

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSCOE DABAN Y GANZON, ACCUSED-APPELLANT.***G.R. No. 31429. December 19, 1981*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-31429/>**PER CURIAM:**

Roscoe Daban appealed from the decision of the Court of First Instance of Iloilo, finding him guilty of murder, sentencing him to death and ordering him to pay the heirs of Conrado de la Cruz an indemnity of twelve thousand pesos (Criminal Case No. 11863).

According to the prosecution's evidence, at about four o'clock in the afternoon of July 17, 1967 Roscoe Daban, Angel Bala-sote, Jr. and three unidentified persons were riding in a 1965 Chev-rolet Malibu red car with white top (Plate No. L-19604, Quezon City, 1967) which stopped beside a jeep parked in front of the Philippine National Bank Building near Plaza Libertad in Iloilo City.

Right after the car stopped, Daban, who was in the front seat of the car, pulled his pistol and fired three or four times at Conrado de la Cruz who was leaning against the jeep. After the shooting, the driver drove the car in the direction of the Colegio del Sagrado Corazon de Jesus. On reaching the corner of P. Burgos and J. Rizal Streets, it abruptly turned to the right, causing its tires to screech, and then it disappeared from view.

De la Cruz, on being shot, staggered and fell face down on the pavement behind the parked jeep. Two Constabulary soldiers arrived at the scene of the shooting, placed De la Cruz in their jeep and took him to the Polyclinic Hospital where he died. Lieu-tenant Colonel Lauro T. Margate, the Constabulary provincial commander, and his men started looking for Daban sometime after the shooting. They could not find him.

The autopsy disclosed that De la Cruz, 42, had an entrance gunshot wound in the chest. The bullet perforated his left lung and exited at the inner scapular region. He had also an entrance gun-shot wound in the abdomen. The bullet perforated his colon and two loops of the ilium and exited at the left lateral lumbar region. Another bullet hit his left forearm and exited below his left elbow (Exh. A). The victim was a forklift driver of former Congressman Pascual Espinosa and later of the Negros Navigation Company.

Shortly after eight o'clock in the morning of the following day, July 18, Lieutenant Colonel Margate received two telephone calls from Congressman Espinosa apprising him that the car used by Daban (a nephew of Senator Rodolfo Ganzon) was being hastily repainted in Mendoza's Auto Painting Shop located near Senator Ganzon's residence on Timawa Avenue, Molo.

Margate and his men went to the shop and found that the Chevrolet Malibu car had just been repainted black and that the top still retained its white color. The black paint was fresh and the red paint was still discernible. Margate got the car plates with No. L-19604 from Jaime Mendoza, the owner of the shop.

The peace officers were informed by Mendoza that the car was brought to the shop before seven o'clock on that same morning by a certain Burton, a factotum of Edwin Daban, the brother of accused Roscoe Daban, with the request that the car be repainted black "right away". The car was impounded and towed to the Constabulary

headquarters.

Found inside its glove compartment was a statement of account of the Philippine Long Distance Telephone Company mailed to Roscoe Daban together with the toll charges for the long distance phone calls made through Roscoe's phone number 62-11 (Exh. L to O-4).

Investigation disclosed that the car was shipped from Manila on the M/S Elcano by D. L. Teruel Tobacco Co., Inc. and was consigned to Roscoe Daban as shown in the bill of lading dated July 8, 1967 (Exh. D). The bill of lading revealed that the plate number of the car when it was shipped to Iloilo nine days before the killing was L-7914 '66.

About a month after the shooting, Senator Rodolfo Ganzon broadcasted over the radio that he was responsible for the arrest of the accused in Manila in connection with the killing of De la Cruz.

Daban escaped from the national penitentiary on June 15, 1971 (See *People vs. Daban*, 43 SCRA 185; 189; 68 O. G. 2945). He was recaptured. But on June 13, 1976, while confined in the Philippine General Hospital, he again escaped. Up to this time, his whereabouts are unknown. (Note that while at large, Daban was charged with murder in Criminal Case No. 5655 of the Court of First Instance of Rizal for having killed Antolin Ferrer on April 25, 1972 in Makati, Rizal in conspiracy with two other persons.)

In this case, an amended information for murder was filed against Daban, Edgardo Alfonten, Angel Balasote, Jr., Rafael Velasco and an unidentified person. Only Daban and Balasote were brought to trial. Daban did not testify. Three witnesses declared that on the day of the shooting Daban was in Bacolod City.

His two other witnesses testified that the killer was tall, dark and slender and has no mole on the left cheek. (Daban has a mole on the left cheek). As rhetorically asked by the trial court: how did they know that the killer was tall when he was sitting at the time he shot De la Cruz? The testimonies of the defense witnesses evoked disbelief instead of generating credence.

