

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GLICERIO NAVARRO, ALIAS NONONG, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. L-20860. November 28, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

For the death of Alfredo Debil, the Provincial Fiscal of Cotabato presented with the Court of First Instance of said Province, the following Information:

"The undersigned Provincial Fiscal accuses Jaime Navarro alias Jim, Glicerio Navarro alias Nonong, Eleuterio Navarro and Yce feon Kon? of the crime of murder, committed as follows:

That on or about August 4, 1952, in the Municipality of Koronadal, Province of Cotabato, Philippines and within the jurisdiction of this Honorable Court, the said accused in company with some whose identity is unknown and who is still at large, conspiring and confederating together and mutually helping each other, armed with a piece of wood and bottles of coca cola, with deliberate intent to take the life of one Alfredo Debil, did then and there willfully, unlawfully and feloniously attack and assault said Alfredo Debil, who as a result thereof, suffered several serious wounds on different parts of his body which caused his death.

All contrary to law, and with the aggravating circumstances of nocturnity which was purposely sought by the accused to insure the commission of the crime herein charged and abuse of superior strength."

Subsequent to the filing of the above information, however, the case with respect to Eleuterio Navarro and Yee Bon Kong was dismissed upon motion of the Fiscal, and the trial proceeded against Jaime Navarro and Glicerio Navarro.

The evidence adduced by the prosecution has established that in the evening of August 4, 1952, the defendants Jaime Navarro and his brother Glicerio, one person identified only as a relative of the Navarros, Teodorico Esprela, Ricardo Arroyo and a number of other friends, indulge in a drinking spree, within the premises of the public market of Marbel, Koronadal, Cotabato, where beer and tuba were freely served and imbibed. There, loose talks bruited a plan to kill somebody, prompted by a previous insinuation of Eleuterio Navarro, uncle of Jaime and Glicerio. It appears that Eleuterio who was a desperate person, due to lack of money, had heard that one Yee Bon Kong hated Alfredo Debil so much, that he (Yee) was willing to pay a prize to anyone who would liquidate Debil. After partaking of the drinks, the group proceeded to the entrance of the Grand Theatre, same town, where they stayed until the screening was over. At the lobby of the show-house, all they did was to chat idly among themselves. Even after the movie-goers had already left and the theatre closed, the group still lingered in the premises. At this juncture, Alfredo Debil passed in front of the theatre, coming from the market premises. Upon seeing Debil, Jaime Navarro, Glicerio Navarro and the unidentified relative followed, stalking from behind. At a place along the street, which turned out to be near the house where the accused were living, Debil paused to urinate, having his back towards the stalkers. At this instance, Jaime hit Debil on the head with a piece of wood,

causing Debil to emit a loud expression of pain and to fall to the ground. Glicerio and the unknown relative, followed suit, Glicerio hitting Debil with the same piece of wood used by Jaime, and the unknown relative, with an empty bottle of coca-cola. Debil died on the spot. :

An examination of the body of the deceased, made by Dr. de Jesus, medical officer, showed that the following wounds were inflicted:

- "(1) Wounds, two, incised, scalp, occipital region (one was 3 inches lone and the other 2-1/2 Inches).
- (2) Fracture, compound, comminuted, depressed, skull, about 6 inches long extending from occipital region to right temporal region.
- (3) Laceration, meninges and brain substance, over temporal region with hemorrhage.
- (4) Abrasion, moderate, buck.
- (5) Contusions, moderate, over right eye and shoulder.

It is the opinion of the undersigned that the victim died instantaneously because of the depressed fracture of the skull with resulting laceration of meninges and brain.

Dr. de Jesus, found the corpse lying on the ground on one side of the body and facing the highway of Marbel. One hand was under the body and the other stretched out. The victim's trousers were not buttoned and I lie fingers of his hand that was under, was near his genital organs and the ground underneath, the deceased was wet, which was a clear attestation that the victim died while ho was urinating and fell immediately upon receiving the blows.

The defense of the accused was a denial of the charges and alibi. Jaime Navarro imputed the killing of Debil to Ricardo Montalban alias Ricardo Arroyo, and tried to establish this contention by the testimony of Antonio Zerrudo, Jr. and Loreto Carbon and that of his own. It was pointed out that when Arroyo was urinating at the balcony of the house where they were staying, he (Arroyo) told appellant Jaime Navarro that he had seen his enemy; that although he advised Arroyo to lie down, the latter answered that he was used to fighting in Iloilo. Arroyo rushed down to the street and beat the person, which turned out to be Debil. Thereafter, Arroyo returned to the house, carrying a piece of wood and threatened Jaime not to divulge what he had just seen; and if he would ever be arrested on account of the incident, he would implicate everybody in the house. Zerrudo and Carbon tried to corroborate the story of Jaime Navarro, by declaring that at about 11 o'clock in the evening of August 4, 1952, as they were about to retire for the night, they heard person shouting. Thru a small opening of the window, they saw a person staggering in the street who was challenging anyone brave enough to fight him. Ricardo Montalban alias Ricardo Arroyo approached said person and struck him on the head with a piece of wood, two feet long, causing the victim to fall. They came to know afterward that it was Debil who died on the spot where they saw Arroyo hit the person that night.

