

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. AMADOR ATIENZA, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-38571. March 31, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is another convict-against-convict killing in the New Bilibid Prison where feuding prisoners used to kill each other to quench their thirst for vengeance or to inflict injury on members of rival gangs.

Between seven and eight o'clock on the night of July 26, 1972, in the corridor near cell 2 of dormitory 4-A-2 of the prison in Muntinlupa, Rizal, prisoner Rodolfo Ibañez, 22, was repeatedly stabbed. He suffered sixteen stab wounds and six incised wounds in different parts of the body. Eight of the wounds were fatal because they affected his internal organs. He died upon arrival at the hospital.

The prison investigator reported that prisoner Amador Atienza initiated the assault on Ibañez and that four other prisoners, named Tomas Sarmiento, Ignacio Barraca, Jr., Alfredo Regular and Benito Pablatin, collaborated with Atienza in assaulting Ibañez. Only Atienza surrendered to the prison guard after the assault.

The investigator said that the assailants were motivated by a desire to avenge the death of prisoner Alfredo Mariano who was killed by Ibañez in September, 1971.

Atienza, who was serving a sentence for attempted robbery with homicide, declared in his extrajudicial confession that he stabbed Ibañez because the latter was trying to convince him to join Ibañez in stabbing members of the Bahala Na Gang. Atienza rejected the suggestion of Ibañez.

When Ibañez was allegedly about to pull out his weapon, Atienza acted first by stabbing Ibañez in the chest and there-after stabbed him about twenty times (No. 9, Exh. B). Atienza said: "Ng akto siyang bubunot ng matalas sa tagiliran ng kanyang korto, ay kaagad kong binunot ang matalas ko sa aking baywang ng pantalon at inunahan ko siya ng saksak". (Ibid, No. 7.)

Atienza stated that he was the only one who stabbed Ibañez. He denied the imputation of prisoners Danilo Villa-fuerte, Augusto Garcia, Antonio Juanengo and Benito Laca, Jr. that prisoners Sarmiento, Regular, Barraca and Pablatin joined him (Atienza) in assaulting Ibañez. Atienza admitted the voluntariness of his confession. He candidly affirmed that he was not maltreated by the investigator who was "quite good" to him.

Nevertheless, the special prosecutor charged Atienza and his four alleged companions with murder in connection with the killing of Ibanez. They pleaded not guilty. However, at the initial hearing of the case, Atienza withdrew his plea of not guilty and substituted it with a plea of guilty.[*]

Atienza, 21, married with one child (he reached first year high school), took the witness stand as a prosecution witness and declared categorically that he was the only one who killed Ibañez. He reiterated what he stated in his

confession that he killed Ibañez because "he was planning to kill me" 13 tsn November 6, 1973).

Then, about three months later, Atienza testified in his own defense. He declared once more that he killed Ibañez because "binunutan niya ako pero naunahan ko siya" (4 tsn February 11, 1974). He described the incident in this manner:

"He (Ibañez) was inviting me to kill somebody and I told him I cannot because I want to turn a new life but he spoke bad words to me. After that, he left and then returned and we had an exchange of words. When he drew his weapon, I moved ahead of him." (4 tsn).

Atienza said that no other persons were present on that occasion because the other prisoners were upstairs watching television. He again denied that Regular, Barraca, Pablatin and Sarmiento participated in the killing.

The trial court found that only Atienza perpetrated the assault. It acquitted Sarmiento, Regular, Barraca and Pablatin. It convicted Atienza of murder qualified by treachery and aggravated by evident premeditation and recidivism, imposed upon him the death penalty because he was a quasi recidivist, and ordered him to pay the heirs of Ibañez an indemnity of twenty thousand pesos. The case was elevated to this Court for automatic review of the death penalty.

Counsel de oficio contends that Atienza acted in self-defense. This contention cannot be sustained because it does not appear that the victim was armed. No weapon (matalas) was found on his body. Hence, credence cannot be given to Atienza's version that the victim committed the initial unlawful aggression by making a motion to pull out his weapon and, because of that alleged aggressive act, Atienza stabbed him.

Indeed, Atienza's plea of self-defense is inconsistent with his plea of guilty which was made after the prosecution had started presenting its evidence.

The Solicitor General concedes that the crime committed by Atienza was homicide and that treachery and evident premeditation did not aggravate the killing.

Recidivism cannot be taken into account because the previous convictions admitted by the accused were for robbery and attempted robbery with homicide, which are crimes against property, whereas, the killing in this case is a crime against persons. (See art. 14[9], Revised Penal Code.)

But quasi-recidivism can be appreciated against Atienza. Hence, the penalty for homicide should be imposed in its maximum degree.

WHEREFORE, the decision of the trial court is set aside. Atienza is convicted of homicide. He is sentenced to an indeterminate penalty of twelve years of prison mayor as minimum to twenty years of reclusion temporal as maximum and to pay an indemnity of twelve thousand pesos to the heirs of Rodolfo Ibañez. Costs de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee and Abad Santos JJ., took no part.

[*] Atienza, with two other prisoners, was convicted of homicide in *People vs. Resurreccion, et al.*, L-38730, December 14, 1979, Criminal Case No. 1327. That case involves the killing of a prisoner on March 25, 1971. He is implicated in a murder case, *People vs. Garcia, et al.*, L-40106, Criminal Case No. 1342, regarding the killing of four prisoners on April 9, 1971.

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