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SECOND DIVISION

[G.R. No. L-32792. February 2, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONISIO BASTASA @ DIONY and VIRGINIA DUGENIA BASTASA @ VIRGIE**, *defendants.* **DIONISIO BASTASA *alias* "DIONY"**; *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CIRCUMSTANCES SHOWING THAT DECEASED WAS SHOT WHILE HAVING SEXUAL INTERCOURSE WITH ACCUSED'S WIFE.** — Appellant's version that he shot the victim while the latter was having sexual intercourse with his wife is shown by the following circumstances: (a) the presence of four empty bullet shells on the floor of the bedroom, supports appellant's statement that he aimed and fired four shots at the deceased while the latter was inside the bedroom; (b) the absence of bullet holes on deceased's T-shirt, although he sustained several wounds on the breast affirms appellant's statement that deceased had only his pants on when he shot him; (c) the fact that the bullet holes on the jacket of the deceased do not tally with the bullet wounds found on the upper portion of the deceased's body substantiates appellant's statement that the jacket was held by the deceased as shield for his breast when fired at in the sala — the multiplicity of the holes thereon apparently were occasioned by the fact that the deceased held the jacket in a crumpled manner towards his breast; and (d) the fact that the fashion magazines, found by the police authorities lying under a small table in the sala have bullet holes on them, one from cover to cover and the other up to page 31 thereof where the slug was found imbeded, proves that deceased could not have been sitting on a chair scanning a fashion magazine when he was shot.

2. **CRIMINAL LAW; PENALTIES; *DESTIERRO*; WHEN IMPOSABLE.** — Where the ongoing illicit relations between the deceased and the appellant's wife are duly established by the evidence and provide ample basis for the conclusion that

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the deceased's real purpose in going to the appellant's house was to indulge in the sexual act with the latter's wife, the circumstance that appellant killed the deceased in the act is deemed within the conditions stated in Article 247 of the Revised Penal Code and consequently, he should be sentenced to suffer the penalty of *destierro* in accordance with said article.

3. **ID.; ID.; ID.; DEFINED.** — Article 29 of the Revised Penal Code applies when the penalty to which the accused has been sentenced consists of deprivation of liberty. The penalty of *destierro* means banishment or only a prohibition from residing within the radius of 25 kilometers from the actual residence of the accused for a specified length of time. Although *destierro* does not constitute imprisonment (which is a typical example of deprivation of liberty), it is nonetheless a deprivation of liberty. It follows that Article 29 is applicable when the penalty imposed is *destierro*. In case the penalty of *destierro* is to be imposed on the appellant, the benefits of Article 29 should be extended to him, that is, he should be credited with the time during which he has undergone preventive imprisonment.

APPEARANCES OF COUNSEL

Yolanda G. Vilaluz for defendant-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

CONCEPCION JR., *J.*:

In Criminal Case No. 4609 of the Court of First Instance of Zamboanga del Norte, the spouses Dionisio Bastasa and Virginia Bastasa were charged with the crime of murder, allegedly committed as follows:

"That in the evening on or about the 2nd day of December, 1966, in the municipality of Dipolog, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and working together, armed with firearm and with intent to kill by means of treachery and evident premeditation did, then and there wilfully, unlawfully and feloniously shoot Atty.

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SOLOMON SUDIACAL, thereby inflicting upon him multiple gunshot wounds on various parts of his body at least one of which caused his death on the spot."[1]

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When arraigned on February 17, 1967, both accused entered a plea of not guilty;[2] thereafter, trial proceeded and the prosecution as well as the defense adduced their respective evidence. After the trial, on July 16, 1970, the trial court rendered a decision,[3] the pertinent part of the dispositive portion of which reads as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court, declaring that the prosecution has proved beyond reasonable doubt the guilt of accused Dionisio Bastasa @ Diony of the crime of murder in the character of principal, with the concurrence of the aggravating circumstance of evident premeditation, which, however, is offset by the mitigating circumstance of his voluntary surrender to the PC authorities in Sicayab, Dipolog, Zamboanga del Norte soon after he committed said crime, and that accused Virginia Dugenia Bastasa @ Virgie, was only accessory-after-the fact in the crime under paragraph 3 of Article 19 of the Revised Penal Code, for which reason, as spouse of said accused Dionisio Bastasa @ Diony, she is exempt from any criminal liability, hereby sentences accused Dionisio Bastasa @ Diony to the penalty of *reclusion perpetua*, with the accessories of the law, to indemnify the heirs of the deceased victim Atty. Solomon Sudiacal in the sum of Twelve Thousand Pesos (₱12,000.00), without subsidiary imprisonment in case of insolvency, to pay them Ten Thousand Pesos (₱10,000.00) as moral damages and Five Thousand Pesos (₱5,000.00) as exemplary damages, and to pay one-half (½) of the costs, and declares accused Virginia Dugenia Bastasa alias Virgie acquitted from the charge in the information, with one half (½) costs *de oficio* and cancellation of her bond for her provisional liberty. Accused Dionisio Bastasa @ Diony will be credited with the full period of his preventive imprisonment if he agrees in writing to

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[1] Original Record, p. 27.

