

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO DE LA CRUZ Y CUMPIO, ACCUSED-APPELLANT.

G.R. No. 100386. December 11, 1992

Ponente: NOCON, J.

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NOCON, J.:

It was the smirk on the face of accused-appellant Eduardo de la Cruz which cannot be erased from the memory of sole eyewitness, Alfred Dizon that fateful night of July 2, 1985 when Clarito "Larry" Olivares was murdered.

Accused Eduardo de la Cruz was charged with the crime of Murder under an information,[1] which reads:

"The undersigned accuses EDUARDO DE LA CRUZ Y CUMPIO of the crime of MURDER, committed as follows:

"That on or about the 2nd day of July, 1985, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a fan knife (balisong), with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack therewith CLARITO OLIVARES in the different parts of his body, inflicting upon him stab wounds resulting to hypovolemic shock secondary to massive hemorrhage due to penetrating wounds of the heart and left anterior (sic) chest, and as a result thereof the said Clarito C. Olivares died instantly.

"CONTRARY TO LAW."

After a trial on the merits, the trial court rendered a Decision,[2] the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the accused, Eduardo de la Cruz y Cumpio, guilty beyond reasonable doubt of the crime charged, and he is hereby imposed the penalty of reclusion perpetua. He shall indemnify the heirs of the victim, Clarito (Larry) Olivares, the amount of P48,150.00 as reasonable burial and related expenses incurred, as well as, P30,000.00 for Olivares' death.

"He shall be credited with the preventive imprisonment undergone by him subject to the conditions prescribed by Article 29, of the Revised Penal Code, as amended."[3]

The facts of the case are as follows:

Alfred Dizon went to the house of the deceased on July 2, 1985 at around 4 o'clock in the afternoon. From there, Dizon together with the deceased Olivares proceeded to Morlow's, a pub, where they drank two (2) Tanduay "lapads" and stayed there up to about 9 o'clock in the evening.

They later proceeded to a radio station, DWHB, and had some more drinks. At around 9:30 that same evening, Dizon heard Olivares arguing with someone at the gate of St. Louis University Girls High. Dizon called Olivares and told him that it was time to go home. It was at this point that Dizon saw Olivares crying. They proceeded to the 456 Restaurant which was along Session Road and about one hundred (100) meters away from the radio station. They had coffee there and stayed for about twenty to thirty minutes.

Dizon testified that Olivares looked depressed and told the former that he was in trouble but did not reveal the reason why he was bothered.

At around 10 o'clock that same evening, they went home walking down Session Road towards the Pines Theater. Upon reaching the Development Bank of the Philippines, which is about ten (10) meters away from the Pines Theater, Olivares was greeted by a townmate and both talked for about ten (10) minutes. After which, Dizon and Olivares proceeded down the road and were met suddenly by three men, one of whom is the accused-appellant, who immediately drew a fanknife and stabbed Olivares in the stomach. Olivares in his attempt to elude the knife thrust of appellant accidentally warded off Dizon and in doing so, the former landed on top of the latter.[4] Olivares tried to get up but accused-appellant stabbed him again on the chest.[5]

Because of the successive thrusts, Olivares fell down once more but was able to kick accused-appellant on his right foot. In so doing he got stabbed a third time below the knee.[6]

Dizon was able to free himself as soon as Olivares tried to stand up. He tried to fight accused-appellant but the latter lunged at him with his knife. Dizon stepped backward and with his left hand grabbed appellant's right wrist and in so doing Dizon's finger got lacerated. Then, accused-appellant and his companions ran away.[7]

Olivares was brought to the Baguio General Hospital but was pronounced dead on arrival.

The following day, July 3, 1985, Dr. Emmanuel Fernandez of the Baguio Health Department conducted an autopsy examination on the deceased and his findings are the following:

"x x x x

3. STAB WOUND on the left anterior chest located 3 cm from the mid-line and 3.5 cm above the nipple line; 2 cm long with 3 black surgical stitches and with its medial end blunt and lateral end sharp; 15.5 cm deep directed inwards, backwards and slightly downward; penetrated the chest muscles, entered between the 3rd and 4th left anterior ribs producing an incomplete fracture of the 4th rib at its upper border; entered the anterior pericardium and penetrated through and through the left atrium and left ventricle of the heart; entered the posterior pericardium then penetrated the lower lobe of the left lung producing massive hemorrhages into the left thoracic cavity. (HEMOTHORAX 2.5 liters, left; HEMOPERICARDIUM - 300 cc.)

4. STAB-INCISED WOUND on the left upper quadrant of the abdomen along the left, anterior auxiliary line, 5 cm from the midline and 16 cm below the nipple line; angular shaped with 3 black surgical stitches; 3 cm. long with its medial end blunt and its lateral end sharp; directed inwards, medially and downwards penetrating only the whole layers of the abdominal wall.

