

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR CRISOSTOMO AND INOCENCIO RAGSAC, ACCUSED-APPELLANTS.

G.R. No. L-38180. October 23, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In an information dated July 9, 1973 filed with the Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, Salvador Crisostomo and Inocencio Ragsac were charged with murder alleged to have been committed as follows:

"That on or about the 27th day of May, 1972, in the New Bilibid Prison, Muntinlupa, Rizal, Philippines, and with-in the jurisdiction of this Honorable Court, the above-named accused while then confined at the said institution, conspiring, confederating and helping one ano-ther, with treachery, evident premedita-tion and deliberate intent to kill, each armed with improvised bladed weapons - did then and there wilfully, unlawfully and feloniously assault and wound there-with one Antonio Waje, No. 21909-P, a sentenced prisoner in the same institution, thereby inflicting upon him multiple stab wounds in the different parts of his body while then unarmed and unable to defend himself from the attack launched by the accused, as a result of which the said Antonio Waje died instantly.

"The commission of the foregoing offense is attended by the aggravating circumstances of recidivism and quasi-recidivism based on the previous con-victions of the above-named accused as follows:

"Salvador Crisostomo having been convicted of Theft by the JPC Tanauan, Batangas on November 5, 1953; Robbery by the CFI Batangas, 18th Judicial Dis-strict, Lipa City on March 25, 1954; Illegal Possession of Firearm and ammu-nition by the same court on June 16, 1955; Murder by the CFI Davao, Branch II on June 12, 1958 and Evasion of Ser-vice of Sentence by the CFI Rizal, Branch XIII on March 4, 1970;

"Inocencio Ragsac having been con-victed of Homicide by the CFI-Ilocos Sur, Branch III on May 20, 1968 and Evasion of Service of Sentence by the CFI Rizal, Branch X on July 20, 1971.

"CONTRARY TO LAW."[1]

The two accused, duly assisted by their counsel de oficio, pleaded not guilty when arraigned.

After trial, Judge Onofre A. Villaluz, rendered judgment on December 28, 1973, the dispositive portion of which reads:

"WHEREFORE, finding the accused Salvador Crisostomo and Inocencio Ragsac, GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sen-tences them to suffer the penalty of DEATH; to indemnify the heirs of the offended party the amount of P10,000.00; to pay moral damages in the amount of P5,000.00 and another P5,000.00, as exemplary damages, jointly and severally and to pay their proportionate share of the costs."[2]

Hence, the present automatic review of the trial court's decision by this Court.

The trial court convicted the two accused Salvador Crisostomo and Inocencio Ragsac of murder as charged in the information on the following findings of fact:

"Four days prior to May 27, 1972, the accused Crisostomo gave sixty-two (P62.00) to the victim Waje to buy cigarettes and sugar. When Crisostomo asked for the things he requested Waje to buy, the latter replied that the money was lost. Crisostomo then asked Waje to repeat what he (Waje) said and the latter said, 'Maulit ka' and dared Crisostomo to fight it out with him. Infuriated by the actuations and remarks of Waje and compounded by the facts that Waje killed prison guards Anselmo Villablanca and Fortunato Vil-lareal, of the Davao Penal Colony on November 13, 1958, who were the former supervisors of Crisostomo, the accused Salvador Crisostomo and Inocencio Ragsac planned to kill Waje. At about 7:00 o'clock in the morning of May 27, 1972, the two accused went out of their dormitory to carry out their plan. Crisostomo followed the group of prisoners who were assigned to collect garbage inside the prison compound while Ragsac proceeded to the general kitchen. Then Crisostomo went to the general kitchen where he met Ragsac. There they waited for the opportune time. When the accused saw the deceased walking towards the Reception and Diagnostic Center, they followed him. Upon hearing the victim, Crisostomo immediately stabbed Waje. The first thrust did not prove fatal, so Ragsac stabbed Waje and the two accused took turns in stabbing the victim. When Servideo Camarillo saw Crisostomo and Ragsac stabbing the deceased, he fired shots in the air. The two accused ran towards the direction of the general kitchen and they lied face down. The PC and the security guards arrived. Camarillo then went to the place where the accused ran to and there he recovered the weapons used by the accused in the stab-bing." [3]

