

PEOPLE OF THE PHILIPPINES, PLAINTIFF APPELLEE, VS. HERMOGENES MAGDUENO, ACCUSED-APPELLANT.

G.R. No. 68699. September 22, 1986

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PER CURIAM:

Before us for automatic review is the decision of the Regional Trial Court of Palawan and Puerto Princesa City finding accused-appellant Hermogenes Magdueno guilty beyond reasonable doubt of the crime of Murder qualified by treachery and evident premeditation and aggravated by price or reward and by the crime being committed in contempt of/or with insult to public authority. The court sentenced Magdueno to suffer the penalty of DEATH with all the accessory penalties provided by law and to pay the costs; and to indemnify the heirs of the victim, Fernando M. Dilig in the sum of PI 30,000.00 as actual damages and P20,000.00 as moral damages.

The amended information charged Hermogenes Magdueno, Apolinario Sison, Teodorico Ramirez, Alejandro Guevarra, Alfredo Guevarra, and Edgardo Casabay with having committed the crime of murder as follows:

"That on or about the 15th day of October, 1980, and for sometime prior and subsequent thereto, in the City of Puerto Princesa, Philippines and in Aborlan, Province of Palawan and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously have in their possession, custody and control a firearm to wit: one (1) 9MM automatic pistol, without having secured the necessary license and or permit to possess the same from the proper authorities; that at the aforementioned time and place while the said accused were in possession of the afore-described firearm, conspiring and confederating together and mutually helping one another, with treachery and evident premeditation, with intent to kill and while armed with said firearm, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one FERNANDO M. DILIG, City Fiscal of Puerto Princesa City, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of his death, (sic) to the damage and prejudice of his heirs in the amount of TWO HUNDRED FIFTY THOUSAND (P250,000.00) PESOS, Philippine Currency.

"CONTRARY TO LAW and committed with the aggravating circumstances of treachery, evident premeditation, that the crime was committed in consideration of a price, reward or promise; and that the crime was committed in contempt of or with insult to public authorities."

The facts established by the prosecution and accepted by the lower court as basis for the decision are summarized as follows:

"On October 15, 1980, a few minutes past 8:00 o'clock in the morning, as soon as the late Fiscal Fernando M. Dilig had placed himself at the driver's seat inside his jeep parked near his house at the corner Roxas and D. Mendoza Streets, Puerto Princesa City, all of a sudden, two successive gunshots 'burst into the air, as the gunman coming from his left side aimed and poured said shots into his body, inflicting two fatal wounds (Exhibit N) that instantaneously caused

his death. The autopsy report of Dr. Rufino P. Yuzon, Puerto Princesa City Health Officer, described the wounds as follows:

1.

Wound, gunshot, (entrance), 0.7 cm. in diameter, surrounded by contusion collar, 0.3 cm. in width almost evenly distributed around the gunshot wound, located at the lateral aspect, neck, left, lower portion, directed medially, slightly anteriorly, and upwards penetrating the subcutaneous tissues and muscles, involving the left lateral portion of the esophagus, then the right lateral portion of the hyoid bone, the right common Carotid Artery, the right jugular vein, and piercing the sternocleidomastoid Muscle, then making a wound (exit), 1.3 cm. located at the lateral aspect, neck, right, about 1 1/2 inches below the angle of the mandible.'

2

Wound, gunshot, (entrance), 0.7 cm. in diameter, surrounded by Contusion Collar, 0.3 cm. in width almost evenly distributed around the gunshot wound, located at the lumbar region, left about 2 inches posteriorly from the Mid-axillary line directed medially, slight anteriorly and slightly upwards penetrating the sub-cutaneous tissues and muscles, then to the abdominal cavity and involving the upper portion of the descending colon, and the two loops of small intestines, then piercing the right abdominal muscles, making a wound, (exit), 1.5 cm. located at the lumbar region, right, about 1 1/2 inches anterior to the mid-axillary line, right.

