

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PACIANO CHAVEZ, ERNESTO CHAVEZ, ESTELITO FORMANES, AND
ALEXANDER DOLLISEN, ACCUSED, ALEXANDER DOLLISEN,
ACCUSED-APPELLANT.**

G.R. No. L-38603. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appellants Ernesto Chavez and Alexander Dollisen are charged with the crime of murder together with Paciano Chavez and Estelito Formanes in the information which reads:

"That on or about the 23rd day of August, 1971 in the barrio of Lajong, Municipality of Matnog, Province of Sorsogon, Philippines and within the jurisdiction of this court, the above-named four accused, all armed with bolos, conspiring, confederating, and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and hack one ZACARIAS NARVADEZ deliberately, suddenly and unexpectedly from behind, without any warning and without giving him any opportunity to defend himself, inflicting upon the latter thirty-eight (38) wounds x x x which injuries caused the death of ZACARIAS NARVADEZ immediately thereafter.

"With the qualifying circumstance of treachery and the following aggravating circumstances:

- "1. Evident Premeditation
2. Superior strength
3. Cruelty, the victim suffered thirty-eight (38) incised and stab wounds."

After trial ERNESTO CHAVEZ and ALEXANDER DOLLISEN were each sentenced to suffer the penalty of reclusion perpetua while Paciano Chavez and Estelito Formanes were each sentenced to an indeterminate period of imprisonment ranging from ten (10) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal. All of the four accused were ordered to pay the heirs of Zacarias Narvadez jointly and severally the amount of Four Thousand Nine Hundred Eight & 30/100(P4 ,908.30) Pesos by way of actual expenses; the amount of Thirty Thousand (P30,000.00) Pesos representing moral damages and each to pay 1/4 of the costs.

Evidence shows that Ernesto Chavez, his father, Paciano, brother-in-law Alexander Dollisen and Estelito Formanes were all tenants in the farm of Zacarias Narvadez, situated at Barrio Lahong, Matnog, Sorsogon. About 8:30 in the morning of August 23, 1971, Zacarias Narvadez accompanied by his son Antonio, Jose Flor, Claudio Agwanta, Paquito Lacta and Nicanor Bongoes went to his farm to mark the coconut trees thereat with numbers. While they were busy numbering the coconut trees, Ernesto Chavez, Paciano Chavez, Estelito Formanes and Alexander Dollisen arrived. Paciano approached Zacarias and told him to stop marking the coconut trees because he has not yet been paid for planting them. Zacarias answered: " Panoy, you cannot stop me from marking these

coconut trees because I owned them." Paciano warned Zacarias to desist from what he was doing, " otherwise something might happen."

About 10:00 that same morning, Paciano and his companions were near the road about ten meters from the group of the Narvadez. Paciano approached Zacarias Narvadez from behind while the latter was standing, facing the East with his right hand pointing to the group of coconut trees to be numbered. Just then, Paciano suddenly raised his bolo and struck Zacarias at the left side of his neck. Thereafter, Paciano called out his companions, namely: Estelito, Ernesto and Alexander to come. Zacarias attempted to wrest the bolo from Paciano and the two grappled with each other. At that juncture, Estelito Formanes hit Zacarias in the right jaw and stabbed him at the back with his bolo. Likewise, Ernesto Chavez and Alexander Dollisen hit Zacarias with their bolos. Overcome with fear, Antonio Narvadez was not able to do anything to save his father. He ran towards the road and with Jose Flor they reported the matter to the PC authorities.

Philippine Constabulary soldiers went to the place where the incident took place and they found the lifeless body of Zacarias Narvadez lying on his back. They brought the cadaver to the municipal hall at Sta. Magdalena for autopsy by Dr. Ramon Pereña, the Municipal Health Officer. An autopsy report submitted by Dr. Pereña revealed that the victim sustained thirty-eight (38) wounds in the different parts of his body. The cause of death was "severe hemorrhage, internal and external, secondary to multiple incised wounds and stab wounds, and shock irreversible." Dr. Pereña opined that the wounds were inflicted by sharp bladed instrument such as bolos and that the incised wounds on the left base of the neck, the nape and the left lower jaw were fatal.

