

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL CATIGAY Y PANDAY A.K.A. SAMUEL LATIGAY Y PATROCINIO, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Before us is an appeal[1] seeking to annul and reverse the Decision[2] dated August 22, 2012 of the Regional Trial Court of Negros Oriental, 7[th] Judicial Region, Dumaguete City, Branch 39 in Criminal Case No. 20281 for Murder which sentenced the accused-appellant as follows:

“WHEREFORE, premises considered, accused SAMUEL CATIGAY OR SAMUEL LATIGAY Y PATROCINIO, is hereby found guilty beyond reasonable doubt of the crime of MURDER, defined under Article 248 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of reclusion perpetua.

Accused is likewise ordered to pay the heirs of the deceased, Antonio Baguio y Abueva, the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages.

SO ORDERED.”

An Information[3] was filed charging appellant with the crime of murder. The Information reads:

“That on or about the 25th day of December, 2010, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused SAMUEL CATIGAY y PANDAY with evident premeditation and with intent to kill one ANTONIO BAGUIO y ABUEVA a.k.a. “Nonoy”, armed with a gun did, then and there wilfully, unlawfully and feloniously shoot the said ANTONIO BAGUIO y ABUEVA with the said gun, there(b)y inflicting upon him multiple gunshot wounds which directly caused his death.[4]

That the crime was committed with the qualifying aggravating circumstance of evident premeditation.

Contrary to law.”

Upon arraignment, appellant, assisted by the Public Attorney's Office, pleaded not guilty to the crime charged.[5]

Pre-trial was thereafter conducted and a Pre-Trial Order[6] was issued dated April 1, 2011.

Trial on the merits ensued with the prosecution presenting the following witnesses, namely: Lorenzo Brumo,[7] Conigonda Baguio,[8] Dr. Virgilio de Guzman,[9] Police Officer Derek Alcoran,[10] Dr. Sarah Talla,[11] and SPO1 Rachel Portada.[12]

Their testimonies, as succinctly summarized by the Solicitor General in his Appellee's Brief[13] are as follows:

“On the evening of December 24, 2010, witness Lorenzo Brumo was at his house in Purok Gumamela, Brgy. Bagacay, Dumaguete City, when victim Antonio Baguio called out his name and asked for him to open the gate. Lorenzo let Antonio in and inquired what happened. Antonio told Lorenzo that he had an argument with somebody. Moments later, accused-appellant Samuel Catigay came to the gate of the house thrusting a square bar at Antonio. Lorenzo advised Antonio to get out of his house through the back door. As Lorenzo was

talking to Samuel, Antonio arrived from behind and pushed the head of Samuel to the steel gate. Thereafter, Antonio immediately ran away. Samuel immediately went home to have his bleeding head treated.[14]

The following day, or on December 25, 2010, at around 5:00 o'clock in the morning, Lorenzo was at the waiting shed in front of his house sipping coffee when he noticed Samuel went out of his house (located around one hundred [100] meters from Lorenzo's house), board his tricycle and drove off. Few minutes later, Samuel returned, parked his motorcycle in front of his house, pulled out a firearm and fired the gun at the direction of the riverbank. Samuel then approached Lorenzo and uttered "do" if Antonio Baguio will arrive, I will kill him." Lorenzo advised Samuel not to do it, but the latter ignored him. Lorenzo then saw Antonio walking towards their direction so he shouted for the latter to stop and go back. Samuel looked at the direction of Antonio and uttered "do", I am going to kill you." Antonio ran off. Samuel shot Antonio, hitting the latter at the back and causing him to fall down. Samuel fired another shot. The wounded Antonio stood up and ran towards the house of their policeman neighbor. Samuel proceeded home, boarded his motorcycle and drove off.[15]"

The accused testified[16] on his defense. His testimony as summarized by the RTC, is hereunder quoted as follows:

"Accused Samuel Catigay or Latigay testified that at around 6:00 o'clock in the morning of December 25, 2010, he went out of his residence at Purok Gumamela, Brgy. Bagacay, this City, to purchase some pandesal. As he was walking on his way towards the highway and at a distance of around 120 meters away from his house, the deceased suddenly waylaid him and mauled him. He then instinctively also struck him back and a fistfight ensued between them.

In order to obviate further trouble, he immediately rushed home, but as he was nearing the gate of his house, he saw Lorenzo Brumo, his neighbor and co-worker at the construction site, sitting at the waiting shed, a few meters away from his house. In view thereof, he decided not to enter his house because he wanted to tell Lorenzo that the deceased had waylaid him again and had boxed him. As he approached Lorenzo in order that he could talk to him about the matter, the deceased caught up with him and attempted to box him again; and so he instinctively pulled out his firearm and leveled the same at the lower portion of his body, and fired shots at him without intending to harm him.

