

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEXANDER DE LA FUENTE Y MAHILUM, ACCUSED WHOSE DEATH
SENTENCE IS UNDER AUTOMATIC REVIEW.**

G.R. Nos. 63251-52. December 29, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This is a review en consulta of the judgment of the Court of First Instance of Zamboanga del Norte, Dipolog City Branch I, convicting Alexander M. de la Fuente of "the complex offense of double murder with frustrated murder", sentencing him to death and ordering him to pay an indemnity of twelve thousand pesos to each set of heirs of the victims, Elvira B. Dumapig and Matilde B. Dumapig (Criminal Cases Nos. 2969 and 2970).

There is no question that De la Fuente, 21, killed his common law wife Elvira and her mother Matilde Baclayon Dumapig. The principal evidence against him is his extrajudicial confession (Exh. A) wherein he admitted the killing. The confession is admissible under section 20, Article IV of the Constitution because he ratified it while he was on the witness stand. His voluntary plea of guilty, a judicial confession, removed any doubt as to his guilt.

In his confession, he boasted that his motive for the killing was that he "wanted to" kill. He bragged that he already killed three persons, one of whom was named Kokoy (Nos. 12 and 13, Exh. A). He made the same admission to a police officer (p. 7, Record).

Just an hour or two before the killing, when his wife and her sister Imelda were returning home after a program at the School of Fisheries, his wife did not go to the rented house where she and De la Fuente were residing. The house was surrounded by some unknown persons because De la Fuente had assaulted a person (12 and 13 tsn, December 6, 1982). Elvira slept in her parents' house which was about twenty-five meters away.

When the Dumapig family was still in General Santos City and Elvira, a teenager, was engaged in selling halo-halo in the public market, De la Fuente got acquainted with her. One night De la Fuente threatened her with a hunting knife and they eloped. Elvira's father sent for De la Fuente's parents but his own father refused to give his consent to the marriage because Alexander used to challenge his father to a fight (21 tsn, December 6, 1982). So Elvira and De la Fuente cohabited without getting married and lived with her parents in a barrio in Dipolog City.

At his arraignment on November 23, 1982, De la Fuente, assisted by counsel, pleaded not guilty. Judge Simplicio M. Apalisok asked him if he understood the information. The accused answered in the affirmative. Again, the accused was asked as to his plea. He answered "guilty". Judge Apalisok apprised the accused that he was charged with two murders, which are capital offenses, and the death penalty might be imposed on him. He was asked again by the Judge if he understood the information. He said: "Yes, sir, I do understand".

In answer to another question of the trial judge, De la Fuente said that he knew the consequences of his plea of guilty to an information charging him with the murder of two women. He was asked if he wanted to change his plea to "not guilty". De la Fuente said: "I will not change my plea, Your Honor".

Then, he was arraigned on the information for frustrated murder. He was assisted by the same counsel. He also pleaded guilty.

To dissipate any doubt as to his guilt and find out whether he deserved capital punishment, Judge Apalisok required the fiscal to present his evidence. In addition to the extrajudicial confession, the fiscal presented the eyewitness testimony of Imelda Dumapig, 16, a first year high school student and Elvira's sister; the hospital doctor who examined Imelda; Alejandro Dumapig, the husband of the deceased Matilde; Marcos Sorronda, the intelligence officer of the city police who got De la Fuente from the barangay captain of Pian, Polanco, Zamboanga del Norte to whom he had surrendered after the killing.

According to the prosecution at about eleven o'clock on the night of September 21, 1982, Elvira with her one-year-old baby, her mother Matilde and her younger brother Alan and two nephews were sleeping in Matilde's house located in Barangay Olingan, Dipolog City. Elvira's common-law husband, De la Fuente, suddenly barged into the house. On that occasion, Alejandro Dumapig, Matilde's husband, happened to be in Aloran, Misamis Occidental.

Imelda Dumapig, Elvira's sister, who was still awake, combing her hair, saw De la Fuente who, without any preliminaries, stabbed with his knife (Exh. C) Matilde on the left breast and Elvira on the middle portion of her chest while both victims were fast asleep. Imelda with her wounded mother Matilde jumped out of the window. On the ground, they were separated.

De la Fuente, who had gone out of the house, stabbed Imelda on the left buttock. She fled towards the checkpoint where she chanced to meet the head teacher of the School of Fisheries who brought her to the hospital. Her wound was not fatal.

