

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PINCALIN, RODOLFO BELTRAN, EDUARDO EMPLEO AND ALEJANDRO JANDOMON, ACCUSED-APPELLANTS.

G.R. No. L-38755. January 22, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This is another convict-against-convict murder case involving prisoners in the national penitentiary. As shown in *People vs. Garcia*, L-40106, March 13, 1980, 96 SCRA 497, at around eight-forty-five in the morning of Good Friday, April 9, 1971, certain Visayan prisoners, members of the Oxo gang, were killed by their fellow-prisoners from Luzon, members of the Sigue-Sigue Sputnik (SSS) gang.

To avenge those killings, the herein accused, Jose Pincalin, Rodolfo Beltran, Eduardo Empleo and Alejandro Jandomon, all Visayans (except Beltran) and members of the Oxo and Happy-Go-Lucky gangs, conspired at about ten o'clock in the morning of that same Good Friday to kill some of their fellow-prisoners in dormitory 6-A of the New Bilibid Prison, Muntinlupa, Rizal, who were members of the Sputnik gang.

They agreed that Pincalin would kill Leonardo Francisco, that Beltran and Empleo would kill Victorino Abril, and that Jandomon would kill Florentino Tilosa. The accused armed themselves with improvised bladed weapons known among prisoners as matalas.

About an hour later, the accused proceeded to implement the objective of the conspiracy. While Abril was seated on his bed watching someone who was making a basket, Beltran and Empleo approached him frontally and stabbed him. Abril fell on the floor. While in that position, Empleo stabbed him six times while Beltran stabbed him five times.

The second victim, Tilosa, was standing near the door of the dormitory when Jandomon stabbed him on the right side of his body. As Tilosa resisted, Jandomon stabbed him repeatedly until he collapsed on the floor.

The third victim, Francisco, was standing near a wall facing the prison hospital and, as he heard Abril asking why he was assaulted when he had not done anything wrong, Francisco was stabbed by Pincalin in the abdomen near the waist. Francisco avoided further assaults from Pincalin by climbing a window.

Afterwards, Pincalin, Empleo, Beltran and Jandomon surrendered with their weapons to a prison inspector named Mañalac and a prison guard named Pantua. On that same day they executed separate extrajudicial confessions in Tagalog which were sworn to before the Assistant Director of Prisons.

The autopsy disclosed that Tilosa, 37, a native of Mulanay, Quezon, suffered six gaping stab wounds in the chest and abdomen, two of which penetrated his right lung and liver, and two stab wounds in the left forearm, or eight stab wounds in all.

Abril, 34, a native of Barrio Veronica, San Pablo City, sustained five gaping stab wounds in the chest, one of

which penetrated his left lung, a gaping incised wound in the right leg, and abrasions in the chest and wounds in the back and arms, or fourteen stab wounds in all.

Francisco, 48, a native of Cavite City, sustained a serious stab wound in the lumbar region of the abdomen which was sutured. Later, a surgical operation was performed on Francisco.

About seventeen months after that killing, or on September 5, 1972, a special prosecutor filed an information against the four accused, charging them with murder and frustrated murder, qualified by treachery and evident premeditation and alleging that they perpetrated the offenses while serving sentences in the national penitentiary. Upon arraignment, they pleaded not guilty.

The main evidence against the accused consisted of their extrajudicial confessions. Francisco A. Cometa, Jr., the prison-guard investigator who took the confessions and made a written report of the incident dated May 6, 1971, testified on the voluntariness of the confessions and confirmed his report that the four accused were responsible for the two killings and the wounding of Francisco and that gang rivalry motivated the assaults.

Cometa identified the four accused in the course of his testimony. Cometa also identified the affidavits of Francisco and Lamberto Mapalad, a convict and alleged eyewitness who implicated the accused in the assaults. However, Francisco and Mapalad did not testify. Hence, their affidavits are hearsay.

