

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO ONAVIA, DEFENDANT-APPELLANT.

G.R. No. L-38348. January 27, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On automatic review is the death sentence imposed on defendant by the Circuit Criminal Court, Seventh Judicial District, sitting in Pasig, Metro Manila, in its Criminal Case No. CCC-VII-1356, for the crime of Murder qualified by treachery and attended by evident premeditation and recidivism.

The accused is an inmate of the New Bilibid Prisons at Muntinlupa, Metro Manila, serving sentence for Robbery in Band with Double Homicide and Multiple Rape after conviction by the Court of First Instance of Cagayan on April 22, 1969 for which he was sentenced to reclusion perpetua.[1] He was a member of the "Genuine Ilocano Gang" (GIG, for brevity) within the prison compound. The victim, Federico Mansilungan, was also a sentenced prisoner in the same institution, and was a member of a rival group, the "Sigue-sigue Commando Gang."

The Information filed against the accused reads as follows:

"That on or about April 4, 1971, in the New Bilibid Prison, Muntinlupa, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while then confined at the said institution, with treachery and evident premeditation, and each armed with an improvised deadly weapon did then and there willfully, unlawfully and feloniously assault and wound therewith one Federico Mansilungan, No.53352-P, a sentenced prisoner in the same institution, inflicting upon him multiple stab wounds, while then unarmed and unable to defend himself from the attack launched by the accused, as a result of which the said Federico Mansilungan died instantly;

That the offense when committed by the above accused was attended by the aggravating circumstance of recidivism, the accused having been convicted of the crime of Robbery in Band with Double Homicide and Multiple Rape by the Court of First Instance of Cagayan on April 22, 1969.

CONTRARY TO LAW."[2]

Upon arraignment, the accused entered a plea of not guilty. The prosecution thereafter presented its witnesses and rested its case.

On the date set for the reception of evidence for the defense, the accused, through counsel de officio, moved to withdraw his former plea of not guilty and to substitute it with one of guilty. The proceedings that transpired were recorded as follows:

"COURT -

The Court is now in session.

ATTY. KOH -

For the accused. May we request, your Honor, that the accused be allowed to substitute plea of not guilty to guilty.

COURT -

What is the status of the case?

FISCAL SANTOS -

Presentation of evidence for the accused, your Honor.

COURT -

Do you affirm and confirm the manifestation of your counsel that you are now pleading guilty after the prosecution has rested its case?

A. Yes, sir.

Q. The prosecution has already presented its evidence and it is now your turn to present your evidence?

A. I am pleading guilty, sir.

COURT -

Any objection to the plea of guilty?

FISCAL SANTOS -

No objection, your Honor.

COURT -

All right, present him".[3]

Thus, notwithstanding the plea of guilty, the accused took the witness stand and testified in his defense.

On February 22, 1974, the Trial Court rendered judgment convicting the accused of Murder and imposing upon him the supreme penalty of death. The dispositive portion of the Decision reads:

"WHEREFORE, finding the accused, Ernesto Onavia, GUILTY, beyond reasonable doubt, of the crime of Murder, under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences him 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; and to pay the costs.

..."

We are now called upon to review that judgment.

There is no question that at around 3:00 o'clock P.M. of April 4, 1971, inmate Federico Mansilungan was fatally stabbed in the New Bilibid Prisons in Muntinlupa.

The victim sustained six stab wounds, the first three of which were mortal. According to the Senior Medico-Legal

Officer of the National Bureau of Investigation, who conducted an autopsy examination, the first wound "penetrated the upper lobe of the left lung"; the second wound "perforated the upper lobe of the abdomen, hitting the liver; the third wound "perforated the small intestines and the abdominal aorta"; and the remaining wounds were "merely contemporary to cause death also."

