebrow, while the posterior end 1 1/4" posterior to the left external auditory meatus.

“(3) Wound, clean-cut, scalp, parietal region with fracture of the parietal bone, left 2" long parallel to 1/4" to the left of the midline.

“(4) Wound, clean-cut, face, almost horizontally placed, with fracture of the nasal bones and right and left maxilla, 5" long 1 1/2" deep, exposing both maxillary sinuses.

“(5) Wound, lacerated, chin, left side 1" long 1" deep, with fracture of mandible left just below the central incisors up to the left 2nd premolar teeth.

“(6) Wound, clean-cut forearm, left, middle and distal thirds 3 3/8" long 1/2" deep, medial aspect, hitting the ulnar bone.

“(7) Wound, stab, abdomen, left up-per quadrant 15/16" wide 5 1/4" deep directed medially and upwards. Structures involved: Abdominal muscles, skin and subcutaneous tissue, peritoneum, small intestine and stomach.

“(8) Wound, clean-cut, 2 1/2" long 1" deep, shoulder, right posterior and cutting the neck of right scapular bone.

“(9) Wound, clean-cut, knee right, anterior, 3" long 1 1/2" deep the distal end of the femur.

“(10) Wound, clean-cut, 2 1/8" long 1 5/6" deep, leg, right middle third, lateral, 5" below the knee joint.

“(11) Contusion-abrasion, shoulder, posterior aspect 1" x 2".

Cause of death: Fracture of the bones of the skull.”

Silverio Lopez,[7] Crispulo Zamora, Juan Davis, Fortunato Davis, and Bonifacio Davis were consequently charged with the crime of Murder before the Court of First Instance of Cebu, committed as follows:

"That on or about the 3rd day of November, 1965, in the municipality of Argao, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, with deliberate intent to kill, evident premeditation and treachery, taking advantage of superior strength and the age of their victim who was 60 years of age did, then and there wilfully, criminally and feloniously attack, assault and stab with a sharp-pointed weapon, one Rufino Datuin, thereby inflicting upon him 10 fatal wounds in the different parts of the body which caused his death shortly thereafter."

Upon arraignment, Silverio Lopez, Crispulo Zamora, Juan Davis, and Bonifacio Davis pleaded not guilty, while Fortunato Davis entered a conditional plea of guilty to the lesser offense of homicide.[8]

After trial, judgment was rendered finding the accused guilty of murder and sentenced accordingly. Hence, the present appeal.

In seeking a reversal of the judgment, the accused/appellants claim that the crime committed is homicide, for which the appellant Fortunato Davis alone is responsible and assail the trial court for believing the witnesses for the prosecution whose testimonies are inherently improbable and incredible. The appellants more particularly impugn the testimony of Alberto Udioran, Roman Villajuan, and Potenciana Mamolo and point to some contradictory and inconsistent statements made by them.

The appeal is without merit. The contradictions and inconsistencies pointed out by the appellants are not of such a magnitude and character as to lead one to believe that these witnesses were coached or tutored. Besides, no motive has been imputed to these witnesses for them to falsify the truth against the appellants. Alberto Udio-ran even declared that his wife is a close relative of the accused Davises.[9]

The claim that Fortunato Davis alone is responsible for the death of Rufino Datuin and that his co-accused did not participate in the commission of the crime is not consistent with the truth and the physical facts of the case.