[2] *Ibid.*, pp. 97, 107.

[3] *Ibid.*, p. 388.

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abide by the laws and disciplinary rules imposed upon convicted persons, and with only 4/5 thereof if he does not so agree."[4]

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Dissatisfied with the above judgment, the accused Dionisio Bastasa interposed the present appeal, pleading among others, that the trial court erred in not applying the provisions of Article 247 of the Revised Penal Code in the imposition of the penalty.

The evidence for the prosecution shows that from 6:30 to 7:00 o'clock in the evening of December 2, 1966, the deceased Atty. Solomon Sudiacal was with his wife Leonora Lacaya Sudiacal — a pharmacist — in their drug store at Dipolog, Zamboanga del Norte. After 7:00 o'clock that evening, the deceased left their drug store. His wife did not know where he was going; however, she was then expecting that he (the deceased) would go to Katipunan,[5] Zamboanga del Norte.

Instead of going to Katipunan, the deceased went to the house of the spouses Dionisio Bastasa and Virginia Bastasa at Jones Street, Dipolog, Zamboanga del Norte, to find out if the appellant Dionisio Bastasa with whom he had placed an order for cigarettes had already arrived from Zamboanga City. Having been informed by Virginia Bastasa that the appellant had not yet arrived, the deceased decided to wait for him. He then sat on a chair in the sala, while Virginia Bastasa, who had her back to him, sewed on a sewing machine. Thereafter, while the deceased was in the sala sitting and scanning a fashion magazine, the appellant fired shots at him.[6]

Meanwhile, at about 8:30 in the evening of that day, Francisco Balboza, Jr. together with Blanco Carreon and other students were playing cards at the second floor of the house rented by Leoncio Corpuz. After playing cards at around 9:30 in the evening, the two decided to go home. While they were downstairs, they

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[4] *Ibid.*, p. 412..

[5] T.s.n., November 24, 1967, pp. 398; 403-404.

[6] Exhibit "YY", Folder of Exhibits.

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heard shots coming from the house of the Bastasa spouses. When they looked at the appellant's house they saw a man — who turned out to be the deceased Atty. Solomon Sudiacal — fully clothed, his face soaked in blood, slowly walking towards the kitchen while the appellant was behind him aiming a gun at him. Appellant then fired at the deceased who thereafter fell on the floor of the kitchen.[7] Francisco Balboza, Jr. and his companion went nearer to the house of appellant, and standing on a coconut stump, they saw appellant's wife Virginia Bastasa come out from their room. Thereupon, the spouses undressed the deceased and brought his naked body to the sala and then to the balcony. Not long afterwards, they heard four or five successive shots, and thereafter, the appellant and his wife left their house.[8]

On the other hand, the appellant Dionisio Bastasa admitted that he shot the deceased in his house in the evening of December 2,1966. His version of the incident is as follows:

On November 30, 1968, he went to Zamboanga City — without informing his wife when he would return — to find out from the Bureau of Customs what foreign boat would dock at Pulawan and to pay for the boarding permit.[9]

On December 2, 1966, he went home, arriving at Dipolog City at about 9:00 o'clock in the evening of that day. On his way home, he was surprised to see the jeep of the deceased Atty. Solomon Sudiacal parked along General Luna Street near the establishment or store of one Omamalin about 70 meters away from his house.[10] Arriving home, he passed through the secret passage leading to the old balcony of his house, which he used to pass especially when going home at night in order not to disturb his wife and children who were already asleep.[11]

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[7] T.s.n., July 11, 1967, pp. 123-125.

[8] T.s.n., July 11, 1967, pp. 127-128, 129.

[9] T.s.n., September 16, 1969, pp. 290-291.

[10] T.s.n., September 16, 1969, pp. 265-266.

[11] T.s.n., September 16, 1969, p. 266; t.s.n., September 17, 1969, pp. 295-296.

