

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL ESCOTO Y GONZALES AND DOMINADOR ESCOTO Y CRUZ, ACCUSED. DOMINADOR ESCOTO Y CRUZ, ACCUSED-APPELLANT.

G.R. No. 91756. May 11, 1995

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Dominador Escoto y Cruz seeks the reversal of his conviction for murder handed down in Criminal Case No. 85-37810 of the Regional Trial Court of Manila, Branch 13, on September 11, 1989 wherein, inter alia, he was sentenced to suffer the penalty of reclusion perpetua.[1]

In said criminal prosecution, the People presented Mabina* Cuales Vda. de Torno who testified in the court a quo that at about 5:30 P.M. on April 10, 1985, the brothers Wilfredo ("Willie") and Dominador ("Ogie") Escoto arrived at her residence at 2237 M. Hizon Street, Sta. Cruz, Manila looking for Alfred Torno, the elder brother of Robert Torno who later became the victim in this case. Wilfredo and Dominador demanded to talk to Alfred but Mabina refused them entry into the house. The Escoto brothers were thereby constrained to leave but, before departing, Wilfredo shouted, "Alfred, do not go out of that house alive. If I see you, I will kill you." Afterwards, Wilfredo and Dominador headed towards Batangas Street with Mabina following them.[2]

Still on M. Hizon Street, and before they could reach the corner of Batangas Street, the Escoto brothers chanced upon Robert Torno walking alone. Without any warning, Wilfredo and Dominador pursued Robert. After a brief chase, they were able to catch up with him. At this juncture, Mabina was about ten meters away from the protagonists.[3]

Suddenly, Mabina saw Wilfredo stab Robert on the left chest with a fan knife. Then, Dominador himself stabbed Robert. Although Mabina could not tell the specific number of times that Robert was stabbed, she was certain that Dominador was holding Robert when Wilfredo stabbed the latter. Robert thereafter collapsed and fell on the ground.[4]

From afar, Mabina heard Raul Escoto, father of Dominador and Wilfredo, shout to both his sons "to run if they have already finished." At this point, Raul was standing in front of Mabina's house which is also about ten meters away from the crime scene. The three Escotos then ran away in the same direction. Mabina, along with a nephew called "Totoy," approached Robert to assist him, only to find out that he had already expired. "Totoy" then called the police who brought Robert to the morgue.[5]

Joseph Calma, a resident of 2232 M. Hizon Street, Sta. Cruz, Manila, also took the witness stand and testified that at around 5:30 that afternoon, he was standing in front of their house when he saw Robert Torno walking alone. He also saw Wilfredo and Dominador Escoto nearby. Initially, he thought Dominador and Robert were "boxing" each other but it turned out later that Wilfredo and Dominador were stabbing Robert. Afterwards, Joseph saw Robert fall to the ground. Although he was around fifty meters away from the scene of the incident, Joseph noticed that Wilfredo was clutching a fan knife. He also spotted Raul Escoto who was by then standing about fifty

meters away from the locus delicti.[6]

Dr. Marcial G. Cenido, medico-legal officer of the Western Police District, performed an autopsy on the late Robert Torno and concluded that the latter died of twelve stab wounds.[7] On her part, Leticia Torno, mother of the deceased, testified that the family incurred expenses consequent to the untimely death of her son. She declared that she paid P4,895.00 to the funeral parlor, P750.00 for the transfer of the cadaver from Funeraria Popular to Funeraria Oro, and an undetermined amount to the grave?digger ("supulterero").[8]

On July 16, 1985, an information was filed against Raul Escoto and Dominador Escoto as conspirators in the murder of Robert Torno y Acosta before the Regional Trial Court of Manila, Branch 13. For reasons that are not clear in the records of this case, Wilfredo Escoto was not included in the information, nor does it appear that a separate information was subsequently filed against him, presumably because of the fact that at that time he was at large.