According to him, he went to the house of Roman Villajuan at about 1:00 o'clock in the afternoon of November 3, 1965, to attend the party following the novena. Upon arrival thereat, he saw a cockfight going on. Since he was tired and hot after a long walk, he did not mingle with the crowd, but sat down to rest and cool off. A few moments later, Rufino Datuin approached and up-braided him, saying: "Stand up there or else I will break your head. Why is it that you have been gathering the fruits of the coconut trees there?"[10] He tried to use reason, saying that he was the one who planted the coco-nut trees. But, the deceased insisted that the coconut trees were his. When Rufino Datuin unsheathed a knife and tried to kick him, Fortunato Davis jumped to evade the kick, at the same time picking up a rock which he threw at Rufino Datuin who scampered away. Incensed, he ran after Rufino Datuin. At a distance of about 40 meters, Rufino Datuin stopped and faced him, saying: "All right, come, and let us have a showdown." He continued throwing stones at Rufino Datuin, who, upon being hit, fell to a squatting position on the ground. Then, he went to Rufino Datuin and hacked him with a bayonet until Rufino died.[11]

It is unlikely, however, for a frail sexagenarian like Rufino Datuin to have confronted the very much younger Fortunato Davis on that day to settle their land dispute by means of force or intimidation considering that Rufino Datuin had already brought the matter to the attention of the municipal judge. Besides, if Rufino Datuin was the aggressor, it would be unnatural for him to run away the moment Fortunato Davis took up his challenge.

Moreover, the witnesses for the prosecution categorically declared that all five appellants actively participated in the killing of Rufino Datuin. The eyewitnesses are one in stating that when the deceased ran away being hit on the nape by Fortunato Davis, the appellants threw stones at Rufino Datuin causing him to fall. Then Bonifacio Davis went to the victim and hacked him on the right shoulder and head. When the victim turned to face his assailant, he was hit by Juan Davis on the forehead. Thereafter, Silverio Lopez hit Rufino Datuin on the face with a rock after Fortunato Davis had slashed the victim several times with a knife. Crispulo Zamora also stabbed the on the abdomen with a bayonet.[12]

Furthermore, the defense of alibi interposed by the other appellants do not satisfy the rule that in order to establish an alibi an accused must show that he was at another place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission.[13]

Thus, Juan Davis declared that he was on his way to the house of Roman Villajuan in the afternoon of November 3, 1965, when he met one Gil Datuin on the way, about 2 kilometers from the house of Roman Villajuan, who informed him that Fortunato Davis had killed Rufino Datuin. He went back because he was afraid. He further stated that he was implicated in this case because Susana Datuin, daughter of the deceased, resented his having advised Crispulo Zamora to report to the police authorities the illegal possession of a firearm by Joaquin Datuin, son of the deceased Rufino Datuin.[14]

The accused Bonifacio Davis stated that he was working on their farm from morning to sunset of November 3, 1965, after which he went home to rest. Their house is about 5 kilometers from the house of Roman Villajuan and was included in this case for being the younger brother of Fortunato Davis.[15]

The accused Crispulo Zamora testified that he was in his brother's house in sitio Osmad, 6 kilometers away from the house of Roman Villajuan, the whole day of November 3, 1965. He was included in this case because he had a previous quarrel with Joaquin Datuin who shot him in the leg. He admitted that he had been convicted for stealing the chickens of Rufino Datuin.[16]

The accused Silverio Lopez declared that he was sawing lumber the whole day of November 3, 1965 in barrio Apo, about six kilometers from barrio Mabasa. He also denied participation in the killing of Rufino Datuin and claims that he was implicated by Susana and Joaquin Datuin because he refused their previous offer to kill Crispulo Zamora for P200.00.[17]

As could be seen, the places where the appellants are claimed to be during the commission of the crime are all located in Argao, Cebu, and within the periphery of barrio Mabasa where the crime was committed, and the place was accessible so that it was not impossible for the accused to have been at the scene of the crime when it was committed.