Defense version of the incident is as follows:

"On August 23, 1971, at or about 10:00 o'clock in the morning, in Barrio Lahong, Matnog, Sorsogon, there was a violent encounter between Zacarias Narvadez, hereinafter alluded to as the victim, on the one hand and two of the four accused, namely Paciano Chavez and Estelito Formanes, on the other; and as a result of the said encounter, the victim sustained multiple injuries enumerated and more particularly described in the Autopsy Report (Exh. "A") while accused Paciano Chavez likewise sustained incised wounds on the right knee cap and on the front part of his left forearm (EXh. 3-Chavez); that the victim died on the same day of that encounter; that the fatal injuries which caused the victim's death were the injury at the nape (Exh. D-3-e), the incised wound on the left base of the neck (Exh . D-3-f) and the deep incised wound on the left lower jaw (Exh . D-2-i). It is further admitted that the victim is the owner of the land where the incident took place while the accused, except for appellant Alexander Dollisen, are his tenants therein. There is also no question that the victim is from Sta. Magdalena, Sorsogon, and the accused is from Lahong, Matnog, Sorsogon except appellant Alexander Dollisen who resides in Sisigon, Matnog, Sorsogon. The claim, however, of Antonio Narvadez and Jose Flor that the herein appellants were present during the violent encounter on August 23, 1971 and had participated therein is totally denied as untrue and a fabrication." (Appellant's Brief, pp. 115-116, Rollo)

Appellant Alexander Dollisen denied participation in the crime charged and claimed absence at the time and place of the incident. He alleged that "x x x (he was) at the time when the subject incident was taking place at around 10:00 o'clock in the morning of August 23, 1971, in Barrio Sisigon, Matnog, Sorsogon, a barrio about sixteen (16) kilometers away from Barrio Lahong, Matnog, Sorsogon. x x x (he) was on that particular time in the said barrio of Sisigon on an errand by his wife, Evelyn Chavez, to get from their house thereat the prepared clothes and diapers of the baby and also to secure some money because his wife was then delivering a baby. His errand made him stay in Sisigon until about past 2:00 o'clock that afternoon and arrived only in Lahong at about 3:00 o'clock of that same day. When he arrived his wife had already given birth to a son. x x x However, he came to know from his mother-in-law that his father-in-law was involved in an incident which resulted in the death of Zacarias Narvadez. For fear of reprisal he transferred to a house of a neighbor about 300 meters away. The following morning, August 24, 1971, x x x (he) returned to their house in Bo. Sisigon, Matnog, Sorsogon, staying there until

September 2, 1971 when he was arrested by the PC." (pp. 5-6, Appellant's Brief; pp. 4-18, tsn., Dec. 8, 1972).

On May 7, 1979, appellant Ernesto Chavez filed a MOTION TO WITHDRAW APPEAL alleging:

"1. That accused-appellant herein have entirely lost interest in prosecuting and/or pursuing the Notice of Appeal which he has timely filed and interposed;

"2. That undersigned accused-appellant is fully aware of the effect of withdrawal of appeal in criminal cases, as he was properly appraised in connection thereto;

"3. That accused-appellant herein strongly believes that withdrawal of his appeal is very much advantageous and favorable to him for inevitable and plausible reasons; and

"4. That undersigned appellant's desire to withdraw his appeal is his voluntary act and free will, as noted to herein by the prison guard on duty who translated to him in Tagalog the contents of his motion.

"WHEREFORE, PREMISES CONSIDERED, it is most respectfully moved and prayed of this Honorable Court that the above-entitled case be WITHDRAWN with cost de officio."

On September 5, 1979, the Second Division of this Court issued a resolution allowing the withdrawal of the appeal of said accused-appellant Ernesto Chavez. On the same date, as to him, an entry of judgment was entered.

The declaration of appellant Alexander Dollisen cannot prevail over the positive identification by prosecution witnesses Antonio Narvadez and Jose Flor. The early identification of this appellant by prosecution witnesses as the companion of the other accused in perpetrating the heinous offenses, and which identification led to his apprehension, bespeaks of their spontaneity and veracity. The testimonies of these two witnesses appear to be clear and positive. Both clearly identified appellant whom they have known for some time before the incident. As has been consistently held by this Court, where clear and positive identification are made by the People's witnesses regarding the participation of the accused in the crime against him, his denial and explanation cannot overcome such evidence.

Hereunder is the testimony of Antonio Narvadez on this point:

"Q Where did Paciano Chavez come from?

A He came from behind.

Q And then what did he do?

A (Witness demonstrating by asking Atty. De Vera to take the place of his father). When Paciano Chavez reached a point about a meter to the left of Zacarias Narvadez but behind him without saying anything he boloed or struck my father with a bolo and was hit at left side of his neck. At that instant while Paciano Chavez was on the act of striking with his bolo I was able to shout to my father and my father was able to duck a little and Paciano Chavez shouted: "You come here now", simultaneously with the hacking.