5. STAB WOUND on the right leg, distal third, lateral aspect; 1 cm long with its upper end sharp and lower end blunt; 4.5 cm deep directed downwards and laterally penetrating only the skin and muscle layers:

6. Except for marked pallor, the rest of the internal organs are normal. The stomach contained 1 1/2 cupfuls of brownish liquid materials admixed with some digested meat particles and having a strong alcoholic smell."

CAUSE OF DEATH:

"Hypovolemic shock secondary to massive hemorrhage due to penetrating wounds of the heart (left atrium and left ventricle) and the left lung (lower lobe) due to a stab wound on the left anterior chest."[8]

Two days after the incident, Dizon went to the police station and gave a written statement. He described the killer as a man between the ages of 28 and 32, about 5 feet 7 Inches in height, of regular build, with an oblong face, pointed nose, sported a mustache, wore a checkered polo shirt, a blue-green jacket with straight collar, and a blue wool hat.[9]

Dizon's detailed description of the killer fitted accused-appellant who, coincidentally, was seen by Det. Calpito at around 9 o'clock in the evening of July 2, 1985 in front of the Lady Donna Restaurant. Appellant is known to the Police for a month before the incident, his picture having been taken by the Baguio Police Department in connection with another murder case.

Without telling Dizon of appellant's possible connection with the killing of Olivares, Det. Calpito gathered from his personal files mug shots of eight persons, including that of the accused-appellant, having a strong similarity with the description given by Dizon. When shown the mug shots, Dizon immediately identified appellant's mug shot (Exhibit "E").

Thereafter, accused-appellant, who answers to the name of Eduardo de la Cruz, was picked up by the police authorities and brought to the police station where Dizon identified him again as the assailant of Olivares.

Accused-appellant had an existing record in the police station because he is a member of the Sigue--Sigue Commando Gang. While this is admitted by the accused-appellant, he claims he is no longer a member of said gang.[10]

On the other hand, accused-appellant denies involvement with the killing of Olivares and predicated his defense on alibi.

We are not persuaded.

Dizon, who happens to be the sole eyewitness to the killing had the opportunity to observe the physical features of the person who attacked Olivares that fateful night of July 2, 1985. He even had the chance to see the attacker face to face because he was able to wrest possession of the attacker's knife and in doing so hurt his finger.

He likewise gave a vivid description of the attacker and was able to positively identify accused-appellant in the mug shots presented to him. Again, when presented in a line-up, Dizon was able to identify the accused-appellant as the assailant of Olivares.

Dizon describes the accused-appellant as follows:

"9. Q - Will you describe him then?

A - He is between the ages from 28 to 32 years old, about 5'7" in height, brown complexion, regular built, oblong face, pointed nose, with mustache, wearing blue wall (wool?) hat, wearing checkered polo-shirt and wearing a blue-green jacket with straight collar." (Exhibit "E")[11]

The above description of the assailant lends to easy verification, confirmation or refutation. In fact during the trial, Dizon accurately described accused-appellant even though the latter shaved his mustache which he previously had during the first hearing.[12]

This indicates exceptional ability in the powers of observation and recollection by the witness. Since his description fits appellant, a fact not denied by him, Dizon had no difficulty in positively recognizing him in court.

True, that the witness admitted having drunk alcohol and being "tipsy" before the incident occurred, but said condition apparently wore off as not to affect his perception and becloud his recollection and description of the attacker. The undeniable fact is that Dizon's description of the assailant was so accurate that Det. Restituto Calpito immediately recognized appellant as the person described and whom he saw in front of Lady Donna Restaurant at around 9:00 P.M. on the night in question, dressed, exactly in the way described.

Accused-appellant's defense of alibi is not only inherently weak but finds no support from the testimony of Dra. Carmelita Paruñgao-Caisip, who performed the caesarean operation on his wife at 12:15 in the morning of the

following day, July 3, 1985. She testified she did not notice accused-appellant at the hospital at the time she performed the operation.

Moreover, the defense of alibi cannot prevail over appellant's positive identification by eyewitness Dizon, who had no motive at all to testify falsely against him and who had not known him prior to the incident. To be given full faith and credit, the defense of alibi must not only be clearly established but must not leave room for doubt as to its plausibility and verity.[13]

Finally, appellant's argument that even assuming his conviction of the crime of Murder under Article 248 of the Revised Penal Code, the penalty imposable should have been only 18 years, 8 months and 1 day to 20 years and not reclusion perpetua.

We do not agree.

Sitting in en banc, the Court ruled in *People vs. Munoz*:^[14]

"The advocates of the Masangkay ruling argue that the Constitution abolished the death penalty and thereby limited the penalty for murder to the remaining periods, to wit, the minimum and the medium. These should now be divided into three new periods in keeping with the three-grade scheme intended by the legislature. Those who disagree feel that Article III; Section 19(1) merely prohibits the imposition of the death penalty and has not, by reducing it to reclusion perpetua, also correspondingly reduced the remaining penalties. These should be maintained intact.