Glicerio Navarro, upon the other hand, claimed that from August 2, 1952 and five (S) days after August 4, 1952, he never left the house of his aunt-in-law, Mrs. Mercedes Delmo Navarro. This allegation was sought to be corroborated by Mrs. Navarro, who testified that prior, during and after the date of the killing, the accused Glicerio was in bed, suffering from malaria; and that she knew this for a fact, because she attended Glicerio. Ricardo Arroyo, whom Jaime Navarro and his two witnesses implicated as the perpetrator of the offense, categorically declared that It was Jaime and Glicerio Navarro who killed Alfredo Debil. This witness also belied the testimony of defense witnesses supporting the alibi of Glicerio, by asserting that Glicerio was not sick at any-time immediately before, during and after the commission of the crime.

The dispositive portion of the decision appealed from declares:

"The acts committed by Jaime Navarro alias Jim and Glicerio Navarro alias Nonong as established by the evidence of the prosecution, constitute the crime of MURDER qualified by the circumstance of treachery and premeditation in the killing of Alfredo Debil. This crime is prescribed and penalized by Article 248 of the Revised Penal Code with reclusion Temporal in its maximum period to Death.

IN VIEW OF THE FOREIGN CONSIDERATIONS, Jaime Navarro alias Jim and Glicerio Navarro alias Nonong are hereby declared GUILTY beyond reasonable doubt of the crime of MURDER committed in the person of Alfredo Debil and they are hereby sentenced to SUFFER, each, an IMPRISONMENT of from TWELVE (12) YEARS OF PRISION MAYOR, as MINIMUM, to TWENTY (20) YEARS of RECLUSION TEMPORAL as MAXIMUM, to pay the heirs of Alfredo Debil in an indemnity in the amount of P6,000.00, with the (memories of the law and to pay the costs of these proceedings."

The above decision was appealed to the Court of Appeals, during the pendency of which, Jaime Navarro petitioned for the withdrawal of his appeal, which was granted. In the Resolution of the Court of Appeals, elevating the case to this Court, it concurred with the findings of the trial court regarding the guilt of the accused, but observed that the penalty imposable under the circumstances obtaining should be reclusion perpetua, and, there- fore, it pronounced itself without authority to impose the same.

In passing upon the tenability of the defense of appellant Jaime Navarro, the trial court made the following disquisitions:

"Likewise, the Court does not give credit to the contention of the defense that it was Ricardo Arroyo the person who killed Alfredo Debil on the night of August 4, 1952; that Jaime Navarro himself saw Ricardo Arroyo, who was then living with him in the same house of Elcuterio Navarro, when Ricardo Arroyo went down the house hurriedly in the night of the killing; that from the window of the house, he, Jaime Navarro, saw Ricardo Arroyo, when the latter, with a piece of wood, gave a blow to Alfredo Debil; that when Ricardo Arroyo returned to the house after killing Alfredo Debil, the latter warned him not to divulge the incident because otherwise, he, Jaime Navarro, would be implicated in the case; that for this reason he never revealed to anybody that Ricardo Arroyo was the author of the crime until the trial of the case because he was afraid to be implicated. The strong impression of this Court is that the testimony of defendant Jaime Navarro does not ring true. Beside this consideration, the circumstance that defendant Jaime Navarro and Ricardo Arroyo were then living together in the same house of Eleuterio Navarro, and that Ricardo Arroyo was a sort of a protegee of the two defendants, because Ricardo Arroyo came to live in the house where they were living on the promise that they will find him employment and to sponsor him to be a member of a labor union then existing in Marbel, shows that socially and economically Ricardo Arroyo was, by far, lower in station of life, than the defendants. Because of this consideration, Jaime Navarro could not likely be easily influenced by the threat of Ricardo Arroyo that he will be implicated in the case if he ever reveal the incident he allegedly saw on the night of August 4, 1952. The attitude therefore of Jaime Navarro in keeping silent by not revealing that Ricardo Arroyo was the author of the crime until the trial of the case is not natural, hence, his story is unbelievable. Besides, the incontrovertible fact that Alfredo Debil was found with five lesions in his body makes inconsistent the claim of Jaime Navarro that Ricardo Arroyo struck Alfredo Debil only once on the head with a blunt instrument.

