

GREGORIO RAMOS AND CONRADO RAMOS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-22348. August 23, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

We have before Us an appeal via certiorari to review a decision of the Court of Appeals[1] affirming the conviction for murder of petitioners-accused Gregorio and Conrado Ramos and imposing upon each of them "an indeterminate penalty of not less than ten (10) years and one (1) day of prision mayor and not more than seventeen (17) years, four (4) months and one (1) day of reclusion temporal".

The decision under appeal provides Us with the following background facts as found by the Court of Appeals, thus:

"In the national election held on November 11, 1957, the late Rufino Gotangco, said to be a rabid and influential leader of the Nacionalista Party, staunchly and vigorously supported said party's candidate, Dr. Jose D. Moreno, for Congressman for the lone congressional district of Romblon. The four defendants above-mentioned were die-hard followers of Atty. and ex-Governor Jovencio Q. Mayor who was the candidate of the Liberal Party and whom they unconditionally supported, being their political boss and personal idol. x x x

"It appears that on November 19, 1957, in the evening, ex-Governor Mayor arrived in Cajidiocan, Romblon. Apparently, to console him in his recent defeat, his leaders gave a party in his honor in the house of Juan Ramiro where he put up. A program was held in which a sound amplifying system was used. Defendant Benjamin Rovira, a school teacher, acted as master of ceremonies. Among those who attended were Conrado Ramos, then the incumbent vice-mayor of Cajidiocan, and his younger brother, Gregorio Ramos. Benjamin sang over the microphone a song called 'Sentimental Journey', to Dodge City, which was followed by the remarks: 'Before I proceed to Dodge City, I will bring first Rufino Gotangco and his brother-in-law, Ernesto Calsado, to the cemetery'. Undoubtedly, Benjamin referred to his impending transfer as a barrio teacher to far away barrio Ayabag, which transfer he attributed to the work of Rufino Gotangco, a public health nurse, and the latter's brother-in-law, Municipal Judge Ernesto Calsado, on account of his having supported defeated candidate Jovencio Mayor in the elections just finished.

"The following day, November 20, 1957, in the afternoon at about 5 o'clock, Benjamin Rovira and Gregorio Ramos were in the public kiosk in the Plaza of Cajidiocan, with several friends. From there, they went to a certain corner store where shortly afterwards Ludovico Rovira, a cousin of Benjamin, arrived with his face swollen and reddish. Ludovico told Benjamin that he was boxed by Rufino Gotangco in barrio Cambajao, about 1-1/2 kms. from the poblacion, and that Rufino was waiting there for Benjamin and Rizal Gregorio. Upon being so informed, Benjamin together with Gregorio Ramos proceeded to Cambajao. On the way, they were joined by Fortunato Galang who was armed with a bolo. Benjamin also had a balisong. There were two parallel roads - the new and the old - from the poblacion to Cambajao. Benjamin, Gregorio and Fortunato

took the new road. Conrado Ramos was seen walking fast along the old road and picking up a stone. A bridge spanned the Cambajao river. As Conrado reached the bed of the old river, Benjamin, Gregorio and Fortunato were about to reach the bridge. It was at this juncture that Conrado, in a voice loud enough to be heard by the three and other people nearby, among whom being Pedro Dianco, told the three: 'You hurry so that we can overtake them'. Benjamin cautioned Conrado, saying, 'Keep quiet, we might be heard that we have intentions'. When the trio were already approaching the bridge, Conrado further told them: 'You advance (atraca)'. Conrado momentarily joined the three at the new road, but subsequently separated and went down the other side of the new road near the bridge.

"Meanwhile, Patrolman Alvaro Rabino, who was told by Juanito Besas, a school teacher, about the expected trouble, rushed to barrio Cambajao in time to stop Gregorio Ramos, Benjamin Rovira and Fortunato Galang at the bridge. Pat. Rabino held Benjamin and Fortunato by the arms and succeeded in stopping them from proceeding to Cambajao. He allowed Gregorio Ramos to proceed because the latter said that he was just going to the barrio and that he was not concerned with the two. Benjamin and Fortunato protested that they were being detained but somehow Pat. Rabino was able to hold them at bay for several minutes. He was advising them to go back to town, but they said 'Wait for a while'. At this instant, Conrado Ramos was seen deviating to the right to avoid the policeman.

