

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO OÑATE ALIAS BUKAY, DEFENDANT-APPELLANT.

G.R. No. L-27481. July 28, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from a judgment of conviction of appellant for murder and imposing upon him the penalty of "cadena perpetua" (should be reclusion perpetua) of the Court of First Instance of Negros Occidental in Criminal Case No. 9040, entitled People of the Philippines vs. Alfonso Oñate alias Bukay, the dispositive portion of which reads thus:

"WHEREFORE, in view of the foregoing, the Court finds that the prosecution has established the crime of murder conclusively and beyond reasonable doubt, it appearing that the killing was attended by the qualifying circumstance of alevosia. Hence, the accused is hereby declared guilty of murder, under Art. 248 of the Revised Penal Code, and, in the absence of any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period, and he is hereby sentenced to cadena perpetua, and to indemnify the heirs of the deceased the sum of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs." (Pp. 11-12, Record.)

Even before the trial in the court below, appellant already admitted having killed the offended party, Peping Ventosa, by proposing to plead guilty to the crime of homicide, but this offer was rejected by the trial judge. And so, in this appeal, he has assigned only two errors, namely:

"I. The lower court erred in not appreciating the voluntary surrender of the accused as a mitigating circumstance.

"II. The lower court erred in holding that the stabbing of the deceased was attended by the qualifying circumstance of alevosia to qualify the stabbing as murder." Page 39, Rec.)

(There is indeed a certification found in page 18 of the record of the proceedings in the trial court which appears to be signed by Lt. Col. Domingo C. Tutaan, Inf. (PC) Provincial Commander, to the following effect:

"27 October 1966

"CERTIFICATION

"THIS IS TO CERTIFY that ALFONSO OÑATE, a detained prisoner has voluntarily surrendered to this Hq. at about 180800 Oct. 1966. Presently he is detained with our PC stockade, Provl. Hqs. Neg. Occ. PC, Bacolod City. However subject will be turned over to Provl. Jail today for safekeeping.

"This certification is issued in connection with the request of Pat. Roberto Fernandez of Bacolod Police Dept., Bacolod City for whatever purpose deemed necessary." (Page 18, Record of lower court.)

The obvious reason why no mention of this certification was made in the decision of the trial court is because it does not appear that the same was formally offered as evidence by the defense. We can overlook such oversight

as, anyway, the Solicitor General does not impugn the genuineness and truthfulness of the certificate and, in fact, recommends that on the basis thereof, appellant be credited with the mitigating circumstance of voluntary surrender.)

(Anent the second assignment of error, it is to be observed that the trial judge, Hon. Jose F. Fernandez, deferred consideration of the offer of appellant to plead guilty to the lighter offense of homicide until after he heard the evidence of the prosecution, hence it must be presumed that His Honor carefully weighed all relevant circumstances including the demeanor of the witnesses who testified before him regarding the sole basic factual issue he had to decide, namely, whether or not the admitted killing of Peping Ventosa by appellant was attended by "alevosia" or treachery) After the trial, His Honor concluded as follows:

"The accused admits having stabbed Jose Ventosa in the evening of October 15, 1966, and, announced during the trial that he was ready to plead guilty to homicide, not murder. He stated that in the evening of October 15, 1966, he and his companions, together with Jose Ventosa, drunk 'tuba' in a 'sari-sari' store in Burgos Street, Bacolod City, but Jose Ventosa left without paying for his drink so he (Oñate) was asked to pay for it by the storekeeper but instead he promised to collect the amount from Jose Ventosa; that while he and his two companions were standing near the corner of Lacson-Burgos Streets, Bacolod City, shortly after leaving the store, he saw Jose Ventosa walking towards the direction of the Provincial Hospital in front of Funeraria Alisbo in Lacson Street, so he asked his companions to approach Jose Ventosa for the payment of the 'tuba' but his companions refused whereupon he himself accosted Jose Ventosa and demanded payment but Ventosa laid hands upon him, grabbing him by his collar and pushing him back and forth until he fell to the ground, after which Jose Ventosa dipped his hand into his pocket as if to fish for something in his pocket, so, fearing for his life; he drew his knife and stabbed Jose Ventosa.

"This pretension of the accused was roundly denied by the eyewitnesses Rebecca Sy and Jimmy Tajanlangit. Rebecca Sy stated that she was seated in front of a store next to Funeraria Alisbo for she was selling 'tuba' in the evening in question when Jose Ventosa came and asked for a glass of 'tuba' but she answered that all her 'tuba' had been consumed whereupon Ventosa turned around and walked towards the direction of the Provincial Hospital; that Ventosa had not gone far when she saw the accused who, without saying a word, placed his hand on the shoulder of Ventosa and stabbed him with a knife hitting him in his side and in his forehead.

