

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESTEBAN MELGAR Y CORNEL AND GERARDO LANGUISAN, ACCUSED-APPELLANTS.

G.R. No. 75268. January 29, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal brought by the accused Gerardo Languisan who, together with Esteban Melgar y Cornel, was charged before the Court of First Instance (now Regional Trial Court) Rizal, Quezon City, Branch 31 with the crime of murder committed as follows:

"That on or about the 20th day of October, 1976, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill and by means of treachery, and with evident premeditation, did then and there, wilfully, unlawfully and feloniously stab with a bladed instrument one Jaime Duque y Palada, thereby inflicting upon him serious and mortal wound, which was the direct and immediate cause of his death, to the damage and prejudice of the heirs of the victim in such amount as may be awarded to them under the provisions of the Civil Code." (Original Record, p. 1)

On December 20, 1976, Esteban Melgar was arraigned and pleaded not guilty. The other accused, Gerardo Languisan alias "Jerry" remained at large so that trial proceeded against Esteban Melgar only.

On July 9, 1979, the trial court rendered a decision acquitting Esteban Melgar for failure on the part of the prosecution to prove his guilt beyond reasonable doubt.

On September 11, 1980, or four years after the incident, Gerardo Languisan was arrested. Upon arraignment on November 6, 1980, he pleaded not guilty.

The trial court, after evaluating the evidence presented, rendered its decision on December 9, 1981 finding accused Languisan guilty of murder. The dispositive portion of the decision reads:

"ACCORDINGLY, judgment is hereby rendered convicting the accused GERARDO LANGUISAN alias 'JERRY' beyond reasonable doubt of the crime of Murder charged in the information and as defined and penalized in Article 248 of the Revised Penal Code, and in accordance therewith, there being no mitigating or aggravating circumstances which attended the commission of the offense, the said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua, with all the accessory penalties provided for by law; to indemnify the Heirs of Jaime Duque the amounts of P12,000.00, as compensatory damages; P15,000.00, in moral damages; and P3,100.00 in medical and funeral expenses, and to pay the costs.

"The accused being detained and considering the practice in the Quezon City Jail for all detention prisoners to agree in writing that they be governed by the same rules concerning convicted prisoners, he is hereby credited with the full extent of the period under which he was under detention.

"Let a copy of this decision be served to the Heirs of Jaime Duque.

"SO ORDERED." (Original Records, p. 279).

The prosecution's evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized as follows:

"At about 7:00 P.M. of October 20, 1976, Angelito Mata who have (sic) been driving a passenger jeepney with the route Farmers Market-Libis and vice-versa, was then at the back of Farmers Market, Cubao, Quezon City, falling in line with other passenger jeepneys for his turn to get passengers for Libis, Murphy, Quezon City. With Angelito Mata at that time in his passenger jeepney were Lorenzo Ramos and the victim, Jaime Duque, who were seated at the front seat, with the victim between Angelito Mata and Lorenzo Ramos. Esteban Melgar and accused Gerardo Languisan were also at the place, serving as starters for the jeepney passengers, seeing to it that the passenger jeepneys fall in line and get their passengers only as their turn comes in the line-up, for which they get a fee of P0.25 per passenger jeepney they served. Since it was already dark, Angelito Mata decided to go home. For this purpose, he maneuvered his passenger jeepney out of the line. But he was blocked by another passenger jeepney. As a result, some passengers took the passenger jeepney of Angelito Mata which angered Esteban Melgar and which resulted into an argument with the victim, Jaime Duque, who was asked by Esteban Melgar why he inserted at (sic) the line-up his passenger jeepney to which the victim retorted that it was none of his business as they were already going home, leading Esteban Melgar to tell the victim: 'Baka hindi mo ako kilala dito, kaya kita sabayan.' There-after, Esteban Melgar approached accused Gerardo Languisan and talked with him. After their talk, accused Gerardo Languisan boarded the passenger jeepney of Angelito Mata and seated himself at the center of the right back seat behind the victim, Jaime Duque, who was seated between Angelito Mata and Lorenzo Ramos at the front seat. At this, the passenger jeepney of Angelito Mata proceeded to Libis, which was the end of its route. At Libis, when Mata's passenger jeepney stopped, accused Languisan was the last to alight. But before he did, Angelito Mata, thru his rear-view mirror saw him stabbed (sic) the victim with a double-bladed knife in his right hand at the back of the victim's neck, left side, and then when Angelito Mata turned his head to look, accused Gerardo Languisan alighted from the passenger jeepney and ran away towards a dark place. The victim attempted to pursue accused Gerardo Languisan by going across the back seat. But there the victim slumped at the right seat as he became weak. Then, the victim was brought to the Quirino Memorial Hospital at Quezon City where he died the next day, October 21, 1976, of cardio-respiratory arrest due to shock and hemorrhage as a result of the stab wound to the nape (Exh. D-3), per his Certificate of Death issued by the Local Civil Registrar of Quezon City (Exh. D). The cadaver of the victim was autopsied by Capt. Desiderio A. Moraleda, Chief, Medico-Legal Branch, PC Crime Laboratory, Camp Crame, Quezon City, on October 21, 1976 at the PCCL Morgue, Camp Crame, Quezon City, and he found in his Medico-Legal Necropsy Report dated October 27, 1976, the following Postmortem findings:

"Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity over the dependent portions of the body. Conjunctivae, lips and nailbeds are pale. There is a tracheostomy opening at the anterior aspect of the neck, measuring 1.2 cm. long with 2 stitches applied and a surgical incision at the left hypochondriac region, measuring 3 by 1 cm., 12 cm., from the anterior midline.

NAPE:

Stab wound, nape, measuring 4 by 0.5 cm., 5 cm. left of the posterior midline, 7.5 cm deep, directed anteriorwards, downwards and to the right, cutting the muscles and major blood vessels of the neck.

REMARKS:

Cause of the death is cardio-respiratory arrest due to the shock and hemorrhage as a result of a stab wound of the nape.' (Exh. A)

"Capt. Moraleda also caused the taking of the picture of the victim (Exh. B), showing the wound at the back of the nape, left side (Exh. B-1), as well as, a sketch of the human body (Exh. C), showing the said wound (Exh.

C-1). For the death of his son, Juan Duque spent P1,000.00 for medicine and P2,100.00 for funeral expenses.

"In his defense, accused Gerardo Languisan asserts that he had nothing to do with the killing of the victim, Jaime Duque. For, according to him, at about 7:00 P.M. on October 20, 1976, he was at the Farmers Market, Cubao, Quezon City, at the passenger jeepney's starting point calling for passengers, as a starter of passenger jeepneys, for Libis at Murphy, Quezon City, at which place he had been since 5:00 P.M. until 9:00 P.M. when he left Farmers Market and went home to Libis." (Original Records, pp. 274- 275)

Accused-appellant Languisan now raises the following assignments of errors in this appeal:

I

THE LOWER COURT ERRED IN HOLDING APPELLANT LIABLE FOR THE DEATH OF JAIME DUQUE DESPITE THE ABSENCE OF EVIDENCE IDENTIFYING HIM AS THE ASSAILANT.

II

THE LOWER COURT ERRED IN POINTING TO THE APPELANT AS THE ASSAILANT OF THE VICTIM DESPITE THE ABSENCE OF MOTIVE (AND WHICH THE PROSECUTION FAILED TO PROVE) ON THE PART OF THE APPELLANT TO KILL THE VICTIM BECAUSE:

"A.

THE APPELLANT AND THE VICTIM HAVE NEVER KNOWN NOR MET EACH OTHER;

"B.

THE APPELLANT AND THE VICTIM HAD NO CONFRONTATION, GRUDGE, OR ALTERCATION, EITHER IN THE PAST OR IMMEDIATELY BEFORE THE STABBING INCIDENT.