Duly assisted by counsel, both accused entered a plea of not guilty when arraigned on September 18, 1985.[9] After trial on the merits, the lower court found Dominador Escoto guilty beyond reasonable doubt of the crime charged, imposed on him the penalty of reclusion perpetua, and ordered him to pay the heirs of the deceased Robert Torno the amount of P30,000.00 as death indemnity and P5,645.00 as reimbursement for the funeral expenses. Accused Raul Escoto was acquitted.[10]

In all the stages of the criminal prosecution, both Raul and Dominador Escoto raised the familiar defense of denial cum alibi. Raul Escoto, an upholsterer, maintained that on April 10, 1985, he was at his residence at A-100 Sauyo, Novaliches, Quezon City where he was busy all day trying to finish a rush order from Ester Ramos who was his customer. Together with his son Dominador, he started working at 8:00 A.M. that day and finished early in the evening thereof.[11]

Raul alleged that he only learned from Ester Ramos in the morning after the stabbing incident that he was being implicated in the death of Robert Torno. Two weeks later, he was "invited" to shed light on what he knew about the killing by the Theft and Homicide Division, Police Station 5 of the Western Police District.[12]

Ester Ramos, a neighbor of the Escotos, took the witness stand on behalf of the accused. She claimed that in following up her order for the repair of a sofa and two arm--chairs, she went to Raul Escoto's residence in Novaliches at about 6:00 A.M. on April 10, 1985 to inquire if the sale set was ready for delivery. She learned that Raul was still working on the sala set so she decided to come back later.[13]

She thrice returned later in the day only to find out that her order was not yet finished. On her third trip at around 5:00 P.M., she became irritated when she learned that the work was not completed. Pleading for patience, Raul informed her that he and his son "Jing-Jing" were trying very hard to finish it. Finally, at about 5:30 in the afternoon, Raul and his aforesaid son delivered the sala set to her house. Adela Hernandez, a "comadre" of hers, arrived and inquired from Raul if she could also have her sala set repaired. This resulted in an extended discussion of the matter until nine o'clock that evening when Raul decided to leave.[14]

On the other hand, herein appellant Dominador Escoto contended that at the time of the incident he was at his grandmother's house in "Emison St., Sta. Mesa, Manila."** His grandmother promised him some money, hence his visit to her that day. At about six or seven o'clock in the evening, he left for Novaliches. When he arrived at their residence, he saw his father "fixing the set," obviously referring to the sala set of Ester Ramos.[15]

On the foregoing evidence adduced by the parties, this Court finds no compelling reasons to overturn the judgment of conviction of the lower court. Mabina Torno positively identified herein appellant, together with his brother Wilfredo, as the assailants responsible for the death of Robert Torno. This witness was only about ten

meters away from the crime scene which was clearly visible to her, so she had a good view of what really transpired.[16] Testimonies of eyewitnesses are given ample weight.[17] Positive identification prevails over the simple denials of the accused or his witness for that matter.[18] A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[19]

No evidence was advanced by the defense to show any ill motive on the part of Mabina to concoct the story she related to the trial court. The fact that Mabina Torno is a relative of the deceased, instead of undermining her reliability, even makes her more, credible. A relative of the victim has a natural knack in remembering the face of the assailant[20] in order to render justice to the deceased by the conviction of the real culprit. The weight to be given to the testimony of a witness possessing integrity and intelligence, who has no motive to fabricate facts and foist a very serious crime against an accused, depends chiefly on their observation and means of knowing the facts testified to by them.[21] The foregoing considerations obtain in favor of the prosecution witnesses in the case at bar.

Notwithstanding the persistence of the defense in its attempt to prove that appellant could not have been present at the time of the perpetuation of the crime, the claim of alibi is negated by the very testimonial evidence it has offered in the court below. The inconsistent statements of the defense witnesses themselves have resulted in their failure to realize the objective they sought to accomplish thereby.

