

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESARIO DEGAMO AND CONSTANTE DEGAMO, DEFENDANTS. CONSTANTE DEGAMO, DEFENDANT-APPELLANT.

G.R. NO. 60945. March 06, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. 140-N of the Court of First Instance of Ilocos Sur, Cesario Degamo and his brother, Constante Degamo, were charged with the crime of Murder committed as follows:

"That on or about the 19th day of December, 1971, in the municipality of Burgos, province of Ilocos Sur, Philippines and within the juris-diction of this Honorable Court, the above-named accused, Cesario Degamo and Constante Degamo, conspiring together and helping each other, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot with guns, one, Tomas Mina, thereby inflicting upon the latter, multiple gunshot wounds directed to the different parts of his body which wounds necessarily produced the death of said Tomas Mina shortly thereafter." [1]

When arraigned, both accused pleaded "not guilty" of the commission of the crime charged.[2] Later, the accused Cesario Degamo withdrew his plea and entered a plea of "guilty" to the charge. He was consequently sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased Tomas Mina in the amount of P12,000.00 and to pay the costs.[3]

Constante Degamo was brought to trial, and at the conclusion thereof, Judge Oscar C. Fernandez found him guilty of the crime of Murder and sentenced him to suffer the penalty of reclusion perpetua, with the accessory penalties of the law, to indemnify the heirs of the deceased Tomas Mina in the amount of P12,000.00, and to pay the costs.[4]

Upon motion of the accused, however, the judgment was modified and Constante Degamo was found guilty only of Homicide and sentenced to suffer an indeterminate penalty of from eight (8) years and one (1) day of prison mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, with the accessory penalties of the law, to indemnify the heirs of the deceased Tomas Mina in the amount of P12,000.00, and to pay the costs.[5]

From this judgment, Constante Degamo appealed to the Court of Appeals. Upon a review of the case, the appellate court found that the crime committed is Murder and sentenced the appellant Constante Degamo to suffer the penalty of reclusion perpetua, with the accessory penalties of the law, to pay the heirs of the deceased the amount of P12,000.00, and to pay the costs. Thereafter, the court certified the case to this Court for final disposition, pursuant to law. [6]

We have scrutinized the record of the case with great care and find that the crime committed is indeed Murder, as found by the Court of Appeals, and that the appellant Constante Degamo and Cesario Degamo, who had pleaded

guilty to the charge, are guilty of the crime.

The record of the case shows that the deceased Tomas Mina and Juan Degamo, father of Cesario Degamo and Constante Degamo, were the candidates for the position of barrio captain of Barrio Manaboc, Burgos, Ilocos Sur. A meeting in connection with said election was scheduled to be held in the early evening of 19 December 1971, in the yard of the former barrio captain, Alfredo Degamo, who had been elected to the municipal council of Burgos, Ilocos Sur.[7]

Cesario Degamo had wanted for a long time to kill Tomas Mina so that he and Constante planned to kill him on that night of 19 December 1971. At about 6:00 o'clock in the evening of the said day, they armed themselves with guns and took positions, about forty (40) meters from the house of Tomas Mina, beside a narrow pathway leading from the house of Tomas Mina to the house of Alfredo Degamo, where the meeting was to be held. At about 7:00 o'clock, Tomas Mina left his house and headed to the barrio meeting, passing through the pathway where the accused were waiting for him. When Tomas Mina was about three (3) meters from them, the accused fired at Tomas Mina. The latter turned and fled, but the accused ran after him and continued firing at him until he fell to the ground.[8]

Upon hearing the gunfire, Dorotea Mina, sister of Tomas Mina, rushed towards the direction of the gunfire and found Tomas lying in the cornfield, mortally wounded. As she cradled her brother in her arms, Tomas Mina said to her: "I am dying, Cesario and Constante who are brothers shot me." [9]

Urbano Dato, a resident of the barrio who was on his way to the house of Tomas Mina in the early evening of 19 December 1971, upon hearing a gunshot, sought cover by the road, and when several more shots were fired, he hid near some small shrubs ("Bagbagutot"), growing near the pathway. As he was hiding, he saw a person running from the south-westerly direction towards the northeast, followed by two (2) persons who were firing guns at the person ahead of them. When the person they were shooting fell, the firing stopped and the two (2) persons left the place, passing by the place where he was hiding. He (Dato) recognized them as Cesario Degamo and Constante Degamo. Constante Degamo was holding a gun. He was able to recognize them because he had known the accused since they were born and the distance between them was only about two and a half (2 1/2) meters.[10]

Dr. Benito Dolor, Jr., Municipal Rural Health Physician of Sta. Maria, Ilocos Sur, conducted an autopsy on the cadaver. He found that the deceased sustained twelve (12) gunshot wounds in various parts of the body. He attributed the cause of death to "Shock, Hemorrhage, Secondary to Multiple Gunshot Wounds." [11]

As the facts of the case show, the crime committed is Murder since the killing was characterized by treachery. Cesario Degamo admitted that he had wanted to kill Tomas Mina and planned to kill him on that night of 19 December 1971. After arming themselves with firearms, they (the accused) hid near a fence beside a narrow pathway leading from the house of Tomas Mina to the house of Alfredo Degamo, through which they expected Tomas Mina would pass in going to the barrio meeting. Then, when Tomas Mina was only about three (3) meters from them, they shot him. When Tomas Mina fled, they followed him and continued firing at him until he fell. Without doubt, the means, mode and manner of killing Tomas Mina directly and especially insured the commission of the crime without risk to the defense that the deceased might make.