Q In relation to where your father was standing where he was hacked, where were you also and how many meters were you from your father?

A I was on his left side at a distance of about five meters.

Q When Paciano Chavez hacked your father as you said what did your father do?

A What my father did was he tried his best to wrest the bolo of Paciano Chavez and they grappled.

Q You said that at the time that Paciano Chavez hacked your father on the left side of his neck Paciano Chavez shouted at the same time, 'you come now.' What happened. Was there anybody who came?

A Estelito Formanes arrived, came next.

Q Is that Estelito Formanes the accused in this case?

A Yes, sir.

Q And what did Estelito Formanes do upon arriving at the place where your father was hacked?

A He boloed my father on the right jaw and also stabbed him, my father on his back.

Q Who else came if anybody else?

A Ernesto Chavez arrived in the same (sic) also and likewise Alexander Dollisen.

Q You are referring to Ernesto Chavez and Alexander Dollisen the accused in this case?

A Yes, sir.

Q And when they arrived what did they do these Alexander Dollisen and Ernesto Chavez?

A They also boloed or hacked my father.

Q So these four had bolos with them?

A Yes, sir.

Q What about you what did you do when you saw your father being hacked by these four people?

A I was not able to do anything because I was seized with fear.

Q And what did you do because you could not do anything?

A I looked at them who they were, then I ascended towards the road.

Q What then did you do after ascending?

A I tried to proceed to Matnog to which Lahong belongs in order to report the matter to the P.C." (tsn., pp. 9-10, March 21, 1972 hearing)

and, the testimony of Jose Flor, as follows:

"Q Now, you said that when Paciano Chavez hacked Mr. Narvadez he shouted ' Canhe na camo.' What happened after that shout of ' Canhe na camo?'

A Three persons arrived.

Q Who were these three persons who arrived?

A Estelito Formanes, Alexander Dollisen and Ernesto Chavez.

Q When these three persons arrived what did they do?

A The first one among the three who struck at Mr. Narvadez with his bolo was Estelito Formanes.

Q Where did Estelito Formanes hit Zacarias Narvadez?

A Mr. Narvadez was slashed on the right jaw and followed with a thrust on his back.

Q How about Ernesto Chavez, what did he do also when he arrived?

A Right after Ernesto Chavez and Alexander Dollisen arrived at the scene of the incident, they boloed at Mr.

Narvadez and stabbed him also. Mr. Narvadez was already inclined to one side." (tsn. pp. 5-6, August 9, 1972 hearing)

Appellant Dollisen declared that at 9:30 in the morning of August 23, 1971, the day of the incident, he was in Barrio Sisigon which could not be more than 30 minutes by bus from Lahong. The trial judge observed that "the distance from Sisigon is not too remote to remove entirely the possibility of Alexander returning to the scene even when he was already on the way to Sisigon." Thus, it was not impossible for him to be at the scene of the crime at the time the murder was committed.

Alibi is a question of fact which is best determined by the trial court and in order that it would be believed there should be a showing that there was physical impossibility for the accused to be at the place of the incident. Otherwise stated, for the defense of alibi to prosper, the evidence to support it must be clear and convincing considering that "it is easy to fabricate." (People vs. Fontañosa, et al. 20 SCRA 249)

Finally, the withdrawal of the appeal by his brother-in-law Ernesto Chavez and failure of the two others, namely: Paciano Chavez and Estelito Formanes who were accorded by the lower court the mitigating circumstance of voluntary surrender, to appeal mean acquiescence to the veracity of the prosecution's witnesses. (People vs. Bongo, 55 SCRA 547)

With respect to the aggravating circumstance of evident premeditation, evidence is not clear as to whether the accused-appellant and his companions had sufficient time within which to reflect on the evil character of the crime before they committed the same. The qualifying circumstance of treachery may be considered due to the suddenness of the attack and the collective effort of the four armed accused in their assault against an unarmed victim. However, WE cannot take into account superior strength as an aggravating circumstance because "this circumstance must be considered absorbed in treachery." (People vs. Nicolas Layson, 30 SCRA 92).

With respect to the aggravating circumstance of cruelty WE are not convinced from the People's evidence that the same is present in this case. True, the wounds were many but they were the consequence of the fury of the assault by the four assailants, and not intended as an unusual mode of attack.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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