Waje was brought to the prison hospital but he died on arrival. The cause of his death was determined to be hemorrhage secondary to stab wounds. The post-mortem examination disclosed that Waje was stabbed seven times. [4]

That same morning of May 27, 1972, Salvador Crisostomo and Inocencio Ragsac were treated for their wounds at the prison's hospital by its resident physician, Luz Alma Romero Santos. The accused Crisostomo was found to have sustained the following injuries: abrasion-bridge of the nose; ecchymosis - right eye; abrasion with contusion chin right; abrasion, right and left knee; lacerated wound, 1 1/2 inch above the right ear; and contusion right index finger. The accused Ragsac was found to have the following injuries: abrasion with contusion left wrist; abrasion with contusion dorsal surface of left arm, proximal third; contusion left cheek-bone; contusion dorsal surface of left hand; abrasion both knees; lacerated wound occipital region right head. [5]

After having been treated in the prison's hospital, the two accused Crisostomo and Ragsac were investigated by prison guard Tolentino Avelina, the one assigned as investigator for the death of Waje. [6] The investigation was conducted in Tagalog. The accused Crisostomo was interrogated between 11:00 a.m. and 12:40 p.m. on May 27, 1972. He executed a sworn statement (Exhibit "F") [7] wherein he related that he had been in prison since 1953 for the crimes of theft, robbery in band, murder and illegal possession of firearms; that about 7:00 A.M. on that day he plotted with the accused Ragsac to kill Waje; that his reasons for wanting to kill Waje were the following: a) because Waje killed prison guards Anselmo Villablanca and Fortunato Villareal and wounded prison guard Predisvindo Calugay who were his supervisors and friends at the Davao Penal Colony in 1958; and b) because Waje swindled him in 1962 of the amount of P62.00. When asked who were his companions in stabbing the victim, he pointed at Inocencio Ragsac. [8]

Likewise, the accused Ragsac executed a sworn statement (Exhibit "G"). [9] He admitted therein that he stabbed Waje several times. His motive was that he killed Waje because he was asked by Crisostomo and that he cannot refuse him because he is a friend. Moreover, the victim was a member of the Commando Gang, an enemy of the Genuine Ilocano Gang to which he belonged. [10] He was interrogated from 1:00 p.m. to 2:40 p.m. on the same day.

Aside from the two accused, prison guard Servideo Camarillo, who was an eyewitness to the commission of the crime, was also investigated (Exhibit "H").[11] He was asked by the investigator to identify from among four weapons the two that he had recovered from the two accused. He pointed at the weapons marked as Exhibits "C" and "D" as the ones used by the accused Ragsac and Crisostomo respectively. These were the very same weapons identified by the two accused when they were investigated by Avelina.

During the trial, the two accused gave a version of the incident which was different from the one they related in their respective sworn statements, Exhibits "F" and "G". According to their new version, the accused Crisostomo was the only one who stabbed Waje. The accused Ragsac denied participation the stabbing for he was with the brigade of prisoners collecting garbage in the prison premises. Furthermore, the accused Crisostomo allegedly acted in self-defense. According to him four days prior to the incident, he requested Waje to buy him sugar and cigarettes at the prison Post Exchange. For that purpose, he gave Waje P62.00. On May 27, 1972, he saw Waje and asked him about his request. Waje said that he lost the money. When asked how the money was lost Waje became irritated and threatened to add him to the persons he had killed. At the same time, Waje struck him with a "chaco" (a weapon made of two sharp-edge pieces of wood, connect-ed together with a string). Crisostomo allegedly saw Waje pulling something from his body, so Crisostomo immediately brought out his own weapon (Exhibit "D") known in prison parlance as "matalas" and stabbed Waje with it.[12]

In their brief, the two accused assigned the following errors:[13]

"I

"THE TRIAL COURT ERRED WHEN IT HELD THAT THE DEFENDANTS-APPELLANTS SALVADOR CRISOSTOMO AND INOCENCIO RAGSAC CONSPIRED TO KILL ANTONIO WAJE AND THAT THE LATTER WAS KILLED WITH EVIDENT PREMEDITATION AND TREACHERY.

