

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANKIE SORIANO AND FERNANDO VALDEZ, DEFENDANTS-APPELLANTS.

G.R. No. 57575. February 25, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal from the judgment of conviction by the then Court of First Instance of Pangasinan, Branch III, Dagupan City, in Criminal Case No. D-1351 for Murder, sentencing the accused Frankie Soriano and Fernando Valdez to suffer the penalty of reclusion perpetua.

The People's evidence has been capsulized in the People's Brief as follows:

"The deceased, Sergio de Guzman, was a passenger of the 'Catherine' mini-bus driven by appellant Fernando Valdez in the evening of March 20, 1976. He boarded the bus at the public market of Mangaldan, Pangasinan. Appellant Frankie Soriano, together with one 'John Doe', were the conductors of the said bus. Sergio de Guzman boarded the bus, with several companions, namely: Danilo Corpuz and Armando de Guzman. A number of his barangay mates, namely, Leonardo Mapalo, Mario Molina, Felimon Calderon and Pedro Maure, were also passengers of the same bus. They were all residents of Anolid, Mangaldan, Pangasinan. Sergio de Guzman was able to seat immediately behind the herein appellant, Fernando Valdez with Armando de Guzman (pp. 5-6, tsn, July 24, 1976).

As the bus travelled towards Dagupan City from Mangaldan, Pangasinan, the appellant stopped at Malabago, Pangasinan, and alighted from his bus to go to a house across the street. He was gone for some twenty minutes, and the passengers became worried and started to be noisy. Later, the appellant-driver returned, carrying a scythe which he gave to his co-appellant, Frankie Soriano (pp. 12-14, tsn, Aug. 23, 1978). Immediately thereafter, the bus proceeded on its way, in a very fast manner (p. 8, tsn, Nov. 2, 1977).

Upon reaching their destination at Saipan, Anolid, Mangaldan, Pangasinan, Danilo Corpus, Armando de Guzman and Sergio de Guzman stopped the bus. Corpus and Armando de Guzman were able to alight, but when Sergio de Guzman was about to go down, the appellant abruptly started his bus preventing Sergio de Guzman from alighting. At this juncture, the appellant Frankie Soriano, and 'John Doe', began to attack Sergio de Guzman. They boxed and kicked him. Frankie Soriano thrust his scythe against Sergio's face wounding the latter whose face bled. Frankie Soriano and 'John Doe' continued to attack Sergio de Guzman, until he fell to the bus floor, near the bus exit (pp. 15-19, tsn, Aug. 23, 1978).

As this drama took place inside the bus, the other passengers shouted for the bus to stop, but the appellant-driver Valdez ignored them. The other passengers could not help Sergio de Guzman because the attacker, Frankie Soriano, was brandishing the scythe while his companion, 'John Doe'; was armed with an iron pipe (pp. 15-19, tsn, Aug. 23, 1978).

Appellant Frankie Soriano and 'John Doe' continued to attack Sergio de Guzman, in spite of his plea for them to stop. Then Frankie Soriano kicked Sergio de Guzman out of the bus. Immediately thereafter,

appellant-driver Valdez maneuvered his bus to the right and then to the left, in a zigzag manner, running over Sergio de Guzman who died instantaneously as a consequence thereof (pp. 21, tsn, Jan. 27, 1981).

After running over Sergio de Guzman, appellant-driver Valdez turned off the bus' headlights and drove fast towards Dagupan City."^[1]

The defense on the other hand, gave the following version of the incident:

"Accused Fernando Valdez was the driver of the 'Catherine' mini bus owned and operated by Romulo Saballa of Binalonan, Pangasinan, while accused Frankie Soriano was the conductor thereof (Tsn, August 22, 1980, p. 4 & Tsn, June 18, 1980, p. 4).

This mini bus used to ply the Dagupan City-Binalonan route and vice-versa. At past 5:00 o'clock in the afternoon of March 20, 1976, the mini bus then driven by accused Fernando Valdez left Binalonan for Dagupan City. It was then full of passengers (Tsn, June 18, 1980, p. 4 & Tsn, Aug. 22, 1980, p. 4).