"Three witnesses positively identified the assailant as accused Hermogenes Magdueno: (1) Elena Adion Lim, while sitting (sic) at the gate of her fence, about 20 to 30 meters away from the house of Fiscal Dilig, saw the gunman coming from where she heard two successive shots when he passed by her house, bringing a short gun in his right hand and a clutch bag while hurriedly proceeding towards Liwanag Street. On October 30, 1980, she identified accused Magdueno as the man she saw that early morning of October 15, 1980; (2) Ernesto Mari Y Gonzales, a security guard of the Malaria Eradication Service, this City, while on board a tricycle, passing in front of the house of Fiscal Dilig, on his way home, likewise heard the two gunshots coming from the direction of Fiscal Dilig's house, prompting him to order the driver to stop. He described the gunman as wearing a white polo shirt, blue pants and a hat, still holding the gun pointed at Fiscal Dilig. When the gunman turned to his left side, Mari saw a scar on his left temple below his left eyebrow. The man was still holding the gun in his right hand while walking in a limping manner towards

Mendoza Street. On the witness chamber, he positively identified accused Hermogenes Magdueno as the gunman; (3) Cynthia Canto, a taxi dancer, residing at Jose Abad Santos, this City, while in front of the store of Aling Charing near the house of Fiscal Dilig, waiting for a tricycle, saw the gunman standing by for a quite time, then went nearer Fiscal Dilig who was then sitting (sic) on the driver's seat of his jeep and fired two successive shots to the latter, exiting towards Mendoza Street. She could not be mistaken that accused Hermogenes Magdueno was the gunman and when she came face to face with him at the invitation of the police in Plaridel, Aborlan, Palawan, she readily identified Magdueno as the killer.

Magdueno also executed an extra-judicial confession wherein he admitted that he killed Fiscal Dilig for a price or reward and implicated Leonardo Senas and Mauricio de Leon to the commission of the crime. However, both Senas and de Leon were later dropped from the amended information for lack of a prima facie case against them.

All the other accused were acquitted for insufficiency of evidence.

Gloria S. Dilig, the widow of the victim was presented as witness to prove the civil aspects of the case. She testified on the actual damages the family incurred and the moral damages she suffered as a result of the death of Fiscal Dilig.

The dispositive portion of the trial court's decision states:

"WHEREFORE, judgment is hereby rendered finding:

"1) Accused Hermogenes Magdueno guilty beyond reasonable doubt of the crime of murder qualified by treachery and evident premeditation and aggravated by price or reward and that the crime was committed in

contempt of/or with insult of public authority, and hereby sentences him to suffer the SUPREME PENALTY OF DEATH, with all the accessory penalties provided for by law, and to pay the costs. He is likewise ordered to indemnify the heirs of the late Fernando M. Dilig in the sum of P130,000.00, as actual damages and P20,000.00, as moral damages.

"2) Accused Alejandro Guevarra, Teodorico Ramirez, Jr., Edgardo Caabay, Apolinario Sison and Abredo Guevarra, not guilty of the crime of murder and hereby acquits them of the charge against them.

The bailbond posted for the provisional liberty of accused Alejandro Guevarra, Teodorico Ramirez, Jr., Edgardo Caabay and Alfredo Guevarra is hereby ordered cancelled and the immediate release of accused Apolinario Sison is likewise ordered unless held for any other cause."

The appellant assigns the following errors allegedly committed by the lower court:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED FOR MURDER.

II

THE COURT A QUO ERRED IN ADMITTING IN EVIDENCE THE ACCUSED'S EXTRA-JUDICIAL CONFESSION.

We are convinced from the records that the appellant was the assailant of the late Fiscal Fernando Dilig. The lower court did not err as alleged.

The appellant was a stranger in the town and was not known by the three eyewitnesses before the incident. However, he was readily and positively identified by the three eyewitnesses upon confrontation. They could not have mistaken the appellant's identity because they had a clear view of him at the time and the incident happened in broad daylight. Any doubt of his identity is erased by the testimony of Ernesto Mari Gonzales, one of the eyewitnesses, to the effect that the man he saw pointing a gun to the late Fiscal Dilig had a scar on his left temple below his left eyebrow. The appellant, as observed by the lower court, has a scar below his left eye and above the left eye at the eyebrow in the shape of a letter "J" and at the end of the left eye somewhat shaped like the letter "V", perpendicular to the eyebrow.