At the trial, the four accused repudiated their confessions. Jandomon, 37, a native of Binalbagan, Negros Occidental, denied that he and his co-accused assaulted the three victims herein. He admitted that he was a member of the Happy-Go-Lucky gang. He allegedly signed his confession because he was confined in a room without breakfast and lunch up to ten-thirty in the evening of April 9, 1971. He signed because he was hungry. Cometa allegedly said that if he did not sign the confession, he would not be allowed to go home.

Jandomon said that he could not read his confession because he does not know how to read. He was not formally investigated. He does not remember whether he appeared before the Assistant Director of Prisons to swear to his confession. He admitted that he was not mauled by the investigator ("We were not mauled by Cometa", 12 tsn March 20, 1974).

Accused Beltran, 29, a native of Pasay City, a tubercular, who finished Grade five, testified that he did not know how Abril and Tilosa were killed. He denied that he entered into a conspiracy with Pincalin, Jandomon and Empleo to assault the victims. He said that he was investigated by Cometa. He admitted that he signed his confession because he trusted Cometa who assured him that he could go home (umuwi) after signing it. At about nine o'clock in the morning of April 9, 1971, he was taken to the investigation room by Cometa and made to face the wall. He declared that Cometa did not maltreat nor intimidate him.

Accused Empleo, 32, a native of Bacolod City, who finished Grade one, declared that he did not know who killed Abril and Tilosa. He was not interrogated by Cometa. He could not have read his confession because he does not know how to read. He signed it because he was hungry and dizzy. He did not kill Abril and Tilosa. He admitted that he was not maltreated nor intimidated by Cometa. He was a member of the Happy-Go-Lucky gang. He said that the enmity between Tagalogs and Visayans was a common phenomenon in Muntinlupa.

Pincalin, 27, a native of Samar, who finished Grade two, testified that he had no participation in the assaults committed on April 9, 1971. He denied having executed any confession. However, he admitted his signature and thumbmark in his confession. He said that he was not interrogated by Cometa. He admitted that he was not maltreated by Cometa. He said that he did not belong to any gang in 1971 but in 1974 he was a member of the Batang Samahan ng Waray-Leyte. He said that Beltran was his "boy" (bata).

All the four accused admitted on the witness stand that they were serving sentences for different crimes when the assaults in question were perpetrated.

By way of rebuttal, Cometa testified that the four accused were given their lunch at four twenty-five in the afternoon of April 9, 1971. He took the confessions in the following manner:

"Before I proceeded to the investigation proper, I interviewed them (the four accused) one by one verbally. After that, I went to the brigade and looked for an eyewitness but I was not able to find an eyewitness that day.

"I talked to them and asked them whether the other (their) confessions were true or not and they insisted that they were confessing to the truth. So that was the time I proceeded to the investigation proper." (22 tsn March 26, 1974).

The trial court convicted the four accused of murder, which it regarded as a complex crime qualified by treachery and aggravated by evident premeditation and quasi-recidivism. Applying article 160 of the Revised Penal Code, it sentenced each of them to one death penalty and ordered them to pay solidarily to the heirs of the two deceased victims, Abril and Tilosa, an indemnity of twenty thousand pesos.

The trial court also convicted the four accused of frustrated murder and sentenced each of them to an indeterminate penalty of seventeen years, four months and one day of reclusion temporal as minimum to twenty years of reclusion temporal as maximum and to pay solidarily an indemnity of twelve thousand pesos.

The accused did not appeal from that decision. The case was elevated to this Court for automatic review of the death penalty.

Accused Beltran died in prison of tuberculosis on May 7, 1977. Hence, his criminal liability was extinguished. (Resolution of November 17, 1977.)

Counsel de oficio, who was designated to present the side of the accused in this review, contends that the guilt of the accused was not proven beyond reasonable doubt. He observed that the investigation conducted by Cometa was haphazard and inadequate. The case hinges on the probative value of the confessions of the accused.

