

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN DIAZ Y PEPITO AND SERGIO DIAZ Y PEPITO, DEFENDANTS-APPELLANTS.

G.R. No. 75433. November 09, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

At about 8:00 in the evening of December 24, 1983, a group of people celebrated their Christmas party in the house of Jovita Seno in Barangay Luz, Cebu City. Among those present were Doroteo Rosales, Edilberto Seno, Rosalito Villamor and Jorge Villamor, the younger brother of Jovita Seno. At about 1:00 in the morning of the following day, Jovita sent her brother Jorge to a nearby store to buy six (6) bottles of beer. Jorge asked Doroteo Rosales to accompany him and the latter followed him to the store.

At the store, appellant Sergio Diaz confronted Jorge and punched him. Immediately thereafter, appellant Ruben Diaz, the brother of Sergio, stabbed Jorge with a knife. The two assailants fled from the scene. Doroteo tried to run after them but did not succeed in doing so. He then decided to proceed to the residence of the barangay captain who in turn provided the vehicle by which the victim was to be transported to the nearest hospital.

Upon being informed that there was a stabbing incident in the store, Jovita Seno rushed to the scene of the incident and found her brother lying prostrate, soaked in his own blood. When the vehicle arrived, her brother was immediately carried inside and there Jovita asked the victim for the name of the assailants. He answered that his assailants were the brothers Ruben and Sergio Diaz. About thirty minutes after his admission to the emergency room of the hospital, Jorge Villamor died.

There were eyewitnesses to the crime. They are Reynaldo de los Santos and Ildefonso Batingan, both barangay tanods who helped bring the victim to the hospital. These two individuals also went to the house of the Chief Barangay Tanod, Cpl. Graciano C. Tan, during the wee hours of December 25 to report the incident. The three then went to the scene of the crime to make an investigation. Thereafter, appellant Ruben Diaz was invited for questioning at the house of the barangay captain. There, said appellant admitted stabbing the victim and informed the tanods where his brother Sergio could be located. Subsequently, Sergio was apprehended. He was made to surrender the knife that was used in the commission of the crime. Later, the brothers were brought to the Cebu Metrocom headquarters.

On December 27, 1983, the following Information was filed in the Regional Trial Court of Cebu:

"That on or about the 25th day of December, 1983, at about 1:40 A.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with a kitchen knife, conniving and confederating together and mutually helping with one another, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and stab one Jorge Villamor with said kitchen knife thereby inflicting upon him the following injuries:

STAB WOUND 3 CMS. LONG AT THE LEFT SUPRACLAVICULAR REGION PENETRATING, WITH LACERATION OF THE UPPER POLE OF THE SUPERIOR LOBE OF THE LEFT LUNG, TRANSACTION OF THE LEFT SUBCLAVIAN VEIN; LACERATION OF THE COMMON CAROTED ARTERY; MASSIVE HEMOTHORAX LEFT, CONFLUENT ABRASION 2 BY 3 CMS, LATERAL ASPECT OF THE RIGHT EYE.

and as a consequence of said injuries, Jorge Villamor died almost instantaneously.

CONTRARY TO LAW."[1]

Trial ensued where the defense presented a witness named Juanito Tatoy whose testimony was summarized by the lower court as follows:

"x x x x According to this witness, on December 25, 1983 at 1:30 in the morning he was at the residence of Ruben Diaz and his younger brother Sergio where all the three of them were drinking tuba since 6:00 o'clock in the evening of December 24. He left the house in order to buy cigarettes at the store near the house of the Diazes. At the store the victim stepped over his foot and when he asked the victim not to do it the victim all of a sudden struck him with a bottle which hit him on the right side of his head. He then went back to the house of the Diazes and got a knife and returned to the place where the man who stepped over his feet was and again tried to strike him with the bottle. When the victim did this he stabbed the latter. During all this time the accused Diaz brothers were in their house. After stabbing the victim he went back to the house of the Diazes and got his clothes and left the knife and then he went home to Mandaue."[2]

On November 6, 1985, after the trial on the merits the lower court rendered a Decision with the following dispositive portion:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Ruben Diaz and Sergio Diaz guilty beyond any reasonable doubt of the crime of murder. Accordingly, the accused are hereby sentenced to suffer imprisonment of RECLUSION PERPETUA and are ordered to indemnify the heirs of the late Jorge Villamor in the amount of P30,000.00."[3]

After his conviction, Sergio Diaz was gunned down on account of an escape attempt. Hence, only Ruben Diaz brought this appeal wherein he assigned the following errors on the part of the lower court:

"I

THE LOWER COURT FAILED TO APPRECIATE THE EXACT SIGNIFICANCE OF WITNESS JUANITO TATOY'S JUDICIAL ADMISSION.

II

THE LOWER COURT ERRED IN APPRECIATING THE EXACT EVIDENTIARY WEIGHT OF THE SO CALLED 'DYING DECLARATION.'

III

THE LOWER COURT ERRED IN ADMITTING THE EXTRA-JUDICIAL CONFESSION AND THE EVIDENCE OBTAINED WITHOUT PROPER WARRANT.

