

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIOQUINTO DE JOYA Y CRUZ, DEFENDANT-APPELLANT.

*G.R. No. 75028. November 08, 1991*

Ponente: FELICIANO, J.

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### FELICIANO, J.:

In an Information dated 5 May 1978, appellant Pioquinto de Joya y Cruz was charged before the Regional Trial Court, 3rd Judicial Region, Branch 14, Malolos, Bulacan with the crime of robbery with homicide committed as follows:

"That on or about the 31st day of January, 1978, in the municipality of Baliuag, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the said accused Pioquinto de Joya y Cruz, did then and there wilfully, unlawfully and feloniously, with intent of (sic) gain and without the knowledge and consent of the owner and, by means of violence and intimidation, take, carry and cart away two (2) rings, one (1) necklace, one piece of earring, belonging to Arnedo Valencia y Angeles and Eulalia Diamse Vda. de Salac, to their damage and prejudice in the sum of FIVE HUNDRED FIFTY PESOS (P550.00); and that on the occasion of the said robbery and for the purpose of enabling him to take the said properties, the accused did then and there willfully, unlawfully and feloniously with treachery, evident premeditation and great advantage of superior strength, with intent to kill, attack, assault and use personal violence upon the person of Eulalia Diamse Vda. de Salac by stabbing and hitting the latter on her neck and other parts of her body with pointed instrument causing injuries which directly caused the death of the said Eulalia Diamse Vda. de Salac.

That in the commission of the offense, the following aggravating circumstances were present (1) abuse of superior strength; (2) committed in the dwelling of the offended party; (3) disregard of age and sex; (4) abuse of confidence.

Contrary to law."<sup>[1]</sup>

At arraignment, appellant De Joya pleaded not guilty. After trial, the court a quo rendered a decision dated 16 May 1986 convicting De Joya of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered, finding the accused guilty beyond reasonable doubt of the crime of Robbery with Homicide, committed with the aggravating circumstances of: abuse of superior strength, old age, disregard of sex, the victim a woman 88 years old, the crime was committed in the dwelling of the victim. The accused being 72 years old death penalty cannot be imposed against him as provided in Article 47 of the Revised Penal Code.

The Court therefore, sentences the accused to LIFE IMPRISONMENT; to indemnify the heirs of the victim in the amount of P20,000.00 and to pay damages in the amount of P550.00.

The bond of the accused is ordered cancelled and the accused to be confined immediately in the National Penitentiary pending review of his case by the Supreme Court.

The Clerk of Court is ordered to immediately forward the record of this case to the Supreme Court for review.

SO ORDERED."[2]

In this appeal, appellant raises a number of issues all of which, however, amount to one basic assertion: that the lower court erred in concluding that appellant was guilty beyond reasonable doubt of the crime charged.

The facts have been summarized in the brief of the Solicitor General in the following manner:

"The spouses Arnedo Valencia and Herminia Salac-Valencia, together with their ten (10) year old son Alvin Valencia and Herminia Valencia's 88-year old mother, Eulalia Diamse, are residents of Balagtas St., Baliuag, Bulacan. (TSN, June 11, 1981, p. 2). Both spouses are teachers by profession.

Arnedo Valencia teaches at the Tiaong Elementary School at Barrio Tiaong, Baliuag, Bulacan whereas Herminia Valencia teaches in an intermediate school at Baliuag, Bulacan. (TSN, March 11, 1980, p. 7).

In the afternoon of January 31, 1978, Herminia Salac-Valencia left for school to teach. Her mother Eulalia Diamse was then [sitting] at their sofa watching the television set. (TSN, October 12, 1978, p. 3).

Her son Alvin likewise left for school at 1:00 o'clock. And at 3:00 o'clock in the afternoon, his classes were dismissed and he proceeded home. (TSN, March 11, 1980, p. 8).

