

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO YURONG ALIAS RUDY, FELIX BAHIAN, APOLINARIO
BAHIAN, SALE LAGUDAS AND AMADO GARCENES, ACCUSED,
RODOLFO YURONG ALIAS...**

G.R. No. L-39025. October 31, 1984

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Accused Rodolfo Yurong alias Rudy, Felix Bahian, Apolinano Bahian, Sale Lagudas and Amado Garcenes were charged with the crime of Murder in the Court of First Instance of Zamboanga del Norte, for the killing of Ricardo Daligdig, committed as follows:

"That in the evening on or about the 4th day of November, 1971, at Libas, Sawang, Sibutad, Zamboanga del Norte, within the preliminary jurisdiction of this Honorable Court, the above-named accused ROGELIO YURONG alias Rudy, FELIX BAHIAN, APOLINARIO BAHIAN, SALE LAGUDAS and AMADO GARCENES, conspiring, confederating and working together, armed with homemade shotgun locally known as Paliuntod, and with intent to kill by means of treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack and shoot suddenly one RICARDO DALIGDIG thereby inflicting upon the latter multiple wounds on the different vital parts of his body which caused his death on the spot; that as a result of the commission of the said crime, the heirs of said victim suffered the following damages, viz:

(1) Indemnity for the death of the victim P12,000

(2) Loss of earning capacity 5,000

(3) Moral damages 10,000

(4) Exemplary damages 10,000

Total P37,000

CONTRARY TO LAW with the qualifying circumstances of treachery and evident premeditation and the aggravating circumstance of dwelling."[1]

On arraignment, all the accused pleaded not guilty. Thereafter, trial proceeded. After the prosecution had rested its case, the charge against Sale Lagudas and Amado Garcenes was dismissed upon the motion of the defense for insufficiency of evidence.

After due trial, accused Apolinario-Banian was acquitted for insufficiency of evidence but Rodolfo Yurong alias "Rudy" and Felix Bahian were found guilty of the crime charged and were each sentenced to reclusion perpetua; to indemnify the heirs of the deceased in the amount of P12,000.00 as death indemnity; P5,000.00 for the loss of the victim's earning capacity; P10,000.00 for moral damages and P10,000.00 for exemplary damages; to suffer all the accessory penalties provided by law and to pay the costs proportionately.[2]

The facts of the case as narrated by the People's Brief are as follows:

"After supper at about 8:00 o'clock in the evening of November 4, 1971, the spouses Ricardo and Rufina Daligdig were preparing to retire in their home situated along the beaches of Libas, Sawang, Sibutad, Zamboanga del Norte. They lived alone in their barrio as their children were attending school at Dapitan City (pp. 24-25, 37, tsn, Jan. 19, 1973; p. 2, tsn, March 20, 1973). Rufina was then reclining while Ricardo was sitting on the floor and leaning on the wall facing the sea. The barking of the dogs prompted Ricardo to stand up and find out the cause. He proceeded to the kitchen which was lower than the sala and bedroom. Seeing nobody outside, he returned upstairs. But as he was about to step upward, he was shot. He staggered, knelt and cried, "Help me, Day."

Rufina rushed to her husband and embraced him, she pressed his stomach and felt blood oozing from his back (pp. 25-26, 30, tsn, Jan. 19, 1973; pp. 4-7, tsn, March 20, 1973). Then another shot was fired which almost hit Rufina were it not for the weight of her husband's body which brought them down. As it were, only Rufina's hair was singed (p. 26, tsn, Jan. 19, 1973; pp. 5 & 6, tsn, March 20, 1973).

Immediately, Rufina put out the lamps locally known as "lamparilla" (pp. 26-27, tsn, Jan. 19, 1973; p. 6, tsn, March 20, 1973). She also called for neighbors but nobody responded to help (pp. 7, 8, & 9, tsn, March 20, 1973; p. 37, tsn, Jan. 19, 1973). So she crawled down the kitchen which was only a foot higher than the ground to see who the intruders were. She saw four (4) persons two of whom she recognized as appellants Rodolfo Yurong and Felix Bahian who were holding long-barelled firearms and standing outside the kitchen by the side of the stove. She did not recognize the other two who were farther away (pp. 27-28, 30-32, 35 & 36, tsn, Jan. 19, 1973; Exh. "G", p. 177, rec). Before leaving, the intruders went to the beach and fired at the pumpboat owned by her husband (p. 36, tsn, id.).