Elvira and Matilde died as a result of the stab wounds (Exh. F and H). Matilde had a penetrating wound in the left breast which cut the nipple and areola and fractured her sixth and seventh ribs. Elvira had a three-centimeter wound in the chest. The wounds affected the victims' hearts and lungs (Exh. E and G).

De la Fuente was charged with double murder in one information and with frustrated murder in another information with respect to the wounding of Imelda. As stated already, he executed an extrajudicial confession wherein he admitted that he killed the two women (Exh. A). He was assisted by Manuel P. Abad, a lawyer of the Citizens Legal Assistance Office.

The confession was sworn to before an assistant city fiscal of Dipolog City who certified that he personally examined De la Fuente and that he was satisfied that the latter voluntarily executed and understood his confession.

The fiscal agreed that plea of guilty and voluntary surrender to the authorities were mitigating but he disagreed with counsel de oficio's contention that passion and obfuscation should also be mitigating. De la Fuente had to testify in his own behalf to prove that mitigating circumstance.

His version was that at about two o'clock in the afternoon, a few hours before the killing, he asked for twenty pesos from Elvira. He was angered by the intervention of Matilde who on such occasions used to advise Elvira to leave him. He gambled with the twenty pesos.

At about ninety-thirty in the evening, when he went to the house of Matilde, he was asked by Elvira about the twenty pesos. She and Matilde were allegedly still awake at that time. Elvira and De la Fuente had a spat about the loss of the money. Elvira bit him in the left breast near the nipple. That supposedly provoked him to assault the two women.

After assaulting the two women, he jumped out of the window. In the darkness, he encountered a person whom he

did not recognize. He also stabbed that person who turned out to be Imelda.

The trial court did not give credence to his testimony. It did not appreciate passion and obfuscation as a mitigating circumstance. Counsels de oficio seek only a modification of the trial court's decision. They contend that the accused committed only two homicides and attempted homicide.

We hold that the killings are separate offenses because they were perpetrated by means of distinct acts. They cannot be considered complex. As the victims were asleep, the two killings were attended with treachery which absorbs nocturnity. They were correctly categorized as murders. Counsels de oficio's contention that the killings were homicides is not supported by the evidence. Even the accused in his confession did not state that he killed the victims when they were awake.

The accused supplied the evidence on evident premeditation when in his testimony he declared that he had an altercation at two o'clock in the afternoon with the two victims and he killed them about nine hours later in the evening of the same day (4-5 tsn, November 23, 1982). He had sufficient time for meditation and reflection and ample opportunity to allow his conscience to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings (*U. S. vs. Gil*, 13 Phil. 530, 547). Hence, *premeditacion conocida* is aggravating.

Dwelling is also aggravating since the murders were committed in the humble abode of Matilde B. Dumapig which was not the habitation of the accused.

As to Imelda B. Dumapig, the crime is attempted murder, not attempted homicide as contended by counsels de oficio. Treachery was present in the stabbing of Imelda because she was the victim of a sudden and unexpected assault. She had reason to feel safe after she had jumped out of the window and landed on the ground. Even the accused did not know that he was attacking Imelda. He did not recognize her. It was dark. The attempted murder was not aggravated by evident premeditation and dwelling.

Plea of guilty and voluntary surrender to the authorities are admittedly mitigating, but passion and obfuscation cannot be considered extenuating because the accused acted in a spirit of unmitigated lawlessness. Moreover, the act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time (*People vs. Hernandez*, 43 Phil. 104; *People vs. Alanguilang*, 52 Phil. 663).

Considering the attending circumstances, reclusion perpetua is the proper penalty for each murder. For the attempted murder, the proper penalty, after giving the accused the benefit of two mitigating circumstances without any generic aggravating circumstance (Art. 64[5], Revised Penal Code), is six months of *arresto mayor*.

Alejandro Dumapig, 51, widower, testified that the mental anguish caused by the death of his wife and daughter cannot be evaluated in terms of money. He spent P1,900 for the funeral, prayers and miscellaneous expenses. The civil liability awarded by the trial court is increased to thirty thousand pesos for each set of heirs.

WHEREFORE, the death penalty is set aside. The accused is sentenced to two reclusion perpetuas for the assassination of Matilde B. Dumapig and Elvira B. Dumapig. He should pay an indemnity and damages of thirty thousand pesos to each set of the victims' heirs.

For the attempted murder, he is sentenced to six months of *arresto mayor* and to pay Imelda B. Dumapig an indemnity of five thousand pesos. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Makasiar, J., no part.

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