

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GETULIO PANTOJA, DEFENDANT-APPELLANT.

*G.R. No. L-18793. October 11, 1968*

Ponente: CAPISTRANO, J.

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### CAPISTRANO, J.:

This murder case is before us for review of the sentence of death passed upon the accused by the Court of First Instance of Quezon.

Late in the night of June 28, 1957, in the Barrio of Malinao, Atimonan, Quezon, a group of seven young men serenaded the house, where Estelita Eroles lived. Invited to come up, the young men accepted the invitation. When Wenceslao Hernandez was seated beside Estelita, an uninvited Philippine Army Sergeant, Getulio Pantoja, in T-Shirt, came up and asked Hernandez to allow him to sit beside Estelita, but Hernandez refused the request. The time was about 1:30 A.M., June 29. Pantoja said nothing and showed no sign of anger. However, he immediately left and went to his camp about half a kilometer distant, put on his fatigue uniform, got a rifle, went back to the house and stationed himself on the stairway. The time was about 2:00 A.M. At this time, the serenaders left the house to go to and serenade another house in the Northern part of the Barrio. Pantoja followed the group. When the serenaders had walked a distance of about thirty meters with Pantoja following them at a distance of about five meters, Pantoja suddenly shouted "Ano yan? Ano yan?". Turning their heads back they saw Pantoja raise the garand rifle and aim at them. Before any of them could run away, Pantoja fired two shots in rapid succession. The first shot hit Angel Marasigan who instantly fell on his back. The second shot hit Wenceslao Hernandez who fell down. The other serenaders scampered away for safety. Pantoja, who had walked nearer, then fired one more shot at the prostrate body of Marasigan and four more shots at the prostrate body of Hernandez.

The accused, testifying in his own defense, admitted that the shots he fired from the garand rifle killed Marasigan and Hernandez. The autopsy report attributed the deaths to internal hemorrhage and the destruction of vital organs.

The lower court found the defendant guilty of double murder, that is, of a complex crime, and sentenced him to the penalty of death.

We immediately noted that the lower court erred in finding the appellant guilty of a complex crime. Appellant's brief, however, does not contain an assignment of this error. This notwithstanding, we can consider the error, the case under review being a criminal case.

It is well known to students of criminal law, as early as thirty-five years ago, that according to Article 48, as amended, of the Revised Penal Code, there are two classes of complex crimes. The first class comprises cases where a single act constitutes two or more crimes. The second class covers cases where one crime is the necessary means for committing the other. The case at bar does not fall under the first class because in this case there were two acts, two shots, one killing Marasigan, and the other killing Hernandez. If there were only one shot killing

both Marasigan and Hernandez, there would have been a complex crime, double murder. The second class, obviously, does not cover the case at bar. We are of the considered opinion that the appellant is guilty of two separate and distinct murders and that he should suffer the penalty for each murder.

Appellant contends that the qualifying circumstances of evident premeditation and treachery did not exist. The contention is tenable with respect to evident premeditation because the appellant only had about half an hour (1:30 to 2:00 A.M.) for meditation and reflection from the time he left the house, went to his camp, put on his fatigue uniform, got a garand rifle and returned to said house, followed the serenaders a short distance and then fired the two shots. The time in the circumstances was insufficient for full meditation and reflection. It was insufficient, in the juridical sense, for his conscience to overcome the resolution of his will had he desired to hearken to its warning. The contention is untenable with respect to treachery. The appellant followed the serenaders as they walked, made no indication that he would shoot, and then suddenly fired from behind two shots in rapid succession at Marasigan and Hernandez from a distance of about five meters. Under the circumstances, clearly there was treachery.