III

THE LOWER COURT ERRED IN RELYING ON THE SPECULATIVE AND DOUBTFUL EVIDENCE OF THE PROSECUTION IN CONVICTING THE APPELLANT.

IV

EVEN ON THE GRATUITOUS ASSUMPTION THAT THE STABBING TOOK PLACE, THE LOWER COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY BECAUSE THE PROSECUTION FAILED TO PROVE THAT THE VICTIM WAS COMPLETELY UNAWARE WHEN ATTACKED." (Brief for the Appellant, pp. 7-8, Rollo, p. 55)

The first assignment of error stresses the alleged absence of evidence positively identifying Languisan as the assailant on the ground that the description by the prosecution witness, Angelito Mata, was erroneous. According to the defense, the person whom the witness identified was another person, the name of the assailant having been given by the witness as "Willie" and not Gerry. The same was sufficiently explained by the prosecution - that Mata knew Gerry Languisan as Willie and the Willie as mentioned in his statement is the accused Languisan (TSN, pp. 5-6, August 31, 1981). There can be no question about the identity of Languisan because Mata pointed to him in open court. He was not identified because of his name but he was pointed to and singled out upon the instructions of the court to finger the accused-appellant if he was in the courtroom.

This Court, in a number of cases, held that minor inconsistencies do not destroy the credibility of the witness. An inconsistency may even prove that the witness is unrehearsed. (People v. Dava, 149 SCRA 582; People v.

Bautista, 147 SCRA 500; *People v. Ancheta*, 148 SCRA 178; *People v. De las Piñas*, 141 SCRA 379).

The identity of the assailant is further established by the fact that Mata saw the appellant stab the victim (TSN, p. 4, June 4, 1977). There is nothing in the records that would show that Angelito Mata had any bias or prejudice against Languisan. The fact that there were no earlier differences between them was admitted by the accused himself (TSN, pp. 6 and 13, October 20, 1981). There being no evidence that the principal witness for the prosecution was actuated by improper motive, his testimony should be given full faith and credit. (*People v. Alcantara*, 126 SCRA 425, 436).

Furthermore, between the positive declaration of the prosecution witness and the negative statements of the accused, the former deserves more credence (*ibid.*, *People v. Paseo, Jr.*, 137 SCRA 137; *People v. Borbano*, 76 Phil. 702).

As to the second assignment of error regarding the absence of motive to kill, proof of motive is not essential in the face of the positive identification by the witness (*People v. Anquillano*, 149 SCRA 442; *People v. Ramilo*, 147 SCRA 102; *People v. Manalo*, 135 SCRA 84). Such proof is necessary only when there are no eyewitnesses and where suspicion is likely to fall upon a number of persons.

Possible motive, however, is not wanting. Languisan was a barker or starter for jeepneys lining up for passengers behind the Farmers' Market. Starters take charge of seeing to it that jeepneys fall in line according to the arranged schedule. When Mata went ahead of the other drivers patiently waiting for their turn, it became a matter of honor for the appellant because his usefulness or his authority was challenged. There was a threat to harm or kill the victim as shown by the altercation between the co-accused Melgar and Duque. The threat was carried out when Melgar approached Languisan. After the two talked to each other, Languisan boarded the jeepney of Mata and stabbed the victim.

The defense of the appellant that he was not at the scene of the crime when the incident happened but was at the jeepney starting point is without merit. The defense of alibi to be given full credit must be clearly established and not leave room for doubt (*People v. Petil*, 149 SCRA 92; *People v. Ramilo*, 147 SCRA 102). Alibi is an inherently weak defense especially because of the proximity of the accused's alleged whereabouts at the time to the scene of the crime (*People v. Anquillano*, 149 SCRA 442; *People v. Aboga*, 147 SCRA 404). The appellant failed to establish that it was impossible for him to be at the scene of the crime inasmuch as the traveling time from said starting point to his residence at Libis, Murphy, Quezon City is only 5 kms. and is only 30 minutes ride (Original Records, pp. 275-276). It was, therefore, not impossible for the accused to be at the passenger jeepney of Mata and be back to Farmer's Market immediately thereafter, riding in another jeepney, then staying there to resume his work of starting passenger jeepneys until 9:00 p.m. when he went home to Libis.