After ascertaining that the appellants and their two companions were no longer around, Rufina went to the house of Agapita Mangubat and requested her to fetch the barrio captain of Panganuran and a policeman who was staying there. Later, barrio captain Filemon Taruc, Rufina's first cousin, and Patrolman Mariano Caliso arrived and accompanied Rufina to her house where they saw the corpse of Ricardo Daligdig (pp. 37-38, tsn, Jan. 19, 1973). Pat. Caliso found outside an empty shell of a 12-inch shotgun just below the plate rack ("banguera") (Exh. "N", p. 56, tsn, April 25, 1973). He discovered that the pumpboat was punctured with holes on the sides. A pellet (Exh. "K-I") was also found inside the plastic gallon placed on the pumpboat (pp. 57-58, 61, tsn, id.). Both Bo. Capt. Filemon Taruc and Pat.

Caliso asked Rufina who shot her husband. Rufina answered that although she knew and recognized them, she would only reveal their identities to the police authorities at the Municipal Building in Sibutad, Zamboanga del Norte or to the National Bureau of Investigation in Dipolog City (pp. 38, 39, tsn, Jan. 19, 1973; p. 55, tsn, April 25, 1973; pp. 116-117, tsn, Feb. 15, 1974).

The following day, November 15, 1971, Municipal Judge Nicomedes Cabasag of Sibutad, went to the victim's house together with the Acting Chief of Police, Anacleto Baldemor, Judge Cabasag examined the lifeless body of the victim lying on the floor and saw many gunshot wounds on his body. Said Judge issued a certification, Exhibit "M" (pp. 48-50, tsn, March 28, 1973; p. 181, rec), of his findings and prepared a sketch of the premises (Exh. "L", back of p. 177, rec.) to establish the direction of the gun fired at the body of the victim (pp. 50-51, tsn, id.). He also made another sketch (Exh. "G", p. 177, rec.) to establish the direction of the gun fired at the body of the victim (pp. 50-51, tsn, id.). He also made another sketch (Exh. "G", p. 177, rec.) indicating the relative locations of the victim's house with those of his neighbors.

When Judge Cabasag interviewed the widow, she said nothing about the killers. However, "she was looking around as if she was afraid of somebody." So he advised her to go to the Office of the Chief of Police at the

poblacion of Sibutad (p. 52, tsn, id.).

Rufina Daligdig did not reveal the identities of her husband's killers to Bo. Capt. Filemon Taruc or to Pat. Mariano Caliso because she was afraid of being killed (pp. 55-56, tsn, April 25, 1973; pp. 116-117, tsn, Feb. 15, 1974). Likewise, she did not confide what she knew to Agapita Mangubat, the first person whom she saw after the shooting, stating that she would divulge the killers' identities "only to the NBI" (pp. 24, 27, tsn, Oct. 16, 1972). According to Rufina, she did not immediately make the revelation because, aside from fear of reprisal, her husband was still lying in state in their house and she had not yet identified the two other persons who shot her husband (p. 38, tsn, Jan. 19, 1973). However, after her husband's burial, she went to the NBI and executed an affidavit (Exh. "A", pp. 6-7, rec.) where she related the incident to NBI Agent Arturo Nunag and identified appellants Rodolfo Yurong and Felix Bahian as the perpetrators of the crime committed (pp. 39-41, tsn, Jan. 19, 1973; pp. 2-12, tsn, Oct. 16, 1972)."[3]

Appellants interposed the defense of alibi. Rodolfo Yurong alias Rudy testified that at the time of the shooting incident he was in the house of Atty. Dioscoro Elumbaring at Marapong, Sibutad, Zamboanga del Norte where he had been staying since September 5, 1971 and that he came to know of the death of Ricardo Daligdig on November 12, 1971 when Atty. Dioscoro Elumbaring sent him to the place of the deceased to get fish.[4]

Felix Bahian on his part testified that on the date and time of the incident he went fishing with Gregorio Yurong, Rosario Yurong, Generito Yurong, Hernani Yurong, Claro Gahum and Isiong Martinez from 1:00 o'clock in the afternoon up to 11:00 o'clock in the evening; that he learned of the victim's death only on December 23, 1971 when he was arrested.[5]

We have carefully examined the records of the case and We find no cogent reason to disturb the findings of the trial court that the appellants were the perpetrators of the crime charged. The alibi of Rodolfo Yurong alias Rudy and Felix Bahian is incredulous. Rufina Daligdig positively identified them as two of the four persons who shot her husband in the evening of November 4, 1971. Besides, Dionisio Martinez, uncle of the accused Rodolfo Yurong, declared in court that on the night of November 4, 1971 he was in the house of his brother-in-law, Gregorio Yurong, father of Rodolfo Yurong. While there, he saw Rodolfo Yurong and Felix Bahian carrying homemade shotguns called "Paliuntod," together with Hernani, Babing and Luning, all surnamed Yurong and overheard them talking about killing Ricardo Daligdig. He tried to dissuade them from proceeding with their plan but the appellants and his group did not heed him. A few minutes later, at around 7:30 o'clock in the evening, he heard gunshots coming from the direction of the house of the deceased. After 30 minutes, appellants and their group, except Babing Yurong, returned.[6]