The reasons advanced by the accused as to why they were charged in this case although innocent are flimsy and deserve no credit. Thus, Silverio Lopez stated that he was implicated in this case because he had refused the offer of Susana and Joaquin Datuin of P200.00 for him to kill Crispulo Zamora. But, the record does not show what could have persuaded Susana and Joaquin Datuin to seek Lopez' services in the killing of Crispulo Zamora. Besides, the claim appears to be a last-minute concoction as Silverio Lopez never told the police authorities or his co-accused of such an offer, although Silverio Lopez was frequently seen in the company of his co-accused, including Crispulo Zamora, before the commission of the offense charged.[18]

The accused Crispulo Zamora had every reason to bear a grudge against Rufino Datuin. Rufino Datuin had previously charged him with being a chicken-thief and for which he was convicted. He also had a quarrel with Joaquin Datuin, son of Rufino Datuin, who shot him in the leg.[19] In that quarrel, Crispulo Zamora appeared to be the most aggrieved so that it cannot be true that he was implicated in this case because of that quarrel.

The statement of Juan Davis that he was included in this case for having advised Crispulo Zamora to report to the police authorities the illegal possession of a firearm by Joaquin Datuin could not have motivated Susana Datuin to falsely include him for it is not of record that Susana Datuin previously knew that he had so advised Crispulo Zamora.

The claim of Bonifacio Davis that he was implicated in this case just because he is the younger brother of Fortunato Davis is not worthy of belief.

It results that the trial court did not err in accepting the version of the prosecution as credible and in concluding that the guilt of the appellants have been proven beyond reasonable doubt.

The crime committed is murder, qualified by treachery. There is treachery because the attack on the victim was sudden and unexpected and from behind. The deceased, therefore, did not have the slightest opportunity to defend himself. The lower court, therefore, correctly imposed the penalty of reclusion perpetua. With respect to Fortunato Davis, having been convicted of murder and taking into account the mitigating circumstance of voluntary surrender, the proper penalty to impose upon him is an indeterminate penalty ranging from 17 years of reclusion temporal, as minimum, to 20 years of reclusion temporal, as maximum. The indemnity to be paid to the heirs of the deceased should be raised to P12,000.00.

WHEREFORE, and with the modification above indicated, the judgment appealed from should be, and is hereby, affirmed in all other respects. Costs against the appellants.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] also known as Ceferino Datuin (see Exhs. D, D-1, also pp. 71, 73, tsn, Maureal).

[2] Fortunato Davis was armed with a hunting knife; Silverio Lopez, a homemade gun; Juan Davis, a bolo locally known as "plamenco"; Bonifacio Davis, a hunt-ing knife; and Crispulo Zamora, a bayo-net. (p. 24, tsn, Maureal).

[3] p. 89, tsn, Garcia.

[4] See Exhibit 1.

[5] Exhibit C.

[6] Exhibit A.

[7] Silvestre Lopez was originally named as one of the accused. At the trial, however, it was shown that his real name was Silverio Lopez. Accordingly, the information was amended to con-form with the evidence. (See pp. 97--98, Orig. Rec.; also p. 70 tsn, Maureal).

[8] p. 26, Original Record.

[9] p. 6, tsn, Garcia.

[10] Rufino Datuin and Fortunato Davis had a boundary dikpute. Sometime on February 10, 1965, while Ru-fino was away, Fortunato and his brother Bonifacio Davis climbed the coconut trees on the disputed par-cel of land and harvested some co-conuts. Rufino Datuin reported the incident to the municipal authorities (Exh. G) and as a consequence, the said accused were summoned to ap-pear. (p. 77, tsn, Maureal).

[11] pp. 145-147, tsn, Maureal.

[12] pp. 2-4, 47-50, tsn, Garcia; pp. 25?26, tsn, Maureal.

[13] People vs. Resayaga, L-23234, Dec. 26, 1973, 54 SCRA 350; People vs. Saliling, L-29974, Feb. 27, 1976, 69 SCRA 427; People vs. Abrogar, L-24310, Oct. 19, 1976.

[14] pp. 184, 185, 189, tsn, Garcia.

[15] pp. 192, 193, 195, tsn, Garcia.

[16] pp. 127, 128, 131, tsn, Maureal.

[17] pp. 207, 210, tsn, Garcia.

[18] p. 75, tsn, Maureal.

[19] p. 131, tsn, Maureal.

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