"Jimmy Tajanlangit, one of the two companions of the accused in the evening in question, denied that the deceased provoked a quarrel with the accused. He stated that when they saw Jose Ventosa the accused asked him and his companion to approach Jose Ventosa for his unpaid drink but he was afraid and refused, whereupon the accused himself accosted Jose Ventosa and, once close to him, suddenly stabbed the deceased in his right side and forehead.

"The record shows that the testimony of Rebecca Sy and Jimmy Tajanlangit have not been impugned nor in any manner disproven by the accused. Their testimonies are free from any material contradiction and the accused has not shown any motive whatsoever that these eyewitnesses were impelled by any malicious or false motive in testifying in the manner they did.

'As appellant met the deceased walking along the street appellant suddenly and without any warning pulled out a bolo under his shirt and with full strength thrust it upon the body of Fernandez. Fernandez fled and appellant continued to chase him and struck him again until he finally fell. Held: There is no doubt that the sudden attack made upon Fernandez without any warning was accompanied by treachery thereby qualifying the killing as murder. People vs. Dosal, G. R. Nos. L-4215-16.' " (Pp. 9-11, Record.)

(We have read the complete transcript of the proceedings in the trial court and carefully scrutinized the testimonies of appellant and his lone witness Rogelio Tobola, in the light of the opposite versions of the

eyewitnesses of the prosecution Tajanlangit and Sy. While it does seem, as contended by counsel for appellant in his brief and in his memorandum in the court below, rather strange and unnatural that appellant would un-ceremoniously and suddenly assault Ventosa only because the latter left the store without paying for the "tuba" he had drunk, thus causing the storekeeper to try to collect the P0.20 payment therefor from the appellant and his companions, Tajanlangit and Edmundo Cailo, such apparently unusual circumstance finds sufficient explanation in the fact that, as was shown by the prosecution thru the testimonies of three witnesses, namely, Porfirio Arcobillas, a policeman, George Valencia and Fernando Valencia, appellant is a man prone to resorting to the use of his bladed weapon, notwithstanding protestations made by him on the witness stand to the contrary. In other words, there is enough basis in the record for Us to rely on the conclusions of fact of the trial court as regards the decisive issue of credibility raised by appellant in his second assignment of error. It is almost trite to reiterate that "time and again, We have held that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the results of the case.)"[1]

(Appellant capitalizes on some alleged discrepancies in details between the testimonies of the physician and of Tajanlangit as well as between that of the latter and of the other eyewitness Rebecca Sy. But apart from the fact that the trial judge was diligent enough to iron out some of the apparent discrepancies referred to, the rest of them are related to merely insubstantial matters, which, as We have uniformly held, lend weight rather than detract from the credibility of the evidence.[2]

(There can be no doubt, therefore, as to the guilt of appellant of the crime of murder charged, qualified by "alevosia. However, he must be credited with mitigating circumstance of voluntary surrender, for which reason, the Solicitor General recommends that in lieu of the life imprisonment imposed by the trial court, the appellant be sentenced to an indeterminate penalty of imprisonment ranging from twelve years and one day of reclusion temporal, as minimum, to eighteen years two months and one day of reclusion temporal, as maximum. In this connection, in *People vs. Pantoja*, 25 SCRA 468, it was held that "(t)he penalty for murder is reclusion temporal in its maximum period to death. (Art. 248, Revised Penal Code.) There being one mitigating circumstance, voluntary surrender, the penalty -- should be reclusion temporal in its maximum period in relation to the Indeterminate Sentence Law", and the sentence actually imposed by the Court was the indeterminate penalty of from 15 years to 20 years of reclusion temporal.)

(We believe, however, that [considering the age of the appellant, as well as other relevant factors in this case, it would be more in keeping with the spirit and intent of the Indeterminate Sentence Law, which is "to uplift and redeem valuable human material and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." (*Peo. vs. Ducosin*, 59 Phil. 109, 117), to be guided instead by Our holding in *People vs. Manansala Jr. et al.*, 31 SCRA 401,] as follows:

"... the penalty imposable upon him is the minimum period of the penalty for murder (see par. 3, Art. 63, Revised Penal Code), which is reclusion temporal maximum (17 years, 4 months and 1 day to 20 years). Since the resulting penalty is neither death nor life imprisonment, the Indeterminate Sentence Law applies (Sec. 2, Act No. 4103 as amended). Avelino Manansala is therefore entitled to an indeterminate sentence, the upper range of which is reclusion temporal maximum and the lower range - which is one degree lower than the penalty prescribed by the Revised Penal Code for murder - is anywhere within prision mayor maximum (10 years and 1 day) to reclusion temporal medium (17 years and 4 months). The penalty meted out by the trial court on Avelino Manansala, Jr. - from 10 years and 1 day of prision mayor to 17 years 4 months and 1 day of reclusion temporal) - is within the range allowed by law and is therefore correctly imposed.")