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Upon reaching the balcony, he saw a jacket on top of the center table in the sala. He went inside to find out who owned the jacket, and as he approached the center table, he also found thereon a .45 caliber pistol.[12]

Believing that somebody was inside their bedroom, he took the pistol and went downstairs passing through the same old balcony.[13] After finding that the pistol was loaded, he climbed the ladder on the northern side of the house where he could see who was inside without being noticed.[14] When he reached the top of the ladder, he saw the deceased, naked from the waist, lying down with his wife and having sexual intercourse with her. Somehow his feet slipped from the ladder and he took hold of a board which created some noise. Immediately thereafter, the deceased stood up. At that moment, he shot the deceased four times, and the latter ran out of the bedroom to the sala and picked up his jacket. Again, he fired three more shots at the deceased, who ran to the kitchen with the jacket on his breast. Then he climbed down the ladder to pursue the deceased upstairs.[15]

While the appellant was about to go up the house, he heard a sound as if a body crashed against the plywood board, which served as a provisional shutter of the door of the new balcony. Looking towards the new balcony, he saw the plywood board fall down with the deceased. Thereafter, he went up the house, and again, he shot the deceased two more times. Thereupon, he turned over the body of the deceased which was then lying face downward and thereafter removed his trousers with the intention of cutting his penis but desisted when he heard the sound of an approaching jeep. Immediately, he left the house and placed the pistol on the stomach of the deceased. Failing

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[12] T.s.n., September 16, 1969, pp. 266-267.

[13] T.s.n., September 13, 1969, pp. 267-268.

[14] T.s.n., September 16, 1969, p. 268; t.s.n., September 17, 1969, p. 305.

[15] T.s.n., September 16, 1969, pp. 268-272.

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to get a motorcab, he went to the house of his uncle, Dr. Destura, where he took the latter's car and proceeded to the house of his cousin, Gregorio Bastasa, whom he requested to get in touch with his (Bastasa's) parents to secure a bond for him. From there, he went to the PC Headquarters at Sicayab, Dipolog, Zamboanga del Norte, and surrendered, informing them that he killed a man inside his own house.[16]

The Solicitor General is inclined to believe the version of the appellant. It is his observation that appellant's version is more credible than that of the prosecution because it is consistent with the physical facts of the case, namely: (a) the presence of four empty bullet shells on the floor of the bedroom supports appellant's statement that he aimed and fired four shots at the deceased while the latter was inside the bedroom;[17] (b) the absence of bullet holes on the T-shirt of the deceased although he sustained several wounds on the breast affirms appellant's statement that the deceased had only his pants on when he shot him;[18] (c) the fact that the bullet holes on the jacket of the deceased do not tally with the bullet wounds found on the upper portion of the deceased's body substantiates appellant's statement that the jacket was held by the deceased as shield for his breast when fired at in the sala — the multiplicity of the holes thereon apparently were occasioned by the fact that the deceased held the jacket in a crumpled manner towards his breast;[19] (d) the fact that the fashion magazines, found by the police authorities lying under a small table in the sala, have bullet holes on them, one from cover to cover and the other up to page 31 thereof where the slug was found embedded, proves that the deceased could not have been sitting on a chair in the sala scanning a fashion magazine (the one with bullet holes from cover to cover) when the first shots were fired at him; the probability being that a bullet fired at the deceased while he was already in the

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[16] T.s.n., September 16, 1969, pp. 272-276.

[17] *Rollo*, p. 286, par. (b).

[18] *Ibid.*, p. 288, par. (d).

[19] *Loc. cit.*

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sala from the bedroom found its mark on the fashion magazines as they lay under a small table one on top of the other;[20] and (e) the fact that the dead body of the deceased was found completely naked in the living room on top of a piece of plywood with the jacket under his right arm and his pants below his feet verifies the truth of appellant's declaration that while he was climbing down the ladder he heard a banging of the plywood board which served as temporary door shutter of the new balcony of the house and that he saw the deceased fall down with the board.[21]

The Solicitor General has also observed that the antecedent facts of the case, particularly the ongoing illicit relations between the deceased and the appellant's wife, are duly established by the evidence and provide ample basis for the conclusion that the deceased's real purpose in going to appellant's house on that fateful evening of December 2, 1966 was to indulge in the sexual act with appellant's wife.[22] This conclusion is bolstered by the disclosure of the records that on November 30, 1966 appellant left his residence in Dipolog City for Zamboanga City without informing his wife when he would be returning home.[23] Indeed, according to the Solicitor General, it was a perfect opportunity for the deceased to indulge in sexual act with Mrs. Bastasa, what with her husband away from home.[24]

Thus, the Solicitor General concludes that the appellant killed the deceased under the conditions stated in Article 247 of the Revised Penal Code, and, consequently, recommends that the appellant be sentenced to suffer the penalty of *destierro*, in accordance with said article.[25]

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[20] *Ibid.*, p. 287, par. (c).

