

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DEMETRIO DE LA CRUZ, DEFENDANT-APPELLANT.***G.R. No. L-30059. December 19, 1970*

Ponente: REYES, J.B.L., J.

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Direct appeal from a sentence of life imprisonment meted out by the Court of First Instance of Pangasinan in its Criminal Case No. 23149-I.

Appellant Demetrio de la Cruz was charged together with his brother, Alberto de la Cruz, and his nephew, Eulogio de la Cruz, with the murder of Leonardo Sanchez, by shooting the latter to death with a .22 caliber rifle on 1 June 1964 in Rosales, Pangasinan. Alberto and Eulogio were first arrested, tried and sentenced to life imprisonment, but appellant Demetrio managed to avoid arrest and went into hiding for four (4) years. He finally surrendered to the authorities on 17 July 1968; was tried on the original charge, and, despite his protestations of innocence, convicted of murder qualified by alevosia, and sentenced to the same penalty as his co-accused (reclusion perpetua), to pay an indemnity of P12,000.00 to the heirs of the deceased and the costs.

It is uncontested that in the morning of the fatal day, 1 June 1964, Alberto de la Cruz had an altercation with one Victoriano Noveloso, a security guard of Hacienda Guiling in the municipality of Rosales, Pangasinan, owned by the brothers Cojuangco. In the encounter, Alberto was boxed by Noveloso, and departed saying: "Wait for me, and expect what is to be expected". Noveloso proceeded to the house of the hacienda overseer, Leonardo Sanchez, whom he informed of the previous occurrence. According to the prosecution witnesses, sometime later, Sanchez and Noveloso, accompanied, by another guard, Laureano Sabado, while on the way to Barrio Camangaan, Rosales, met the appellant, with his brother Alberto, who bore a .22 caliber rifle, and a nephew of theirs, Eulogio de la Cruz. Sanchez advised his companions to stay behind and said he would talk with the trio. Approaching the De la Cruzes, Sanchez raised his left hand and asked them to be calm and settle things; but appellant Demetrio de la Cruz snatched the rifle held by his brother Alberto, and repeatedly fired at Sanchez, hitting him in the chest. Sanchez was able to advise his companions to run away, which they did. Later, Sanchez died.

Testifying in his own behalf, Demetrio averred that on the morning of 1 June his brother Alberto arrived at his house, told him about his being boxed by guard Noveloso, and took his rifle from the trunk where it was kept. Demetrio attempted to pacify his brother, but Alberto ran away with the gun. Demetrio followed, to keep his brother from trouble, but on the way met Sanchez, and Alberto shot the latter, as he tried to wrest away the rifle. Demetrio snatched the gun from his brother and led him home. This version was supported by Alberto and Eulogio de la Cruz, who were taken from the penitentiary to testify; and both asserted it was Alberto who shot Sanchez.

We find the defense version not credible, being seriously infirmed by several circumstances. First, by the admitted flight of Demetrio, who avowed having fled to Isabela and gone into hiding there for about four years. His explanation of having done so for fear of injury at the hands of the security guards is not convincing; for if

appellant's version is true, the guards who were with the late Sanchez must have seen that it was Alberto, and not Demetrio, who shot and killed the hacienda overseer; and there would be then no reason for Demetrio to be afraid of retaliation. Secondly, right at the start, the state witnesses, in their affidavits in support of the complaint, laid the blame on Demetrio. Yet neither Alberto nor Eulogio had previously asserted the innocence of Demetrio, not even after the first trial, when both were convicted of the killing as conspirators. Finally, it is easy to see that Alberto, after his own conviction, ran no risk of additional, punishment by avowing having been the one who shot the late Sanchez; and We have repeatedly held such belated assumptions of guilt by persons previously convicted as unworthy of credence.[1]

While We find appellant's guilt proved beyond reasonable doubt, We agree with the Solicitor General that the crime committed is not murder, but homicide. Merely, there being no adequate showing of alevosia, since the shooting was preceded by a parley between the accused and the deceased, and there is testimony that the latter had attempted to wrest from Alberto de la Cruz the rifle used to slay him (t.s.n., Estrada, pages 6 and 26; Appeal Brief for the prosecution, page 7). The penalty of reclusion temporal for homicide should, therefore, be applied in the medium degree, and the appealed judgment must be accordingly modified. We do not believe this appellant is further entitled to the mitigating circumstance of voluntary surrender, the search for appellant having already lasted four (4) years, which belies the spontaneity of the surrender.[2]

WHEREFORE, applying the indeterminate sentence law, the appellant is sentenced to a minimum of eight (8) years of prision mayor and a maximum of fifteen (15) years of reclusion temporal. In all other respects, the judgment under appeal is affirmed.

Dizon, J., on leave, took no part.

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

Concepcion, C.J., did not take part.

[1] People vs. Bayubay, G.R. No. L-13901, 19 September 1961, 3 SCRA 24, and cases cited therein.

[2] Cf. People vs. Sakam, 61 Phil. 33-34; People vs. Laurel (CA) 59-OG, No. 44, page 7623.

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