Buenaventura de la Cuesta of the Investigation Section of the New Bilibid Prisons, who also testified for the prosecution, declared that in the evening of the incident, he investigated and took down the statement of the accused (Exhibit "C"); that the latter merely affixed his thumbmark thereto allegedly because his right hand was painful, although the investigating officer found no injury thereon.[4] The accused, however, signed his statement the next day before the subscribing officer. The investigator further testified that the accused, in his statement, admitted having been the first to stab the victim. The witness also declared that there were three prison guards who rushed to the scene of the incident, chased and caught the accused when the latter and Romeo Pasmala, a co-prisoner, tried to run away after stabbing the victim; and that Exhibit "D" was the improvised weapon used by the accused in stabbing the deceased.

Another investigator, Francisco A. Cometa, declared that he investigated prisoner Romeo Pasmala, who admitted to him that he was another assailant who had stabbed the deceased (Exhibit "F"), after the accused had first stabbed.[5] Pasmala was a member of a third group, the Happy Go Lucky Gang. The records show, however, that Pasmala died before he could be included in the criminal charges filed in Court.

In his sworn statement (Exhibit "C"), taken in the evening of the incident, the accused admitted having stabbed the deceased and also recounted the circumstances surrounding the incident and the motivation therefor, thus:

15. T - Isalaysay mo nga sa akin kung papaano ninyo ni bilanggong Romeo Pasmala sinaksak iyong Kommando sa likuran ng simbahan?

S -

Nag-gagardin ako kanina. Ngayon ho, habang nag-gagardin ako sumama ang isip ko dahil malaki ang sentensiya ko. Iyong matalas ko ay nakalibing sa garden kaya ang ginawa ko, kinuha ko bago ako nagpunta sa Gate IV. Habang naglalakad ako papunta sa Gate IV, nakita kong sumusunod siya sa akin (Itinuro ng may salaysay si Romeo Pasmala). Umihi ako sa bakod tapat ng pintuan ng hospital kaya ako inabutan niya. Nong naglalakad ako papunta sa Gate IV, sumunod siya sa akin tapos noong palapit na ako sa likuran ng simbahan, nakita ko iyong Kommando na sumisilip sa butas ng steel matting. Dahil sa ang Kommando at GIG ay magkalaban, naisipan ko na iyong Kommando na iyon na ang aking titirahin kayo ko linapitan. Pagkatapos, noong malapitan ko binunot ko na iyong matalas ko bago ko sinaksak ngunit noong una kong saksakin, hindi ko tinamaan dahil nailagan niya tapos sinaksak kong pangalawa at tinamaan ko sa tiyan, at iyon din naman ang pagdating niya bago niya sinaksak. Ako naman ay tumakbo na. (*Italics ours*)

The defense assails the judgment of conviction on the ground that it was entered on an improper plea of guilty. It also insists that the Trial Court should not have taken into consideration the accused's sworn statement because it was not voluntary.

The arguments are not impressed with merit.

Although the accused had pleaded guilty, the records show that the Trial Court still required the defense to present its evidence. Thus, the accused declared on the witness stand that the victim was armed with a "balila" and that the victim suddenly tried to strike him first on the head but he was able to parry the blow and was instead hit in the right hand,[6] only to clarify it on redirect examination when he said "I pulled my 'matalas' and stabbed him,

and he hit me with 'balila'." [7] The accused further declared that he stabbed the victim only once [8]; that he admitted to the guards that he had stabbed the deceased [9]; that he ran away after stabbing the victim [10]; that after he had stabbed the victim, Pasmala also stabbed the latter to help him (accused) [11] but that he and Pasmala had not agreed on the commission of the crime [12]; and that his "bosyo" (or leader of the gang), also a GIG [13], had told him in the morning of the incident that "whatever commando I see, I must stab him". [14]

On cross examination, the accused admitted that he had stabbed the victim "by surprise" [15], and that he had given his statement, Exhibit "C", to Investigator de la Cuesta voluntarily. [16]

Based on the evidence thus presented by the prosecution and the defense, the Trial Court made its own factual findings and rendered a judgment of conviction. Although it did not explain to the accused the full import of his plea of guilty, neither did it automatically accept that plea nor did it render judgment based exclusively thereon. It accepted evidence for the purpose of determining the accused's guilt and the degree of his culpability to the end that such evidence would dispel all doubt that the accused misunderstood the nature and effects of his plea of guilty. [17] Where the Trial Court received evidence on the there is no improvident acceptance of a plea of guilty. [18] The defense contention, therefore, that the plea of guilty, having been improvidently accepted, the case should be remanded to the trial Court, is bereft of basis. The validity of the judgment under review is unassailable.

