

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY DOMINGO AND IGNACIO ALBIOR (ESCAPED), ACCUSED-APPELLANTS.***G.R. No. 68993. September 26, 1988*

Ponente: MELENCIO-HERRERA, J.

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An appeal by accused Rudy Domingo from the Decision of the Regional Trial Court of Cagayan, Branch XII, in Sanchez Mira, Cagayan,[1] convicting him and his co-accused, Ignacio Albior, of the crime of Murder.

On 30 January 1981, the victim, Melecia Culasing-Macabugao, boarded a jeepney at Luna Junction, Kalinga, Apayao, at about 5:00 P.M., bound for home at Bidduang, Pamplona, Cagayan. She worked as an agronomist at the Bureau of Plant Industry in Luna, Kalinga-Apayao, commuting daily. A one-way trip took two (2) hours.

Among the passengers who boarded the same jeepney were accused Ignacio Albior and his companion. At about 7:00 P.M., when the jeepney was already near Melecia's residence, one Maurino de la Cruz boarded the jeepney on his way to Dubeng, Pamplona. He noticed that there were more than ten (10) passengers inside the vehicle. He saw his barriomate Ignacio Albior and his companion on the front seat. He and Melecia, whom he recognized, were both seated on the left side of the jeepney. After a while, the jeepney stopped across the house of Melecia, who then alighted carrying a basket with a chicken. De la Cruz saw her cross the street toward her house. After approximately fifteen (15) meters, he saw Albior and his companion "jump out of the jeep without letting the driver to stop."

Meanwhile, also at around 7:00 P.M., Blas Culasing, Melecia's father, was walking to her house for a visit. As he was nearing the place, and while still across the street, Blas heard "thudding sounds" emanating from the direction of the house. He turned on his flashlight and focused it in that direction. He saw Albior and a tall companion holding daggers and looking down on a woman lying prostrate on the ground. Gripped with fear, he ran towards Melecia's house and told his son-in-law, Manuel, to join him to see the fallen woman only to find out to his extreme shock that the woman who lay ten (10) meters away from the house was his daughter Melecia. By that time, Albior and his companion were no longer around. Blas and Manuel then carried Melecia's cadaver inside the house.

Blas reported the killing to the police who requested the Rural Health Physician of Pamplona, Cagayan, to conduct a post-mortem examination on the cadaver of Melecia. The physician counted twenty-eight (28) stab wounds all over the body of Melecia, with five (5) wounds considered fatal as they affected the heart (Exhibit "A").

On 8 February 1981, the police force of Ballesteros, Cagayan, apprehended Ignacio Albior and Rudy Domingo and took them to the Municipal Jail of Ballesteros. The following day, 9 February 1981, they were transferred to the Municipal Jail of Pamplona, where they were investigated. Albior executed a sworn statement duly subscribed before the Municipal Mayor of Pamplona, Cagayan (Exhibit "B"), who testified that the affiant had signed and

sworn to it voluntarily. In that statement Albior owned the commission of the crime and admitted that he and one Delfin Sabugo had daggers in hand while Appellant had none but that the latter was the one who took hold and covered the mouth of the victim. After investigation, however, Sabugo was not included as an accused.

On 30 April 1981, an Information was filed against Albior and Appellant before the Court of First Instance of Cagayan.

Upon arraignment, both accused pleaded not guilty and trial on the merits followed. Both accused raised the defense of alibi. Further, Albior repudiated his confession for having been extracted through force and maltreatment, while Appellant stoutly denied his culpability.

Accused Albior testified that at the time of the incident, he was in Manila at his sister's house in Makati, from 29 January 1981 to February 4, 1981. His statement was corroborated by Reynaldo Gadiano, a boarder at his sister's house, who declared that accused Albior arrived at his sister's house on 27 January 1981 and left on 4 February 1981 and that he (Gadiano) even took Albior to the Philippine Rabbit Bus station in the morning of the said date.

Defense witness, Pedro Andres, a resident of Lucban, Abulug, Cagayan, and a Barangay Tanod of that place, testified that Appellant Domingo is his barriomate at Lucban, Abulug, Cagayan. On 30 January 1981, in the evening, he butchered a pig at their house and Appellant went there to buy meat at about 7:00 P.M. and stayed until midnight drinking with him. Thereafter, he conducted Appellant to the latter's house as the latter was already drunk.

Both accused testified that on 8 February 1981, while both were riding a tricycle, they were apprehended by the Ballesteros police and accused of being NPA's; that they were taken to the Ballesteros Municipal Jail and later transferred to the Pamplona Municipal Jail; that they were accused of killing Melecia but which they never admitted; that they were maltreated while in the custody of the police and Albior was forced to sign a sworn statement without the same being read to him in violation of his constitutional rights. Appellant did not sign any sworn statement.

After the presentation of accused Albior and his witness, Reynaldo Gadiano, said accused escaped from prison on 31 March 1983 so that the proceedings continued in his absence.