Firstly, Raul's attempt to give a credible alibi for Dominador proved to be futile. Raul seemed unable to decide how to answer the query on where Dominador was on April 10, 1985. At first, when questioned under direct examination as to where Dominador was, Raul responded, "All I know, sir, my son Dominador was with h(is) lola at Blumentritt because he was living with h(is) lola." (Corrections and italics supplied).[22]

Then, still under direct examination, Raul apparently decided to change his story by subsequently stating that on April 10, 1985, he worked alone in his shop in Novaliches because Dominador was in school taking summer classes. However, when the matter was probed further, he could not state either the name of the school or even its location.[23]

Still reiterating that Dominador did not help him that day, Raul now asserts that he saw him in their house in Novaliches early in the morning of April 10, 1985. Dominador was allegedly still there after lunch, but Raul did not notice what time he left. He was sure, however, that Dominador was there "while we were doing something"[24] presumably referring to the job order of Ester Ramos. Unfortunately for him, this statement clearly underscores the fact that Dominador was neither at his grandmother's residence nor attending summer classes in school on that fateful day, thus completely contradicting Raul's previous assertions.

Furthermore, if we are to follow this latest version of Raul, then it can be inferred that Dominador, although present in their residence, did not lend him a hand in his work. However, in an earlier statement, Raul avowed that "Dominador helped me until I finished the rush job." [25]

Secondly, although the defense obviously hoped that Ester Ramos would be a corroborative witness for Raul Escoto, her testimony did not at all prove to be helpful for Dominador. Ramos testified that she went to the house of Raul several times on April 10, 1985 to follow up the progress of the work being done on her sala set. She saw Raul and the latter's son Jonis ("Jing-Jing") working on her sala set, but she did not see Dominador.[26] Hence, while Raul's earlier assertion that a son of his helped him in his work that day was corroborated by Ramos, that son was obviously not Dominador.

Thirdly, the gaps and fissures in the defense claim of alibi were further exposed when appellant Dominador himself took the witness stand. As earlier noted, Dominador actually claimed that at the time of the murder, he

was at his grandmother's house at Blumentritt Street, near M. Hizon Street. He stayed there from six to seven o'clock in the evening until he decided to leave for Novaliches. He arrived at their house between seven to eight o'clock that evening. He allegedly saw his father "fixing the set." [27] Earlier, however, Ester Ramos had testified that between 5:30 to 6:00 of the same day, Raul and his son "Jing--Jing" had already delivered that sala set to her house. Raul then stayed at her house until 9:00 P.M. because Adela Hernandez arrived and they discussed a furniture repair job she also wanted to be done. [28] It was, therefore, impossible for appellant to have seen his father "fixing the set" at about eight o'clock that evening since at that time, as affirmed by Ester Ramos, Raul was in her house conversing with her and Hernandez after delivering that furniture set much earlier in the afternoon.

Yet, even liberally assuming *arguendo* that Dominador was at his grandmother's house at the time of the incident, still it is not a legally sufficient alibi to warrant his acquittal. His grandmother's house is just a short distance away from the crime scene. In fact, his grandmother's house is located near the same street where the killing took place. It is by now a stale and trite doctrine which we have to interminably reiterate that for alibi to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed. It must likewise be demonstrated that he was also so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. [29]

The People having demonstrated beyond reasonable doubt the culpability of appellant, what now confronts us is the appreciation of the circumstances of treachery and abuse of superior strength alleged by the prosecution in the indictment as either qualifying or aggravating circumstances vis-a-vis the facts borne out by the evidence of record and the arguments thereon of the prosecution. This Court has time and again reiterated that circumstances which would qualify the killing to murder must be proved as indubitably as the crime itself.

