

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. EDMUNDO GADIANO, ACCUSED.

G.R. No. L-31818. July 30, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This is an automatic review of the decision rendered by the Court of First Instance of Agusan convicting the accused Edmundo Gadiano of the complex crime of murder with assault upon an agent of a person in authority, and sentencing him to the penalty of "DEATH by electrocution, to indemnify the heirs of the deceased Leodegario Secote in the sum of P6,000.00, and to pay the costs."

The incident that gave rise to this case occurred at about 7:30 o'clock in the evening on October 8, 1964 in Cabadbaran, Agusan. The victim Leodegario Secote, then 36, was a policeman of said municipality. Accused Edmundo Gadiano, then 31, was a carpenter who resided also in the same town.

At about 7:30 o'clock in the evening of October 8, 1964, accused Edmundo Gadiano was drinking beer in a store called "Tootsies Nook" in Cabadbaran, Agusan. While Gadiano was so engaged, a certain Benedicto Nakila entered the said store with his wife who was then a student at the Northern Mindanao College of Cabadbaran. Upon seeing Gadiano, Nakila greeted him, they being friends. Gadiano reacted to the greeting by asking Nakila to drink beer with him. Nakila refused, but on the insistence of Gadiano, he drank a bottle of beer. When Nakila tried to excuse himself after taking a bottle of beer, Gadiano threw a glassful of beer at him thereby causing Nakila's wife to be wet in the process.

Nakila complained to Patrolman Secote who was at the store at that time. Secote approached Gadiano and told him to go with him to the municipal building in connection with the complaint of Nakila. In going to the municipal building, Gadiano was allowed to pass by his house which was on the way.

It was at this juncture that the incident in question came to pass. The prosecution and the defense had conflicting versions of how it occurred. It is an admitted fact, however, that Secote was stabbed on that occasion by Gadiano by means of a 7-inch knife, the stab blow having landed on the left chest of Secote causing him to fall on his haunches on the stairs of Gadiano's house.

After the stabbing, Gadiano ran to the kitchen of his house but, with the aid of his father, he was soon placed into custody by Patrolman Felicio Maturan and Evangelista Dejolde who were present at that time. Gadiano was brought to the municipal building by Patrolman Maturan and Dejolde, while Secote was taken to the Ramirez clinic, and on the following day, to the Butuan Public Hospital. An emergency operation performed on Secote failed to save his life. He died in said hospital on October 10, 1964. Dr. Brenda B. Agagon, Adjunct Resident Physician of said hos-pital issued a medical certificate as to the injuries sustained by Secote as follows:

"This is to certify that one, LEODEGARIO SECOTE, 36 years old, married, male, and a resident of Cabadbaran, Agusan was seen as an emergency case at 9:30 PM on October 8, 1964 because of the following:

1. Wound, stabbed, chest, left. Wound is V-shaped, 3 inches long at the level of his 6th intercostal space from the left midclavicular line to the left anterior axillary line directed infero-medially wounding the diaphragm at the pericardio-diaphragmatic angle downwards to the peritoneal cavity with four stab wounds in the fundus of the stomach near the greater curvature and two stab wounds in the transverse colon.

2. Hemorrhage, intraperitoneal, moderately severe

3. Shock, secondary.

The above patient died 23 hours after admission from above injuries.

This certificate is corollary to one issued by this hospital on October 9, 1964 re-Leodegario Secote.

(SGD.) BRENDA B. AGAGAN, M.D.

(Exhibit "C").

The information eventually filed by Special Counsel Orlando F. Doyon on November 24, 1964 charged the appellant Edmundo Gadiano with the crime of murder with assault Upon an Agent of a Person in Authority, allegedly committed as follows:

"That on or about the 8th day of October, 1964, at about 7:30 o'clock in the evening, at the municipality of Cabadbaran, province of Agusan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, criminally and feloniously attack, assault and stab with a sharp bladed weapon one LEODEGARIO SECOTE, a Policeman of the aforesaid municipality, while the latter was engaged in the performance of his Official duties, thereby inflicting upon the said Leodegario Secote, wounds on his left chest, which directly caused his death hours thereafter." (Rollo, page 11).