The defense failed to show any motive on the part of these eyewitnesses to falsely accuse the appellant as having committed the crime. The appellant's accusation that Cynthia Canto, one of the eyewitnesses testified against him "to claim a reward" is not supported by any evidence on record.

In the light of the positive identification of the appellant as the perpetrator of the crime, his defense of alibi necessarily falls. His assertion that on the day of the incident, he was at the house of Leonardo Senas in Plaridel, Aborlan, Palawan deserves no credit. The appellant has not shown that it was impossible for him to have been at the place of the incident at the time the crime was committed. Moreover, as the lower court observed a bus ride from Aborlan, Palawan, would take only a little more than two hours to the city.

Treachery in the commission of the crime is clearly established by the record.

The appellant fired two successive shots at the defenseless Fiscal Dilig while the latter was still seated in his jeep, hitting him at the neck and lumbar region. According to Dr. Rufino P. Yuzon, who performed the autopsy, on the victim, both wounds were fatal and that "death will definitely occur." Immediately after the shooting, the appellant fled still holding his firearm.

The manner of the execution was such that the appellant deliberately and consciously adopted means and ways of committing the crime and insured its execution without risk to himself arising from any defense Fiscal Dilig might make. The two conditions necessary for treachery to exist are present {People v. Macarloia, 120 SCR A 92; People v. Rhoda, 122 SCRA909; People v. Malmsay, 138 SCRA452; and People v, Radomes, 141 SCRA 548}.

The fact that the appellant called out, "Fiscal" before shooting the victim does not negate the presence of treachery in the commission of the crime. Since the appellant was a hired killer, he wanted to insure that he was shooting the correct person. When Dilig turned his face to find out who was calling him, the appellant fired immediately rendering no opportunity for Dilig to defend himself.

The attendant circumstance of treachery qualifies the crime to murder. The first assigned error is without merit.

The second assignment of error questions the trial court's finding that the extra-judicial confession was admissible.

The lower court quoted Section 20, Article IV of the Bill of Rights and took pains to explain why there was compliance with its mandate. The court commented on the imbalance present during custodial interrogations, the strange and unfamiliar surroundings where seasoned and well-trained investigators do their work, and then rejected the appellant's allegations that it was extracted through violence and torture.

The trial court stated:

"But a cursory evaluation of the evidence shows that accused Magdueno was properly informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. He was allowed to communicate with, and was even given, a lawyer in the person of Atty. Clarito A. Demaala, Jr. of the CLAO in this City. As certified to by Atty. Demaala, Jr., he assisted and was present when the accused was placed under custodial investigation. Even before it started, Atty. Demaala interviewed the accused and informed him of his constitutional rights. NBI Officer-in-Charge Celso A. Castillo, affirmed this particular fact. He was allowed to converse with his counsel in his cell and the statement thus obtained from him, signed and subscribed by him as true, whether inculpatory or exculpatory, in whole and in part, shall be, as it is hereby, considered admissible in evidence. (Morales, et al. v. Ponce Enrile, et al. L-61016; Moncupa, Jr. v. Ponce Enrile, et al. L-61107, April 26, 1983.) It is presumed voluntary and no contrary evidence was shown. {People v. Dorado, L-23464, 36 SCRA 452}. There is spontaneity and voluntariness in his extra-judicial confession which contains details that cannot be furnished by the investigators on how the killing was planned, the reward to be received and the scenario of the killing. {People v. Opiniano, 22 SCRA 177}. Furthermore, it was corroborated by other evidence which recites the true sequence of events. (People v. Pontanosa, 20 SCRA 249).