At around 3:00 o'clock in the afternoon of that same day, the spouses Valencia's neighbor by the name of Gloria Capulong, together with a friend, went out of the former's house to visit a friend. While at her yard, Gloria Capulong looked back to the direction of the Valencia's house. She noticed appellant Pioquinto de Joya standing and holding a bicycle at the yard of the Valencia's. (TSN, June 11, 1981, pp. 2-4).

When Alvin reached home, he saw his grandmother Eulalia Diamse lying down prostrate and drenched with her own blood. He immediately threw his bag and ran towards her. He then held her hands and asked her: "Apo, Apo, what happened?". (TSN, March 11, 1980, p. 10).

x x x [E]ulalia Diamse held his hand and after which said: "Si Paqui". After saying these words, she let go of Alvin's hand and passed away. (TSN, Ibid, pp. 14 and 17).

Alvin then called for his Nana Edeng and told her to see his lola because she was drenched with her own blood. His Nana Edeng told him to immediately see his mother Herminia Salac-Valencia to inform her of what happened (TSN, Id).

Upon seeing her mother, Alvin told her: "Mommy, Mommy, apo is drenched in her own blood." (TSN, March 11, 1980, p. 20).

Herminia immediately ran outside the school, flagged down a tricycle and went home. Alvin followed, riding his bicycle (TSN, Id., p. 21). When she reached their house, she found her mother lying prostrate in her own blood at their sala in front of the television. Her mother's hands were stretched open and her feet were wide apart. Blood was oozing out of her mother's ears. She then embraced her mother and placed her on the sofa. She asked Alvin and the tricycle driver to call Dr. Delfin Tolentino. (TSN, October 12, 1978, pp. 25-26).

Dr. Tolentino arrived at around 4:00 o'clock that same afternoon and examined the body of Eulalia Diamse. Said doctor declared that said Eulalia Diamse had a heart attack which caused her death. When asked by Herminia Valencia why her mother's ears were punctured, no reply was given by said doctor. Herminia requested for a death certificate, but Dr. Tolentino did not issue one and instead immediately left. (TSN, Ibid., pp. 27-29).

Herminia found out that the two (2) gold rings worn by her mother were missing. The right earring of her mother was likewise missing. All of these were valued [at] P300.00 (TSN, Id., p. 15).

That same afternoon, Herminia saw the room of the groundfloor ransacked. The contents of the wardrobe closet (aparador) were taken out. Its secret compartment/box was missing. And the lock of the aparador was

destroyed. (TSN, October 12, 1978, pp. 15-17).

When she went upstairs after putting her mother on a bed at the ground floor, she found the two (2) rooms thereat in disarray. She then caused the rooms and things photographed by a certain Ricardo Ilete (Exhibits "A" to "A-11"; TSN, October 12, 1978, p. 17).

Later, Herminia went to Dr. Adela Cruz and pleaded [with] said doctor to issue a death certificate so that her mother could be embalmed. (TSN, Id., pp. 33-34).

On the same night, Herminia found a beach walk step-in (Exhibit "B") by the side of the cabinet near the door of their room downstairs, more or less one meter from where the victim was lying prostrate. (TSN, October 12, 1978, pp. 24-25).

Herminia was able to recognize the said step-in because of its color and size, as the other half of the pair she bought for her husband Arnedo but which she gave to Socorro de Joya, the wife of herein appellant, before Christmas of 1977 when she saw the old and wornout pair of slippers of the latter. (TSN, Ibid.).

Appellant Pioquinto de Joya visited the wake only once. During the second day of the four-day wake, Herminia saw herein appellant Pioquinto de Joya enter the kitchen and peep under the cabinet of the (Valencia's) house. (TSN, Id.).

On February 3, 1978, a post-mortem examination was conducted by Dr. Romulo Madrid, a medico-legal officer of the National Bureau of Investigation. Per examination, the cause of the death arrived by Dr. Madrid was 'shock, secondary to punctured wound neck' (Exhibit "D-1") situated at the right side of the neck, just below the right ear wherein it went out thru and thru, opposite, almost in the same location, from one side of the neck to the opposite side". (Exhibit "D-2")."