Prosecution witnesses Policemen Felicito Maturan, Evangelista Dejolde and Juan Bosadre, who were all present at the scene, declared in substance that when Secote and the appellant arrived at the latter's house, the appellant went up the stairs while Secote stayed at the foot thereof. While waiting for the appellant to come down, Secote used his flashlight to summon for help by intermittently flashing the same. Patrolmen Maturan, Dejolde and Bosadre who happened to be in the vicinity went to where Secote was. Hardly had they arrived thereat when the appellant suddenly went down the stairs of his house and delivered a stab blow at Secote's chest causing him to fall on his buttocks. The appellant then ran to the kitchen in the ground floor of his house. With the help of appellant's father, the policeman were able to place the appellant under arrest, and they later brought him to the municipal building.

Gadiano admitted the killing of Secote, but pleaded self-defense. In substance, he declared that at the Tootsie's Nook, Secote ordered him to go home, which he did. After he had reached his house, he saw that Secote followed him, and two other policemen were seen by him some fourteen meters behind Secote. When appellant was on the stairs of his house, Secote told him to come with him. Gadiano refused and said that he was already going to sleep. Secote then held the trousers of Gadiano, and when the latter struggled to free himself, Secote beat him with a club in his thighs and arms. Secote drew his pistol, and a gunshot was heard. Gadiano happened to get hold of a knife near the stairs and he stabbed Secote with it. He then ran to the kitchen on the ground floor of his house. While there, he heard three more gunshots.

The admission of the appellant that he authored the stabbing that caused the death of Secote imposed upon him the burden of proving his plea of self-defense, relying on the strength of his evidence which must be clear, positive and convincing, and not on the weakness of that of the prosecution (People vs. Ansoyon, 75 Phil. 772; People vs. Libed, 14 SCRA 410; People vs. Talaboc, Jr., 30 SCRA 87). We agree with the trial court that the

appel-lant failed to satisfy this burden.

The alleged beating of the appellant by Secote when the former resisted being brought to the municipal building was sought to be proved alone by appellant's uncorroborated testimony. Its credibility is impaired by the lack of any medical finding that the appellant sustained injuries as a result of having been clubbed by Secote on his thighs and arms. The father of the appellant who accompanied him to the municipal building after the stabbing could have asked that his son be treated or at least examined by a doctor, he having been allegedly maltreated by Secote. No medical certificate was presented in evidence to sustain such claim.

The firing of a gun during the subject occasion is borne out by the record. However, there is no proof as to the author thereof. It could not have been Secote because his service pistol had not been drawn at the time he was stabbed, as testified to by Patrolman Juan Basadre as follows:

"Q - At the precise moment Patrolman Secote was stabbed by accused Edmundo Gadiano, can you tell the Court where the sidearm of Patrolman Secote was located in relation to his body?

A - Yes, sir.

Q - Please indicate to the Court?

A - His pistol was on the right hip and night stick was on the left side.

Q - Do you mean to say that the pistol was placed inside the holster of the right hip?

A - Yes, sir, it was on the right hip."

(t.s.n., page 78, September 24, 1965).

We see no reason for Secote to draw his gun and fire the same, even though not aimed at appellant, the latter not having shown any cause for such acts on the part of Secote. There being no proof of unlawful aggression on the part of the deceased, the appellant's plea of self-defense must fail (U. S. vs. Carrero, 9 Phil. 544).

The trial court categorized the killing of Secote as murder on the ground that it was characterized by treachery and evident premeditation.

We disagree. In the first place, the qualifying circumstance of evident premeditation is not even alleged in the information. Secondly, the circumstances of the killing, as gathered from the evidence of the prosecution itself, does not suffice to show that the appellant adopted a method deliberately chosen with a view to accomplishing the act without risk to himself from any defense that the party attacked might make.

"Treachery, just like any other element of the crime committed must be proved by clear and convincing evidence - evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that 'the attack was sudden', there must be a clear showing from the narration of facts why the attack or assault is said to be 'sudden'. A nebulous atmosphere surrounding the attack is not to be tolerated especially when the liberty and life of an individual is at stake.

"In People vs. Delgado, et al. (77 Phil. 11) this Court ruled that mere suddenness of the attack is not enough because it must be shown that the move adopted by the assailant was one which he knowingly intended to insure the accomplishment of his criminal purpose without risk to himself arising from the defense the victim might offer." (People vs. Santos 85 SCRA 630, 638-9).

It may be true that the attack on Secote was one in a sudden manner. Such fact, however, does not suffice by itself to prove treachery.