The claim of the appellant Constante Degamo that it was not he, but his cousin Rosalino Degamo who had accompanied Cesario Degamo in killing Tomas Mina is not worthy of belief. We cite with approval the following disquisition of the Court of Appeals.

"With respect to the evidence for the defense, it is contended that the trial court erred in giving no credit to the testimony of Cesario Degamo that his companion, at the time of the incident, was Rosalino Degamo and not Constante.

"It is, indeed, noteworthy that it was only on June 21, 1973, more than a year after the arrest of the two brothers and after the prosecution had already presented eyewitness Esteban Mina and two other witnesses, that Pampila Degamo, Cesario Degamo, and Constante Degamo executed sworn statements (Exhs. 3, 5 & 6) before the Assistant Provincial Fiscal conducting a reinvestigation of the case, that Rosalino Degamo was the companion of Cesario in shooting Tomas Mina. This was the first time such a claim was made. Their excuse that they did not make this disclosure earlier because they had never been confronted before by the police flimsy. They were arrested in connection with the killing of Tomas Mina and they were later investigated by the municipal court, but in neither case did they ever say that it was not the accused Constante, but their cousin Rosalino, who was involved in the killing. The fact that Rosalino Degamo's whereabouts are unknown makes the excuse later put forward by the defense a convenient one. The failure of the accused to inform the authorities and the fiscal investigating the case makes his later claim that it was not he but another one who committed the murder suspect. (See *People v. Boduso*, 60 SCRA 60 [1974]).

"What is more the appellant's flight from the scene of the crime after the killing is indicative of guilt. (*People v. Pajenado*, 69 SCRA 172 (1976); *People v. Molleda*, 86 SCRA 667 (1978); *People v. Guevarra*, 94 SCRA 642 (1979); *People v. Bermoy*, 105 SCRA 106 [1981]). It is not true that the accused surrendered. The records show that the warrant of arrest dated January 14, 1972 could not be served because the accused could not be located. As Lt. Crisostomo Medina testified, he was told by Marieta Degamo that she did not know where her husband, the accused, was. (Transcript, p. 15, March 13, 1974)."[12]

Besides, Constante Degamo was positively identified by Urbano Dato and Esteban Mina as the companion of Cesario Degamo when they shot and killed Tomas Mina. The testimony of Esteban Mina reads, in part, as follows:

"Q

And when your son ran proceeding southward, what happened next, if any?

A

Somebody ran and two persons were pursuing him, sir.

Q

Were you able to recognize these two persons who ran after him?

A

I recognized them because as a matter of fact they even bumped me, sir.

Q

Do you know the name of those two persons who even bumped you?

A

Yes, sir.

Q

What are their names?

A

Cesario Degamo and Constante Degamo, sir."[13]

In his Brief, the defendant-appellant points to inaccuracies in the decision of the trial court. But, as the appellate court said, "the inaccuracy is the trial court's, not of the witnesses whose credibility is not in any way affected." [14]

WHEREFORE, the judgment of the Court of Appeals finding the appellant Constante Degamo guilty of Murder and sentencing him to suffer the penalty of reclusion perpetua, being in accord with the evidence and the law, is hereby **AFFIRMED**, with the modification that the indemnity to be paid to the heirs of the deceased Tomas Mina is increased to P30,000.00 in line with recent decisions of the Court. With costs against the appellant.

SO ORDERED.

Paras, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., with reservation or to the penalty of reclusion perpetua pursuant to my dissent in *People vs. Millora*, and with the observation that evident premeditation should be appreciated as an aggravating circumstances.

[1] Original Record, p. 275

[2] *Id.*, p. 280

[3] *Id.*, pp. 337-338

[4] *Id.*, pp. 470-500

[5] *Id.*, pp. 617-625

[6] CA-G.R. No. 22069-CR, 14 May 1982; Justice Vicente V. Mendoza (ponente), Justices Nestor B. Alampay and Isidro C. Borromeo (concurring), Rollo, pp. 56-71

[7] *tsn* of Sept. 27, 1972, pp. 3, 12-14; *tsn* of Jan. 3, 1974, pp. 3-4, 10-12

[8] *tsn* of Aug. 13, 1975, pp. 14-19

[9] *tsn* of Jan. 16, 1973, pp. 6-13

[10] *tsn* of Jan. 3, 1974, pp. 4-8

[11] *tsn* of Dec. 15, 1972, pp. 4-11; See also Exh A

[12] Decision of the Court of Appeals, pp. 13-14

[13] *tsn* of Sept. 27, 1972, pp. 4-5

[14] Decision of the Court of Appeals, p. 12

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