After taking into account the testimony of the investigator on the voluntariness of the confessions, the fact that, admittedly, the accused signed their confessions without any maltreatment or intimidation and that there is no reason why the investigator would falsely impute to them the commission of two murders and one frustrated murder by fabricating their confessions, we have reached the conclusion that the confessions should be regarded as conclusive proof of their guilt.

The other contention of counsel de oficio is that the lower court erred in imposing the death penalty, considering the inhuman congestion in the national penitentiary, as described by Justice J. B. L. Reyes in *People vs. De los Santos*, L-19067-68, July 30, 1965, 14 SCRA 702, 712.

We find that the four accused are guilty of the complex crime of double murder and frustrated murder aggravated by quasi-recidivism. This case is governed by the rule that when for the attainment of a single purpose, which constitutes an offense, various acts are executed, such acts must be considered as only one offense, a complex one (*People vs. Peñas*, 66 Phil. 682).

In other words, where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a complex offense.

Various acts committed under one criminal impulse may constitute a single complex offense. (People vs. Abella, L-32205, August 31, 1979.)

Therefore, the four accused should each be sentenced to death, as was done by the trial court. However, following the precedent established in the De los Santos and Abella cases as well as in the Garcia case, which involved four murders and double attempted murder committed on the same day when the double murder and frustrated murder in this case were committed, the death penalty should be reduced to reclusion perpetua.

In the De los Santos case, which like this case arose due to the virulent and continuing feud between members of the Sigue-Sigue and Oxo gangs, there was a riot in the morning of Sunday, February 16, 1958, in the national penitentiary. Five prisoners were killed. On the following day, a similar riot occurred. Four prisoners were killed. For the killing of the nine prisoners, the fourteen accused (originally 46 were charged in two separate cases), only one reclusion perpetua was imposed.

It should be noted that the killings in this case were the fourth incident which transpired on Good Friday, April 9, 1971. Thus, at past eight o'clock in the morning of that day, four prisoners were killed (Garcia case). Then at ten-five on that same morning, one prisoner was killed. At ten-twenty-five, two prisoners were killed and at eleven-twenty-five, the two killings involved in this case were perpetrated (96 SCRA 505).

In other cases where several killings on the same occasion were perpetrated, but not involving prisoners, a different rule may be applied, that is to say, the killings would be treated as separate offenses, as opined by Mr. Justice Makasiar and as held in some decided cases.

WHEREFORE, the trial court's judgment is set aside. The accused, Pincalin, Empleo and Jandomon, are each sentenced to reclusion perpetua and to pay solidarily to each set of heirs of the victims, Abril and Tilosa, an indemnity of twelve thousand pesos and to Francisco an indemnity of six thousand pesos. Costs de oficio.

SO ORDERED.

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

Makasiar, J., see dissent.

DISSENTING OPINION

MAKASIAR, J.:

Despite the fact that the four accused-appellants killed two victims by separate acts of execution, aside from adjudging them guilty of the frustrated murder of a third victim, the majority opinion finds the four appellants guilty of only the complex crime of double murder and sentenced them to reclusion perpetua. If they are guilty of the complex crime of double murder, the death penalty should be imposed on the four accused, as a matter of legal precision.

But I dissent mainly because the appellants should be guilty of two separate murders, not of the complex crime of double murder.

Article 48 of the Revised Penal Code states that "when a single act (not a single purpose) constitutes two or more grave or less grave felonies x x x, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period" (underscoring supplied). The basis for the legal conclusion in the majority opinion is the

single motivation or single purpose, which is not justified by the phraseology of the law as aforequoted.

Terrorists have one single purpose - to terrorize. If the terrorists kill several persons separately with different firearms or sharp instruments, under the majority opinion, the terrorists can only be guilty of the complex crime of multiple murder. Or if the members of an arson syndicate, by pre-arranged signals, set fire to several buildings at the same time and killing all the inmates therein, under the single purpose or single motivation theory of the majority opinion, the culprits can only be guilty of one crime of arson complexed with murder.

