

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTINOMENES DUERO, ACCUSED-APPELLANT.

G.R. No. 65555. May 22, 1985

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Charged with the crime of murder before the then Court of First Instance of Surigao del Sur, Antinomenes Duero was found guilty and sentenced to suffer "an indeterminate penalty of imprisonment of ten [10] years 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 Alfonso Magabili the sum of P20,000.00."

On appeal, the Intermediate Appellate Court found appellant guilty of murder, qualified by treachery and, accordingly, increased the penalty to reclusion perpetua, and certified the case to this Court for review. Thus —

"No doubt the offense committed is murder as the commission thereof was attended by the qualifying circumstance of treachery. This is evidenced by the suddenness of the attack on the victim without warning under cover of darkness [People v. Acopio, 58 Phil. 582; People v. Casas, 93 Phil. 1082; People v. Gorospe, 105 Phil. 184].

"Under Art. 248 of the Revised Penal Code the penalty for murder is reclusion temporal in its minimum period to death. There being no aggravating or mitigating circumstances, the correct penalty that should be imposed on the appellant should be reclusion perpetua.

"Obviously this Court has no appellate jurisdiction over this case and should elevate the records of the case to the Honorable Supreme Court as a matter within its exclusive appellate jurisdiction.

"WHEREFORE, with the modification as to the penalty sentencing the appellant to reclusion perpetua, the decision appealed from is hereby AFFIRMED in all other respects with costs against the accused-appellant. Let the records of this case be elevated to the Honorable Supreme Court for review as a matter within its exclusive appellate jurisdiction."

From the record there appears no dispute that in the evening of November 24, 1981, Alfonso Magabili was stabbed to death under the house of Alberto Duero in sitio Tiguis, Bgy. Manga, Madrid, Surigao del Sur. He sustained "one [1] stab wound at the back on the left iliac crest directed upward, inward and to the right, piercing the heart, which caused his death." [1] The injury was caused by a sharp-edged instrument, according to Dr. Constante Noriega, who conducted the post-mortem examination of the victim some 30 minutes after his death.

At the trial, the prosecution failed to present any eye-witness to give testimony as to the manner the deceased was actually attacked by the assailant. In fact, the judgment of conviction was based upon circumstantial evidence which the lower court found sufficient to prove the appellant's responsibility for the offense charged. Such circumstantial evidence consists of the testimonies of Segundiano Miranda, Juliano Cuahao and Pat. Marcial Bucallon which the appellate court summarized as follows:

"At about 11:00 o'clock in the evening of September 24, 1981 at the house of Alberto Duero in Sitio Tiguis, Barangay Manga, Municipality of Madrid, Surigao del Sur several persons were playing a card game called 'Bacarat', including Alfonso Magabili, Alberto Duero, his son Pepe Duero, Luis Tumilap, Marcial Bucallon, Gregorio Oribe, Elpidio Tijor, Policarpio Pude, while Julianio Cuahao was watching the game. Then Alfonso Magabili went down the house and after a few seconds he came up the house already wounded saying 'Jesse I am wounded', so Julianio Cuahao immediately went down to verify who stabbed Magabili with the aid of his flashlight. He saw the appellant running holding a bolo in one hand and the scabbard in the other. Marcial Bucallon, a member of the Integrated National Police also went down so Cuahao handed over the flashlight to Bucallon pointing to the appellant whom Bucallon pursued but was not able to intercept.

"Segundiano Miranda who was among the gamblers then, after he and Magabili won in the game, was told by Magabili to go ahead to the store of Deusdedit Roz which is near the house of Alberto Duero and he will follow. Miranda went with Tijor and drank inside the store while waiting for Magabili. After some time he went back to the house of Alberto Duero to fetch Magabili as he did not follow as he promised. There he saw Magabili going up the stairs, while the appellant was holding a bolo without a scabbard running towards the East. He recognized the appellant because he focused his flashlight on him."

For his part, appellant interposing the defense of alibi, denied authorship of the offense charged. He claimed that during the stabbing incident he was sleeping in the house of his grandmother, Raymunda Rosales, which was about 1/2 kilometer away from the scene of the crime. The appellant's father Alberto Duero and his grandmother took the witness stand to corroborate his alibi.