In its decision, the trial court became quite clear as to the factors which led to the judgment of conviction against appellant. These factors, as set out in the decision of the trial court, were the following:

"In the case at bar, the prosecution relied heavily on the circumstances surrounding the death of the victim as testified to by the witnesses and proven during the trial, also the dying statement of the deceased, which are: Herminia testified that two weeks before the incident the accused and the deceased quarreled over a bicycle which the former took from their house without the consent of the latter; that Exhibit 'B' (step-in beach walk type) which was found near the cabinet one meter away from the body of the victim was identified by Herminia as the step-in that she gave to the wife of the accused and which she saw accused wearing on January 29, 1978 when she visited them in their house; the testimony of Gloria Capulong that she saw the accused in the afternoon of January 31, 1978 at around 3:00 p.m. in the yard of Herminia standing and holding a bicycle; the accused admitted, although his wife is the sister of the husband of Herminia he never visited the deceased during the four days that it was lying in state without any justifiable reason and contrary to the ordinary experience of man; last but most convincing is the dying statement of the deceased when her grandson Alvin asked her 'Apo, Apo, what happened?' and she answered, 'Si Paki', then she expired. When Alvin was asked during his testimony who is this Paki, he identified the accused. The accused during his testimony never denied that he is called Paki.

The foregoing circumstances established during the trial plus the dying statement of the deceased leads only to one fair and reasonable conclusion, that the accused is the author of the crime."

Analyzing the above portion of the decision, the elements taken into account by the court in convicting appellant De Joya of robbery with homicide may be listed as follows:

1. The dying statement made by the deceased victim to her grandson Alvin Valencia a 10-year old boy: "Si Paqui";

2. The quarrel, which, according to Herminia Valencia, daughter of the deceased victim, took place two weeks before the robbery and homicide, between the appellant and the deceased over the use of a bicycle which appellant allegedly took from the Valencia's house without the consent of the victim;
3. The rubber slipper, one of a pair, ("step-in beach walk type") which according to Herminia, she found near a cabinet in their house one (1) meter away from the body of the victim, and which Herminia identified as one of the pair that she had given to the wife of the accused the previous Christmas Season;
4. Accused was seen by one Gloria Capulong around 3:00 p.m. in the afternoon of 31 January 1978 in the yard of the Valencias, standing and holding a bicycle and doing nothing;
5. The statement of appellant that he did not visit the deceased during the four-day wake.

We turn first to the dying statement made by the victim when the 10-year old Alvin Valencia asked his grandmother who was sprawled on the floor of their house drenched with blood: "Apo, Apo, what happened?" The deceased victim said: "Si Paqui". After uttering those two words, she expired. It is not disputed that "Paqui" is the nickname of appellant Pioquinto de Joya. It must be noted at once, however, that the words "Si Paqui" do not constitute by themselves a sensible sentence. Those two words could have been intended to designate either (a) the subject of a sentence or (b) the object of a verb. If they had been intended to designate the subject, we must note that no predicate was uttered by the deceased. If they were designed to designate the object of a verb, we must note once more that no verb was used by the deceased. The phrase "Si Paqui" must, moreover, be related to the question asked by Alvin: "Apo, Apo, what happened?" Alvin's question was not: "Apo, Apo, who did this to you?"

It has been held that a dying declaration to be admissible must be complete in itself. To be complete in itself does not mean that the declarant must recite everything that constituted the *res gestae* of the subject of his statement, but that his statement of any given fact should be a full expression of all that he intended to say as conveying his meaning in respect of such fact.[3] The doctrine of completeness has also been expressed in the following terms in Prof. Wigmore's classic work:

"The application of the doctrine of completeness is here peculiar. The statement as offered must not be merely apart of the whole as it was expressed by the declarant; it must be complete as far it goes. But it is immaterial how much of the whole affair of the death is related, provided the statement includes all that the declarant wished or intended to include in it. Thus, if an interruption (by death or by an intruder) cuts short a statement which thus remains clearly less than that which the dying person wished to make, the fragmentary statement is not receivable, because the intended whole is not there, and the whole might be of a very different effect from that of the fragment; yet if the dying person finishes the statement he wishes to make, it is no objection that he has told only a portion of what he might have been able to tell." [4] (Underscoring supplied)