From Binalonan on the way to Dagupan City, the mini bus had to pass thru the towns of Laoac (new town), Manaoag, San Jacinto and Mangaldan (Tsn, June 18, 1980, p. 4).

Upon reaching the town of Mangaldan at past 6:00 o'clock that early evening of March 20, 1976, about ten passengers boarded the bus in front of the public market of said town (Tsn, June 1980, p. 6 & Tsn, Aug. 22, 1980, p. 4), and some of whom were able to take their seats inside the bus, while others stayed in between the seats and near the running board (Tsn, June 18, 1980, p. 7 & Tsn, Aug. 22, 1980, p. 10).

After leaving the public market of Mangaldan, accused Valdez stopped the mini bus at Brgy. Malabago to pay his father's indebtedness of P50.00 to the former's aunt, Coring Valdez, spending therefor about ten minutes (Tsn, Aug. 22, 1980, p. 8).

Accused Valdez next stopped his vehicle within the next barangay of Anolid after two of his passengers signalled him to stop. These two passengers who were drunk alighted. One of them, upon alighting, hurriedly passed in front of the bus towards the driver's seat and tried to pull down driver-accused Valdez therefrom; and that because he sensed that these two passengers had bad intention on him, accused Valdez drove on (Tsn, Aug. 22, 1980, p. 11 & Tsn, June 18, 1980, pp. 9-12).

Conductor - accused Frankie Soriano did not see any passenger being boxed or kicked because he was then collecting fares at the rear portion of the bus (Tsn, June 18, 1980, p. 14). Neither did accused Valdez notice anyone fall from the bus because he was then driving. Nor did he notice his vehicle run over anything (Tsn, Aug. 22, 1980, p. 12)."^[2]

After trial, the lower Court rendered a verdict of guilty, thus:

"WHEREFORE, in the light of the foregoing considerations, this Court finds FRANKIE SORIANO and FERNANDO VALDEZ both guilty of the crime of Murder defined under Art.248 of the Revised Penal Code and hereby sentences each of them to reclusion perpetua (Life Imprisonment) and to indemnify the heirs of Sergio de Guzman the amount of P12,000.00 jointly and severally and to proportionately pay the costs. This is without prejudice to further proceedings in the event that the third accused who is unknown is identified and duly arrested."

In this appeal, the accused submits that:

I

"The Trial Court erred in finding and concluding that the killing of Sergio de Guzman was deliberate and was attended by circumstances of treachery, use of motor vehicle and with superior strength that qualified it to murder.

II

"The lower court erred in finding and concluding that accused driver Fernando Valdez was an enemy of the deceased Sergio de Guzman.

III

"The trial court erred in holding the view that both accused Fernando Valdez and Frankie Soriano should have reported the incidents to the police or they should have executed voluntarily their own sworn statements when asked to do so.

IV

"The trial court erred in concluding that there was no reason for the two drunken persons to try to pull down the driver, and that such pulling incident was not cause for accused Fernando Valdez to panic, so much so that he took another route to Binalonan, Pangasinan.

V

"The lower court erred in not finding and concluding that the death of Sergio de Guzman was purely accidental and of his own making.

VI

"The trial court erred in finding and concluding that both accused Fernando Valdez and Frankie Soriano are guilty beyond reasonable doubt of the crime of murder, as defined and penalized by Article 248 of the Revised Penal Code and in sentencing them to a prison term of reclusion perpetua, and to indemnify jointly and severally, the heirs of Sergio de Guzman in the amount of P12,000.00, and to proportionately pay the costs."

The core issue for resolution is whether or not the death of Sergio de Guzman (VICTIM, for short) was accidental or deliberately caused by Appellants.