He averred that after he shot the deceased, he immediately sought the aid of Police Provincial Director Lyndon Lawas so that he could surrender and place himself under his custody, but he met instead Police Officer Derek Alcoran, the close-in security detail of Col. Lawas, and so he readily surrendered to him."

Thereafter, the RTC rendered the assailed decision.

Hence, the instant appeal with the following assignments of error:

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER INSTEAD OF HOMICIDE.
- THE LOWER COURT GRAVELY ERRED IN NOT FINDING THAT THE MITIGATING CIRCUMSTANCE OF VINDICATION OF A WRONG, SUFFICIENT PROVOCATION AND VOLUNTARY SURRENDER ATTENDED THE COMMISSION OF THE CRIME CHARGED.
- THE LOWER COURT FAILED TO IMPOSE THE CORRECT PENALTY ON THE ACCUSED-APPELLANT.

We dismiss the appeal, but modify the awarded indemnities.

Appellant contends that the RTC erred in convicting him for murder considering that the prosecution failed to prove the elements of evident premeditation.

We do not agree with appellant.

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[17]

The above elements have been duly established in the instant case as shown by the following testimony of the eyewitness to the crime, Lorenzo Brumo, to wit:

“PROS. ASENIERO:

Q. In the morning of December 25, 2010 at around 5:00 o'clock in the morning, where were you?

A. I was at the place called waiting shed.

XXX

Q. After Samuel went somewhere else, what happened next, if any?

A. After a while, Samuel returned.

Q. Where did he go? (SIC)

A. Samuel proceeded home. He stopped his motorcycle and turned off the engine. He pulled out his firearm and fired it at the direction to the riverbank.

XXX

Q. At the time when Samuel fired his gun at the direction of the riverbank, where was he standing?

A. Right in front of his house, sir.

Q. And after that, what happened next?

A. He came near me.

XXX

Q. Now, you said Samuel approached you at the waiting shed where you were sitting, what happened there, if any?

A. He went near me and he told me, “do” if Antonio Baguio will arrive, I will kill him.

XXX

Q. Now, you said that you saw Antonio Baguio approached you, what happened next, if any?

A. I told Antonio Baguio to go back from where he came from, but he did not listen my call. Instead, he continued to approach me.

Q. And what happened next, if any?

A. Then Samuel Latigay looked the direction of Antonio Baguio and said “do,” I am going to kill you.”

Q. And what happened next, if any?

A. And with that, Antonio Baguio turned around and ran off and Samuel Latigay shot him.

Q. Was Antonio Baguio hit by the shot made by Samuel Latigay?

A. Yes, he was hit at the back, sir.

XXX

Q. And what happened after Samuel shot Antonio for the first time?

A. Antonio ran off, he fell down, and another shot was fired.”

The above testimony clearly indicated that first thing in the morning of that fatal day, appellant was determined and had planned to kill the victim; that appellant had armed himself with a gun, a clear indication that he was indeed determined to kill. In fact, he even tested the gun by firing it towards the direction of the riverbank. In addition to that, he even declared to Lorenzo that he will kill the victim. He also told the victim of his intent to do so.

There was also sufficient lapse of time between appellant's apparent determination to kill and the actual killing as Antonio was not there yet when appellant did all the scheming. Lorenzo even had time to discourage appellant from executing his plans but the latter persisted and insisted on killing the victim to the point of shooting the latter at the back as he tried to run away. Hence, the planning and the preparation stages prior to the killing was clearly shown by the prosecution.

Added to this is the fact that the night before the killing, herein appellant appeared to have chased the victim towards the house of the eyewitness, where the latter sought refuge, and there, thrust a square bar at the victim. The victim was able to hit back and this must have angered appellant. All these circumstances, taken together, indicate the presence of evident premeditation. This is in accordance with the ruling of the Supreme Court in the similar case of *PEOPLE OF THE PHILIPPINES vs. ALBERT SANCHEZ y GALERA*,^[18] to wit:

“For evident premeditation to be considered, the following must be established: (1) the time when the accused determined (conceived) to commit the crime; (2) an overt act manifestly indicating that he clung to his

determination to commit the crime (kill his victim); and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act. Premeditation presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. As here, there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime.