"Besides, mere suddenness of an attack is not enough to constitute the qualifying circumstance of treachery

where it does not appear that the accused had consciously chosen the method of attack directly and specially to facilitate the perpetration of homicide without risk to himself arising from the defense that the victim might offer. As indicated in *People vs. Tumaob* (83 Phil. 738, 742) the qualifying circumstance of treachery cannot logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. This circumstance can only be applied, according to the tenor of Article 13, sub-section 16 of the Revised Penal Code, when the culprit employs, methods or forms of execution which tend directly and specially to insure the commission of the crime and at the same time to eliminate or diminish the risk to his own purpose from a defense which the other party might offer." (*People vs. Cabiling*, 74 SCRA, 285, 302-303; see also *People vs. Latorre*, 74 SCRA 106).

At the moment he was attacked, Secote was face to face with the assailant. He was not there as an innocent by-stander unmindful or oblivious of any harm that could possibly come his way from the appellant. He went to the appellant's house to take the latter to the municipal building due to a complaint arising from the appellant's misdeed evidently caused by his drunkenness. The appellant was not too eager to go with him. That Secote sensed difficulty in said effort, and possible risk of his person arising therefrom, could be unerringly deduced from his act of summoning help from his fellow policemen by signalling to them to come by means of his flashlight. Not only one, but three policemen, responded to Secote's signal. Under this circumstance, we find it difficult to imagine that Secote was totally unsuspecting of any possible untoward act that the appellant might do. If he indeed was so, his attitude merely revealed that he was not as vigilant and alert as a police officer that the circumstances demanded he should have been. His pretended nonchalance, totally inconsistent with the prevailing situation, should not be a reason to impute to the appellant the intention to use a method of attack-ing him without risk to his person from a defense that Secote could possibly put up.

It is accordingly our considered view that the killing of Secote by the appellant was under no qualifying circumstance to categorize it as murder. The said killing should only be classified as simple homicide. We agree that the homicide committed is complexed with assault upon an agent of a person in authority, the killing of Secote having been perpetrated while he was engaged in the performance of his official duties and on the occasion of the same. It is not denied that Secote was a police-man of Cabadbaran, Agusan, and that he was stabbed by the appellant while in the process of bringing the appellant to the municipal building in connection with a complaint filed against him.

For the complex crime of homicide with assault upon an agent of a person in authority, the proper penalty prescribed by law is that of the most serious crime which shall be imposed in its maximum period (Article 48, Revised Penal Code). No aggravating or mitigating circumstance attended the commission of said crime.

WHEREFORE, the decision of the Court of First Instance of Agusan in the above-entitled case is hereby MODIFIED in the sense that the accused-appellant shall be deemed guilty beyond reasonable doubt of the complex crime of homicide with assault upon an agent of a person in authority, and accordingly sentenced to suffer an indeterminate prison term of seven (7) years, four (4) months and one (1) day of prison mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, to indemnify the heirs of the deceased Leodegario Secote in the sum of P12,000.00, and to pay the costs.

The appellant shall be credited with the period of the preventive imprisonment undergone by him.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, Relova, and Gutierrez, JJ., concur.

Teehankee, J., votes for reclusion perpetua for the reasons stated in the dissent of Justice Aquino.

Makasiar, J., dissents in part. Drunkenness and voluntary surrender should be appreciated as mitigating circumstances. Appellant should be sentenced accordingly. Considering his having been imprisoned for 17 years and crediting him with good conduct allowances he should be paroled, if not released unconditionally.

Melencio-Herrera, J., concurs in the partial dissent of Justice Makasiar.

Aquino, J., dissents.

DISSENTING OPINION

AQUINO, J.:

I dissent. The crime committed by the accused is the complex crime of murder with assault upon a policeman, an agent of a person in authority. Hence, the penalty for murder should be imposed in its maximum period which is death.

Accused Edmundo Gadiano committed murder because, as testified by an eyewitness, Patrolman Felicio Maturan, Gadiano perpetrated a sudden and deliberate, face-to-face assault at night on the victim without giving the latter a chance to defend himself. The victim did not expect that he would be assaulted. (See *People vs. Pengzon*, 44 Phil. 224; *People vs. Noble*, 77 Phil. 93 and other cases.)

The killing was not made on the spur of the moment. The accused resented his having been arrested by the victim.

However, because of the mitigating circumstances of intoxication and voluntary surrender to the authorities and the fact that the accused has been under detention for more than seventeen (17) years, the death penalty should be commuted to reclusion perpetua.

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