The contention of the defense that the accused did not flee from the scene of the crime is untenable. Prosecution witness Mata testified that after stabbing Duque, Languisan ran from the scene of the crime (TSN, p. 4, June 14, 1977).

The claim of the defense that the accused did not attempt to escape does not inspire belief. According to the defense, the accused neither changed his residence nor place of work. This is nothing but a mere pretense. It was precisely because of the difficulty of locating the accused that the court litigation proceeded only against Melgar. Languisan was at large at the time the information was filed against him because he could not be found at his last address. It was only after four (4) years that he was found and arrested. Flight of the accused is indicative of his guilt (*People v. Astor*, 149 SCRA 325; *People v. Pimentel*, 147 SCRA 25).

The third assignment of error claiming that the evidence of the prosecution was speculative and doubtful

specifically because its witness, Angelito Mata, is wanting of credibility has been discussed earlier. It was established that Mata had no bias against Languisan. There is no doubt from the records that he was an actual eyewitness. There is no improper motive on Mata's part to implicate Languisan of the crime.

Lastly, the defense holds that the lower court erred in appreciating the qualifying circumstance of treachery because the prosecution was unable to prove that the victim was completely unaware when attacked and that there was no deliberate adoption of means to insure the killing. We agree with the Solicitor General that treachery was duly and sufficiently proven. The Revised Penal Code, specifically Art. 14, Sec. 16, states that "there is treachery when the offender commits any of the crimes against the person, employing means, methods, or terms in the execution, without risk to himself arising from the defense which the offended party might make" (People v. Rojas, 147 SCRA 169). In the case at bar, the victim was suddenly and without warning stabbed at the back of his nape by the appellant from behind with a double-bladed knife (TSN, pp. 6-7, May 14, 1981, Medico-Legal Necropsy Report, Exh. A). The appellant, therefore, employed a means of attack without risk to himself which might have arisen from any defensive or retaliatory act on the part of the victim (People v. Casalme, 17 SCRA 717).

The unexpected stabbing in the back of the victim by the accused proves the existence of treachery (People v. Crisanto, 135 SCRA 413). In a number of cases, it has been held that there is treachery when the defenseless victim was shot from behind without risk to his assailants (People v. Asil, 141 SCRA 286) or when the victim, while driving his jeepney was strangled from behind (People v. Masilang, 142 SCRA 673).

Therefore, the crime committed is murder, qualified by treachery. No other modifying circumstance attended the commission of the offense.

The judgment of conviction imposed by the lower court is affirmed but the penalty will have to be modified. This is in view of the abolition of the death penalty in the 1987 Constitution, "unless, for compelling reasons involving heinous crimes the Congress hereafter provides for it." (Art. III, Sec. 19 [1]).

The penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua (People v. Masangkay, G.R. No. 73461, Jan. 25, 1988; People v. Lopez, G.R. Nos. 71875-76, Jan. 25, 1988; and People v. Gavarra, G.R. No. L-37673, Oct. 30, 1987). In the absence of any modifying circumstances, the imposable penalty is reclusion temporal in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. For purposes of applying the Indeterminate Sentence Law, the range of penalty 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. (People v. Masangkay, supra).

WHEREFORE, the judgment appealed from is hereby AFFIRMED except for a MODIFICATION of the penalty. The accused-appellant Gerardo Languisan is sentenced to suffer an indeterminate penalty 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; to pay indemnity to the heirs of Jaime Duque in the amount of THIRTY THOUSAND PESOS (P30,000.00) and to pay the costs.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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