"From the bridge, Gregorio Ramos proceeded to the place where Rufino Gotangco was with several companions in front of the store of Atanacio Ramiro. When about 6 meters from Rufino, Gregorio bent down to roll up his trousers, once on the left side and once on the right side, and on straightening up, he took out of his pocket his balisong which he opened at once. Suddenly, he told Rufino Gotangco, 'Pinong, celebracion tana', at the same time charging at Rufino with the open knife. Apparently, taken by surprise, being unarmed, and having had no ill-feeling or misunderstanding with Gregorio, Rufino took to his heels. Gregorio chased after him. While running, Rufino slipped and fell down, face up. In that position, he was stabbed three times in rapid succession by Gregorio, the most fatal being the stab into the heart. Gregorio then ran towards the town. Salvio Dianco, who was with Rufino, threw a stone at Gregorio. The other companions of Rufino made no move to go to the latter's rescue during the stabbing as the trio, Benjamin, Conrado and Fortunato, were in sight. On seeing his brother stoned at, Conrado, in turn, threw a stone at Salvio. When Gregorio, running, passed by Benjamin and Fortunato on the bridge still being held by Pat. Rabino, he told them shouting, 'I have already stabbed Gotangco; he is already dead'. Gregorio surrendered to the Chief of Police with his balisong, telling said officer that he had stabbed to death Rufino Gotangco. That same night, in the municipal building, Benjamin's knife was confiscated from him.

"The certificate of death issued by the Health Officer of San Fernando, Romblon, shows that the cause of death of Rufino Gotangco was 'severe hemorrhage and shock secondary to stab wounds, multiple', one in the abdomen; two on the chest, and one on the upper left arm.

"Complaint for murder was filed on November 21, 1957, with the Justice of the Peace Court of Cajidiocan, Romblon, against the said Gregorio Ramos, Benjamin Rovira, Conrado Ramos and Fortunato Galang. In the course of the trial before the Court of First Instance of Romblon, Benjamin Rovira and Fortunato Galang were killed and the case as to them was dismissed.

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"After the trial, defendants Gregorio Ramos and Conrado Ramos were found guilty of the crime charged [sic] of murder 'qualified by treachery and attended by evident premeditation as a generic aggravating circumstance', with the mitigating circumstance of voluntary surrender in favor of defendant Gregorio Ramos; and applying the Indeterminate Sentence Law, they were sentenced 'to suffer the penalty of from sixteen (16) years, eight (8) months and one (1) day of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum, with the accessory penalties prescribed by law; to indemnify jointly and severally the heirs of the deceased in the amount of P10,000.00, and to pay the proportionate part of the costs.'"[2]

On appeal to the Court of Appeals, the judgment of conviction was affirmed but the penalty imposed was slightly reduced on the conclusion that evident premeditation did not attend the killing of the victim.

The first question for resolution is the nature of the crime committed by petitioner Gregorio Ramos, i.e., whether murder or plain homicide. We agree with petitioner's submission that treachery did not attend the killing of the victim. Both the lower court and the Court of Appeals based their conclusion of treachery on the finding that the attack, though frontal, was sudden. But suddenness of attack alone does not conclusively show treachery.[3] It is required also that the victim be completely deprived of a chance to either prepare for a fight or retreat.[4] Thus, where a warning precedes the assaults, there is no treachery.[5]

The facts before Us show that Gregorio, who was alone, was about 6 meters away from the victim, who was with several companions, when he hurled what appears to be a challenge - and a warning also - to the latter simultaneously or just shortly before he charged with his open balisong. Thus, though surprised, in the sense that he did not expect any attack at that precise moment, the victim was not however deprived of opportunity for countering or evading the attack. In fact, he was able to run away. The 6-meter distance between them and the challenge hurled at him made this possible. And he probably would have made good his escape from harm but for his unfortunate slipping down which enabled the pursuing Gregorio Ramos to overtake and stab him. Moreover, even while down on his back, the victim was not deprived of opportunity to render less easy the assault upon him. As testified to by the medico legal expert, the victim was most probably trying to cover himself with his free arms from the thrusts administered by Gregorio. These considerations all negative treachery.

Withal, the killing of Gotangco cannot be characterized as simple homicide only. The facts on record sufficiently establish evident premeditation. Gregorio Ramos and Rovira started for Cambajao immediately after Ludovico related to them his tiff with the decedent. On the way, Galang, who was also armed, joined them. Together, they headed for Cambajao which was 1-1/2 km. away. Galang and Rovira each had a score to settle with the decedent. Before reaching the bridge, there was an exchange of words between the group and Conrado Ramos, who was walking along the old road, wherein Rovira exclaimed: "Keep quiet, we might be heard that we have intentions." The existence of a criminal plan is clearly inferable from this statement. And considering the distance of Cambajao, the three had sufficient time to reflect and deliberate on what they were set out to do.

But while on the bridge, a policeman stopped them. Their plan would have been frustrated right there but for the quick thinking of Gregorio Ramos who was able to convince the policeman to allow him to proceed on his representation that he had nothing to do with the other two and was just going to the town. That this was a mere pretext is confirmed by his subsequent actuation culminating in the decedent's death. Gregorio's giving this pretext is also the overt act showing that he was bent on making a success of their original plan.