(Besides, the gap between the minimum of fifteen (15) years and the maximum of twenty (20) years is too short. The law is intended to favor the defendant, particularly to shorten his term of imprisonment, depending upon his behavior and his physical, mental and moral record as a prisoner, to be determined by the Board of Indeterminate Sentence. The law grants the courts discretion to fix the minimum of the penalty to be imposed, with the limitation that it must be within the range of the penalty next lower in degree to that prescribed by the Revised Penal Code for the offense committed.)

(Thus, this Court, in *People v. Gonzales*,^[3] stated:

"According to section 1 of Act No. 4225, the minimum of the indeterminate penalty 'shall be within the range of the penalty next lower to that prescribed by the Code for the offense' and the penalty for each offense is provided by the Code without regard to circumstances modifying criminal liability. In other words, for purpose of the Indeterminate Sentence Law, the penalty next lower should be determined without regard as to whether the basic penalty provided by the Code should be applied in its maximum or minimum period as circumstances modifying liability may require. When, however - and this may be the only exception to the rule - the number of mitigating circumstances is such as to entitle the accused to the penalty next lower in degree, this penalty, in the application of the Indeterminate Sentence Law, should be taken as the starting point for the determination of the penalty next lower."

(The determination, however, of the minimum is not a mechanical act of computation, but a consideration of various factors, keeping in mind the basic purpose of the law. As explained in *People v. Ducosin*:^[4]

"The determination of the 'minimum' penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits.

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"We come now to the second aspect of the determination of the minimum penalty, namely, the considerations which should guide the court in fixing the term or duration of the minimum period of imprisonment. Keeping in mind the basic purpose of the Indeterminate Sentence Law 'to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness' (Message of the Governor-General, Official Gazette No. 92, Vol. XXXI, August 3, 1933), it is necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual; with due regard to the imperative necessity of protecting the social order.

"Considering the criminal as an individual, some of the factors that should be considered are: (1) His age, especially with reference to extreme youth or old age; (2) his general health and physical condition; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime was committed; (9) the gravity of the offense (note that section 2 of Act No. 4103 excepts certain grave crimes - this should be kept in mind in assessing the minimum penalties for analogous crimes).

"In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and secondly his relationship towards society at large and the State are important factors. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for

economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in these Islands. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.")

(It was for the purpose of giving substance to the purpose of the law that this Court, in previous cases of murder where there was one mitigating circumstance and no aggravating circumstances, had usually imposed upon the accused an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor as minimum of the penalty, to either seventeen (17) years, or eighteen (18) years of reclusion temporal as the maximum of the penalty.[5] The minimum of ten (10) years and one (1) day of prision mayor was set obviously to give sufficient incentive for the culprit to rehabilitate himself morally and socially to "redeem the individual for economic usefulness and other social ends.")

(Likewise, pursuant to Pantoja, supra, the indemnity of P6,000 awarded by the trial court should be increased to P12,000.)

WHEREFORE, the judgment of conviction appealed from is affirmed, but the penalty imposed is modified, and appellant Alfonso Oñate is sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor to seventeen (17 years, four (4) months and two (2) days of reclusion temporal, to indemnify the heirs of Jose Y. Ventosa in the amount of P12,000, and to pay the costs.

Castro, C.J., Fernando, Teehankee, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., Martin, Fernandez, and Guerrero, JJ., concur.

Makasiar, J., did not take part.

[1] People vs. Ancheta, G.R. No. L-29581-82, October 30, 1974, 60 SCRA 333, citing People vs. Hamtig, L-27431, August 22, 1969 and People vs. Bautista, L-27638, November 28, 1969; See also People vs. Boduso, G. R. No. L-30450-51, September 30, 1974, 60 SCRA 60; People vs. Curiano, 9 SCRA 324; People vs. Vicente, 28 SCRA 247.

[2] People vs. Tumulip, G.R. No. L-28451, October 28, 1974, 60 SCRA 303; See also People vs. Albapara, 22 SCRA 1043; People vs. Ancheta, supra; See also People vs. Viñas, 25 SCRA 682; People vs. Belchez, 22 SCRA 1321; People vs. Guardo, 24 SCRA 851; People vs. Pelago, 24 SCRA 1072.

[3] 73 Phil. 549, 552.

[4] 59 Phil. 109, 116-118.

[5] People v. Ordonio, 82 Phil. 324; People v. Refuerzo, 82 Phil. 576; People v. Guhiting, 88 Phil. 672; People v. Aguilar, 88 Phil. 693; People v. Irinco, 89 Phil. 555; People v. Custodio, 97 Phil. 698; and People v. Manansala, 31 SCRA. 401.

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