"A reading of Section 19(1) of Article III will readily show that there is really nothing therein which expressly declares the abolition of the death penalty. The provision merely says that the death penalty shall not be imposed unless for compelling reasons involving heinous crimes the Congress hereafter provides for it and, if already imposed, shall be reduced to reclusion perpetua. The language, while rather awkward, is still plain enough. And it is a settled rule of legal hermeneutics that if the language under construction is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation.

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"The question as we see it is not whether the framers intended to abolish the death penalty or merely to prevent its imposition. Whatever the intention was, what we should determine is whether or not they also meant to require a corresponding modification in the other periods as a result of the prohibition against the death penalty.

"It is definite that such a requirement, if there really was one, is not at all expressed in Article III, Section 19(1) of the Constitution or indicated therein by at least clear and unmistakable implication. It would have been so easy, assuming such intention, to state it categorically and plainly, leaving no doubt as to its meaning. One searches in vain for such a statement, express or even implied. The writer of this opinion makes the personal observation that this might be still another instance where the framers meant one thing and said another or strangely, considering their loquacity elsewhere - did not say enough.

"The original ruling as applied in the *Gavarra*, *Masangkay*, *Atencio* and *Intino* cases represented the unanimous thinking of the court as it was then constituted. All but two members at that time still sit on the Court today. If we have seen fit to take a second look at the doctrine on which we were all agreed before, it is not because of a change in the composition of this body. It is virtually the same court that is changing its mind after reflecting on the question in the light of new perspectives. And well it might, and can, for the tenets it lays down are not immutable. The decisions of this court are not petrified rules grown rigid once pronounced but vital growing things subject to change as all life is. While we are told that the trodden path is best, this should not prevent us from opening a fresh trial or exploring the other side or testing a new idea in a spirit of

continuing inquiry.

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"x x x (W)e return to our original interpretation and hold that Art. III, Sec. 19(1) does not change the periods of the penalty prescribed by Art. 248 of the Revised Penal Code except only insofar as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged.

"The Court realizes that this interpretation may lead to certain inequities that would not have arisen under Article 248 of the Revised Penal Code before its modification. Thus, a person originally subject to the death penalty and another who committed the murder without the attendance of any modifying circumstance will now both be punishable with the same medium period although the former is concededly more guilty than the latter. True enough. But that is the will not of this Court but of the Constitution. That is a question of wisdom, not construction. Of some relevance perhaps is the parable of the workman who was paid the stipulated daily wage of one penny although he had worked longer than others hired later in the day also paid the same amount. When he complained because he felt unjustly treated by the householder, the latter replied: "Friend, I do you no wrong. Did you not agree with me for a penny?"

"The problem in any event is addressed not to this Court but to the Congress, Penalties are prescribed by statute and are essentially and exclusively legislative. As judges, we can only interpret and apply them and have no authority to modify them or revise their range as determined exclusively by the legislature. We should not encroach on this prerogative of the lawmaking body.

"Coming back to the case at bar, we find that there being no generic or mitigating circumstance attending the commission of the offenses, the applicable sentence is the medium period of the penalty prescribed by Article 248, which conformably to the new doctrine here adopted and announced, it is still reclusion perpetua." [15]

Applying the foregoing doctrine, since appellant committed the crime of murder qualified by treachery with no attendant generic aggravating or mitigating circumstances, the correct penalty is reclusion perpetua as imposed by the trial court.

WHEREFORE, the guilt of accused-appellant Eduardo de la Cruz having been proved beyond reasonable doubt, the decision appealed herefrom is hereby **AFFIRMED** except that the indemnity to be paid to the heirs of the deceased is increased to P50, 000.00.[16]

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Records, p. 1.

[2] Rollo, pp. 54-77.

[3] Ibid. at p. 77.

[4] T.S.N., November 12, 1985, pp. 43-47.

[5] Ibid., at p. 50.

[6] Ibid., at p. 47, p. 50.

[7] Ibid., at pp. 48-54.

[8] Exhibit "C", Records, pp. 170-171.

[9] Exhibit "E", pp. 173-175.

[10] T.S.N., September 29, 1987, p. 2.

[11] Records, p. 173.

[12] T.S.N., November 12, 1985, pp. 40; T.S.N., March 7, 1986, pp. 43-45.

[13] *People vs. Martinada*, G.R. Nos. 66401-03, 194 SCRA 36 (1991), citing *People vs. Serante*, L-46724, 152 SCRA 525 (1987).

[14] G.R. Nos. 38969-70, 170 SCRA 107 (1989).

[15] *Id.*, at pp. 121-125.

[16] *People vs. Sison*, G.R. No. 86455, 189 SCRA 643 (1990).

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