"II

"THE TRIAL COURT ERRED WHEN IT HELD THAT DEFENDANT-APPELLANT INOCENCIO RAGSAC PARTICIPATED IN THE KILLING OF ANTONIO WAJE.

"III

"THE TRIAL COURT ERRED WHEN IT HELD THAT DEFENDANT-APPELLANT SALVADOR CRISOSTOMO DID NOT ACT IN SELF-DEFENSE WHEN HE KILLED ANTONIO WAJE."

It is apparent that the trial court's finding of the existence of conspiracy to kill Waje between the two accused and the alleged treacherous manner in which the killing was executed is based on the sworn statements executed by Salvador Crisostomo (Exhibit "F") and by Inocencio Ragsac (Exhibit "G").

It is, therefore, necessary to pass upon the admissibility of the confessions and their sufficiency to sustain the conviction.

For a confession to be admissible in evidence, it is a general rule that it must have been made with-out hope of benefit, without fear or duress, and with-out the use of threat, torture, violence, artifice or deception.[14] Likewise, "written statements which were made freely and voluntarily whereby they admitted Participation in the act complained of and sufficiently corroborated by other and independent evidence introduce during the trial of the case are sufficient basis for conviction."[15]

The question before the Court is whether the sworn statements made by the two accused were freely and voluntarily given.

There is merit in the contention of the Solicitor General[16] that the injuries suffered by the two accused (Exhibits "1" and "2") do not necessarily prove that they were maltreated. The injuries of the two accused consisted of bruises and abrasions in the arms and knees and ecchymosis in the right eye. Indeed, these kinds of injuries are very likely to be sustained by one who suddenly drops prone to the ground while in the act of running very fast as the two accused did when they heard the shots fired by prison guard Camarillo. Likewise, if the testimony of the accused Crisostomo that he was hit in the head with a "chaco" by Waje is to be given credence, then his head wound was not due to maltreatment.

Moreover, as pointed out in the Appellee's Brief,[17] assuming *arguendo* that the two accused were tortured, the torture was inflicted when the guards and soldiers were trying to apprehend them following their assault on Waje,[18] and not when their admissions were taken by Tolentino Avelina. In fact, the two accused admitted during the trial that Avelina was good to them and that the latter did not threaten or maltreat them.[19]

Notable also is the time which lapsed between the alleged maltreatment which was around 9:00 A.M. to 9:30 A.M. of May 27, 1972, as in fact they were treated for the injuries sustained by reason thereof at around 9:35 A.M. of the same day,[20] and the taking of their admissions which were from 11:00 A.M. to 12:40 P.M. for Salvador Crisostomo and from 1:00 P.M. to 2:40 P.M. of the same days for Inocencio Ragsac.[21] They had sufficient time to retract what-ever admissions they made during the alleged maltreatment when they were formally investigated more than two hours later by Tolentino Avelina, who was admittedly good to them.

As regards the contention of counsel for the two accused that the admission of their sworn statements is unconstitutional in the light of Sec. 20, Art. IV of the New Constitution because they were not assisted by counsel, it is settled that proscription against the admissibility of confessions obtained from the accused during the period of custodial interrogation in violation of the procedural safeguards, applies to confessions after the effectivity of the new charter on January 17, 1973.[22] The sworn statements of the two accused were executed before the new constitution took effect.

The question of whether or not the two accused committed the killing in conspiracy and with evident premeditation and treachery will now be taken up.

The conspiracy between the two accused is shown by the admitted fact that they agreed to kill Waje two hours before he was actually killed. It is shown by the concerted acts of the two accused of leaving their dormitory XI-B-3 at 7:00 A.M. on the day of the killing, of meeting at the prison kitchen, of waiting for Waje to appear, of approaching him and simultaneously stab-bing him.

Because of the existence of conspiracy between the two accused, the acts of one are legally considered the acts of the other.[23] Both are liable as principals.

Treachery is shown by the admission of the accused Crisostomo that he approached Waje from behind, turned him about, then stabbed him (Exhibit "F"). The sudden-ness of the attack was consciously adopted to facilitate the perpetration of the crime without risk to them-selves.[24]

Evident premeditation can not be appreciated. The two accused allegedly planned to kill Waje at 7:00 o'clock in the morning and the killing took place at 9:00 A.M. (Exhibits "F" and "G"). The two accused did not have sufficient time to reflect during the two hours that preceded the killing.