In pronouncing the appellant guilty as charged, the appellate court rationalized its position thus:

"The identity of the appellant as the person who stabbed the victim with a bolo was positively identified established through eye-witnesses Julianio Cuahao and Segundiano Miranda. Altho they did not actually see the appellant in the act of stabbing the victim, they saw him immediately after the stabbing incident. Indeed witness Cuahao even remembered the T-shirt that the appellant was wearing then with the marking on the back 'Madrid Bargain Center' as well as the short pants he wore.

"No less than Alberto Duero surrendered to the police his own bolo which was identified by the prosecution witnesses as the very bolo that was used by the appellant in assaulting the victim. Section 5 of Rule 133 of the Rules of Court provides as follows:

'SEC. 5. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

[a] There is more than one circumstance;

[b] The facts from which the inferences are derived are proven; and

[c] The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.'

"From the foregoing circumstances and facts duly established by the prosecution, the Court finds that the guilt of the appellant of the offense charge had been established beyond reasonable doubt.

"The question of credibility of the witnesses as invoked by the appellant is the peculiar province of the trial court because of its superior advantage in observing the conduct and demeanor of the witnesses while testifying on the witness stand and its findings shall not be disturbed on appeal unless some facts or circumstances may have been overlooked that may otherwise affect the result of the case. The Court in this case finds no reason to depart from this well-known rule.

"Nor has the second assigned error been committed. True it is that Bucallon testified that he was not able to identify the assailant and it is obviously because he did not succeed in pursuing him. And even if he may have said that there is another suspect in the commission of the offense, the fact remains that it was the appellant who

was positively identified as the culprit.

"The defense of the appellant is alibi. He claims that during the stabbing incident he was then sleeping at the house of his grandmother. On this aspect the court a quo has this to say:

'The Court is convinced that Julianio Cuahao and Segundiano Miranda, including the patrolman who chased Antinomenes Duero, knew of the accused intimately; hence all these witnesses could have and indeed have positively identified the accused Antinomenes Duero to have killed the victim. To the Court, their positive identification prevails over the alibi of the accused considering that the accused was only one-half [1/2] kilometer from the scene of the crime, as he lives in the house where the incident happened, and that the testimonies of the father and the grandmother were biased.'

"Alibi is among the weakest defense that can easily be concocted and the same cannot be sustained when the appellant has been positively identified as the assailant. [People v. Ismael, 37 SCRA 601; People v. Amit, 37 SCRA 793; People v. Miranda, 38 SCRA 168; People v. Bagasal, 39 SCRA 236; People v. Ancheta, 60 SCRA 333; People v. Caoili, 61 SCRA 73]."

We perceive no compelling reason to disturb the above findings and conclusions of the lower court, the same being in accord with the evidence on record and the applicable jurisprudence on the matter.

It is our view, however, that the appellate court erred in appreciating the circumstance of treachery against the appellant. There is treachery when the offender employ means, methods or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

As heretofore stated, not a single eye-witness to the stabbing incident had been presented by the prosecution. Thus, the record is totally bereft of any evidence as to the means or method resorted to by appellant in attacking the victim. It is needless to add that treachery cannot be deduced from mere presumption, much less from sheer speculation. The same degree of proof to dispel reasonable doubt is required before any conclusion may be reached respecting the attendance of alevosia.[2]

Since there is not a shred of evidence as to the manner the deceased was attacked, the defendant should be given the benefit of the doubt. Accordingly, we hold that, absent any qualifying circumstance, the crime committed is not murder, but simple homicide defined and penalized under Article 249 of the Revised Penal Code.

ACCORDINGLY, appellant Antinomenes Duero is declared guilty of homicide and sentenced to an indeterminate penalty ranging from six [6] years and one [1] day of prision mayor, as minimum, to fourteen [14] years, eight [8] months and one [1] day of reclusion temporal, as maximum, with the accessory penalties provided for by law. The civil indemnity awarded to the heirs of the victim is hereby increased to P30,000. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Abad Santos, and Cuevas, JJ., concur.
Concepcion, Jr., on leave.

[1] Exhibit A.

[2] P. v. Torejas, 43 SCRA 158; P. v. Lansa, 94 SCRA 616.

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