On the circumstance of abuse of superior strength, to be applicable in a crime it must be clearly shown that there was deliberate intent on the part of the malefactor to take advantage thereof. [30] To justifiably appreciate it, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event. [31]

All that we can gather from the testimony of prosecution witness Mabina Torno is that after their chance meeting with Robert and immediately following a brief chase, Dominador and Wilfredo were able to catch up with their victim. Suddenly, Wilfredo stabbed Robert on the chest and then Dominador also knifed the latter. Although Mabina stated that "pinagtulungan na siya," yet, when asked to elaborate thereon, she could only say that Dominador held Robert while Wilfredo was stabbing the latter. She could not tell whether it was a limb or the body of Robert and, correspondingly, which one or what part Dominador was actually holding, because at that time she "was shouting for help." [32]

Hence, from the aforementioned chronology and rapidity in the succession of events, we can neither deduce nor conclude that indeed Dominador and Wilfredo deliberately used their collective strength in order to overpower Robert and consummate the felony. The sketchy evidence of the prosecution does not provide sufficient basis to convince this Court that the crime was committed by the offenders by intentionally relying on and abusing or taking advantage of their combined superior strength. Also, the mere fact that one person was attacked by two aggressors does not constitute this aggravating circumstance if the relative physical strength of the parties does not appear of record. There must be evidence that the accused were physically stronger and abused such superiority. [33] A superiority of numbers per se is not sufficient to bring the case within the purview of this qualifying or aggravating circumstance. [34]

In addition, we can neither conscientiously nor plausibly surmise that Dominador himself was armed. Although

Mabina Torno and Joseph Calma testified that Wilfredo had a fan knife, neither of said witnesses could say the same with regard to Dominador. Hence, it would appear that only one of the Escoto brothers was armed as opposed to the unarmed victim. While abuse of superior strength may be considered when there is an inequality of comparative force between the victim and the aggressor, there must nonetheless be a situation of strength notoriously selected or taken advantage of by him in the commission of the crime.[35]

Addressing the circumstance of treachery, a careful evaluation of this case produces the inference that the sole determining motive for the crime was a mauling incident which happened the night before the incident. The advance report from the Investigation Division of the Western Police District showed that on the night prior to the killing, Wilfredo was mauled by companions of Alfred.[36] Obviously, the Escoto brothers went to M. Hizon Street to confront Alfred about that incident but whether or not the Escoto brothers went there to kill Alfred can only be a matter of speculation. But, one thing is certain - they did not have the plan to kill or harm Robert, whether prior to, during or immediately after going to that house. It was only when they unexpectedly and fortuitously saw Robert walking along M. Hizon Street, and the latter ran away, that they decided to get back at Alfred through Robert.

From the aforementioned recital of facts and on which there is no dispute, *alevosia* is clearly wanting and cannot be considered in the case at bar. In *People vs. Calinawan*,[37] reiterating previous doctrines, this Court held that where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected and while the victim was running away with his back towards the accused. As has been aptly observed, the accused could not have made preparations for the attack, the meeting between him the deceased being casual; and the means, method and form of attack could not theretofore have been thought of by the accused, because the attack was impulsively done.[38]

We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an 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.[39] In fact, from the reaction of Robert in running away from the Escoto brothers the moment he saw them, we can reasonably conclude that he was not completely unaware that herein appellant and Willie posed a danger to him and this necessarily put him on guard, with the opportunity to prevent or repel a possible assault.

Lastly, although the victim sustained twelve stab wounds, some of them located at his back, we can not infer from this physical evidence alone that treachery was initially present in the case at bar. It is not clear from the testimonies of Mabina and Joseph whether or not the attack was inceptively launched frontally or otherwise, or at what stage of the fight those wounds at the victim's back were inflicted. It is a fundamental rule of long standing that for treachery to be appreciated, that circumstance must be present at the inception of the attack and, if absent and the attack is continuous, treachery at a subsequent stage is not to be considered.[40]

All told, we are firmly convinced that appellant had committed only the felony of homicide since the allegations of either abuse of superior strength or treachery have not been borne out by the evidence adduced by the prosecution. For that matter, neither can we consider the allegation of evident premeditation since the very mode of commission of the offense, the background thereof, and the mistake as to the intended and actual victims collectively reject the possibility of its being attendant in the crime. For that matter, the prosecution itself has not seriously pursued this aspect of the case.