In the case at bar, the interplay of the following circumstances indicate the presence of evident premeditation. First, the night before the stabbing incidents, appellant went to the De Leon residence to ask for money. Edgar, with much reluctance, gave appellant only P100. Jeane noted appellant receiving the money with a hostile expression on his face. Appellant was no longer working for the De Leon, so he was not required to go back to the house. But he did return the following morning, January 27, 2006, armed, surreptitiously entering the house and proceeding to Jufer's bedroom while everyone was busy having breakfast and preparing for school.

Second, Jufer told his mother that while relieving himself in the comfort room, appellant pointed a knife at him. John Ray corroborated the pointing-of- knife scenario. On the witness box, John Ray testified that on the night of June 26, 2006, appellant was toying with a knife while talking to him and Jufer, threatening to kill them both should they report the matter to their parents.

Last but not least, six different knives, all with blood stains, were found at the crime scene. Two pairs of gloves were discovered near Jufer's body. These compelling pieces of evidence presuppose planning.

There can be no serious argument that appellant was determined to commit a crime as early as on the night of January 26, 2006, when he uttered the threat to kill Jufer at the bathroom. Jelyn and Joshua Ray testified to seeing appellant holding a knife while talking to Jufer. Appellant had the whole night to contemplate his action and reflect upon its consequences before he entered the household the following morning. Finally, the covert manner appellant gained entry in the house and stabbed the victims showed a careful deliberation of his criminal intent. As the CA aptly observed, taking into stock the incidents that happened on the night of January 26, 2006, the fact that he hid in the room of Jufer after sneaking into the De Leon's household early the next morning and the real evidence found in the house, appellant's "commission of the crime was not clearly a product of accident, it was evidently a premeditated one."

Appellant likewise contends that treachery did not attend the commission of the crime. We do not agree with appellant. We quote with approval the findings of the RTC on the matter, to wit:

"This Court is, therefore, convinced that the prosecution has proven the guilt of the accused beyond reasonable doubt, and that the commission of the offense was attended with treachery and that the unsuspecting deceased who was also defenseless was fatally shot from behind, and that the accused employed means to insure the slaying without risk to himself arising from the defense which the deceased might make."

The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[19]

Anent appellant's contention that the RTC erred in failing to consider the mitigating circumstances of vindication of grave offense/sufficient provocation, we find the same bereft of merit.

With regard the mitigating circumstance of vindication of a grave offense, the RTC was correct in not appreciating the same in the instant case. Article 13, paragraph 5 of the Revised Penal Code requires that the act be "committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees." The established rule is that there can be no immediate vindication of a grave offense when the accused had sufficient time to recover his equanimity.[20] In the case at bar, the alleged offense happened the

night before the shooting incident, hence appellant had sufficient time already to recover his equanimity.

With regard the mitigating circumstance of sufficient provocation, the same is likewise not applicable in the instant case inasmuch as the alleged provocation did not immediately precede the killing. The Supreme Court in the case of *MANUEL O. ORIENTE vs. PEOPLE OF THE PHILIPPINES*,^[21] has ruled that:

“Provocation is defined to be any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating anyone. In order to be mitigating, provocation must be sufficient and should immediately precede the act. Provocation is sufficient if it is adequate to excite a person to commit the wrong, which must accordingly be proportionate in gravity. That the provocation must immediately precede the act means that there should not be any interval of time between the provocation by the offended party and the commission of the crime by the person provoked.”

With regard the mitigating circumstance of voluntary surrender, we find the same to be present in the instant case.

The Supreme Court in the case of *PEOPLE OF THE PHILIPPINES vs. ROSENDO REBUCAN y LAMSIN*,^[22] has ruled that:

“For voluntary surrender to mitigate criminal liability, the following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or to the latter’s agent; and (3) the surrender is voluntary. To be sufficient, the surrender must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because they acknowledge their guilt or wish to save the authorities the trouble and the expense that will necessarily be incurred in searching for and capturing them.”

In the instant case, it was duly established by the testimony of Police Officer Derek Alcoran that appellant surrendered to him at around 7:40 o’clock on the day of the shooting incident because he shot his neighbor Antonio Baguio.