[21] *Ibid.*, pp. 288-289.

[22] *Ibid.*, p. 282.

[23] *Ibid.*, p. 283.

[24] *Ibid.*, p. 285.

[25] *Ibid.*, p. 294.

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We have carefully examined the records of this case and We agree with the observations of the Solicitor General as well as his conclusion that the appellant killed the deceased while in the act of committing sexual intercourse with the appellant's wife, Virginia Bastasa, Accordingly, the appealed decision must be modified and the appellant sentenced to suffer the penalty of *destierro* as provided for by the first paragraph of Article 247 of the Revised Penal Code, to wit:

"ART. 247. *Death or physical injuries inflicted under exceptional circumstances.* — Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*."

We have noted, however, that the appellant has been under preventive imprisonment since December 2, 1966; or a period of almost twelve (12) years to date. Considering that the penalty of *destierro* has a duration of from six months and one day to six years, it appears that appellant has more than served the full duration of the penalty imposable on him, *even if he be credited with only four-fifths of his preventive imprisonment* — a period of nine years and six months — pursuant to Article 29 of the Revised Penal Code, as amended, which reads:

"ART. 29. *Period of preventive imprisonment deducted from term of imprisonment.* — Offenders who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

"1. When they are recidivists, or have been convicted previously twice or more times of any crime; and

"2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

"If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be

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credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment." (As amended by Republic Act No. 6127, June 12, 1970).

This brings Us to the question of whether or not the benefits of Article 29 aforequoted can be extended to the appellant, considering that the penalty imposable on him is *destierro*. We hold the affirmative view. Article 29 of the Revised Penal Code applies when the penalty to which the accused has been sentenced consists of deprivation of liberty.[26] The penalty of *destierro*, according to this Court in *Uy Chin Hua vs. Dinglasan*,[27] means banishment or only a prohibition from residing within the radius of 25 kilometers from the actual residence of the accused for a specified length of time. Although *destierro* does not constitute imprisonment (which is a typical example of deprivation of liberty), it is nonetheless a deprivation of liberty.[28] It follows that Article 29 is applicable when the penalty imposed is *destierro*. Therefore, in the instant case where the penalty of *destierro* is to be imposed on the appellant, the benefits of Article 29 should be extended to him, that is, he should be credited with the time during which he has undergone preventive imprisonment.

ACCORDINGLY, the judgment of the trial court is modified holding the appellant Dionisio Bastasa *alias* "Diony" guilty of the crime of killing the victim, Solomon Sudiacal, under exceptional circumstances as defined and penalized under Article 247 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *destierro*. Considering the preventive imprisonment that he has undergone, he is hereby ordered released immediately from custody. No pronouncement as to costs.

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[26] This is evident from the opening clause of Art. 29 which states that "preventive imprisonment shall be credited in the service of the *sentence consisting of deprivation of liberty* . . ."

[27] 86 Phil. 617, 619.

[28] *People vs. Abilong*, 82 Phil. 172, 174.

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SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

EN BANC

[G.R. No. L-49112. February 2, 1979]

LEOVILLO C. AGUSTIN, *petitioner, vs.* **HON. ROMEO F. EDU, in his capacity as Land Transportation Commissioner; HON. JUAN PONCE ENRILE, in his capacity as Minister of National Defense; HON. ALFREDO L. JUINIO, in his capacity as Minister of Public Works, Transportation and Communications; and HON. BALTAZAR AQUINO, in his capacity as Minister of Public Highways,** *respondents.*

SYLLABUS

1. POLITICAL STATE; INHERENT POWERS; POLICE POWER; SCOPE. — The broad and expansive scope of the police power, which was originally identified by Chief Justice Taney of the American Supreme Court in an 1847 decision, as "nothing more or less than the powers of government inherent in every sovereignty" was stressed in the case of *Edu v. Ericta*, (L-32096, Oct. 24, 1970), thus: "Justice Laurel, in the first leading decision after the Constitution came into force, *Calalang v. Williams*, (70 Phil. 720) [1940] identified police power with the state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. Persons and property could thus 'be subjected to all kinds of restraints and burdens in order to secure the general