After trial, the Court a quo rendered judgment finding both Ignacio Albior and Rudy Domingo guilty of Murder, and sentencing them as follows:

"WHEREFORE, in view of the foregoing, the Court hereby finds the guilt of the accused Ignacio Albior and Rudy Domingo to have been proved beyond cavil of doubt of the crime of Murder, hereby sentences each to suffer an imprisonment of Reclusion Perpetua and to jointly indemnify the heirs of the deceased in the amount of P12,000.00 plus P25,000.00 as her salary for 24 years being only 36 years old at the time of her death and to pay the costs." (p. 268, Original Record).

Rudy Domingo (Appellant, for short) has appealed contending that:

#### Assignment of Errors

"I

The lower court erred in not finding that the crime committed is homicide.

"II

The lower court erred in not finding that the identity of the appellant as one of the authors of the crime committed has not been established by competent and convincing evidence.

"III

The lower court erred in finding that the guilt of appellant has been proven beyond reasonable doubt, and in not acquitting him." (pp. A-B, Brief for the Accused-Appellant)

After careful scrutiny of the evidence, we find that Appellant's identity as one of the perpetrators of the crime has not, in fact, been established with certainty. Maurino de la Cruz, who was in the same jeepney as the victim and Albior, identified Albior alone but not the latter's companion. In fact, De la Cruz declared that he would not be able to recognize that companion even if he were to see the latter again (TSN, Jan. 30, 1982, p. 6).

Similarly, Blas Culasing identified only Albior but not his companion whom he referred to only as someone "tall." Nowhere in Blas' testimony in open Court did he categorically state that Albior's companion whom he saw that fateful night was, in fact, Appellant. He never specified any such comparable factors such as height, build, and the like, which led him to the conclusion that Appellant was decidedly Albior's companion. All he testified to was that Appellant was one of the accused rather than as the very person he saw (TSN, Nov. 18, 1981, p. 3). If Appellant was subsequently identified by Blas Culasing in a sworn statement taken on 24 February 1981, (but which was not presented in evidence), it was only after Appellant and Albior were apprehended in Ballesteros, Cagayan, on 8 February 1981 on suspicion that they were NPA's, and when they were already in the custody of the INP of Pamplona, Cagayan (TSN, Jan. 26, 1982, p. 13), and only after Blas was informed by the police that they were the killers. Thus, Blas' testimony reads:

"ATTY. PASCUA:

q

And it was only on the 24th day of February 1981 when ... rather you were called by the police to the municipal building. Is it not?

a

Yes, sir.

xxx xxx

q And it was on that date that the police informed you that they have apprehended the killers of your daughter. Is it not?

a

Yes, sir.

q

And when the police informed you when you reached the municipal building on that date that they have already apprehended the killers of your daughter, they showed you these two accused. Is it not?

a Yes, sir.

q And they told you that the name of one of the persons they apprehended is Rudy Domingo, one of the accused in this case?

a Yes, sir.

q And afterwards the police asked you to give your statement to them? Is it not?

a Yes, sir. (TSN, Dec. 5, 1981, pp. 45-46)

Under the circumstances, it has to be held that the identification of Appellant is shrouded in serious doubt and falls short of the positiveness and reliability essential for conviction.

Appellant's alibi may be weak, as is the general run of alibis, but it is well-settled that the prosecution must rely on the strength of its own evidence and cannot rest on the weakness of that of the defense (People vs. Tabayoyong, G.R. No. L-31084, May 29, 1981, 104 SCRA 754).

In contrast, accused Albior was sufficiently identified by both Blas Culasing and by Maurinio de la Cruz. Blas had identified him the very same evening as holding a dagger and standing beside a fallen body (TSN, Dec. 5, 1981, p. 42); while De la Cruz also identified him as one of the jeepney passengers who alighted a few meters away from Melecia's house at around the same time that Melecia did (TSN, Jan. 20, 1982, p. 8). Even without considering Albior's statement, which is inadmissible for having been obtained without benefit of counsel, his culpability has been proven and his conviction, therefore, must stand.

The crime was correctly categorized as Murder, the qualifying aggravating circumstance of abuse of superior strength being present. Albior and his companion had mercilessly hacked to death a defenseless working wife at the threshold of her home and inflicted on her twenty-eight (28) stab wounds. Contrary to the finding of the Trial Court, treachery was not sufficiently proven as having characterized the killing. The qualifying circumstance of treachery may not be simply deduced from presumption but has to be established as fully as the crime itself in order to aggravate the liability incurred by a culprit (People vs. Ardesa, G.R. No. L-29351, January 23, 1974, 55 SCRA 245).

The penalty, however, will have to be modified as to Albior.

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is no reclusion temporal in its maximum period to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the judgment appealed from is hereby REVERSED in respect of accused-appellant, Rudy

Domingo, who is hereby ACQUITTED. He is ordered released from further custody unless held on other charges.

The judgment is AFFIRMED as to accused Ignacio Albior, except: as to the penalty, which is hereby modified to an indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum; and as to the amount of the indemnity, which is hereby increased to P30,000.00. With one half (1/2) of the costs against accused Ignacio Albior.

**SO ORDERED.**

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

[1] Judge Infante S. Calaycay, Presiding.

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