The reason upon which incomplete declarations are generally excluded, or if admitted, accorded little or no weight, is that since the declarant was prevented (by death or other circumstance) from saying all that he wished to say, what he did say might have been qualified by the statements which he was prevented from making. That incomplete declaration is not therefore entitled to the presumption of truthfulness which constitutes the basis upon which dying declarations are received.[5]

It is clear to the Court that the dying declaration of the deceased victim here was incomplete. In other words, the deceased was cut off by death before she could convey a complete or sensible communication to Alvin. The trial court simply assumed that by uttering the words "Si Paqui", the deceased had intended to name the person who had thrust some sharp instrument through and through her neck just below her ears. But Eulalia herself did not say so and we cannot speculate what the rest of her communication might have been had death not interrupted her. We are unable to regard the dying statement as a dying declaration naming the appellant as the doer of the bloody

deed.

The other elements taken into account by the trial court are purely circumstantial in nature. When these circumstances are examined one by one, none of them can be said to lead clearly and necessarily to the conclusion that appellant had robbed and killed the deceased Eulalia Diamse. The quarrel over the use of the bicycle which was supposed to have taken place two weeks before Eulalia's death does not, in our view, constitute adequate proof of a motive capable of moving a person to slay another in such a violent and gory manner. Failure to prove a credible motive where no identification was shown at all, certainly weakens the case of the prosecution.

The testimony of Herminia Valencia about the single slipper that she found near or under the cabinet in the living room where Eulalia Diamse was slain, can scarcely be regarded as conclusive evidence that such slipper was indeed one of the very same pair of slippers that she had given to appellant's wife, who was also the sister of Herminia's husband. Rubber or beach walk slippers are made in such quantities by multiple manufacturers that there must have been dozens if not hundreds of slippers of the same color, shape and size as the pair that Herminia gave to appellant's wife. And even if conclusive identification of the slippers had been offered, and it is assumed that appellant (rather than his wife) had worn those very slippers on that fatal afternoon, still the presence of that singular slipper did not clearly and directly connect the appellant to the robbery or the slaying. At most, under that assumption, the presence of that slipper in the house of the Valencias showed that the accused had gone to the house of the Valencias and there mislaid that slipper. We note in this connection, that appellant himself had testified that he did enter the house of the Valencias that afternoon, but after the killing of Eulalia Diamse had been perpetrated, and there had found many persons in the house viewing the body.

The testimony of Gloria Capulong that she saw the accused in the afternoon of 31 January 1978 around 3:00 p.m. in the yard of the Valencias, standing and holding a bicycle and doing nothing is, by itself, not proof of any act or circumstance that would show that appellant had perpetrated the slaying or the robbery. The behaviour of the appellant, as testified to by Gloria Capulong, offers no basis for slain that appellant, himself 72 years of age, had just slain an 88-year old woman by skewering her through the neck and had ransacked both floors of the Valencia house.

Appellant's failure to present himself to pay his respects to the deceased or her immediate family during the four-day wake, does not give rise to any inference that appellant was the slayer of Eulalia Diamse. Appellant had explained that he had been busily at work, sewing and carrying on his trade as a tailor. Appellant, as already noted, had dropped in the Valencias' house in the afternoon Eulalia Diamse was killed and had viewed the body (before it was lying in state) along with several other persons. His reluctance or inability to participate in the formal wake is not necessarily a sign of guilt. We are unable to agree with the trial judge that such behaviour was "contrary to the ordinary experience of man" although respect for the dead is a common cultural trait of the Filipinos.

In the Solicitor General's brief, it is casually contended that the circumstantial evidence against appellant included: "the attempt on the part of appellant Pioquinto de Joya through his counsel to settle the case amicably".[6] We have examined the testimony that the Solicitor General pointed to in referring to a supposed attempt to settle the criminal charge amicably. That testimony, given by Arnedo Valencia, son-in-law of the deceased Eulalia Diamse and brother-in-law of appellant Pioquinto de Joya, was as follows:

Q. You also testified that before the release of the accused from the municipal jail, you had a conversation with him, is that right?