"With the admission of, and conformably to what the accused Hermogenes Magdueno alleged in his extra-judicial confession, the court finds that accused Magdueno was hired by a 'mysterious mastermind' with whose representative he agreed to kill Fiscal Dilig for a fee of P80,000.00, of which he will receive a clean bill of P30,000.00. Sometime during the last week of September, 1980, at his residence in Divisoria, Metro Manila, he agreed to the proposition. The representative of the mastermind/ Leonardo Senas, gave him the advance payment of P5,000.00, with the balance of P25,000.00 to be paid after he accomplished the mission. As to the gun he used, it was a 9mm. automatic revolver. This confirms the finding of the NBI. x x x."

The records show that the CLAO lawyer, Atty. Clarito Demaala, entered his appearance as counsel for the accused during the interrogation and was present from the start of the investigation until it was finished.

The evidence showing that the appellant was a contract or hired killer especially contacted in Manila to do a job in Puerto Princesa is strengthened by testimony.

Magdueño himself testified that he was formerly an inmate of Muntinlupa who was later transferred to Sta. Lucia Sub-Colony and released in 1973. He stated that after his release, he lived with relatives in Divisoria and worked with an aunt as sidewalk vendor. He explained his presence in Palawan on the day of the killing by claiming that sometime in 1979 Leonardo Senas accidentally passed by their place in Tabora and suggested that the appellant bring assorted merchandize to Aborlan, Palawan where Senas resides. He, therefore, left for Palawan on board the M/V Leon on September 28, 1980 (or shortly before the killing) and visited Mauricio de Leon at Quito, Puerto Princesa, saw head-nurse Mrs. Fernandez at Sta. Lucia, spent a night with a Mr. Obid at the Inagawan Sub-Colony and proceeded to Aborlan, Palawan. He claims that at the time of the shooting, he was in the house of Senas in Aborlan and learned only from the radio about the killing of Fiscal Dilig.

One of the prosecution witnesses, Andres Factora, testified that he was formerly an inmate in Muntinlupa since October 26, 1955 and that while serving a sentence for triple death penalty, he met Magdueno, a leader of the Sputnik Gang, also on death row. Magdueno was nicknamed "Mande" and served as an attendant in the prison hospital. Factora stated that Magdueno was known as a T1RADOR or killer while in prison. He further testified that while he was in Sta. Lucia Sub-Colony in 1980, he saw Magdueno on October 12 or 13 at the gate of Palawan Apitong. The reason given by the appellant for his being there was that he was in the business of bangus fry.

There is plenty of other testimony about the participation of the appellant and the other accused and the defenses they presented. The trial court summarized in its decision the testimonies of sixteen (16) prosecution witnesses and twenty-one (21) witnesses for the defense.

We have carefully examined the records and considering the testimony of the three eyewitnesses to the shooting, their positive and categorical identification of the appellant as the assailant, the corroborative evidence on the circumstances of the killing, and the more than coincidental presence of Magdueño in Palawan when he should have been in Manila, we see no error in the lower court's finding that the appellant committed the crime of murder qualified by treachery and evident premeditation and aggravated by price and reward. Magdueño, in effect, also admitted that he was a recidivist at the time of his trial. However, recidivism was not alleged in the information and makes no difference in the determination of the penalty in this case.

However, the aggravating circumstance of commission of a crime with insult to public authority does not seem to be borne by the records. For this aggravating circumstance to be considered it must not only be shown that the crime was committed in the presence of the public authority but also that the crime was not committed against the public authority himself. (U.S. v. Rodriguez, 19 Phil. 150; People v. Rizal, 103 SCRA 282). In the instant case Fiscal Dilig, the public authority involved in the crime, was the victim. Hence, the lower court, erred in including commission of the crime with insult to public authority as an aggravating circumstance.

Considering the presence of an aggravating circumstance and the absence of any mitigating circumstance attending the offense, the lower court imposed the proper penalty on the appellant. The crime in this case is a particularly heinous one. The appellant is shown by the records as a heartless contract killer. Upon being paid for a job, he had no compunctions about traveling all the way to Palawan from Manila, stalking and liquidating an unwary victim whose only fault was to perform his duties faithfully.

WHEREFORE, the lower court's judgment is hereby AFFIRMED.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrem, Alamuay, Gutierrez, Jr., Cruz, Paras, and Feliciano, JJ., concur.

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