"Respecting the testimonies of witnesses Antonio Zerrudo and Loreto Carbon, they are in the opinion of the Court, unbelievable. These witnesses declared that on the night of August 4, 1952, at about eleven o'clock they went home after seeing the Grand Theatre show. When they were about to sleep, they heard a person shouting, challenging anybody to fight; they stood up from where they were about to sleep and peeped, thru a small openings at the window; while peeping they saw a person walking in zigzag along the road challenging; any person who is brave to fight; after a while another person, who turned out to be Ricardo Arroyo, coming from behind the house of Eleuterio Navarro, approached the first person and struck the latter on the head with a blunt instrument and then, after delivering the blow, returned towards the direction where he came from,

According to these witnesses, after they saw the incident just related, they returned to their bed and after commenting lightly the occurrence they saw, they slept. According to these witnesses they saw Alfredo Debil when the latter fell to the ground after receiving the blow from Ricardo Arroyo; that early in the following morning they left the house where they slept and returned to their farm without even thinking of the incident they have seen the night previous; they did not even have the curiosity to find out what became of the man who fell after receiving a blow on the head before they proceeded to their farm. The behavior of these two witnesses is not humanly natural if what they related was true. The natural impulse of a man who sees another falling to the ground as a result of a blow given by an aggressor is to succor the victim, or at least, for curiosity sake, go near the place of incident to find what it is all about. The Court cannot accept as good the explanation that they were frightened so they went to sleep. These witnesses further declared that they came to know, shortly after the incident, that the victim was one Alfredo Debil, that the aggressor was Ricardo Arroyo and that the herein accused were indicted for the killing of Alfredo Debil, which according to them, was not true. Yet they kept silent, they never revealed what they allegedly saw until the trial of this case, that is, after the lapse of several years. This, the Court cannot believe."

After going over the record, We are fully satisfied that the killing occurred in the manner as narrated by the prosecution and as found by the trial court and confirmed by the Court of Appeals. We have no cogent reasons to deviate from the findings and conclusions reached by the two courts.

The next issue which We are called upon to rule then, is whether the penalty to be imposed, is reclusion temporal as meted out by the trial court, or reclusion perpetua as recommended by the Court of Appeals.

Both Courts are one in concluding that the element of evident premeditation has been fully established. We do not, however, share the view. The prosecution has not successfully proved a previous plan on the part of the appellants to kill Debil. The fact that on the night of the killing, Jaime Navarro was provided with a piece of wood, 2 feet long and 2-1/2" in diameter and Glicerio Navarro carried two empty coca-cola bottles; that soon after, Jaime hit the nape of Debil with the wood, and the unidentified relative hit the back of Debil at the right, with an empty bottle, and thereafter Glicerio struck Debil with the same piece of wood, does not definitely show the existence of a mature and cold reflection to kill Debil or deliberate preparation to execute a plan. The decision to kill, if one was ever thought, was, under the circumstances proven, made on the moment Debil passed by the appellants until the moment he urinated, which covered a very short interval of time. A qualifying circumstance not alleged in the information or complaint, although proven, may only be considered as an aggravating circumstance, but not to qualify the offense charged. (See *People vs. Alcantara*, 55 Off. Gaz., 3451, cited in *Padilla's Criminal Law*, p. 214, 1955 Ed.) And it could not have been lawfully proven, in the case at bar, because all that information alleged is merely "a deliberate intent to take the life of one Alfredo Debil", which is different from "evident premeditation".

We are, however, satisfied that the aggravating circumstance of treachery is present. The attack was sudden, and from behind while the victim was urinating, done at night time, purposely sought to insure the success of the attack and with abuse of superior strength. Nevertheless, treachery cannot qualify the crime to murder, as the information does not alleged it as a qualifying circumstance. In fact, there is no qualifying circumstance alleged, in the information, either evident premeditation or treachery, as having attended the commission of the offense charged.

Under the aegis of the foregoing facts, therefore, the crime for which appellant could be held responsible, is only Homicide, aggravated by treachery, with no mitigating circumstance to appreciate. The penalty imposable for the crime is reclusion temporal (Art. 249, RPC) which is from twelve (12) years and one (1) day to twenty (20) years. The penalty imposed by the lower court being within the range provided for, is correct.

Premises considered, the decision appealed from is hereby affirmed. With cost against appellant Glicerio Navarro.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. D. L., Dizon, Barrera, Regala, Makalintal, Dengzon, J. P. and Zaldivar, JJ. concur.

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