The evidence on record supports the Trial Court's conclusion that the killing of the VICTIM was deliberate. Three eyewitnesses, namely, Domingo de Vera, Leonardo Mapalo, and Filemon Calderon, all of whom were passengers of the mini-bus, positively and convincingly testified that while the VICTIM was on the bus, APPELLANTS were staring at him; that as, the VICTIM was about to alight, the bus suddenly picked up speed and the VICTIM was mauled by the two conductors, who were armed with a scythe and an iron pipe, respectively; then accused SORIANO kicked the VICTIM out of the entrance of the bus on the right side nearer the front; after which accused VALDEZ put out the headlights and swerved the bus to the right and then to the left such that the VICTIM was run over by the right rear tire; the witnesses heard a thud (alaltog) and felt the bus lifted by about four inches and then down again.

The thud that the eyewitnesses had heard and felt could only have been because the VICTIM was run over, which fact is supported by the autopsy findings that the VICTIM's head was flattened from side to side (pitpit) and the brain tissues macerated. Following is the detailed description of the VICTIM's injuries:

"x x x x x x x

"Head;

Head appears flattened from side to side. Right temporofacial are with bruises and ecchymoses. The bruises are numerous linear and appeared to be in the same direction. Left face showed irregularly rounded ecchymoses with superficial bruises.

Body-Extremities;

Ecchymotic spot at the left shoulder joint about 1 x 1 inches. Ecchymotic spot at the left waist-line, rounded irregularly about 2 x 1 inches. Incised wound right foot, at the post. area. Superficial abrasion and bruises of

the right lateral aspect of right elbow and arm. Bruises superficial right deltoid muscle.

Findings on the Skull and Cranium;

The skull appears compressed from side to side. On palpitation of the skull, it appeared soft with multiple crepitus felt. Eyeballs sunken with peri-orbital hemorrhages and ecchymoses. The right temporal facial area showed uniformly numerous linear bruises over an area of ecchymoses involving the facial and temporal area. The left face with ecchymoses with superficial bruises.

On opening the scalp and elevating it from the skull, multiple fracture was visible, movable. Brain tissue are coming out of the fracture segments mixed with dark clotted blood.

x x x x x x x x

Cause of Death:

Maceration of brain tissue, secondary to compressed fracture of the skull, multiple hemorrhage, secondary."

The VICTIM's fall from the bus could not have been accidental. If it were, VALDEZ would not have maneuvered the bus in such a way as to ensure that the VICTIM would be run over. His claim that he drove in a zigzag manner to avoid the big stones scattered on the road, which was then under repair, is negated by the fact that he switched off the headlights and sped away, obviously seeking the cover of night. The explanation that two drunken passengers tried to pull out VALDEZ from the driver's seat and that the bus was being stoned from behind for which reason he panicked and drove away fast is a lame attempt at exculpation. Even out of charity alone, VALDEZ would have stopped to assist the VICTIM specially with the passengers clamoring for a halt. A natural reaction would also have been for Appellants to have reported the "accident" to the police immediately thereafter.

The excuse that Appellants could not have known that the VICTIM had been run over since SORIANO was busy collecting passenger fares at the rear of the bus, while VALDEZ was himself driving, is negated by the added circumstances that VALDEZ de-viated from the normal route on their return trip that evening, and further avoided taking out the bus the following day. Besides, with the passengers shouting for the bus to stop, they could not but have known.

Unconvincing, too, is Appellants' argument that the victim could not have possibly been run over because the natural tendency of any object falling from a moving vehicle is to fall away from the same, and that since the VICTIM's head was towards the middle of the road and his feet towards the shoulder, the VICTIM might have crawled or rolled over to the road after he had fallen, or, that his body might have been pulled by some barangay mates to the place and in the position where his body was found and photographed.[3] Since the VICTIM fell from a moving vehicle it is highly improbable that he would still have been able to roll over. Neither would the body have been moved, the standard procedure in criminal investigations being to leave objects where they are.

