

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO SEDA Y PUROS AND RICARDO AUSTRIA Y CAAG,
DEFENDANTS-APPELLANTS.**

G.R. Nos. 44810-12. May 21, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These are three separate cases for (1) murder with direct assault, (2) murder and (3) attempted murder, committed on the same occasion, qualified by treachery and evident premeditation, with nocturnity deliberately sought as aggravating circumstance, filed in the Criminal Circuit Court of Batangas on August 15, 1975, against Armando Seda Y Puros and Ricardo Austria Y Caag, for the killing of Bienvenido Ariola and Edna Ariola, and the near killing of Elsa Ariola.

When arraigned on September 9, 1975, both accused, duly assisted by counsel de oficio, pleaded not guilty.

After joint trial, they were found guilty of the crimes charged, in a decision the dispositive portion of which reads:

"In view of all the foregoing and after mature deliberation and meditation, the court finds accused Armando Seda and Ricardo Austria guilty beyond reasonable doubt of the offense of murder with direct assault in CCC-VIII-523 (75) - Batangas penalized under Articles 248 and 148 in relation to Article 48 of the Revised Penal Code. The court finds Armando Seda and Ricardo Austria guilty beyond reasonable doubt of the offense of murder in CCC-VIII-524 (75) - Batangas, penalized under Article 248 of the Revised Penal Code. The court finds Armando Seda and Ricardo Austria guilty beyond reasonable doubt of the offense of attempted murder in CCC-VIII-525 (75) - Batangas penalized under Article 248 in relation to Article 51 of the Revised Penal Code, considering that they performed all the acts of execution which could have produced the crime of murder of Elsa Ariola as a consequence but nevertheless did not produce it by reason of some cause or accident other than their own spontaneous desistance, that is, because Elsa Ariola was not hit with shots fired at her as she was thrown out of the jeep.

"The court in deciding these cases, most carefully weighed the evidence, deliberated for hours, for days and nights. Every nerve of the body of the presiding judge has been taxed; he searched the entire records and searched his own conscience, but found the crimes committed by the accused to be so abominable, so heinous, so brutal, so inhuman, so grisly, horrible and cruel. What reason in there to kill a promising innocent young lady, Edna Ariola, 15 years of age, a true 'dalagang Filipina', charming and beautiful?

"In criminal Case CCC-VIII-523 (75) for murder with direct assault, the court hereby sentences Armando Seda and Ricardo Austria, the penalty of RECLUSION PERPETUA (Life Imprisonment) and to pay jointly and severally the heirs of Bienvenido Ariola the sum of TWELVE THOUSAND (P12,000.00) PESOS, to pay jointly and severally the amount of FIVE THOUSAND (P5,000.00) PESOS as exemplary damages.

"In Criminal Case CCC-VIII-524 (75) for murder, the court hereby sentences Armando Seda and Ricardo Austria the penalty of RECLUSION PERPETUA (Life Imprisonment) and to pay jointly and severally the heirs of Edna Ariola the sum of TWELVE THOUSAND (P12,000.00) PESOS to pay jointly and severally the

amount of FIVE THOUSAND (P5,000.00) Pesos as exemplary damages.

"In Criminal Case CCC-VIII-525 (75) for attempted murder, the court hereby imposes upon Armando Seda and Ricardo Austria the penalty of imprisonment of FOUR YEARS AND TWO MONTHS of prision mayor, as maximum and to pay jointly and severally Elsa Ariola the sum of FIVE THOUSAND (P5,000.00) PESOS as moral damages, and to pay the costs."[1]

From the judgment convicting them, both accused appealed to this Court.

