

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE DAYSON, ACCUSED-APPELLANT.

G.R. No. 106234. March 02, 1995

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellant Jose Dayson was charged with murder in an information, dated 01 February 1991, that read:

"That on or about the 18th day of May, 1990, at more or less 9:00 o'clock in the evening, at Bgy. Tinapian, Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with two (2) other persons whose true identities are not yet known and still at large, with intent to kill, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot PEDRO TRILLES. With High Powered Firearm, thereby inflicting upon the latter gunshot wound on the skull (head) which caused his death, to the damage and prejudice of his legal heirs.

"ACTS CONTRARY TO LAW." [1]

After trial, Regional Trial Court Judge Antonio A. Arcangel [2] rendered his verdict (a) finding Dayson guilty beyond reasonable doubt of the offense charged and (b) sentencing him thusly:

"WHEREFORE, premises considered the accused JOSE DAYSON is found GUILTY beyond reasonable doubt of shooting to death Pedro Trilles last May 18, 1990, at about 9:00 P.M. at Tinapian, Manito, Albay. The crime was evidently murder because the victim was killed while almost unconscious, being very drunk that he had no chance of defending himself. This is treachery.

"The crime was further aggravated by the fact that it was committed in the dwelling of the victim, at nighttime, and by a band of armed men.

"There being no mitigating circumstances present to offset the aggravating, accused Jose Dayson is sentenced with reclusion perpetua and to pay the widow and heirs of the victim, the amount of P50,000.00 for the life of the victim plus P10,000.00 for burial expenses.

"SO ORDERED." [3]

Dayson, protesting his conviction and insisting on his innocence, has come to this Court. We cannot grant him relief.

Nieves Trilles, widow of deceased Pedro Trilles, narrated on the witness stand how the accused took the victim's life at about nine o'clock in the evening of 18 May 1990. Nieves was then with her husband at their residence in Tinapian, Manito, Albay. Their small hut was well lighted with a kerosene torch ("karaba"). Suddenly, Jose Dayson, whom she knew to be a member of the Civilian Armed Forces Guerilla Unit ("CAFGU"), entered the house through the doorless kitchen and forthwith fired his gun at Pedro Trilles, who was in a frontal slouching position, shattering the latter's skull and killing him instantly. Shocked, Nieves managed to recognize her

husband's assailant who was standing just about an arm's length away from the couple. Dayson immediately left. Gazing through the window, Nieves saw Dayson join up with two other persons outside the house whom she could not identify. She had no idea of any motive for the dastardly act. The following day, she informed her husband's parents of the incident and reported the matter to the authorities. The body was brought to the poblacion for autopsy. Nieves added that her husband was the sole breadwinner of the family, and that P10,000.00 was spent for his burial.

Witness Elena T. Alcera, sister of the deceased and barangay captain of Tinapian, Manito, Albay, testified that, at about 6:00 a.m. of 19 May 1990, Nieves told her of Pedro's death. Elena, accompanied by her kagawads, promptly proceeded to the scene of the shooting incident. They saw the victim's lifeless body with its skull shattered by a gunshot wound. The remains were brought to Manito town where an autopsy was performed by Dr. Napoleon Se.

The defense, by and large, is one of alibi.

Dayson, the defense asserted, was on guard duty at the CAFGU detachment in Manumbalay, Municipality of Manito, about three (3) kilometers away from Tinapian of the same town, between 6:00 and 10:00 p.m., on the day of the incident. Being on duty at the time, Dayson did not leave his post until after his replacement for the evening, Marcelo Perol, relieved him at about 10:00 p.m. Perol corroborated this alibi of Dayson. After his relief, Dayson talked for a while with Millallos and then went to the detachment's bunkhouse to spend the night. CAGU soldiers, he said, could carry their long firearms, either a garand or an armalite, only while on guard duty or when they were on important missions. Millallos testified that their detachment was informed on 19 May 1990 about the shooting incident in Tinapian but neither the name of the victim nor that of the assailant was mentioned. He made no entry in their blotter since the matter was also reported to the Manito police.

In appreciating the defense of alibi, this Court has repeatedly held, it is essential that the accused is able (a) to prove his presence at another place at the time of the perpetration of the offense and (b) to demonstrate that it would thus be physically impossible for him to be at the scene of the crime. [4] Neither of the above has been convincingly established. As the Solicitor-General has so pointed out, the presence of Dayson, a roving guard [5] at the CAGU detachment, which is about half a hectare in perimeter, [6] could hardly be monitored that closely during his duty hours, while the distance between the detachment and the victim's house, the trial court on its part has observed, can easily be negotiated in only twenty minutes along a paved provincial highway. [7] Most importantly, accused-appellant's pretense of alibi is no match to the eye-witness account of, and the positive identification made by, the victim's widow who has known the accused for almost ten years before the incident occurred. [8]

The trial court, which obviously should be in the best position to assess the demeanor of witnesses at the witness stand, has noted the testimony of Nieves Trilles to have been "straightforward, convincing and not destroyed, nor put to doubt by the lengthy and thorough cross-examination of the able defense counsel." [9] No plausible reason has been given that might have induced Nieves to testify wrongly against him nor why Nieves, who lost her husband and the father of her five children, would wish to send a person, other than the real killer, to jail for an apparently senseless slaying. That the prosecution has failed to cite appellant's motive for the killing is of no moment. Motive, not being an element of the crime, can become material only when the identity of the assailant is in serious doubt but not, such as in this case, when the accused is positively identified. [10]

The killing was attended by the aggravating circumstances of (1) dwelling, having been committed in the house of the victim without any evident provocation by the latter, and (2) treachery, the deceased not having had any opportunity to defend himself, who, to use the language of the trial court, was "almost unconscious (and) very

drunk," when the sudden fatal shot was, without any warning, delivered by the accused. The attendance of the above aggravating circumstances would be enough to warrant the penalty imposed by the trial court.

It might not be amiss to mention, at least in passing, that neither "nighttime" or the commission of the crime "by a band," likewise appreciated by the trial court, appears to be here extant. Nocturnity is an aggravating circumstance only when it is especially sought for or when the accused has taken advantage thereof to commit an offense, while the phrase "by a band" refers to the situation where more than three armed malefactors act in unison or together in the commission of the crime. The facts on record do not sufficiently establish the attendance of these last two additional aggravating circumstances, and they could have thus been simply discarded by the trial court.

WHEREFORE, the questioned decision, minus its added disquisition on the attendance of "nighttime" and "by a band" in the commission of the offense charged, is AFFIRMED.

Costs against accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo , p. 4.

[2] Branch 10, 5th Judicial Region, Legazpi City.

[3] Rollo , pp. 21-22.

[4] People vs. Penillos, 205 SCRA 546; People vs. Babac, 204 SCRA 968; People vs. Cinco, 194 SCRA 535.

[5] TSN, CIC Bonifacio Millalos, 18 October 1991, p. 24.

[6] Ibid.

[7] Decision, Rollo , p. 20.

[8] TSN, Nieves Trilles, 04 July 1991, p. 15.

[9] Rollo , p. 19.

[10] People vs. Salamat, 225 SCRA 499; People vs. Amondina, 220 SCRA 6; People vs. Molas, 218 SCRA 473.

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