A. Yes, sir.

Q. What was this conversation about?

A. He called for me and took me to his counsel Atty. Aguilar and according to him if only Atty. Aguilar can talk with me, everything will be settled.

Q. Have you seen and talked to this Atty. Aguilar?

A. Yes, I went with him to Manila, sir.

Q. When was this?

A. The time he was fetched out of jail.

Q. You are referring to the municipal jail?

A. Yes, sir.

Q. What did you and Atty. Aguilar discuss when you finally was able to see Atty. Aguilar?

A. When I went there, I was introduced to Atty. Aguilar and Atty. Aguilar asked me as to what I liked to happen.

Q. What did you say?

A. I said if it will be settled, well and good.

Q. Anything else that transpired?

A. He even told me if I might be able to convince both my wife and her sisters.

Q. Did he tell you he can settle this?

A. He was very certain that he can settle this, the very reason why he told me because I was very certain as to what happened.

Q. Was the accused Pioquinto de Joya present when you were discussing this with his lawyer?

A. Yes, sir.

Q. He heard what his lawyer was telling you?

A. It is possible because he is only one or two meters distance away.

Q. Did the accused say anything?

A. None, sir." (Underscoring supplied)

We find the above testimony quite impalpable and inconclusive so far as a supposed attempt of appellant, through his counsel, to offer a compromise on the criminal charges is concerned. We are aware of the provision of Section 24 of Rule 130 of the Rules of Court which provides that:

"Sec. 24 Offer to compromise not admission. An offer of compromise is not an admission that anything is due, and is not admissible in evidence against the person making the offer. However, in criminal cases which are not allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt." (Underscoring supplied)

We do not, however, feel justified in concluding from the above testimony from a member of the (extended) family of the deceased victim that "an offer of compromise" had been made "by the accused" nor that "an implied admission of guilt" on the part of the appellant may be reasonably inferred in the instant case. The trial court itself made no mention of any attempt on the part of appellant to settle the criminal case amicably through the defense

counsel; we must assume that the trial court either did not believe that appellant had tried to compromise the criminal case or considered that appellant could not fairly be deemed to have impliedly admitted that he had indeed robbed and killed Eulalia Diamse. A much higher level of explicitness and specific detail is necessary to justify a conclusion that an accused had impliedly admitted his guilt of a crime as serious as robbery with homicide.

The totality of the case made out against appellant De Joya thus consists of an incomplete, aborted, dying declaration and a number of circumstances which, singly or collectively, do not necessarily give rise to a compelling inference that appellant had indeed robbed and slain Eulalia Diamse. We consider, after prolonged scrutiny, that the sum total of the evidence in the instant case is insufficient to induce that moral certainty of guilt which characterizes proof beyond reasonable doubt. The conscience of the Court remains uneasy and unsettled after considering the nature and speculative character of the evidence supporting the judgment of conviction.

The Court must, accordingly, hold as it hereby holds that appellant's guilt of the crime of robbery and homicide was not shown beyond reasonable doubt.

ACCORDINGLY, the decision of the trial court dated 16 May 1986 is hereby REVERSED and appellant Pioquinto de Joya is hereby ACQUITTED on grounds of reasonable doubt.

It is so ordered.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Rollo, p. 42.

[2] Rollo, p. 48.

[3] *Daughters v. Commonwealth of Kentucky*, 94 A.L.R. 673 (1934); *State v. Patterson*, 45 Vt. 308 (1873). See also *Connor v. State*, 171 A.2d 699 (1961).

[4] *Wigmore on Evidence*, Vol. V, Section 1448, p. 251 (1940).

[5] See cases collected in Annotation: "Admissibility of dying declarations as affected by their incompleteness". 94 A.L.R. 679 (1934).

[6] Appellee's Brief, p. 24.

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