We find no merit either in the defense allegation that the accused's confession was involuntarily made. The fact is that the accused admitted on cross examination that he gave the statement to Investigator de la Cuesta voluntarily. [19] Said investigator confirmed that the accused gave his statement freely and voluntarily. [20] Although the accused averred that he could not read Tagalog (t.s.n., February 4, 1974, p. 10), the trial Court had the opportunity to observe that the accused spoke fluent Tagalog [21]. The alleged injury to his right hand was not proven to have been due to any maltreatment although the accused made a feeble attempt to attribute it to the "employees". [22] The accused, however, also testified that it was the person he had stabbed who had hit him in his right hand. [23] When involuntariness of a confession is pleaded, it is for the accused to carry the burden of proving that his admissions are involuntary or untrue. [24] The accused herein has not successfully discharged that burden. There are details therein that could have been known only by the accused, particularly, as to the motivation behind the killing.

The Court a quo concluded that the aggravating circumstances of treachery, evident premeditation, and recidivism attended the commission of the crime.

We disagree with the finding of treachery. Treachery exists when the offender employs means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [25] The suddenness of the attack, as admitted by the accused, does not of itself, support a finding of alevosia. As the accused himself stated in his sworn statement, "hindi ko tinamaan dahil nailagan niya tapos sumaksak akong pangalawa at tinamaan ko sa tiyan." And in his testimony, the accused declared that he was able to parry the blow intended by the victim on his head and that he was instead hit in the right hand. [26] In other words, the victim was not caught completely unaware and was not deprived of the chance to ward off the assault [27], but was able to defend himself, and it was in the act of doing so that the accused attacked the victim a second time, hitting the latter on the stomach. Treachery, therefore, cannot be appreciated.

"Where the deceased was suddenly attacked, but he was able to retreat to avoid being hit by the hacking blows and was hit only when he was already in the act of defending himself against the attack of the accused, there is no treachery." [28]

Evident premeditation is, however, attendant. According to the accused's own statement, he was instructed by

their leader called "bosyo" in the morning of April 4, 1971 to kill any member of the "Commando" gang. That same afternoon, after gardening, he unearthed his "matalas" from where it was buried and proceeded towards Gate IV. Seeing the victim, a "Commando", looking from behind a steel matting it was he whom the accused decided to liquidate. Romeo Pasmala, another prisoner followed, perhaps divining the accused's criminal intent. They both walked towards the victim. The accused stabbed the victim in the afternoon of the same day that he was told to kill[29], followed by Romeo Pasmala who also stabbed the victim, after which the accused ran away chased by prison guards. These admissions show that the accused had sufficient time to consider and weigh the instructions to him of their gang leader given in the morning, and to refuse to follow said instruction in the afternoon if he did not want to commit the crime charged, thereby establishing premeditation.[30] "There was a sufficient interval of time, more than one-half day, within which he had full opportunity for meditation and reflection and to allow his conscience to overcome the resolution of his (vencer las determinaciones de la voluntad) had he desired to hearken to its warnings." [31] The testimony of the accused on this score follows:

". . .

Court -

Q Do you know the meaning of premeditation?

A I know, sir.

Q Is it not a fact that you planned the killing of Masilongan considering that he belongs to a rival gang?

A I did not plan to kill him, sir

Q But you planned to kill anybody who belongs to a rival gang?

A Yes, sir.

. . ."[32]

". .

Atty. Koh -

. . .

Q Did it come to your mind to stab a commando?

A What entered my mind is that my 'bosyo' told me that whatever Commando I see, I must stab him.

Q Do you know that person to be a Commando?