The final question to be resolved is whether the accused Crisostomo acted in self-defense or not. He contends that he should not be liable for the death of Waje because he acted in self-defense. According to the accused Crisostomo, Waje attacked him with a "chaco" when he asked him about the P62.00 which he gave him for the purchase of sugar and cigarettes at the prison Post Exchange.

By invoking self-defense, the accused Crisostomo admitted that he killed Antonio Waje. With his admission, the burden is upon him to prove by sufficient and convincing evidence that he was defending himself when he killed Waje.[25]

To avail of the justifying circumstance of self-defense, the following elements must be present - unlawful aggression, reasonable necessity of the means employed to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself.

The trial court found the prosecution witnesses more credible than the defense witnesses. This finding is entitled to great weight and should be given full faith and credit in the absence of a showing that the trial court failed to take into account circumstances of weight and importance in arriving at the findings.

Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind.[26] There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon.

The claim of the accused Crisostomo that Waje was the one who attacked him cannot be believed. It is contrary to common experience and to human nature to take offense at the inquiry of the former on how the money was lost.

Although it is claimed by the accused Crisostomo that after he was struck with the "chaco", he grabbed the same, the "chaco" was never presented to the prison investigator. Nor was the said "chaco" ever mentioned in Exhibits "F" and "G". It was brought up for the first time during the trial before the lower court.

There is no sufficient showing that Waje was armed at the time he was killed.

The victim not being armed, it was not reasonable for the two accused, both armed with "matalas", to attack Waje and inflict upon him seven (7) stab wounds.

The accused Inocencio Ragsac escaped during the pendency of the review of this case. Being a death convict, his flight from prison while his case was pending review, as held by this Court in a similar case,[27] is evidence of his consciousness of guilt.

The two accused participated in the killing of the victim. The crime they committed is murder qualified by treachery with the aggravating circumstance of recidivism. Hence the trial court correctly imposed the death penalty. However, for lack of the necessary votes, the penalty next lower in degree is imposed.

WHEREFORE, the decision of the trial court is hereby affirmed, with the modification that the penalty imposed is reclusion perpetua and the indemnity to be paid to the heirs of the deceased Antonio Waje is increased to the sum of P12,000.00, with costs.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., concurs in the result.

[1] Rollo, pp. 2-3.

[2] Rollo, p. 39.

[3] Rollo, pp. 33-34.

- [4] Exhibit "A", p. 16, Records.
- [5] Exhibits "1" and "2", pp. 40-41; Records, pp. 4-7, p. 15; TSN, Nov. 12, 1973, pp. 9-11; TSN, Nov. 17, 1973.
- [6] TSN, pp. 14-15, Nov. 5, 1973.
- [7] Records, p. 23.
- [8] Exhibit "4", Records, p. 23.
- [9] Records, p. 24.
- [10] Records, backpage of p. 25.
- [11] Records, p. 25.
- [12] TSN, pp. 7-10, Nov. 9, 1973.
- [13] Brief for Defendants-Appellants, p. 4; Rollo, p. 79.
- [14] U.S. vs. Agatea, 40 Phil. 596, 600.
- [15] People vs. Tolentino, 82 Phil. 808.
- [16] Brief for the Appellee, p. 13, Rollo, p. 91.
- [17] Brief for the Appellee, p. 14, Rollo, p. 91.
- [18] TSN, pp. 15-16, Nov. 9, 1973; TSN, pp. 3-4, Nov. 14, 1973.
- [19] TSN, pp. 65-66, Nov. 12, 1973; TSN, pp. 38-40, Nov. 13, 1973.
- [20] Exhibit "2", p. 41, Records; TSN, p. 11, Nov. 17, 1973.
- [21] Exhibits "F" and "G". Records, pp. 23-24.
- [22] Magtoto vs. Manguera, 63 SCRA 4.
- [23] People vs. Sumayo, 70 SCRA 488.
- [24] People vs. Lim, 71 SCRA 249.
- [25] People vs. Padiernos, 69 SCRA 484.
- [26] People vs. Alconga, 78 Phil. 366.
- [27] People vs. Cornelio, 39 SCRA 435; Rollo, pp. 106-107.

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