

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO LIMOSNERO, DEFENDANT-APPELLANT.

G.R. No. L-47738. January 12, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

In criminal Case No. 405 of the Court of First Instance of Misamis Occidental (Branch III), Rogelio Limosnero was indicted for murder committed during the night of May 4, 1977 in Liboron, Dolipos Alto, Oroquieta City, it being claimed by the People that at that time and in that place, he fatally stabbed Marcelino Caga-anan in the breast while the latter was asleep in his home, and defenseless, using an improvised spear made up of a kitchen knife mounted on a long piece of newly cut wood, and that the slaying was attended by the qualifying circumstance of treachery, and the aggravating circumstances of evident premeditation and obvious ungratefulness.[1]

Limosnero pleaded guilty to the charge when arraigned, "but denied that he committed the *** (crime) with evident premeditation and with obvious ungratefulness", whereupon "the Court entered a plea of not guilty for him." [2]

In substantiation of the indictment, seven (7) witnesses were presented by the Fiscal at the trial.[3] The accused testified in his behalf, admitting the killing in the manner described in the information and by the witnesses, but asserting that he had had no quarrel with the victim before the incident and had no grudge or ill-feeling against him, and that it was the victim's wife, with whom he was allegedly maintaining an illicit relationship, who had asked him to do the foul deed. His mother, Margarita Limosnero, also testified, declaring inter alia that the accused was born on September 17, 1958 and had lived with the victim, Marcelino, to help in his farm, on the latter's explicit request.

The Trial Court found that the evidence submitted before it established Limosnero's guilt beyond reasonable doubt. It however declined to appreciate against him the aggravating circumstances of evident premeditation or obvious ungratefulness, there being in its view no adequate evidence to prove them. The Court also ruled that although Limosnero was a "youthful offender" in accordance with P.D. No. 603[4] — since he was below twenty-one years of age at the time of the perpetration of the felony, being then only 18 years, 7 months and 17 days old — he could not be accorded the benefit of a suspended sentence under said decree, for the reason that P.D. No. 1179 precludes the grant of that benefit to youthful offenders convicted of an offense punishable by death or life imprisonment; at any rate, Limosnero had not applied for suspension of his sentence.[5]

It accordingly sentenced the accused "to RECLUSION PERPETUA, with all the accessory penalties provided for by law, to indemnify the heirs of Marcelino Caga-anan, the amount of P12,000.00, and to pay the costs." [6] The Court also credited the accused, as a detention prisoner, "with four-fifths (4/5) only of his pre-ventive imprisonment, it not appearing that he had agreed, in writing, to be governed by the same rules concerning convicted prisoners." [7]

Limosnero has appealed to this Court, and ascribes two errors to the Court a quo, to wit:

- 1) "the Trial Court erred in not crediting ** (him) with the mitigating circumstance of his plea of guilty"; and
- 2) "the Trial Court erred in not holding that ** (he) is entitled to the benefit of a suspended sentence as a youthful offender, because the law applicable, as to him, is Presidential Decree No. 603, and not Presidential Decree No. 1179." [8]

Limosnero does not impugn the lower Court's conclusion as to his guilt. He seeks attenuation of the life sentence imposed by the trial Court by invoking the mitigating circumstance of voluntary plea of guilty. [9]

The Solicitor General agrees that Limosnero should, in the light of the facts, have been credited with the mitigating circumstance of a voluntary plea of guilt. This Court also agrees:

"Although the confession was qualified and introduction of evidence became necessary, the qualification did not deny the defendant's guilt and, what is more, was subsequently fully justified. It was not the defendant's fault that aggravating circumstances were erroneously alleged in the information and mitigating circumstance omitted therefrom. If such qualification could deprive the accused of benefit of plea of guilty, then the prosecution could nullify this mitigating circumstance by counteracting it with unfounded allegations of aggravating circumstances." [10]

The second point raised by Limosnero, i.e. he is entitled to the benefit of a suspended sentence as a youthful offender in accordance with Presidential Decree 603, [11] has become moot and academic. Limosnero is now 27 years old, and the rule is that if an accused reaches the age of majority during appeal, he is no longer entitled to a suspended sentence. [12]

WHEREFORE, the judgment of the trial court is affirmed, with the modification that the accused-appellant is sentenced to an indeterminate penalty of 10 years and 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum, and that the indemnity due from him the heirs of the deceased is increased to P30,000.00.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, and Feliciano, JJ., concur.

[1] Rollo, p. 3.

[2] Rollo, p. 5.

[3] Rollo, pp. 5-11.

[4] Otherwise known as the Youth and Child Welfare Code.

[5] Rollo, pp. 14-17.

[6] Rollo, p. 18.

[7] Id.

[8] Rollo, p. 41; Appellant's Brief, pp. 1, 11-13, 13-15.

[9] Art. 13, par. 7, RPC.

[10] *People vs. Ong*, L-34497, Jan. 30, 1975, 62 SCRA 217; *People vs. Yturriaga*, 86 Phil. 534, 539 (1950).

[11] Rollo, p. 41; Appellant's Brief, pp. 1, 11-13, 13-15.

[12] People vs. Millora, 119 SCRA 418 (1982).

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