These two situations graphically demonstrate the absurdity of the legal conclusion in the majority opinion. The rule in the 1975 case of *People vs. Toling* (L-27097, Jan. 17, 1975, 62 SCRA 17, 33, 34) penned by Mr. Justice Aquino himself, which is re-affirmed in the subsequent cases of *Gamboa vs. CA. et al.* (Nov. 28, 1975, 68 SCRA 308, 315-318) and *People vs. Undong* (L-32641, Aug. 29, 1975, 66 SCRA 386, 395-396) should apply and should be adhered to (see also the cases of *People vs. Remollino*, 109 Phil. 609; *People vs. Mortero*, 108 Phil. 31; *People vs. Basarain*, 97 Phil. 955 and a host of other cases).

Mr. Justice Aquino, speaking for the Court in the *Toling* case, *supra*, ruled:

"The eight killings and the attempted murder were perpetrated by means of different acts. Hence, they cannot be regarded as constituting a complex crime under article 48 of the Revised Penal Code which refers to cases where 'a single act constitutes two or more grave felonies, or when an offense is a necessary means for committing the other'.

"As noted by Cuello Calon, the so-called 'concurso formal o ideal de delitos reviste dos formas: (a) cuando un solo hecho constituye dos o mas delitos (el llamado delito compuesto); (b) cuando uno de ellos sea medio necesario para cometer otro (el llamado delito complejo). (1 Derecho Penal, 12th Ed. 650).

"On the other hand, 'en al concurso real de delitos', the rule, when there is 'acumulacion material de las penas', is that 'si son varios los resultados, si son varias las acciones, ester conforme con la logica y con la justicia que el agente soporte la carga de cada uno de los delitos' (Ibid, p. 652, *People vs. Mori*, L-23511, January 31, 1974, 55 SCRA 382, 403).

"The twins are liable for eight (8) murders and one attempted murder (See *People vs. Salazar*, 105 Phil. 1058 where the accused Moro, who ran amuck, killed sixteen persons and wounded others, was convicted of sixteen separate murders, one frustrated murder and two attempted murders; *People vs. Mortero*, 108 Phil. 31, the Panampunan massacre case, where six defendants were convicted of fourteen separate murders; *People vs. Remollino*, 109 Phil. 607, where a person who fired successively at six victims was convicted of six separate homicides; *U.S. vs. Beecham*, 15 Phil. 272, involving four murders; *People vs. Macaso*, 85 Phil. 819, 828, involving eleven murders; *U.S. vs. Jamad*, 37 Phil. 305; *U.S. vs. Balaba*, 37 Phil. 260, 271. Contra: *People vs. Cabrera*, 43 Phil. 82, 102-103; *People vs. Floresca*, 99 Phil. 1044; *People vs. Sakam*, 61 Phil. 27; *People vs. Lawas*, 97 Phil. 975; *People vs. Manantan*, 94 Phil. 831; *People vs. Umali*, 96 Phil. 185; *People vs. Cu Unjieng*, 61 Phil. 236; *People vs. Peñas*, 66 Phil. 682; *People vs. De Leon*, 49 Phil. 437, where the crimes committed by means of separate acts were held to be complex on the theory that they were the product of a single criminal impulse or intent)."

As stressed in *People vs. Pineda* (L-26222, 20 SCRA 754, July 21, 1967), cited in *Gamboa vs. CA*, *supra*, "to

apply the first half of Article 48 . . . there must be singularity of criminal acts; singularity of criminal impulse is not written into the law."

The majority opinion is too lenient in favor of murderers and overlooks the superior right of the victims to live, which ranks second to none in the hierarchy of human rights. No one has the right to kill, except in self-defense or defense of relatives and strangers.

The sub-human conditions inside the National Penitentiary, which might have aggravated the criminal tendencies of the appellants herein, may justify a recommendation to the President of the Philippines for the commutation of their death sentences to life imprisonment.

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