Appellants also claim that the testimony of Rufina Daligdig, lone eyewitness of the prosecution, is highly suspicious in that she failed to reveal the identities of her husband's killers immediately after the incident and only did after 11 days had lapsed from the time of the shooting incident. The failure of Rufina Daligdig to reveal the identities of the persons who shot her husband has been fully explained. The trial court said:

"What was the reason for this attitude of the widow, the lone eyewitness to the killing of her husband? Why did she refuse to reveal the identity of the killers to witnesses Mangubat, Yabu and Suan? Why did she not reveal to Barrio Captain Taruc, a relative or to Patrolman Caliso of the Sibutad Police Force or to even Judge Nicomedes Calusag of Sibutad?

With respect to Yabu, Suan and the others who were more curious neighbors, she did not reveal the names of her husband's killers because these curious inquirers are relatives of the killers and to untimely reveal their names to the merely curious bystanders is to sign her own death warrant, considering that she missed death by a mere hairbreadth when the second shot was aimed at her but missed her by the providential fall of her dead husband,

which brought her down, thus saving her life. Her hair was, however, singed (burned).

Barrio Captain Taruc, testifying in rebuttal, informed the Court that when he asked his cousin, Rufina, as to who shot her husband, she informed him that she knew and recognized them in the bright moon light. This statement was made in the presence of Patrolman Caliso. She also promised to reveal all to the Sibutad authorities or to the NBI.

Judge Cabasag noticed that the widow was afraid even in the presence of the Judge, the Barrio Captain and Patrolman Caliso, so he advised her to relate her declaration before the authorities in Sibutad or in Dipolog, which she proceeded to do immediately after the remains of her husband was properly buried.

The Court noted that Rufina refused to identify the killers of her husband while she was still in Sawang, Sibutad, Zamboanga del Norte; that immediately after reaching Dipolog City, she lost no time in giving her statement to the NBI when she failed to see the Chief of Police at Sibutad. Besides, she was not duty bound to inform the merely curious who happened to be the relatives of the killers, as to the identity of the killers of her husband. Placed as she was in Sawang, Sibutad, Zamboanga del Norte, among the relatives of the murderers of her husband, she was patently and clearly justified in refusing to reveal their identity then.

It would have been a different matter if, when she went to the Municipal Hall of Sibutad, and was investigated by the police authorities, she refused to reveal the names of the killers. According to the evidence on record when she went to Sibutad, Zamboanga del Norte, she did not meet the Chief of Police, so she came to Dipolog City and identified the killers of her husband as the accused Felix Bahian and Rodolfo Yurong. The other two she did not recognize.

Our view is that her actuation was dictated by prudence under the prevailing circumstances that night of November 4, 1971 and the following morning. Besides, there is serious doubt that Yabu was there that night. Virgilio Otad, a disinterested witness testified that that night, he was at sea with Sulpicio Yabu and returned at about 11:00 o'clock that evening so that Yabu could not have been there earlier. Barrio Captain Filemon Taruc also testified that Yabu was not there at the house of the victim that night."^[7]

Appellants further contend that the prosecution failed to establish a motive for them to kill the victim. Suffice it to state, in this connection, that motive is not essential to conviction when the accused as in this case, were positively identified and there is no doubt as to their identity as the culprits.^[8]

The crime committed by the appellants is murder qualified by treachery and attended by the aggravating circumstance of dwelling. With no mitigating circumstance to offset the same, the maximum penalty provided in Art. 248 of the Revised Penal Code should be imposed upon each of the appellants. However, for lack of the required number of votes to impose the death penalty, each of the appellants is hereby sentenced to suffer the penalty of reclusion perpetua.

WHEREFORE, the judgment appealed from should be, as it is hereby AFFIRMED with the modification that the indemnity to be paid for the death of the victim should be increased to P30,000.00. With costs against the appellants.

SO ORDERED.

Fernando, CJ., Teehankee, Makasiar, Aquino, Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., de la Fuente and Cuevas, JJ., concur.

[1] p. 3, Rollo.

[2] pp. 29-30, Decision.

[3] pp. 2-6, Brief for the Appellee.

[4] p. 68, tsn, July 9, 1973.

[5] pp. 29-30, tsn, Aug. 10, 1973.

[6] pp. 3-11, tsn, Dec. 27, 1972.

[7] pp. 26-27, Decision.

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