WHEREFORE, the judgment appealed from is hereby MODIFIED by convicting accused-appellant Dominador Escoto y Cruz of the crime of homicide, and imposing upon him an indeterminate sentence of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

Likewise, the death indemnity is hereby increased to P50,000.00 in accordance with current case law. In all other respects, the judgment of the court a quo is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.

[1] Penned by Judge Gerardo M.S. Pepito.

* Also spelled "Mabena" in other parts of the record.

[2] TSN, December 17, 1985, 3-4.

[3] Ibid., id., 4-7.

[4] Ibid., id., 7-9.

[5] Ibid., id., 9-10.

[6] Ibid., July 23, 1987, 2-5.

[7] Ibid., October 15, 1985, 8; Exhibit D.

[8] Ibid., July 8, 1986, 2.

[9] Original Record, 5-6.

[10] Ibid., 145.

[11] TSN, September 10, 1986, 2-3, 9-10.

[12] Ibid., id., 4-5.

[13] Ibid., August 17, 1988, 3.

[14] Ibid., id., 2-6.

[**]This transcription (TSN, October 2, 1986, 2) is obviously a typographical error for, as pointed out by the trial court, appellant testified that he was in his grandmother's house at "Blumentritt Street" which "is near Hizon and Batangas Streets, both in Manila" (Rollo, 27) and this is confirmed by accused Raul Escoto (TSN, September 10, 1986, 3).

[15] Ibid., October 2, 1986, 2-5.

[16] Ibid., December 17, 1985, 6.

[17] People vs. Sarino, et al., G.R. Nos. 94992-93, April 7, 1983, 221 SCRA 234.

[18] People vs. Dulay, G.R. No. 92600, January 18, 1993, 217 SCRA 103.

[19] People vs. Arnan, G.R. No. 72608, June 30, 1993, 224 SCRA 37.

[20] People vs. Claveria, G.R. No. 94786, April 6, 1993, 221 SCRA 34.

[21] People vs. Lago, G.R. No. 96090, March 30 1993, 220 SCRA 578.

[22] TSN, September 10, 1986, 3.

- [23] TSN, September 10, 1986, 7-8.
- [24] Ibid., id., 11.
- [25] Ibid., id., 10.
- [26] Ibid., August 17, 1988, 24.
- [27] Ibid., October 2, 1986, 2,5.
- [28] Ibid., August 17, 1988, 6.
- [29] People vs. Bernardo, et al., G.R. No. 97393, March 17, 1993, 220 SCRA 31.
- [30] People vs. Martinez, L-31755, March 31, 1980, 96 SCRA 714.
- [31] People vs. Cabiling, L-38091, December 17, 1976, 74 SCRA 285.
- [32] TSN, December 17, 1985, 8.
- [33] People vs. Diokno, et al., 63 Phil. 601 (1936).
- [34] People vs. Balictar, et al., L-29994, July 20, 1970, 91 SCRA 501; People vs. Pajarillo, et al., L-32571-72, December 27, 1979, 94 SCRA 828; People vs. Casey, L-30146, February 24, 1981, 103 SCRA 21 People vs. Karunsiang Guiapar, L-35465, May 31, 1984, 129 SCRA 539.
- [35] People vs. Bigcas, G.R. No. 94534, July 20, 1992, 211 SCRA 631.
- [36] Exhibit F, Folder of Exhibits, 9.
- [37] 83 Phil. 647 (1949).
- [38] Reyes, The Revised Penal Code, 13th ed. (1993), 424.
- [39] People vs. Ardisa, L-29351, January 23, 1974, 55 SCRA 245.
- [40] U.S. vs. Balagtas, 19 Phil. 164 (1911); People vs. Cañete, 44 Phil. 478 (1923).

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