As to the motive of Appellants, the finding of the Trial Court is that the VICTIM was an enemy of VALDEZ. But even if this were to be discounted, it is settled that failure to establish a motive is inconsequential if the assailant has been fully identified by eyewitnesses,[4] as in this case. Motive, though useful, is unessential to convict when there is no doubt as to the identity of the culprit.[5]

The indictment against appellants is Murder attended by the use of motor vehicle. Motor vehicle qualifies the killing to murder if the same was perpetrated by means thereof,[6] as in this case, where the VICTIM was mauled inside the mini-bus, kicked out of the same, and then deliberately run over.

The Trial Court additionally found that treachery and abuse of superior strength were attendant although they were not alleged in the Information. We find, however, that treachery was not satisfactorily established. The

evidence fails to show that the VICTIM was completely unaware when attacked. The eyewitnesses merely declared that they saw the two conductors box and kick the VICTIM until the latter fell off the bus. Treachery cannot be presumed, but must be proven as thoroughly as the crime itself in order to aggravate the penalty or liability incurred by the culprit.[7] It must be shown that the mode of attack was knowingly intended by the assailant to insure the accomplishment of their criminal purpose without risk to themselves arising from any defense that the victim might offer.[8]

The circumstance of abuse of superiority was correctly appreciated. It is only a generic aggravating circumstance, however, because it was not alleged in the Information but was nevertheless proven during the trial.[9] It was shown that the two conductors cooperated in attacking the VICTIM, taking advantage of their combined strength[10] in overpowering him, pushing him out of the vehicle, thus enabling the driver VALDEZ to take the final step in consummating the crime.

The existence of conspiracy can also be inferred from the concerted action of appellants.[11] While the two conductors were attacking the victim, driver VALDEZ instead of heeding the cries of the passengers to stop the bus, continued to drive on. He did not even slow down nor attempt to stop his conductors from mauling the victim. Instead, he purposely ran over the VICTIM when the latter was kicked off the bus by SORIANO, after which he switched off the headlights of the bus and drove away fast. These acts of Appellants evinced a community of criminal purpose or design.

To be appreciated in APPELLANT's favor is APPELLANTS' voluntary surrender to the Station Commander at Mangaldan as testified to by the latter.[12]

Considering the presence of the qualifying aggravating circumstance of use of a motor vehicle, the crime is Murder, punishable by reclusion temporal in its maximum period to death.[13] With the generic aggravating circumstance of abuse of superior strength offset by the mitigating circumstance of voluntary surrender, the penalty is imposable in its medium period of reclusion perpetua.

WHEREFORE, the appealed judgment is hereby affirmed except with respect to the civil indemnity, which is hereby raised to P30,000.00. Costs against accused-appellants Fernando Valdez and Frankie Soriano.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.

[1] Appellee's Brief, pp. 2-5, Rollo, p. 89.

[2] Appellants' Brief, pp. 2-3, Rollo, p. 78.

[3] Exhibits "O","P","Q", pp. 6-8, Record of Criminal Case No.D-1351; Exhibits "B","B-1","B-2", Folder of Exhibits, *ibid*.

[4] *People vs. Rizal*, 103 SCRA 282 (1981).

[5] *People vs. Diva*, 23 SCRA 332 (1968); *People vs. Pascual, Jr.*, 127 SCRA 179 (1984).

[6] Par. 3, Art. 248, Revised Penal Code; *People vs. Ong*, 62 SCRA 174 (1975); *People vs. Canial*, 46 SCRA 634 (1972).

[7] *People vs. Martinez y Sarabia*, 96 SCRA 714 (1980).

[8] Art. 14[16] Revised Penal Code; *People vs. Sudoy*, 60 SCRA 174 (1974).

[9] People vs. Aleta, 72 SCRA 542 (1976).

[10] People vs. Yu, 80 SCRA 382 (1977).

[11] People vs. Angeles, 92 SCRA 432 (1979).

[12] T.s.n., June 13, 1978, p. 170.

[13] Art. 248[3], Revised Penal Code.

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