The counterstatement of facts Appellee's Brief narrates the occurrence with accuracy, and We quote

"At about 1:00 oclock in the morning of July 5, 1975, Station Commander (Chief of Police) Bienvenido Ariola (the deceased) fetched his two teenaged daughters Edna (also deceased) and Elsa from a dance party at Poblacion Laurel, Batangas. Bienvenido Ariola drove his jeep with Edna on the left and Elsa on the right side of the backseat. Upon reaching Lagnasan which is about ninety (90) meters from their house at Barrio Leviste, also at Laurel, Batangas, they were fired upon. Bienvenido Ariola and Edna Ariola were instantaneously killed. The jeep bumped into a coconut tree detaching its left tire, and throwing off Bienvenido Ariola and Edna Ariola to the ground. The headlights of the jeep remained lighted. Miraculously unhurt, Elsa fell down on her knees and dropped to the ground. She was dazed and frightened but otherwise she did not lose consciousness. She heard footsteps approaching. She saw Armando Seda (the appellant), Ricardo Austria (another appellant) and a third person whom she did not recognize. All were armed with long firearms. They peeped inside the jeep. Then Armando Seda kicked the broken head with brains scattered of her father and said: "Ayos na." The said three persons then left the scene (tsn. pp. 23-38, November 27, 1975; tsn. pp. 3-8, January 7, 1976). When they were gone, Elsa stood up and approached her father and sister, both of whom she found to be dead. She raced to her uncle's (Anacleto Punzalan) house about sixty (60) meters away and informed him of the ambush. When asked who were the assailants, she promptly said, Armando Seda and Ricardo Austria and an unidentified person. (tsn pp. 35-40, November 27, 1975).

"Police investigators in the company of Pat. Carlito Encarnacion then went to the scene. They saw the jeep still with its headlights on, although its left tire was detached and its front bumper rammed against a coconut tree (tsn, pp. 75-76, September 25, 1975; tsn. pp. 10-11, October 10, 1975). They saw the dead body of Chief of Police Bienvenido Ariola behind the jeep, more or less two (2) feet therefrom with severely broken skull and his brain scattered outside and his gun at some distance away. They also saw Edna Ariola's dead body, her face disfigured by gunshot wounds. They also found fifteen (15) empty shells seven meters from the jeep and a wooden handguard of a carbine.

"When investigated, Elsa pointed to Armando, Seda and Ricardo Austria as two of the three armed persons who approached the jeep and the bodies immediately after the ambush that dawn of July 5, 1975 (tsn. pp. 87-96, September 25, 1975; tsn. p. 17, October 7, 1975; tsn. pp. 39-40, November 27, 1975). Later that day about 2:00 o'clock in the afternoon of July 5, 1975, the police apprehended Armando Seda and Ricardo Austria at their respective houses (tsn. p. 11, August 5, 1975).[2]

Both appellants pleaded the defense of alibi which the trial court rejected as without merit in the face of their positive identification by an eye-witness, the only one of the three passengers in the jeep who escaped injury despite that she was thrown out of the jeep.

We need not touch on how appellants chided the trial judge in quoting from the Bible one of the ten Commandments: "Thou shall not kill," as if said judge was trying the accused for violation of the Holy Law and not the statutory law that is the Revised Penal Code. It would only reveal how narrowminded the appellants' counsel is in approaching this serious case.

Understandably appellants concentrated their attack against the appealed decision on what they claim to be their wrong identification by Elsa who, having miraculously escaped death which her two co-passengers met with, was

an eye-witness to appellants' destardly act, when both approached their intended victim after the shooting.

It is their approach as stated by Elsa that appellants claim to be improbable for the usual reaction of attackers using ambush method is to run away for fear of recognition or retaliation from survivors. In this case, however, appellants must have known the Chief of Police had only her two daughters as companions, and assumed that the Chief of Police dead, because he lost control of the jeep which hit a coconut tree, and the one of the two daughters thrown off, they thought they were safe from retaliation or recognition. But as stated, one daughter miraculously escaped death or any injury, but was obviously thought of by the assailants as already dead. Appellants, therefore, approached their victims to assure themselves they were already dead, as they would have shot again at them if they were not so.

There is no reason to disbelieve Elsa in her testimony identifying the appellants, not even by the laborious effort of accused to show that in her prone position, she could not have seen the faces of the appellants. The eyes can easily be turned round without having to move the head, and in short instant, see without being noticed. Moreover, Seda uttered some words "Ayos Na," which because of Elsa's familiarity with him, helped to make identification positive.