Allowed to proceed, Gregorio lost no time locating the decedent. He stopped about six meters before Gotangco, and with cool composure, bent down, rolled up his trousers and then with an open balisong and a loud challenge, charged at the latter. The decedent managed to flee. In grim determination, Gregorio gave chase and overcoming the decedent, stabbed him repeatedly, inflicting mortal wounds. The killing was therefore qualified by evident premeditation.

However, the mitigating circumstance of voluntary surrender must be credited to Gregorio. With no aggravating circumstance to offset it, this places the penalty for murder in the minimum period which ranges from 17 years, 4 months and 1 day to 20 years of reclusion temporal. The maximum term of the indeterminate penalty imposed by the Court of Appeals is within this range, and must therefore be affirmed.

The second question refers to the criminal liability, if any, of petitioner Conrado Ramos. The case against him is built solely on the following circumstantial evidence: (1) Two days before the killing of the victim, or on

November 18, 1957, Conrado had a heated argument, and almost came to blows, with the former in the municipal building; (2) he belonged to the opposite political group and had supported a candidate defeated by the one backed up by decedent; (3) in the afternoon of November 20, 1957, he was seen walking fast along the old road to Cambajao and picking up a stone while Gregorio Ramos, Rovira and Galang were trudging along the new road; (4) as the latter neared the bridge, Conrado was heard to have exchanged words with them, after which he walked up to the new road, momentarily joining the three, and continued on down to the other side of the new road near the bridge; (5) when the three were stopped on the bridge by the policeman, he was seen deviating to the right to avoid the latter; and (6) after Gregorio, his brother, had stabbed the decedent and on seeing him being stoned at by Salvio, Conrado threw a stone at Salvio.

These circumstances do not, however, lead Us to the moral conviction regarding Conrado's guilty participation. There is room for reasonable doubt. First, it must be noted that there was no evidence showing a prior agreement between the four accused to do away with the decedent. Based upon the facts on record, Gregorio Ramos and Rovira were impelled to go to Cambajao on the afternoon of November 20, 1957, when the latter's cousin told the two that the decedent boxed him and was waiting for Rovira and one Rizal Gregorio in Cambajao. Prior to this, no occasion is shown in the record when all the four met together.

Second, Conrado could not have known about the incident between Ludovico and the decedent. He was not with his brother Gregorio and Rovira when Ludovico told them about his encounter with the decedent. Conrado did not even walk with them on the way to Cambajao. He was merely seen walking along the old road. His presence, therefore, can reasonably be attributed to chance. On the other hand, his statements to the three accused as they approached the bridge cannot be interpreted conclusively to refer to a plan to avenge the boxing of Ludovico by the decedent.

Third, Conrado could not possibly have been a participant in the plan to harm the decedent. Such a plan must have been hatched while the three accused were on their way to Cambajao. But Conrado was not with them. While he later on joined them near the bridge, it was momentary only as he proceeded to cross the new road on to the other side thereof. Again it is entirely possible that it was while he was thus crossing the new road that he was seen to be "deviating to the right to avoid the policeman."

Lastly, the records show that only Gregorio Ramos stabbed the decedent. Conrado was nowhere nearby at the moment of the assault. The only time when he appeared on the scene again was when he threw a stone at Salvio who was throwing a stone at his brother Gregorio. There is no evidence on record that Conrado saw the stabbing of the decedent by Gregorio. Hence, it is possible that he did not see it. On the other hand, there is positive finding that what he saw only was the stoning of his brother Gregorio, and this was what impelled him to act. The stoning of Salvio was therefore done to protect Gregorio. Hence, innocently done in defense of a relative. The foregoing circumstances and conclusions are therefore compatible with innocence. Since there is no proof beyond reasonable doubt of Conrado's direct participation in Gotangco's killing, he cannot be considered as a co-principal.

Neither can Conrado be liable as an accomplice, nor even as an accessory. The facts on record do not sufficiently establish his guilty knowledge. It was hardly possible for him to have known of the plan of the three other accused to harm Gotangco. He was not at the scene of the stabbing. Moreover, it was Salvio he stoned, not the decedent. His motive for doing so was not to assist a principal to escape, but rather to counter the aggression of Salvio who was then stoning his brother Gregorio. As already stated, it was not shown that Conrado was aware of the stabbing of the decedent at that particular time; hence, he is not even an accessory.

WHEREFORE, the judgment appealed from is affirmed, in so far as petitioner Gregorio Ramos is concerned, but

reversed as to petitioner Conrado Ramos who is hereby acquitted. Proportionate costs against petitioner Gregorio Ramos.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] In CA-G.R. No. 02693-Cr., promulgated on October 21, 1963.

[2] See Decision of CA, pp. 1-5, 7-8.

[3] Perez v. Court of Appeals, L-13719, Mar. 31, 1965.

[4] People v. Pengzon, 44 Phil. 224.

[5] People v. Sagayano, L-15961-62, Oct. 31, 1963; People v. Flore, 87 Phil. 739.

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