The trial court did not believe Daban's alibi. It gave credence to the testimony of Vicente Felisario, 38, a bystander who claimed to be an eyewitness to the shooting. He surfaced as a witness more than six months after the shooting or on February 3, 1968 when he gave his statement to the constabulary investigator (Exh. GG). The trial court regarded Felisario's testimony as sufficient for the conviction of Daban. It acquitted Balasote.

Appellant Daban, in order to show that Felisario was mistaken and that the trial court erred in assuming that the repainted car was the one used in the killing, tried to prove that the said car was a red and black car because its white top was covered by a detachable black vinyl material (Exh. 2).

Edwin Daban, 29 (the elder brother of the accused), who allegedly got the car from the M/S Elcano when it arrived in Iloilo City, testified that the black vinyl material concealed the white top of the car. Mendoza declared that after placing black paint on the red body of the car, it took him about ninety minutes to remove the black vinyl cover of the top, thus exposing its original white color. At that juncture, the Constabulary men arrived in his shop and informed him that the car was used in shooting De la Cruz. So, Mendoza was not able to complete the repainting of the car.

We hold that even if it were assumed that Felisario was mistaken in testifying that the car had a white top, that error would not be sufficient to cast doubt as to Roscoe Daban's guilt. Felisario correctly identified the car as having a red body and two antennas at the rear and as bearing the plate number which is the number found in the two plates surrendered by Mendoza to the Constabulary officers (Exh. HH).

That car was consigned to Roscoe Daban nine days before the shooting (Exh. D) and its glove compartment

contained the telephone bills sent to Roscoe by the PLDT (Exh. L to O-4).

Appellant's counsel contends that the trial court erred in finding that Roscoe shot De la Cruz. That finding was based mainly on the eyewitness-testimony of Felisario, a Korean war veteran familiar with firearms, who after his discharge from the army became a taxicab driver. He testified that he was only about six or seven meters from the Chevrolet car when Roscoe at a distance of about two to two and a half meters fired at De la Cruz.

He even testified that immediately after the shooting, when Balasote, who was in the back seat, saw Felisario looking at him, Balasote or Dagol instinctively sought cover by sinking on his seat.

Felisario recognized Roscoe as the assailant because the latter is well-known in Iloilo City, having been linked to the killing of a man nicknamed "Sweetheart" and a lawyer named Garin. Felisario had seen Roscoe on several occasions and had heard Roscoe's companions call him by that name (No. 6, Exh. GG).

In spite of a rigorous cross-examination, Felisario did not waver in his identification of Roscoe as the gunwielder.

Appellant's last contention is that the trial court erred in using his failure to testify in his behalf as an indication of guilt. The trial court conceded that the neglect or refusal of the accused to be a witness should not in any manner prejudice or be used against him (Sec. 1[d], Rule 115, Rules of Court). At the same time, it observed that Roscoe could not escape the unfavorable inferences arising from his failure to deny incriminating facts (p. 838, Record).

The trial court erred if it based the judgment of conviction on Roscoe's failure to testify, a negative fact which cannot be conclusive as to his guilt. The truth is that it convicted Roscoe on the basis of the evidence of the prosecution which points to him as the killer who use a Chevrolet car as his shield and coign of vantage for consummating the killing with impunity and as a means for making a fast getaway. (See *People vs. Upao Moro*, 101 Phil. 1226 unpublished and *Pendleton vs. U.S.*, 216 U.S. 305, 54 L. ed. 491, 40 Phil. 1033).

The record does not show the motive for the killing. Notwithstanding that deficiency in the prosecution's evidence, the guilt of the accused was proven beyond reasonable doubt. He was positively identified by Felisario as the killer. Any lingering doubt as to his guilt was dissipated by his becoming a fugitive from justice and by the overtures for amicable settlement of the case for P3, 000 made in his behalf by his father, Victor Daban, Gerson Espinosa and Pascual Espinosa and the assistant provincial warden (391-394 tsn April 10, 1969).

The killing was correctly characterized by the fiscal and the trial court as murder, a cold-blooded assassination perpetrated in a public place in daytime in the view of several persons. The manner of its perpetration reveals the high degree of perversity and dangerous-ness of the culprit.

The killing is qualified by treachery and aggravated by the use of a motor vehicle. The means employed by the accused were intended to surprise the victim and prevent him from making any retaliation and at the same time to facilitate the malefactor's escape from the scene of the crime. Evident premeditation cannot be considered aggravating.

There being no mitigating circumstances, the capital punishment has to be imposed on the accused (Art. 64[3] and 248, Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed. Costs de officio.

SO ORDERED.

Teehankee, Makasiar, Aquino, Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur.

Barredo, and Concepcion, Jr., JJ., on leave.

Fernando, C.J., no part.

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