

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANOLO CHAVEZ, DEFENDANT-APPELLANT.***G.R. No. 55830. April 28, 1983*

Ponente: RELOVA, J.

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Between 5:30 and 6:00 in the morning of January 6, 1978, Mauricio Dy, then Cashier of Ong King Po Enterprises, was found dead by his companions, lying on the floor of the bodega. As the said store was already opened there were neighbors and customers already around, among them were Decator Abejuela and appellant Manolo Chavez, viewing the dead body of Mauricio Dy. When Chavez saw Abejuela, he immediately made a sign to the latter by putting the forefinger of his right hand on his lips.

Earlier that morning of January 6, 1978, about 4:00, Warlita Almonia, who lives about three (3) meters away from the said store of Ong King Po, was awakened by an unusual sound from the store. And, about 4:30, Decator Abejuela, while on his way to the house of a friend, Ricky Chavez, nephew of appellant, to accompany the latter to the station of the bus which was bound for Cebu City, saw a man on top of the roof of the rear portion of the bodega of the said Chinese store. Abejuela, from that distance, did not recognize who the man was because it was dark and the man was wearing a long sleeve black shirt and a garter which covered his face. Abejuela shouted "hoy." The man noticed him and immediately jumped to the ground, picked up a big stone and rushed towards Abejuela. This time, Abejuela was able to recognize the man as the appellant Manolo Chavez who threatened to smash his face with the stone should he reveal to anybody what he saw. Frightened, Abejuela promised to keep quiet about it.

Appellant proceeded home and while on the stairs of his house Warlita Almonia saw him through her open window facing the nearby house of appellant. She saw him change his long sleeve black shirt while still on the stairs before getting inside the house.

Appellant was investigated by the police; later by a PC investigator. In both investigations, he professed he was not assisted by counsel and claimed that coercion was used upon him by a PC Lieutenant during the PC investigation.

Appellant vehemently denied the accusation against him and claimed that on the night of January 5, 1978, up to the early morning of January 6, 1978, he was with his three children in his house as his wife spent the night in the house of her parents. He never left the house until about 5:45 in the morning of January 6 when he went to the provincial road to meet and wait for his wife. It was then that he noticed several persons crowding the store of Ong King Po. He went inside the store and there he saw the body of the victim Mauricio Dy. If he were guilty, he said, he would not go there where several persons were crowding. He was just as innocently curious as his neighbors.

The charge of murder was filed against Manolo Chavez. After trial he was convicted in a decision of the Court of First Instance of Camiguin, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, the Court finds and so holds that the Guilt of the accused, Manolo Chavez, has been established beyond reasonable doubt of the crime of MURDER with the attendant qualifying circumstance of treachery defined and penalized under Article 248 paragraph 1, and there being no mitigating or aggravating circumstance, hereby sentences him to RECLUSION PERPETUA.

"The accused is hereby ordered to indemnify the heirs of the deceased, Mauricio Dy, in the amount of P12,000.00 without pronouncement as to costs."

In his assignment of errors, appellant claimed that the trial court erred (1) in convicting the accused-appellant of the crime of murder with attendant qualifying circumstance of treachery penalized under Article 248, paragraph 1 of the Revised Penal Code based merely on circumstantial evidence; (2) in disregarding the testimony of the accused as well as the other defense witnesses; and, (3) in not dismissing the case and/or acquit the accused for insufficiency of evidence against him.

Finding for the prosecution, the trial court said:

"Decator Go Abejuela in the course of his testimony was attentive, his answers to questions propounded were responsive and appears fairly intelligent. While an insinuation was made by the witness, Ricky Chavez, that Decator Go Abejuela is known to be 'Calo-calo' (mentally deficient) yet the Court does not give credence to this assertion for said witness did not show any sign of mental deficiency on the witness stand, especially at the stage when he was subjected to intense cross-examination for about 2 days. The Abejuelas and Chavez families are friends. They are neighbors. No improper motive has been established to show why Decator Go Abejuela testified in the manner he did, thus, his testimony shall be given full faith and credence.

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"While Manolo Chavez was making a sign to Decator Go Abejuela at the precise moment they were viewing the body of Mauricio Dy, Susan Ong saw them. She immediately reported the matter to her husband, Ang Bon Kiam, and together they proceeded to the Manager, Felixberto Jaquilmac and reported the matter. She further testified that about 3 o'clock in the morning of January 6, 1978, she was awakened by the barking of a dog tied near the stairs leading to the second floor of the store. This dog barks only at strangers and never barks at people familiar especially those living in the establishment.

"In the early morning of January 6, 1978, Warlita Almonia woke up as her usual practice to boil water and to cook rice. She heard a loud noise coming from the store of Ong King Po which is located about five meters away. Feeling afraid, she went back to her room and began cleaning the rice to be cooked. On going back to the kitchen she saw Manolo Chavez, wearing a long sleeve black shirt, holding a lamp going upstairs his house. After removing his shirt right on the stairs, Manolo Chavez went inside his house while she proceeded to cook the cleaned rice. The house of the Almonias is only about ten meters distant from that of Manolo Chavez and is in between the latter and the store of Ong King Po.

"Manolo Chavez, according to Ang Bon Kiam, has developed an intense hatred against the Chinese in the Ong King Po Enterprises. At one time, Manolo Chavez having failed to buy beer in the establishment got angry. When he met Ang Bon Kiam in the seashore, Manolo Chavez picked up a stone and addressing him, 'So you are a foolish chinaman, you did not sell me beer. I'll smash you with this stone. You will be the eleventh.' He wanted to hit Ang Bon Kiam, but desisted when the Chinaman pleaded for his life. The claim of Manolo Chavez that this was done in zest to the mind of the Court is a flimsy excuse.

"After the death of Mauricio Dy, Manolo Chavez, who frequents the Ong King Po Store no longer patronize said store.

"Adam Chavez, a brother of the accused threatened bodily harm on the family of Sofronio Go Abejuela, particularly his wife, Charlotte Go Abejuela, when Decator Go Abejuela was known to be a witness for the

prosecution against Manolo Chavez. The certainty that Manolo Chavez knew of this fact is bolstered by the accused not having denied the same, thus an attempt was made by means of intimidation and threat on the part of the accused and his relatives to suppress the testimony of Decator Go Abejuela." (Decision, pp. 76-79)

As has already been stated by this Court in the case of *People vs. Santos*, 94 SCRA 277, "[w]hen the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case." In the case at bar, We find no important fact or circumstance which detracts from these findings of the court a quo.

However, We cannot give assent to the conclusion of the lower court that the crime committed was murder, qualified with treachery. On the other hand, We agree with the Solicitor General that the fact that Dy appears to have been hit with a blunt instrument at the back of his head does not mean that there was treachery, in the absence of evidence that appellant consciously adopted that method of attack to insure risk against himself. "Treachery cannot be presumed from the suddenness or unexpectedness of the attack where there is no proof that such mode of attack was consciously adopted to facilitate the commission of the crime without risk to appellants. Neither can it be established from the fact that the injuries of the victim were inflicted from behind where it does not appear that appellants purposely chose to employ that means of attack so that there could be no risk to themselves from any defense which the offended party might have made. Nor can it be supposed under the circumstances that appellants knew before hand that the deceased was unarmed." (*People vs. Resurreccion*, 94 SCRA 696)

Thus, the crime committed is only homicide, penalized with reclusion temporal, without any aggravating or mitigating circumstance.

ACCORDINGLY, appellant Manolo Chavez is guilty of homicide and is hereby sentenced to SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum, and to indemnify the heirs of the deceased Mauricio Dy in the amount of P12,000.00, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.

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