The certainty and positiveness with which Elsa identified appellants can be seen from how she, on running to her uncle's house after verifying that her two kins were already dead, she informed her uncle who did the ambush, although she named only the two appellants admitting inability to identify a third companion. This statement of Elsa is thus part of the *res gestae* and is characterized with candor for admitting not being able to identify of a third man in the group.[3]

How else could the policemen and the PC pick up both appellants at 2:00 in the afternoon of the same day of July 5, 1975, except upon this information given by Elsa on the identity of the ambushers, since the State-presented only Elsa as the eye-witness to the ambush who could identify the ambushers the way she did? This fact renders futile the argument that because it was only on February 8, 1975 that Elsa's statement was taken, same is not credible, for as previously observed the only source of the identification is Elsa. If the police allowed a few days to lapse before taking down Elsa's statement, it must have been to allow her to recover from the shock of witnessing and grief the killing of her father and her sister, and of her own, if Divine Providence did not spare her perhaps to stand as a means to bring the children to justice-poetic justice it was with the lights staying on for illumination.

Seda's act of condoling with the bereaved family does not negate his culpability. It was only a shallow way of covering up his guilt. If the testimony of his mother and wife that they tried hard to awaken him just after the reports of gun were heard, he should have gone much earlier, instead of first going to the seashore, where he wanted to clean himself of possible spots of blood, or even more, the gun powder in his hands. This could be the reason for the negative result for the paraffin test, specially if the washing has been repeated until the test which was three days later, or July 7, 1975. He has been a member of the police force; he must be knowledgeable on this matters.

As a last attempt to avoid the unerring identification of the state eye-witness, they point to the finding that only one gun fired 15 shots 15 empty shells having been found, indicating according to appellants, that they could not be the culprits since they were supposed to be three of them, as testified to by the state star witness Elsa.

It is possible that only one fired and this single firing hit the intended victim. There was no need for all three to fire if the evil design was accomplished with only one of them firing. But the existence of conspiracy is manifest.

As correctly stated by the Government, the polygraph test was not taken into account in the determination of

appellants' guilt. Its admissibility need not be discussed upon. Appellants' guilt sufficiently anchored on the positive identification by Elsa of said appellants as the ambushers, together with a third companion but whom she candidly admitted she could not identify.[4] She testified with candor and sincerity because she had no motive against appellants.

As earlier stated, appellants' defense of alibi is futile in the face of their having been positively identified by an eye-witness having no motive against the appellants who in fact had been harboring grudge against the deceased Chief of Police, and are the ones thus with motive for the treacherous attack. Chief of Police Ariola forced Seda to resign from the police force for drunkenness and misconduct in office, denying Seda's request for reinstatement (pp. 10-12, tsn, Jan 13, 1976) Appellant Austria, for his part was berated by the deceased Chief of Police for drunkenness which was deeply resented by Austria.[5]

Wherefore, the guilt of appellant has been established beyond reasonable doubt. The aggravating circumstances of nocturnity and superior strength being absorbed by treachery, should not to be considered as separate aggravating circumstances as recommended by the Solicitor General. In the case of murder with direct assault, only murder will be considered because the deceased Chief of Police was not in the performance of official duty. Accordingly, the penalty imposed by the trial court for the three cases is in, accordance with law and the evidence, and except the indemnity which should be raised to P30,000 the same is affirmed in all other respects, with costs. SO ORDERED.

Makasiar, (Chairman), Aquino, Guerrero, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., on leave.

[1] pp. 2-4, Appellee's Brief, p. 137, Rollo.

[2] pp. 4-6, Ibid.

[3] People vs. Jose, 37 SCRA 450; People vs. Diva, 23 SCRA 332; People vs. De Gracia, 18 SCRA 197; People vs. Taño 109 Phil 912; People vs. Quimson, 62 Phil 162.

[4] People vs. Elefano, Jr., 125 SCRA 702; People vs. Tome, 123 ACRA 88; People vs. Dimatulac, 122 SCRA 47; People vs. Ijurcadas, 122 SCRA 515; People vs. Imbo, 116 SCRA 355; People vs. Cudalera, 63 SCRA 499;

[5] pp. 15-16 t.s.n. January 13, 1976.

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