Appellant contends that the generic aggravating circumstances of abuse of public position and ignominy were not present. The contention is meritorious. There is nothing to show that the appellant took advantage of his being a sergeant in the Philippine Army in order to commit the crimes. The mere fact that he was in fatigue uniform and had an army rifle at the time is not sufficient to establish that he misused his public position in the commission of the crimes. With regard to ignominy the mere fact that the appellant fired one more shot at the prostrate body of Marasigan and four more shots at the prostrate body of Hernandez is not sufficient to show the existence of said aggravating circumstance.

Appellant contends that he should be given the benefit of the mitigating circumstance of voluntary surrender. The contention is tenable. The evidence shows that immediately after the commission of the murders, the appellant voluntarily surrendered to his detachment camp commander to whom he also surrendered the garand rifle, and that he was ordered confined in the stockade.

The 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 for each murder should be reclusion temporal in its maximum period in relation to the Indeterminate Sentence Law.

The appellant contends that the lower court erred in rejecting his defense of insanity. The contention lacks merit. The legal presumption of sanity is reinforced by the evidence showing that when he committed the crimes, appellant was calm and collected, and did not show any sign of anger. The fact that he fired four more shots at the prostrate body of Hernandez, who had refused his request to be allowed to sit beside Estelita, shows that revenge was in his heart. The report of Dr. Cesar Catindig of the V. Luna General Hospital where appellant was confined for one month by order of the trial court does not show that appellant was insane. It merely shows that he was suffering from psychoneurotic depressive reaction and psychoneurotic dissociative reaction. The report, however, concludes:

"In the absence of reliable information it could not be ascertained whether the crime imputed to him was committed when he was in such a state of mind."

That part of the judgment below awarding compensatory damages in the amounts of P6,000 to the heirs of Angel Marasigan and P6,000 to the heirs of Wenceslao Hernandez should be modified. In 1947, when the Project of Civil Code was drafted, the Code Commission fixed the sum of P3,000 as the minimum amount of compensatory damages for death caused by a crime or quasi-delict. The Project of Civil Code was approved by both Houses of the Congress in 1949 as the New Civil Code of the Philippines, which took effect in 1950. In 1948 in the case of

People vs. Amansec, 80 Phil. 424, the Supreme Court awarded P6,000 as compensatory damages for death caused by a crime "con-sidering the difference between the value of the present currency and that at the time when the law fixing a minimum indemnity of P2,000 was enacted." The law referred to was Commonwealth Act No. 284 which took effect in 1938. In 1948, the purchasing power of the Philippine peso was one-third of its pre-war purchasing power. In 1950, when the New Civil Code took effect, the minimum amount of compensatory damages for death caused by a crime or quasi-delict was fixed in Article 2206 of the Code at P3,000. The article repealed by implication Commonwealth Act No.284. Hence, from the time the New Civil Code took effect, the Courts could properly have awarded P9,000 as compensatory damages for death caused by a crime or quasi-delict. It is common knowledge that from 1948 to the present (1968), due to economic circumstances beyond governmental control, the purchasing power of the Philippine peso has declined further such that the rate of exchange now in the free market is U.S.\$1.00 to almost P4.00 Philippine pesos. This means that the present purchasing power of the Philippine peso is one-fourth of its pre-war purchasing power. We are, therefore, of the considered opinion that the amount of award of compensatory damages for death caused by a crime or quasi-delict should now be P12,000.

Parenthetically, we should point out that, in proper cases, besides compensatory damages in the sum of P12,000, the courts may also award additional sums as further compensatory damages for loss of earnings and for support. The courts may likewise award additional sums as moral damages and as exemplary damages. (Arts. 2206 and 2230, New Civil Code.)

PREMISES CONSIDERED, the judgment of the court below is hereby modified by: 1. Sentencing the appellant for each murder to an indeterminate penalty of from 15 years to 20 years; 2. Ordering the appellant to pay the heirs of Angel Marasigan the sum of P12,000 as compensatory damages, and to pay the heirs of Wenceslao Hernandez the sum of P12,000 as compensatory damages.

Costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, and Fernando, JJ., concur.  
Zaldivar, J., did not take part.

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