IV

THE LOWER COURT ERRED IN CONCLUDING THAT THE IDENTITY OF THE ASSAILANT HAS BEEN CLEARLY ESTABLISHED.

V

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF MURDER."[4]

For being interrelated, the first, second and fourth assignments of error will be taken up together.

The contention of appellant that the identity of the accused was not clearly established is devoid of merit.

Eyewitnesses stated positively that the Diaz brothers were the ones who attacked the victim. As stated earlier, two of these eyewitnesses are barangay tanods who were at that time standing right across the place where the incident in question occurred. Barangay tanod Idefonso Batingan had been a long-time neighbor of the aggressors and as such, he had no difficulty recognizing them. There was no reason for these witnesses to concoct a story that will incriminate the Diaz brothers.

The testimony of these witnesses is corroborated by the dying declaration of the victim who specifically named Ruben Diaz and Sergio Diaz as his assailants. When a person is at the point of death, every motive for falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth, and therefore his statements, under such circumstances, deserve great weight.[5] Here, the victim made his statement just a few minutes before he died with full knowledge that he was fatally injured. There is nothing to show that the utterance is unreliable or that the declarant is not worthy of trust. Hence, the dying declaration must be admitted.

The admission made by Juanita Tatoy that he is the author of the crime can hardly be given credence in view of the overwhelming evidence pointing to the herein appellant and his brother as the culprits. We do not agree with the appellant that this testimony was completely ignored by the lower court. What the court a quo actually did was to weigh such testimony as compared to the formidable evidence already presented by the prosecution. The court merely took into account the personal background of Juanito Tatoy to determine his credibility as a witness. As shown by the records, at the time he testified for the defense, Juanito Tatoy was serving a sentence for the crime of theft - the fourth time he was arrested. It was also shown that in 1976, he was imprisoned for robbery and was further confined in Muntinlupa for a murder case.[6]

With regard to the allegation of the appellant that there has been illegal arrest, search and seizure. We do not find any convincing proof to support this claim.

However, We do agree with the appellant that the lower court erred in holding that the qualifying circumstance of treachery accompanied the killing. As provided for in the law, there is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[7] By the phrase “employing means, methods, or forms in the execution thereof which tend directly and specially” it is necessary that the mode of attack was consciously adopted by the accused for treachery to come in. For treachery to exist, there must be proof that the means, methods, and forms of killing the victim were reflected upon by the accused and deliberately sought to insure its unobstructed execution.

In *United States vs. Balagtas*,[8] it was held that when the record contains no evidence that the accused prior to the moment of killing, had resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation, or reflection the qualifying circumstance of treachery cannot be considered. In *People vs. Ardesa*,[9] We held that the suddenness of the attack does not, of itself, suffice to support a finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. We further stressed that the qualifying circumstance of treachery may not be simply deduced from presumption as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit.

In the case at bar, there is no evidence that the mode of attack was deliberately sought by the appellant. On the contrary, the decision to kill the victim appears to be sudden. Jovita Seno herself testified that at one o'clock in the

morning of December 25, 1983, she advised her brother to go to the store to buy some more beer as their earlier stock had already been consumed. It, therefore, just so happened that the victim was sent on an errand at that particular time and to that particular place. Had it not been for the instructions of his sister, he would have remained at home. Nobody knew beforehand that he would go to the store. Not even the appellant nor his deceased brother could have expected to meet the victim at the store at that specific moment. Nor could appellant have foreseen that the victim would be carrying bottles of beer at the moment that he would attack the latter. The meeting of the victim and his assailants was casual. The attack was done impulsively.[10] The decision to kill was sudden. And although the position of the victim was vulnerable, it was not deliberately sought by his assailants, but was purely accidental.[11]

It was Sergio who first confronted the victim and punched him. It was only thereafter that Ruben stabbed the victim with a knife. The deceased was forewarned when he was confronted and boxed. The stabbing was not treacherous although sudden.[12]

In view of the foregoing, We find the appellant Ruben Diaz guilty of the crime of homicide punishable under Article 249 of the Revised Penal Code. There being no aggravating or mitigating circumstances attending the commission of the offense, he is hereby imposed the indeterminate penalty of eight (8) 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.

WHEREFORE, with the above modification as to the offense committed and the penalty imposed, the decision appealed from is hereby AFFIRMED in all other respects with costs against the appellant.

SO ORDERED.

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

[1] P. 6, Rollo.

[2] P. 19, Rollo

[3] Pp. 20-21, Rollo.

[4] Page 37, Rollo.

[5] V Moran, Comments on the Rules of Court, 1980 ed., p. 305.

[6] Page 19, Rollo.

[7] Art. 14, par. 16, Revised Penal Code.

[8] 19 Phil. 164.

[9] 55 SCRA 245.

[10] People. vs. Calinawan, 83 Phil. 648.

[11] People vs. Cadag, 112 Phil. 314.

[12] People vs. Visagar, 93 Phil. 326; People vs. Luna, 76 Phil. 101; and People vs. Gonzales, 76 Phil. 473.

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