We note though that the presence of the mitigating circumstance of voluntary surrender will not affect the penalty considering the presence of one aggravating circumstance which is treachery. This is in accordance with the ruling of the Supreme Court in the case of *PEOPLE OF THE PHILIPPINES vs. AGRIPINO GUEVARRA y MULINGTAPANG* alias “BOY DUNGOL,”^[23] to wit:

“Article 248 of the Revised Penal Code states that murder is punishable by reclusion perpetua to death. Article 63(4) of the same Code provides that if the penalty is composed of two indivisible penalties, as in this case, and both mitigating and aggravating circumstances attended the commission of the crime, the courts shall reasonably allow them to offset one another in consideration of their number and importance. As earlier determined, the mitigating circumstance of voluntary surrender and the aggravating circumstances of treachery and use of an unlicensed firearm were present in the instant case. Nonetheless, the aggravating circumstance of treachery in this case cannot be applied for offsetting because it was already considered as a qualifying circumstance. Thus, only the aggravating circumstance of use of an unlicensed firearm may be utilized in offsetting the mitigating circumstance of voluntary surrender.”

We note that in the instant case, treachery is not the qualifying aggravating circumstance but evident premeditation as alleged in the information. Hence, the RTC was correct in imposing the penalty of reclusion perpetua pursuant to the above cited rule and pursuant to Article 63(2), of the Revised Penal Code, to wit:

“Article 63. Rules for the application of indivisible penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules

shall be observed in the application thereof:

xxx

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.”

With regard the award of indemnities, the RTC awarded P50,000.00 as moral damages, P50,000.00 as civil indemnity and P25,000.00 as temperate damages. To conform to recent jurisprudence per the Supreme Court's ruling in PEOPLE OF THE PHILIPPINES vs. ROLLY ANGELIO,[24] the award for temperate damages is hereby increased to P30,000.00[25] and we likewise impose the amount of P30,000 as exemplary damages since the killing was attended with treachery.[26] All others shall remain as is.

Appellant is also liable to pay interest of 6% per annum on all the items of civil damages that were awarded, to be reckoned from the finality of this decision until full payment.[27]

In sum, we find the assigned errors in this appeal to be devoid of any merit. The conviction of appellant beyond reasonable doubt for murder is supported by the prosecution's evidence.

WHEREFORE, the Decision dated August 22, 2012 of the Regional Trial Court of Negros Oriental, 7[th] Judicial Region, Branch 39, Dumaguete City in Criminal Case No. 20281 is hereby AFFIRMED with MODIFICATION. The award of temperate damages is hereby increased to P30,000.00. Exemplary damages in the amount of P30,000.00 is hereby imposed. The civil indemnity and damages shall earn interest at 6% per annum from the finality of this decision until fully paid.

The accused shall be credited with the full period of his detention.

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

[1] Notice of Appeal, Records at p. 166.

[2] Records at pp. 148-155.

[3] Records at pp. 3-4.

[4] Letters in parenthesis supplied.

[5] Records at p. 26.

[6] Records at p. 48.

[7] Transcript of Stenographic Notes dated June 27, 2011.

[8] Transcript of Stenographic Notes dated August 5, 2011.

[9] Transcript of Stenographic Notes dated August 19, 2011.

[10] Transcript of Stenographic Notes dated September 5, 2011.

[11] Transcript of Stenographic Notes dated May 16, 2011.

[12] Transcript of Stenographic Notes dated September 23, 2011.

[13] Rollo at pp. 78-98.

[14] TSN, June 27, 2011, pp. 5-9.

[15] TSN, June 27, 2011, pp. 9-13.

[16] Transcript of Stenographic Notes dated November 11, 2011.

[17] People of the Philippines vs. Lino L. Duavis, G.R. No. 190861, December 7, 2011 citing People v. Ventura, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 400; citing People v. Durante, 53 Phil. 363, 369 (1929); People v. Escabarte, No. L-42964, March 14, 1988, 158 SCRA 602, 612; People v. Escarlos, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 482; People v. Sayaboc, G.R. No. 147201, January 15, 2004, 419 SCRA 659, 673.

[18] G.R. No. 188610 , June 29, 2010.

[19] PEOPLE OF THE PHILIPPINES VS. FORD GUTIERREZ Y DIMAANO, G.R. No. 188602, February 04, 2010.

[20] PEOPLE OF THE PHILIPPINES vs. ROSENDO REBUCAN y LAMSIN, G.R. No. 182551, July 27, 2011.

[21] G.R. No. 155094, January 30, 2007.

[22] G.R. No. 182551, July 27, 2011.

[23] G.R. No. 182192, October 29, 2008.

[24] G.R. No. 197540, February 27, 2012.

[25] The People of the Philippines v. Melanio Galo, alias “Dodo,” etc., et al., G.R. No. 187497, October 12, 2011.

[26] People of the Philippines v. Arnold Pelis, G.R. No. 189328, February 21, 2011 cited in note 22.

[27] People of the Philippines vs. Edgardo Lupac y Flores, G.R. 182230, September 19, 2012.

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