A Yes, sir.

Court -

Q Where did you hit him?

A This part, sir (witness pointing to his right stomach).

. . ."[33]

". . .

Fiscal Santos -

Q You stabbed the victim in the after noon of April 4, 1971 . . .?

A Yes, sir.

Q On April 4, 1971 you were told to kill anybody not from your gang. What did your 'bosyo' give or what time did your 'bosyo' give you that instruction you just told us?

A In the morning,

. . ."[34]

Quasi-recidivism, under Article 160[35] of the Revised Penal Code, is likewise to be appreciated. At the time of the commission of the crime, the accused had been convicted of, and was serving sentence for, Robbery in Band with Double Homicide and Multiple Rape by the Court of First Instance of Cagayan.

The plea of guilty may not, under the law, mitigate the liability of the accused because he entered it only after the presentation of the evidence for the prosecution (Art. 13[7], Revised Penal Code).

The crime committed is Murder qualified by evident premeditation and attended by the special aggravating circumstance of quasi-recidivism, by reason of which, the penalty should be imposed in its maximum period, or death.[36] We feel, however, that the accused's admission of guilt indicates his submission to the law and a moral disposition on his part to reform, hence, for lack of the sufficient number of votes to affirm in toto the judgment under review, the death penalty imposed is changed to reclusion perpetua.[37]

WHEREFORE, the judgment appealed from is hereby modified as to the penalty, which is hereby reduced to reclusion perpetua, and as to the civil indemnity which is hereby raised to P12,000.00. In all other respects, the judgment is hereby affirmed.

Costs against the accused-appellant, Ernesto Onavia.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Makasiar, J., the accused is guilty only of homicide. There is no evident premeditation. Only a few hours elapsed from the order to kill until the actual killing.

[1] Information, p. 1, Original Record; t.s.n., February 4, 1974, pp. 3-5 & 21, CCC Record.

[2] pp. 1-2, Original Records.

[3] pp. 1-2, t.s.n., February 4, 1974.

[4] T.s.n., February 1, 1974, pp. 10-11.

[5] Ibid., p. 26.

[6] T.s.n., February 4, 1974, p. 6.

[7] Ibid., p. 24.

[8] Ibid., pp. 6-7.

[9] Ibid., p. 8.

[10] Ibid., p. 9.

[11] Ibid., p. 12.

[12] Ibid., *ibid.*

[13] Ibid., p. 18.

- [14] Ibid., p. 13.
- [15] Ibid., p. 22.
- [16] Ibid., p. 19.
- [17] People vs. Daeng, 49 SCRA 222 (1973).
- [18] People vs. Nismal, 114 SCRA 487, 490 (1982) citing People vs. Apduhan, Jr., 24 SCRA 798 (1968).
- [19] T.s.n., February 4, 1974, p. 19.
- [20] T.s.n., February 1, 1974, p. 3.
- [21] T.s.n., February 4, 1974 p. 5.
- [22] Ibid., p. 7.
- [23] Ibid., p. 6.
- [24] People vs. Manobo, 18 SCRA 30, 40 (1966).
- [25] Art. 14(16), Revised Penal Code.
- [26] T.s.n., February 4, 1974, pp. 5-6.
- [27] People vs. Manlangit, 73 SCRA 49 (1976).
- [28] People vs. Diva, et al., 23 SCRA 332 (1968).
- [29] T.s.n., February 4, 1974, pp. 13, 18.
- [30] People vs. Hanasan, 29 SCRA 534 (1969).
- [31] People vs. Diaz, 55 SCRA 179 (1974).
- [32] T.s.n., February 4, 1974, p. 8.
- [33] Ibid., pp. 12-13.
- [34] Ibid., p. 18.
- [35] ART. 160. Commission of another crime during service of penalty imposed for another previous offense - Penalty.- Besides the provisions of rule 5 of article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.
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- [36] Art. 248, in relation to Art. 160, Revised Penal Code.
- [37] People vs. Coronel, 17 SCRA 509 (1966).

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